



S.A.(MD)No.550 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.03.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

S.A.(MD)No.550 of 2017

and

C.M.P.(MD)No.11879 of 2017

Murugesan

... Appellant

/Vs./

Narayanavadivoo

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the Judgment and Decree dated 21.09.2016 made in A.S.No.103 of 2013 on the file of the I Additional Subordinate Judge at Nagercoil, confirming the judgment and decree dated 03.09.2013 made in O.S.No.821 of 2009 on the file of the Principal District Munsif, Nagercoil and allow this second appeal.

For Appellant : Mr.P.Thiagarajan

For Respondent : Mr.Vashik Ali
for M/s.Murugan



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JUDGMENT

This Second Appeal has been filed challenging the concurrent findings of the Courts below. The parties are described as per the litigative status in the suit. The plaintiff in the suit is the appellant herein. The suit in O.S.No.821 of 2009 was filed on the file of the Principal District Munsif Court, Nagercoil, against the respondent / defendant seeking for the relief of declaration of title, recovery of possession, future mesne profits and for permanent injunction. The suit schedule property is the house site having an extent of 2.333 cents out of 7 cents in S.No.1639, Iravipudur Village, Agastheeswaram Taluk, Kanyakumari District.

2. The case of the plaintiff as seen from the plaint are as follows:

(a) He is an adopted son of Kamalachi;

(b) According to the plaintiff, the suit schedule property originally belonged to one Subramania Nadar and he had sold the said property in favour of Kamalachi under sale deed dated 11.11.1982 (Ex.B1);

(c) Kamalachi executed a registered settlement deed dated



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11.11.1982 (Ex.A1) in favour of the plaintiff, who is her adopted son retaining her enjoyment of the suit schedule property till her lifetime;

(d) According to the plaintiff, the suit schedule property was purchased by Kamalachi under the sale deed dated 11.11.1982 (Ex.B1) only out of his own income in the name of Kamalachi out of his natural love and affection towards her. Thereafter, the plaintiff claims that he has got the suit schedule property by virtue of settlement deed dated 11.11.1982 (Ex.A1) executed on the very same date by Kamalachi;

(e) The plaintiff claims that in the suit schedule property, a house bearing Door No.6/95 was constructed and Kamalachi, her husband, Paul Nadar and their youngest daughter, the defendant herein and the plaintiff as adopted son were residing;

(f) Kamalachi, died on 04.04.1992. According to the plaintiff, he permitted the defendant and her father to reside in the suit schedule property, though the settlement deed dated 11.11.1982 (Ex.A1) was given effect to and acted upon, pursuant to the death of Kamalachi as early as on 04.04.1992; and

(g) According to the plaintiff, Paul Nadar died on 20.10.2009 and thereafter, the plaintiff requested the defendant to vacate and hand over



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possession of the suit schedule property to him and the same was refused.

Only under such circumstances, the suit in O.S.No.821 of 2009 came to be filed.

3. However, as seen from the written statement filed by the defendant in the suit, her defence is as follows:

(a) She has denied the title of the plaintiff over the suit schedule property based on the settlement deed dated 11.11.1982 (Ex.A1) allegedly executed by Kamalachi in favour of the plaintiff;

(b) According to the defendant, Kamalachi purchased the suit schedule property on 11.11.1982 (Ex.B1) and she had put up a small house after her purchase and she was residing with her family ever since the purchase;

(c) According to the defendant, Kamalachi allowed her husband and the defendant to live with her;

(d) The plaintiff was never an adopted son of Kamalachi as pleaded in the plaint;

(e) During 2007, the house in the suit property fell down due to heavy rain. The defendant had put up foundation for a new house and



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due to paucity of funds, further construction was not carried out; and

(f) The settlement deed dated 11.11.1982 (Ex.A1) alleged to have executed by Kamalachi in favour of the plaintiff has been obtained by fraud and therefore, the said document cannot be relied upon by the plaintiff to prove his title over the suit schedule property.

4. The trial Court based on the pleadings of both the parties, framed the following issues:

(a) Whether the plaintiff is having lawful right over the suit schedule property?

(b) Whether the plaintiff is entitled for the relief of declaration of title?

(c) Whether the plaintiff is entitled for the relief of recovery of possession?

