



S.A.(MD) No.586 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.10.2023

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A.(MD) No.586 of 2023
and
C.M.P.(MD) No.13641 of 2023

R.Subramaniyam

..Appellant

Vs.

1.Gaspar Fathinathan
S/o.Gaspar,
Rep. through his Power agent
S.Arockiasamy

2.Francis Xavier Gaspar

3.Mariadaas Gaspar

4.Gaspar Antony Mary

5.Antony Xavier Soosay

6.Charles Antony Soosay

7.Christina Teresa Soosay

8.Soosay Mary

9.Leo Pelicks Louis

...Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the decree and judgement passed by the Additional District Court, Sivagangai, dated 21.10.2019 made in A.S.No.13 of 2017, confirming the decree and judgement



S.A.(MD) No.586 of 2023

made in O.S.No.66 of 2008 dated 23.08.2016 by the Subordinate Court, Devakottai, by allowing this Second Appeal.

For Appellants : Mr.M.Karthikeyavenkatachalapathy
for Mr.S.Madhavan

For R1, 2, 4 to 7 : Mr.M.Vallinayagam
Senior Counsel
for Mr.J.Anandhakumar

JUDGMENT

This Second appeal is filed challenging the Judgment and decree passed in A.S.No.13 of 2017, dated 21.10.2019, on the file of the Additional District Court, Sivagangai, confirming the judgment and decree in O.S.No.66 of 2008, dated 23.08.2016, on the file of the Subordinate Court, Devakottai.

2. The first respondent as plaintiff filed the suit in O.S.No.66 of 2008 seeking the relief of partitioning the suit schedule properties and allot 1/6th share and for costs. The said suit was partly decreed by the trial Court and confirmed by the first appellate Court in A.S.No.13 of 2017. Not satisfied with the findings of the Courts below, this second appeal is filed.



S.A.(MD) No.586 of 2023

3. The case of the plaintiff, in brief is as follows:-

The plaintiff's father was one Gaspar and his mother was Soosai Mary.

Defendants 1 and 2 are the brothers of the plaintiff. Defendants 3 and 7 are his sisters. He had another sister Annamah. Annamah died leaving behind defendants 4 to 6. 8th defendant was the son of seventh defendant. 9th defendant was the third party. Plaintiff's father and mother and defendants 1 to 6 have been living in Malaysia. Seventh defendant was born in Malaysia and after her marriage, she came to India and has been living with her husband. The suit 'A' and 'B' scheduled properties were self-acquired properties of the Mother Soosai Mary. The said Soosai Mary purchased the 'A' schedule property through a registered sale deed on 30.01.1962. She purchased 'B' schedule property through a registered sale deed in 1964. She had constructed line houses in first item of 'B' schedule properties and had leased to the tenants. She died in or about 1983 leaving behind her husband, sons and daughters. After her death, the legal heirs inherited 'A' and 'B' schedule properties and they were in joint possession and enjoyment. The suit 'C' and 'D' schedule properties belonged to the plaintiff's father Gaspar and those properties are his ancestral properties. Gaspar died in 1985 leaving behind his sons and daughters and the children of pre-deceased daughter Annamah. They were in joint possession and enjoyment of 'C' and 'D' schedule properties. The seventh defendant, in collusion with defendants 8 and 9, created some sham and nominal documents in respect of the suit properties. The



S.A.(MD) No.586 of 2023

plaintiff asked the defendants 1 to 7 for partition in 2006 and they have not come forward to effect partition. Therefore, the suit is filed for the aforesaid reliefs.

4. Except the seventh defendant, other defendants, namely, defendants 2, 3 and 4 to 6 filed written statements supporting the claim of partition and they also paid Court-fee for their shares.

