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A.S.No.173 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	29.11.2023
Pronounced on	27.02.2024

CORAM

**THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN
THILAKAVADI**

A.S.No.173 of 2013

Padmavathi

... Appellant

Versus

1. Palaniammal (Died)
- 2.Rajeswari @ Eswari
- 3.R.S.Palanisamy
- 4.R.s.Appasamy
- 5.M.Arjunan
- 6.S.Shanmugasundaram
- 7.C.V.Subramaniam

... Respondents/Defendants

(R1 died, (sole appellant and 2nd respondent who were already on record) are recorded, as legal heirs of deceased R1, vide order of Court dated 29.11.2023 made in A.S.No.173 of 2013 [KGTJ] memo filed on 19.09.2023 is recorded).



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Prayer : The Appeal Suit is filed under Section 96 of Code of Civil Procedure, against the judgment and decree dated 28.03.2013 made in O.S.No.699 of 2007 on the file of the learned I Additional District and Sessions Court, Tiruppur.

For Appellant	:	Mr.S.Gunaseelan
For R1	:	Died
For R2	:	Mr.Govi Ganesan
For R3 to R6	:	Dismissed vide order dated 17.04.2018
For R7	:	Mr.P.M.Duraiswamy

JUDGMENT

This Appeal Suit has been preferred by the plaintiff in O.S.No. 699 of 2007 against the judgment and decree dated 28.03.2013 on the file of the learned I Additional District and Sessions Judge, Tiruppur in the above suit.

2. The following are the averments in the plaint succinctly stated:

The plaintiff and the 2nd defendant are daughters of the 1st defendant, and the plaintiff and the defendants 1 and 2 are the legal heirs of the one Nachimuthu Gounder, who died intestate on 10.7.2006 by leaving behind the plaintiff and the defendants as his legal heirs. The original legal heir certificate is produced with the plaint. The defendants



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3 to 6 are power holders of Defendants 1 and 2. The 6th defendant is the husband of the 2nd defendant. The above said Nachimuthu Gounder had self acquired and ancestral properties, by virtue of partition deed dated 23.07.1962, and also by registered sale deed dated 20.05.1975 and the certified copies of the deeds are produced as plaint document Nos.3 and 4. The said Nachimuthu Gounder was in possession and enjoyment of the property till his death. Revenue records such as Chita stands in the name of Nachimuthu Gounder. There is a farm house in the suit land. The kist receipt is in the name of the Nachimuthu Gounder. The suit properties are in joint possession and enjoyment of the plaintiff and defendants. Dispute arose between the plaintiff and the defendants 1 and 2 for division of the suit properties. The plaintiff is entitled to 1/3 share in the suit properties and tried to divide the same through Panchayathar with the aid of the police. But, the defendants insisted the plaintiff to take a lower share in the suit property. The plaintiff refused the same. Further, the defendants threatened the plaintiff to accept the demand of the defendants, otherwise they will dispossess the plaintiff from the suit properties and also the defendants executed the registered power deed regarding the entire suit properties on 23.08.2007. On 26.08.2007 the plaintiff orally requested the defendants for an amicable partition. But, the defendants came to the



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suit property on 26.08.2007 with some henchmen and tried to dispossess the plaintiff from the suit properties. Therefore, the plaintiff was constrained to file the suit for partition and for permanent injunction. Pending suit, the defendants 1 and 2 sold a part of the suit property to the 7th defendant. Therefore, he is also added as a party for proper adjudication.