5. Before the trial Court, the plaintiff filed 13 documents, which were marked as Exs.A1 to A13 and the plaintiff examined himself as P.W.1. On the side of the defendant, 12 documents were marked, namely, Exs.B1 to B12 and the defendant was examined as D.W.1 and another



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person, by name, Thangadurai, was examined as D.W.2. Based on the oral and documentary evidence available on record, the trial Court dismissed the suit filed by the plaintiff by giving the following reasons:

(a) The plaintiff failed to prove that he is an adopted son of Kamalachi and Paul Nadar;

(b) No explanation has been given by the plaintiff for the purchase of suit schedule property and execution of the settlement deed dated 11.11.1982 (Ex.A1) in favour of the plaintiff by Kamalachi on the very same date and as such, the case of the defendant that Ex.A1 settlement deed was obtained by fraud from Kamalachi by the plaintiff has to be accepted;

(c) The plaintiff failed to produce the sale deed executed in favour of Kamalachi, but the defendant has produced the original sale deed standing in the name of Kamalachi, which has been marked as Ex.B1. The plaintiff has also not produced the original settlement deed dated 11.11.1982 (Ex.A1), but instead has filed only the certified copy of the said document. The plaintiff has failed to prove that Ex.A1 settlement deed is a valid settlement deed;

(d) The plaintiff failed to prove that the house tax receipts



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produced and marked as Ex.A3 are relating to the suit schedule property house, as Kamalachi purchased only a vacant site. No details have been offered by the plaintiff as to when the building was put up therein and by whom, it was constructed. Ex.A4, EB receipts are only of the year 2009. Ex.A12, patta standing in the name of the plaintiff was also obtained by him only in the year 2009, whereas the defendant has obtained patta in her name, even prior to 2009; and

(e) The defendant and her father are residing in the suit schedule property and the defendant's father has also executed Ex.B2, settlement deed dated 15.11.2006 and the plaintiff has not claimed any relief as against Ex.B2 settlement deed in the suit.

6. The learned counsel appearing for the plaintiff drew the attention of this Court to Section 92 of the Indian Evidence Act, 1872 and would submit that there is a legal bar for letting in any oral evidence by the defendant with regard to the contents of a document. He would submit that it is for the defendant to establish by letting in oral and documentary evidence that the settlement deed dated 11.11.1982 (Ex.A1) standing in the name of the plaintiff has been obtained by fraud.



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7. Section 92 of the Indian Evidence Act, 1872 reads as follows:

“Section 92. Exclusion of evidence of oral agreement.- When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1). - Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, [want or failure] of consideration, or mistake in fact or law.

Proviso (2). - The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3). - The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.



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Proviso (4). - The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5). - Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6). - Any fact may be proved which shows in what manner the language of a document is related to existing facts.”

8. As seen from the aforesaid Section, it is clear that only when the settlement deed dated 11.11.1982 (Ex.A1) standing in the name of the plaintiff has been proved by him, there cannot be any further oral evidence contrary to the contents of the document that can be let in by the defendant. Admittedly, the defendant has disputed the settlement deed dated 11.11.1982 (Ex.A1) standing in the name of the plaintiff and



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she has pleaded that the said settlement deed has been obtained by fraud in the written statement. The following circumstances also support the case of the defendant that the settlement deed (Ex.A1) has been obtained by fraud:-

(a) Though the plaintiff has claimed in the plaint that he is the adopted son of Kamalachi, who has executed the settlement deed dated 11.11.1982 (Ex.A1), he has not filed any documentary evidence to support his stand that he is a legally adopted son of Kamalachi;

(b) Kamalachi purchased the suit schedule property on 11.11.1982 under Ex.B1. On the very same date, Kamalachi has executed a registered settlement deed dated 11.11.1982 (Ex.A1) in favour of the plaintiff and in the recitals to the said settlement deed, it is mentioned that the plaintiff is the son of Kamalachi;

(c) The plaintiff has pleaded in the plaint that the suit schedule property was purchased out of his money in the name of Kamalachi under the sale deed dated 11.11.1982 (Ex.B1). However, on the very same date, he has also got a settlement deed dated 11.11.1982 (Ex.A1) executed in his favour by Kamalachi. There was no necessity for the plaintiff to get a settlement deed executed in his favour on the very same



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date, ie., on 11.11.1982 out of natural love and affection. He claims that out of his own funds, he had purchased the suit schedule property in the name of Kamalachi under the sale deed dated 11.11.1982 (Ex.B1). The sale deed dated 11.11.1982 standing in the name of Kamalachi (Ex.B1) and the subsequent settlement deed standing in the name of the plaintiff (Ex.A1) are of the same date and therefore, the statement made by the plaintiff that only out of his money, he had purchased the suit schedule property in the name of Kamalachi, dated 11.11.1982 (Ex.B1) is unbelievable and the trial Court has rightly rejected the said contention.