5. The seventh defendant filed the written statement denying the plaintiff allegations. It is stated that 'A' schedule property absolutely belonged to the mother Soosai Mary. Mother Soosai Mary handed over the suit 'A' schedule property to the seventh defendant by way of a family settlement deed. This family settlement deed was known to the plaintiff and other defendants, even during the lifetime of Soosai Mary. Thereafter, the seventh defendant executed a gift settlement deed in favour of eighth defendant, her son, as regards, 'A' schedule property. The eighth defendant was enjoying the property and he alienated the property to the ninth defendant. Therefore, it is not open to the plaintiff and other defendants to question the alienation made in respect of 'A' schedule property. Other properties are all in the hands of the plaintiff and defendants 1 to 6. They did not give any share to the seventh defendant in respect of other properties. Therefore, the seventh defendant is also entitled for 1/6th share in the suit 'B', 'C' and 'D' schedule properties. The suit, filed without adding the properties at



Malaysia, is not maintainable.

WEB COPY

6. On the aforesaid pleadings, the trial Court framed the following issues:-

“(i) Whether the plaintiff is entitled for the relief of preliminary decree for partition as claimed in the plaint?

(ii) To what other relief, the plaintiff is entitled?”

7. During the course of trial, PW1 was examined. No documents was produced on the side of the plaintiff. On the side of the defendants, DW1 to DW3 were examined and Ex.B.1 to B.13 documents were produced.

8. On considering the oral and documentary evidence produced before the trial Court, the trial Court partly decreed the suit and that was confirmed by the first appellate Court. Therefore, this second appeal.

9. It is the submission of the learned counsel for the appellant that Ex.B.2, family settlement deed executed by mother Soosai Mary in favour of the seventh defendant on 06.04.1980, is legally binding on the plaintiff and other defendants, for the reason that it is more than 30 years old document and that it does not require for registration for the reason that it only recorded the past



S.A.(MD) No.586 of 2023

transaction. Based on Ex.B.2, proceedings were issued by the Deputy Tahsildar granting patta in favour of the seventh defendant vide Ex.B3. The seventh defendant executed the settlement deed through Ex.B5 on 12.07.2004 in favour of eighth defendant. Ex.B8 shows that patta was transferred to the name of the eighth defendant. Then, on 30.11.2005, the eighth defendant sold the property to ninth defendant through Ex.B9. Patta was also ordered to be transferred to the name of the ninth defendant. Ninth defendant has also produced 10(1) extract and kist receipts to show his possession. In the said circumstances, it is not open to the plaintiff and other defendants to challenge the aforesaid documents and question the title and possession of the ninth defendant and seek partition.

10. In response to the submissions, the learned senior counsel appearing for the respondents would submit that Ex.B2 is not a family arrangement or family settlement deed as the nomenclature suggests. In fact, it is the gift deed alleged to have been executed by mother Soosai Mary in favour of seventh defendant. Through this document, transfer of right on an immovable property has been effected in praesenti. This document requires registration under Section 17 of Indian Registration Act. However, this document was not registered. The trial Court, finding that this document is not registered and that right is created on the basis of this document, found that this document is not admissible in evidence. When this document has become inadmissible in evidence, the other documents



executed on the basis this document, namely, Ex.B.5, Ex.B.9 documents and revenue records given on the basis of these documents, have become irrelevant and not admissible in law. Thus, the Courts below have concurrently found that Ex.B2 is inadmissible in evidence and the other documents executed on the basis of Ex.B2 are also inadmissible in evidence and then decreed the suit. Therefore, the learned counsel for the respondents submitted that there is no substantial question of law arises for consideration in the second appeal.

11. Considered the rival submissions and perused the records.

12. It is not in dispute with regard to the relationship between the parties, namely, plaintiff and defendants 1 to 8. The ninth defendant is the third party to the plaintiff and the defendants. He is the purchaser of 'A' schedule property from the eighth defendant. This Court finds from the records that though the suit was filed for 'A', 'B', 'C' and 'D' schedule properties, there is no document produced with regard to 'B', 'C' and 'D' schedule properties to show that these properties are available for partition and therefore, both the Courts below, have rejected the prayer for partition in respect of 'B', 'C' and 'D' schedule properties. Against the dismissal of the suit in respect of 'B', 'C' and 'D' schedule properties, no appeal was filed by the plaintiff or the other defendants. Even the seventh defendant, who claims 1/5th shares in the 'B', 'C' and 'D' schedule



S.A.(MD) No.586 of 2023

properties in the written statement, has not chosen to file appeal against the dismissal of the prayer for partition in respect of 'B', 'C' and 'D' schedule properties. However, in this appeal before this Court, we are concerned with the partition of 'A' schedule property alone.