3. The written statement filed by the 1st, 2nd and 7th defendants and the additional written statement filed by the 2nd defendant contains the following averments:

The 1st defendant would contend that the suit is false and unsustainable. The plaintiff must strictly prove the facts, which are specifically denied by this defendant. The relationships are admitted. Further, it is also admitted that the plaintiffs and the defendants are the legal heirs of Nachimuthu Gounder. It is denied that the defendants 3 to 6 are the power holders of the D1 & D2. The last item of the suit property namely 4.75 acres in S.F.No. 352/2 is self acquired property by Nachimuthu Gounder as per the sale deed dated 20.05.1975. The said property was given to the 2nd defendant under settlement deed dated 12.06.1996 by Nachimuthu Gounder. Thereafter, the 2nd defendant is



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alone was in possession and enjoyment of the settlement property. The ancestral property was alone under possession and enjoyment of the plaintiff and the defendants. And it is also true that the titles of last item properties are only in the name of the Nachimuthu Gounder. After the demise of the Nachimuthu Gounder, the 2nd defendant resided in a portion of the farm house and was driven away by the husband of the plaintiff from the farm house. On 06.08.2007, plaintiff and her husband threatened the defendants by stating that the entire property should be given to the plaintiff and also slipped the 2nd defendant. In this regard, a compliant was given to the Palladam Police Station. It is false to state that there was a dispute regarding partition, and this defendant never denied 1/3 share of the plaintiff. Further, the plaintiff threatened the defendant to allot her share to the plaintiff in the defendant's property. Further, Nachimuthu Gounder without consideration, executed a sale deed for 1.58 acre in S.F.No.179/4 to the plaintiff so that, the 2nd defendant was also given the last item of the suit properties by way of settlement deed to compensate the properties given to the plaintiff's husband. Further, it is false to state that, this defendants went to the Registrar's office and executed the power to the defendants 3 to 5 regarding the entire property.

The suit is not valued properly hence prays for dismissal of the suit.



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4. The 2nd defendant would contend that suit is false, not maintainable under law on facts. Except the allegation those that are specifically admitted herein, the rest of the allegations should be proved strictly by the plaintiff. The suit is being filed to abuse the process of Court. The relationship is admitted, the ownership of the properties are also admitted. It is denied that the D3 to D5 are political persons. Nachimuthu Gounder had properties by virtue of ancestral and self acquired properties obtained on 23.07.1962 and 20.05.1975. In this, the said Nachimuthu Gounder executed the settlement in favour of defendant G.S.No.No.352/2 measuring 4.75. acres on 12.06.1966. Ever since, this defendant is in possession and enjoyment of the settlement property. Therefore, this property is not available for partition as stated in the plaint. The other properties were under joint possession and enjoyment of the defendant and plaintiffs after the demise of the Nachimuthu Gounder. Further, to avoid continuous torture of the plaintiff and her man, the defendants 1 and 2, to sell their undivided share in the ancestral properties mentioned in para 4 of the plaintiff, appointed the defendants 3 to 6 as a power agents, and for sale of the properties they went to the Registrar Office then came to know that the document writer prepared the



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documents under instigation of the plaintiff's husband without hearing the defendants. So, the power was cancelled on 18.9.2007. Therefore, alleged demand of amicable partition dated 26.08.2007 is false. Since, the last item of the property is in exclusive possession and enjoyment of 2nd defendant, this defendant is ready to partition the suit item 1 to 6 as per the plaint. Therefore, the defendants prays for dismissal of the suit with regard to the 7th item of the suit property.

5. The additional written statement filed by the 2nd defendant is as follows:

The allegations regarding the execution of the registered settlement deed in favour of D.2 on 12.06.1996 in respect of S.F.No. 352/2 is incorrect. The above settlement was executed by the Nachimuthu Gounder on his own will and in a sound disposing state of mind. Therefore, the settlement deed will bind the plaintiffs. She accepted and became the absolute owner of the properties measuring 4.75 acres in S.F.No.352/2 of Chittambalam Village, Palladam. It is not correct to state that the settlement deed was not acted upon. Further, it is also not correct to state that the allegation that the plaintiff and her husband were not aware of their attestation in the settlement deed executed by the



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Nachimuthu Gounder on 12.06.1996 prior to the marriage of this defendant. The plaintiff and her husband obtained sale deed with respect to an extent 1.58 acres in S.F.No.179/4 without any consideration. To compensate the same, the Nachimuthu Gounder executed the settlement deed in favour of this defendant regarding the last item of the suit properties. Further, this defendant and her mother sold 1/3 share to the 7th defendant. So, it is not nominal and void. Hence, prayed for dismissal of the suit.