(d) When the property was purchased by Kamalachi under the sale deed dated 11.11.1982 (Ex.B1), it was only a vacant site. The property was purchased in the year 1982 and the alleged settlement deed was also executed on the very same date as that of the sale deed, in favour of the plaintiff. But, however the suit was filed by the plaintiff only in the year 2009, which is the subject matter of this Second Appeal. No evidence has been let in by the plaintiff as to how the building came into existence and thereafter, who had constructed the same, at whose costs, though the suit schedule property comprises the constructed portion as well.

(e) Under Section 10 (iv) of the Hindu Adoptions and Maintenance



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Act, 1956, under normal circumstances, a person cannot be taken in adoption, if the said person has completed the age of 15 years, unless there is a custom or usage applicable to the parties, which permits the person, who has completed the age of 15 years to be taken in adoption. Admittedly, as seen from the pleadings as well as the oral and documentary evidence of the plaintiff, he was aged 24 years at the time of execution of the settlement deed dated 11.11.1982 (Ex.A1) in his favour by Kamalachi. Therefore, Kamalachi could not have legally taken the plaintiff as her adopted son through a valid adoption. Section 92 of the Indian Evidence Act, 1872, which has been extracted supra and was relied upon by the learned counsel appearing for the plaintiff will not apply to the documents, which have not been proved. Here is a case, where the defendant has pleaded in her written statement that the settlement deed dated 11.11.1982 (Ex.A1) standing in the name of the plaintiff has been obtained by fraud and the circumstances pleaded by the defendant, which have been referred to supra also make the Court to undoubtedly believe that the said documents have been obtained by fraud;

(f) Further, as seen from the documents marked as exhibits on the



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side of the plaintiff, he has only filed certified copy of the settlement deed, dated 11.11.1982 (Ex.A1) and he has not filed the original of the same. However, the parent documents including the original of the sale deed dated 11.11.1982 standing in the name of Kamalachi, from whom the plaintiff alleges to have got the settlement deed under Ex.A1 has also been marked as an exhibit only on the side of the defendant, as they were having custody of the same.

9. The initial burden of proof as per the provisions of Section 101 of the Indian Evidence Act, 1872, is on the plaintiff to prove that he is entitled for the suit claim. In the instant case, the plaintiff has filed a suit for declaration of title, recovery of possession, future mesne profits and for permanent injunction. When the defendant has alleged in her written statement that the plaintiff was never adopted by Paul Nadar and Kamalachi and the settlement deed dated 11.11.1982, which was executed on the very same date of the parent sale deed dated 11.11.1982 is a fabricated document and has been obtained by fraud, it is for the plaintiff to establish through oral and documentary evidence that he is infact the legally adopted son of Paul Nadar and Kamalachi and the



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settlement deed dated 11.11.1982 was also legally executed in his favour by Kamalachi.

10. The surrounding circumstances, namely a) non production of a legally valid document either in the form of a Court order or any other legally acceptable documents to prove that the plaintiff was legally adopted as a son by Paul Nadar and Kamalachi and b) when the settlement deed was executed in plaintiff's favour on the very same date of the parent sale deed ie., on 11.11.1982 and that too when the plaintiff has pleaded that only out of his funds, the property was purchased under the sale deed dated 11.11.1982 in the name of Kamalachi, will certainly make any person having average intelligence to come to the conclusion that the settlement deed dated 11.11.1982 obtained by the plaintiff has been obtained by fraudulent means and is a fraudulent document.

11. Though the general rule under Section 92 of the Indian Evidence Act, 1872 is that no oral evidence can be given contradicting the terms of the recitals contained in a document, but proviso (1) to (6) of the said Section provides for exceptions to the said general



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rule. One such exception is fraud as seen from proviso (1). The defendant has categorically pleaded that the settlement deed was obtained by fraud in her written statement and has also made the Court to undoubtedly believe in view of the surrounding circumstances as observed supra that the said document has been obtained by fraud.

12. As the initial burden of proof to prove the suit claim is vested with the plaintiff and the plaintiff in the instant case has not discharged his initial burden as he has failed to prove through oral and documentary evidence that he is a legally adopted son of Kamalachi and he has also failed to remove the suspicion, any person of average intelligence will have about the valid execution of the document, where a party claims that out of his natural love and affection, he had purchased a property in the name of his mother out of his income, but on the very same date of the purchase in the name of his mother under a sale deed, he has also got a settlement deed executed in his favour from his mother.