13. With regard to 'A' schedule property, it is not in dispute that this property was purchased by mother Soosai Mary through a registered sale deed on 30.01.1962. As a self-acquired property, there is no doubt that she is entitled to gift or settle the property to anyone of her choice. Preciously, on this ground, it is claimed by the appellant, who is a third party purchaser from the eighth defendant, that Ex.B2 binds the plaintiff and other defendants. Therefore, it is necessary to find out the validity and admissibility of Ex.B.2 document.

14.Ex.B.2 document, admittedly, is an unregistered document. It is titled as family arrangement cum family settlement deed. In this document, the mother Soosai Mary states about her husband, children, her properties in India and Malaysia. She claims that her daughter, namely, seventh defendant, resides in India and whenever she comes to India, she stays with her. It is also stated that the seventh defendant was not provided with any property in Malaysia and therefore, she executes a document settling the property, namely, 'A' schedule property, in her favour. From this document, it is apparent that only through this



S.A.(MD) No.586 of 2023

document, mother Soosai Mary, transferred the right/title in respect of 'A' schedule property in favour of her daughter, seventh defendant. It is not in respect of the past transaction, which is reduced into writing through this document. A right in respect of an immovable property is transferred through this document. Thus, it is no doubt that though this document is titled as family arrangement cum family settlement deed, it is in effect and reality, only a gift deed. As per Section 17 of the Indian Registration Act, registration is made compulsory in respect of certain documents, and one among them, is the gift of immovable property. This is dealt with under Section 17(a) of the Indian Registration Act. The trial Court, on a reading of Ex.B2, found that transfer of right is conveyed through Ex.B.2 to the seventh defendant. It requires registration under Section 17(a) of the Indian Registration Act. Since Ex.B.2 is not registered, it is not admissible in evidence and therefore, the documents which had come into existence on the basis Ex.B2 are also not admissible in evidence. This finding was accepted and approved by the first appellate Court.

15. The submission of the learned counsel for the appellant that Ex.B2 is a document which came into existence 30 years back and it recorded only a past transaction, cannot be accepted for the reason that Ex.B2 creates a right in praesenti in respect of immovable property. When its admissibility is challenged on the ground that it is not a registered document, it is not open to the appellant to



S.A.(MD) No.586 of 2023

contend that it has to be received as such without any scrutiny, mainly for the reason that it is more than 30 years.

16. This Court finds from the oral and documentary evidences produced in this case, that the Courts below have properly appreciated the oral and documentary evidence produced and rightly negated the defence taken by the appellant and decreed the suit. This Court finds no reason to interfere with the Judgements of the Courts below.

17. In *Sir Chunilal V. Mehta and Sons v. The Century Spinning Co. Ltd., 1962* reported in *AIR 1962 SC 1314*, the Hon'ble Supreme Court formulated what amounts to a substantial question of law, as follows:

1. Whether it is of general public importance (or)
2. Whether it directly and substantially affects the rights of parties *and if so*,
3. Whether it is *either* an open question (in the sense not finally settled by this Court or Privy Council or Federal Court) *(or)*
4. The question is not free from difficulty and calls for discussion of alternative views.



S.A.(MD) No.586 of 2023

18. In the case before hand, the appellant has not made out any of the aforesaid grounds to formulate substantial question of law. There is no substantial question of law arises for consideration in this second appeal.

19. In fine, this Second appeal is dismissed confirming the judgments of the Courts below. No costs. Consequently, connected miscellaneous petition is closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

16.10.2023

cp

To

1.The Additional District Judge,
Sivagangai.

2. The Subordinate Judge, Devakottai.

3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD) No.586 of 2023

G.CHANDRASEKHARAN, J.

cp

S.A.(MD) No.586 of 2023

16.10.2023