6. The 7th defendant would contend that the plaintiff has to strictly prove each and every allegation made in the plaint except the allegations that are specifically admitted herein. The averments made in the plaint para 3, 4, 5 and 6 and 5A are all false. As per Hindu Succession Act, the defendants 1 and 2 have equally entitled to 1/3 share in each ancestral property of Nachimuthu Gounder. As per their right, the defendants sold their shares to this defendant through the sale deeds for valid consideration, and after purchase, the defendant is in possession and enjoyment of the property. So, the plaintiff is not entitled to interfere with this defendant's peaceful possession and enjoyment of the properties. This defendant never interfered with the plaintiff's 1/3 share in S.F.No. 357/2



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of Chittambalam Village. There is no cause of action for the suit and prays for dismissal of the suit.

7. In the reply statement, plaintiff submits that the said Nachimuthu Gounder has not executed any settlement deed, further the alleged settlement deed was also cancelled by the Nachimuthu gounder under Deed No.1860/97 dated on 02.06.97. Therefore, the 2nd defendant is not entitled any property under cancelled settlement deed. It is true that the Nachimuthu Gounder sold 1.58 acres in favour of her husband in GS No. 179/4 for a valid consideration. It is false to state that, the first defendant was driven away by the plaintiff from the farm house after the death of the Nachimuthu Gounder. To grab the property the 2nd defendant took the 1st defendant with her in a clever manner. It is false to state that the husband of the plaintiff instigated the power holder to prepare the sale deed against the willingness of the defendants. After filing the suit, the defendants sold the property to the 7th defendant which is null and void. Actually, the defendants 1 and 2, acting adversely against the plaintiff, created several documents and tried to mutate the revenue records that will not bind the plaintiff.



8. On the above pleadings the learned trial Judge framed the following issues:

"1. Whether the last item of suit properties measuring 4.75. acres in SF NO. 352/2 with amenities was settled by the late Nachimuthu Gounder in favour of the 2nd defendant by deed dated 12.6.96 and which is not available for partition?"

2. Whether the plaintiff is entitled for partition and separate possession for 1/3 share in each item of the suit properties?"

9. After analyzing the pleadings, evidence and the records, the learned I Additional District and Sessions Judge, Tiruppur, partly decreed the above partition suit and passed the preliminary decree in favour of the plaintiff for 1/3rd share in the suit properties except the property mentioned in Ex.B.2. The learned trial Judge dismissed the suit in respect of the suit property mentioned in Ex.B.2 situated in S.No.352/2 measuring 4.75 acres. The trial Court also granted the relief of permanent injunction in favour of the plaintiff, restraining the defendants and their men, agents, relatives and her links and servants and anybody claiming



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under them from anyway dispossessing the plaintiff from the enjoyment of the 1/3rd share granted to the plaintiff.

10. The learned counsel appearing for the appellant would submit that Ex.B.2 settlement deed is a sham and nominal document and it was not acted upon. The evidence of P.W.2 & P.W.3 would reiterate the same. He would further submit that the father of the plaintiff and 2nd defendant namely Natchimuthu Gounder derived major portions of the suit properties in a family partition dated 23.07.1962 which are ancestral properties and the said Natchimuthu Gounder was doing agriculture in the said properties and purchased the suit item No.7 with the agricultural income, which also assumes the character of ancestral property. The said Natchimuthu Gounder had no other independent income and the same is also not proved by the defendants. Therefore, the father Natchimuthu Gounder has no right to settle the 7th item of the suit property in favour of the 2nd defendant. The 2nd defendant is residing 5 kilometres away from the suit property. The 2nd defendant failed to prove that she is in possession and enjoyment of the 7th item from 1996 till 2013 and the plaintiff is alone in possession and enjoyment of suit property. The patta, adangal extract, rent receipts, home tax receipts and electricity bills