13. The Hon'ble Supreme Court of India, in the case of *Placido Francisco Pinto (D) By Lrs and Another versus Jose Francisco Pinto*



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and Another reported in **2021 SCC OnLine SC 842** has made it clear that the oral evidence of a written agreement, which is asserted by one of the parties to be obtained by fraud, he can let in oral evidence for the purpose of proving his case that the said agreement has been obtained by fraud. Therefore, there is an exception to the general rule under Section 92 of the Indian Evidence Act, 1872, to the cases, where the agreement has been obtained by fraud. In such a case, the party, who pleads fraud is allowed to let in oral evidence with regard to the contents of the alleged fraudulent document. In the case on hand, the defendant has categorically asserted that the plaintiff is not the son of Kamalachi and the settlement deed executed in his favour is also a fraudulent document, which has also made the Courts below to undoubtedly believe based on the oral and documentary evidence available on record that the said document has been obtained by fraud. Therefore, letting oral evidence by the defendant with regard to the recitals as well as the terms and conditions of the settlement deed will fall under the proviso (1) to Section 92 of the Indian Evidence Act, 1872 and therefore, it falls under the exception category to the general rule that no oral evidence is permissible to be let in with regard to the contents of a proved document.



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14. The decisions relied upon by the learned counsel appearing for the appellants in the cases of *Ramti Devi vs. Union of India* reported in *1995 1 SCC 198* and *Rakkammal vs. P.R.Meyappan Ambalam and others* reported in *1991 2 L.W 491* will also not assist the plaintiff's case, as only based on the oral and documentary evidence available on record, the Courts below have given a correct finding that the plaintiff is not a legally adopted son of Kamalachi and that the settlement deed dated 11.11.1982 (Ex.A1) standing in the name of the plaintiff has been obtained by fraud.

15. Unless and until the Courts below had misdirected itself by wrongly applying the evidence available on record, this Court by exercising its jurisdiction under Section 100 of C.P.C., can interfere with the findings of the Courts below. Since the Courts below have rightly given its findings, which are based on the oral and documentary evidence available on record, this Court cannot interfere with the said findings, as there is no infirmity in the same. Therefore, the decision relied upon by the learned counsel appearing for the appellant in *Krishna Mohal Kul @*



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Nani Charan Kul vs Pratima Maity reported in **2003 9 SCC 468** also does not support the case of the plaintiff, in view of the fact that the Courts below have not misdirected themselves by wrongly appreciating the oral and documentary evidence available on record.

16. For the foregoing reasons, this Court is of the considered view that the trial Court has rightly dismissed the suit, as the plaintiff has not been able to prove his title over the suit schedule property and this Court does not find any infirmity in the findings of the trial Court. The lower appellate Court, namely the I Additional Subordinate Court, Nagercoil, by its Judgment and Decree dated 21.09.2016, has also rightly confirmed the findings of the trial Court by dismissing the first appeal filed by the plaintiff by holding that the plaintiff has failed to prove that he is an adopted son of Kamalachi and Paul Nadar and the plaintiff has also failed to prove that Ex.A1 settlement deed is a true and a valid document. This Court, while admitting the second appeal on 21.12.2017, had formulated the following substantial questions of law:-

“1. Whether the Courts below right placing the burden of proof on the plaintiff to prove that he is an



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adopted son of Paul Nadar and Kamalachi, whereas the said fact has been established by the plaintiff by producing Exhibit A-1, the registered settlement deed, dated 11.11.1982 executed by Kamalachi?

2. When the plaintiff has proved his possession and title by producing the documents in Ex.A1 to A13, whether the Courts below were right in dismissing the suit?

3. Whether the Courts below were right in give a finding against the Exhibit A-1, registered settlement deed by Kamalachi executed in favour of the plaintiff ignoring the provision under Section 92 of Indian Evidence Act?

4. Whether Courts below were right in dismissing the suit upon framing an unnecessary issue, with regard to the adoption of plaintiff without going into the scope and validity of Ex.A1 settlement deed, only on the basis of which the present suit came to be filed?"

17. Having failed to prove that the plaintiff is the adopted son of Kamalachi and Paul Nadar and having failed to prove that Ex.A1 registered settlement deed dated 11.11.1982 executed by Kamalachi is a valid and genuine document and having failed to prove that he is in possession of the suit schedule property and in view of the fact that the surrounding circumstances also make this Court to undoubtedly believe



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that the settlement deed dated 11.11.1982 (Ex.A1) standing in the name of the plaintiff has been obtained by fraudulent means, this Court answers the substantial questions of law extracted supra against the plaintiff, as the Courts below have rightly held that the suit claim has not been proved by the plaintiff. This Court does not find any infirmity in the findings of the Courts below. Accordingly, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

30.03.2023

Index : Yes / No
NCC : Yes / No
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TO:

- 1.The I Additional Subordinate Judge at Nagercoil.
- 2.The Principal District Munsif, Nagercoil.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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ABDUL QUDDHOSE, J.

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Judgment made in
S.A.(MD)No.550 of 2017

Dated:
30.03.2023