



S.A No. 568 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

SA. No. 568 of 2024

S.Deivathal (Died)
1.M.Sundaram
2.S.Udayakumar
3.S.Renuka

... Appellants

Vs.

1.P.Murugasamy
2.S.Karupiah
3.S.Vellaisamy
4.K.M.Murugesan

..Respondents

PRAYER : This Appeal has been filed under Section 100 of CPC, to set aside the judgment and decree dated 12.09.2023 made in A.S No. 21 of 2017 on the file of the learned first Additional and District and Sessions Judge, (Second Additional District and Sessions Court- FAC), Tiruppur Confirming the judgment and decree dated 28.03.2017 made in OS No. 397 of 2008 on the file of the learned Principal Sub Court, Tiruppur by allowing this second appeal.



For Appellants : Mr.N.Manoharan

For Respondents : Mr.T.Gowthaman, Senior counsel.
for M.Guruprasad.

JUDGMENT

This second appeal has been filed to set aside the judgment and decree dated 12.09.2023 made in A.S No. 21 of 2017 on the file of the learned first Additional and District and Sessions Judge, (Second Additional District and Sessions Court- FAC), Tiruppur Confirming the judgment and decree dated 28.03.2017 made in OS No. 397 of 2008 on the file of the learned Principal Sub Court, Tiruppur by allowing this second appeal.

2. The appellant herein is the defendant in suit OS No. 397 of 2008 on the file of the learned Principal Sub Court, Tiruppur, filed by his brothers/plaintiffs for the relief of permanent injunction and to declare the cancellation of settlement deeds dated 25.01.2007 as null and void. The plaintiffs claiming that A schedule property is a ancestral property of the plaintiff's father Palanisamy Gounder by way of partition happened on 2.02.2004. B schedule property is absolutely belongs to the plaintiff's father



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Palanisamy Gounder through settlement deed and thereafter he was in possession and enjoyment of the property. While so, on 14.08.2006 his father settled a entire suit properties through two settlement deeds in favour of the plaintiff. Thereafter, the plaintiff was in possession and enjoyment of the suit property. Taking advantage of his father's ailments, the defendant/sister of the plaintiff fraudulently cancelled the settlement deeds dated 14.08.2006 on 25.01.2007. Both the documents are null and void for the reason that his father voluntarily executed a gift deed in his favour in the year 2006 without referring any conditions and original documents also handed over to him. Therefore, the gift deed immediately acted upon by receiving the possession by this plaintiff. Thereafter, his father has no right to transfer the property. At the instigation of the brother-in-law defendant forcefully obtained cancellation deed from the Palanisamy Gounder and also through power of attorney property was sold to the defendants 3 and 4. Therefore, he approached the Court to cancel the documents.

3. The defendant contesting the case stating that plaintiff being son failed to maintained his father. Therefore, his father cancelled the settlement deed voluntarily and executed the settlement deed in favour of the first defendant based on that she claimed right over the property.



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4. On the side of the plaintiff, four witnesses were examined as P.W.1 to 4 and marked 58 documents. On the side of the defendants, three witnesses were examined and 27 documents were marked and two court documents were marked.

5. After considering the oral and documentary evidence, the Trial Court framed four issues with two additional issues. The foremost issue is whether the settlement deed dated 14.08.2006 stands in the name of the plaintiff is as true, valid and binding upon the parties ? and whether the plaintiff is entitled for declaratory relief regarding cancellation of settlement deed dated 25.01.2007 ?

6. Considering the oral and documentary evidence the Trial Court held that properties are absolutely belongs to Palanisamy Gounder by way of settlement deeds and those documents are marked as Ex.A1 and Ex.A2. Thereafter, in the year 2006, plaintiff's father/Palanisamy Gounder executed a settlement deed which was acted upon. Further, the trial Court found that defendant fraudulently obtained cancellation of settlement deed on 25.01.2007. Even plaintiff's father has not mentioned that plaintiff failed to maintained him and also while executing settlement deed he has not imposed any such conditions. Therefore, the alleged cancellation of



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settlement deed is invalid one not bind the plaintiff. Accordingly, suit allowed. Challenging the same, the defendant preferred an appeal in AS No. 21 of 2017, wherein the first appellate Court independently analysed the facts and evidence confirmed the findings of the Trial Court. Furthermore, concluded that to cancellation deeds as well as settlement deed executed in favour of the first defendant would not have been executed by Palanisamy gounder with good physical and mental health(Ex.A6) since he was admitted in the hospital due to illness at his age of 90 years. Accordingly, confirming the findings of the suit. Accordingly, dismissed the appeal.

7. Heard both sides.

8. The submission of the learned counsel for the appellant is that the Court below failed to appreciate the fact that said Palanisamy Gounder not maintained by his son hence he cancelled the settlement deed voluntarily and executed another settlement deed in favour of his daughter/appellant, who was taken care of him on his last days but the Court below failed to appreciate these facts and evidence. Hence, he prays to allow this petition.



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9. The submission of the learned counsel for the respondent is that there was no condition was imposed while executing the settlement deed in favour of the plaintiff in the year 2006 even if a condition imposed it would not bind the plaintiff because once the settlement deed executed settlor/owner Palanisamy Gounder has no right to cancel the settlement deed when it was acted upon. Indeed, defendant also fails to prove the execution of the cancellation of settlement deed as well as another settlement deed executed in favour of appellant/first defendant with sound state of mind by the Palanisamy Gounder since because he was died within 5 days of the said execution of the document before that he was admitted in the hospital at this age of 90 years. Moreover, Ex.A10 also proves that settlor Palanisamy gounder was not cancelled the document voluntarily with sound state of mind. In fact, at that time of alleged registration of cancellation of document, the identity proof submitted is no way connected with the said Palanisamy Gounder, it relates to one Pazhanal of Pollikalipalayam village. Hence, at the instigation of her husband defendant indulged in fabrication of records by fraud, misrepresentation. These facts were rightly appreciated by the Court below. as per As discussed above, the Courts below rightly



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appreciated the said facts which needs no interference. No substantial questions of law involved. In the result, appeal is dismissed. Thus suit is decreed as prayed for. No Costs.

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T.V.THAMILSELVI,J.

Pbl

To

- 1.The Section Officer,
V.R Section.
2. The Principal Sub Court, Tiruppur.
3. The first Additional and District and Sessions Judge, (Second Additional District and Sessions Court- FAC), Tiruppur.

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