marked as Ex.A5 to A.25 would establish the possession of the plaintiff in the suit property. The D.W.1 also admitted in her cross examination that the plaintiff alone constructed the house in the 7th item of the suit property and residing there. Ex.B.2 settlement deed was not acted upon and the father Natchimuthu Gounder had also cancelled the settlement deed under Ex.A.26 cancellation deed. The defendants failed to prove that the 7th item is the separate property of Natchimuthu Gounder. The plaintiff is entitled to 1/3rd share in the 7th item of the suit property. However, the trial Court erroneously held that the plaintiff is not entitled for 1/3rd share in the 7th item which is liable to be set aside.

11. On the other hand, the learned counsel for the defendants would submit that the 7th item is the separate property of her father and the same was settled by him her favour under Ex.B.2 settlement deed. There cannot be any unilateral cancellation of the settlement deed and therefore Ex.A.26 cancellation deed is non est in law and not binding on the 2nd defendant. The trial Court has rightly held that the plaintiff has no share in the 7th item which calls for no interference.



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12. The following points had arisen for consideration in this appeal:

1. Whether the Courts below erred in dismissing the suit in respect of the property covered under Ex.B.2 settlement deed?

2. Whether the property covered under Ex.B.2 settlement deed (the 7th item of the suit property was purchased by the father of the plaintiff from the income derived from the ancestral property?

3. Whether the suit item No.7 assumes the character of ancestral property?

4. Whether Ex.B.2 settlement deed was acted upon?

5. Whether *Ex.A.26* cancellation deed is valid in law?

6. Whether the plaintiff is entitled to 1/3rd share even in the 7th item of the suit property?

7. Whether the appeal can be allowed or not?

13. Since the above point Nos.1 to 5 are interlinked with each other, the above points for consideration are dealt with together.

Point Nos.1 to 5:

14. This appeal is preferred by the plaintiff only with regard to



7th item of the suit property.

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15.The specific contention of the plaintiff is that the suit item No.7 was purchased by the father of the plaintiff from the nucleus derived from the ancestral property of the family and that, it assumes the character of ancestral property. Further, the plaintiff would contend that the father had no independent income to purchase the suit property in item No.7 and therefore, the father does not have any right to settle the property in favour of the second defendant. Moreover, the settlement deed marked as Ex.B.2 executed by the father of the plaintiff in favour of the 2nd defendant was not acted upon and therefore, the cancellation deed marked as Ex.A.26 canceling the above settlement deed in favour of the 2nd defendant is valid in law. The trial Court ought to have passed a preliminary decree in favour of the plaintiff in respect of his 1/3rd share in the 7th item of the suit property.

16.On the other hand, the contention of the defendants1, 2 & 7 is that the 7th item of the suit property in S.F.No.352/2 comprising an extent of 4.75 acres is the self acquired property of their father. The said property was settled by the said Nachimuthu Gounder in favour of the



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second defendant under Ex.B2 settlement deed dated 12.06.1996. Ever since, the second defendant is in enjoyment of the suit property and therefore, the suit property is not available for partition. It is submitted that the allegation of the plaintiff that the above settlement deed was not acted upon is false and in fact, the plaintiff and her husband attested the settlement deed executed by Nachimuthu gounder on 12.06.1996. In turn, the plaintiff and her husband obtained a sale deed in respect of the property in S.F.No.179/4 without any consideration which is to an extent of 1.58 acres to compensate the settlement deed executed in favour of the second defendant.

17. With regard to the other items covered under the suit schedule, there is no dispute that the plaintiff is entitled for 1/3 share in the above properties. According to the defendants, the 7th item of the suit property was purchased by Nachimuthu Gounder on 20.05.1975 out of his own income. Whereas the contention of the plaintiff is that the father Nachimuthu Gounder, had no independent income and only from the income derived from the ancestral property, the 7th item property was purchased.



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18. Firstly, it has to be seen whether the 7th item of the suit property was the separate property of Natchimuthu Gounder. Admittedly, the suit property was purchased by Natchimuthu Gounder under registered sale deed dated 20.05.1975 marked as Ex.B.1. Whether the same is purchased by him from the nucleus of ancestral property or out of his own funds has to be considered. Admittedly, Natchimuthu Gounder had acquired some properties under a partition deed dated 23.07.1962. Whether it is ancestral in nature or not, there is nothing on record to establish the same. Even assuming the same to be ancestral in nature, the plaintiff must establish that there was sufficient nucleus from the ancestral property for purchasing the property under Ex.B.1 sale deed. Only then, the burden shifts on the 2nd defendant to prove that it is the self acquired property of Natchimuthu Gounder. Mere existence of ancestral property is not sufficient. It must be established that there was sufficient income derived from the ancestral property for purchasing property in the name of Kartha. In the present case, the plaintiff failed to establish that sufficient income was derived from the ancestral property for purchasing Ex.B.1 property. On the other hand, the contention of the defendants is that apart from doing agriculture work, the father was doing Tobacco



business. This fact was not rebutted by the plaintiff. Therefore, the submission made by the learned counsel for the plaintiff that the father Natchimuthu Gounder has no right to execute Ex.B.2 settlement deed in favour of the 2nd defendant is unsustainable.

19. The next contention of the learned counsel is that the plaintiff is that Ex.B.2 settlement was not acted upon and the 2nd defendant was never put in possession of the settlement property. Since it was only a Sham and Nominal document, the same was cancelled by the father under Ex.A26. The plaintiff is alone in possession and enjoyment of the said property. Now, it has to be seen whether Ex.B.2 settlement deed was only a Sham and Nominal document and never acted upon.

20. Admittedly, the plaintiff and her husband have attested the settlement deed in favour of the 2nd defendant. According to the 2nd defendant, the father Natchimuthu Gounder settled 1.58 cents in favour of the plaintiff and settled the 7th item in favour of the 2nd defendant. The fact that the plaintiff and her husband have attested Ex.B.2 settlement deed, the contention of the 2nd defendant found to be true. In this case, the settlement deed (Ex.B.2) is handed over to the 2nd defendant which is



sufficient to pass title to such property, without actual physical possession. The settlement deed, once accepted by the settle is complete.

And once a gift is accepted it cannot be revoked unless it is reserved for revocation. Non transfer of name of donee in revenue records is not significant. For this proportion of law, the trial Court has relied upon the cases reported in:

i. 2008 (1) MLJ 227

ii. 2003(2) LW 205

iii. 2012 (1) MLJ 216

21. The said proposition squarely applies to the present case. In the present case no revocation clause found in Ex.B.2 settlement deed. There cannot be any unilateral cancellation of settlement deed. Any unilateral cancellation of settlement deed is void. Further, the settlement deed would not invalidate on the ground that possession was not handed over to the donee or because donee failed to mutate records in favour of donee [*Ref: S.Ganesan Vs. Bharathirajan* reported in *2009 (5) CTC 558*]. Therefore, the possession with the plaintiff does not cloth any title to the property. The title to the property cannot be established by Municipal Extracts and Tax receipts.



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22. For the reasons stated above, I do not find any merit in this appeal. In the result, this appeal suit is dismissed. No cost.

27.02.2024

Index:Yes/No

Speaking Order : Yes/No

vsn

To

The I Additional District and Sessions Court, Tiruppur.



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K.GOVINDARAJAN THILAKAVADI,J.

VSN

PRE- DELIVERY JUDGEMENT MADE IN

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