



WEB COPY

SA.No.434 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2024

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.434 of 2005
and
CMP.No.7078 of 2005

1. K.Saraswathy Ammal (Died)
2. Shanmuga Sundaram
(2nd appellant brought on record as LR of the deceased
sole appellant vide order dated 14.03.2013 made in
CMP.Nos.1636 to 1638 of 2010)
3. S.Santha
(3rd appellant brought on record as LR of the
2nd appellant vide order dated 10.07.2013 made in
CMP.Nos.514 to 516 of 2013)

... Appellants

- Vs -

1. Kalyanasundaram
2. Krishnamurthy
3. Saraswathy Ammal (Died)
4. Ramanatham Pillai @ Mela Pidagai Ramanathan Pillai
5. K.Amudha
(R5 brought on record as LR of the deceased R3
vide order dated 03.09.2021 made in
CMP.No.7469/2021)

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 08.03.2002 in A.S.No.66 of 2002 on the file of the Court of Subordinate Judge at Thiruvarur reversing the



SA.No.434 of 2005

judgment and decree dated 28.06.2002 on the file of the Court of District Munsif at Thiruthuraipoondi.

For Appellants : Ms.S.Mahalakshmi

For Respondents : Mr.T.Murugamanickam
Senior Advocate
for Mr.T.Girish for RR1, 2 & 5
R4-No Appearance
R3-Died

J U D G M E N T

The plaintiff before the Trial Court is the appellant herein, and the defendants of the suit are arrayed as respondents herein.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the Trial Court.

3. The brief facts, which give rise to the instant Second Appeal is that, the plaintiff and one Kanagasundaram are husband and wife. Due to matrimonial discord, they later separated While so, the said Kanagasundaram executed a settlement deed dated 12.09.1955 settling the suit property in favour of the plaintiff. It was recited in the settlement deed that the same will come into operation only from the date when both of them are actually getting divorce. In pursuance thereof, a dissolution of marriage deed was entered on 08.06.1957. As a result of which, the settlement deed dated



SA.No.434 of 2005

12.09.1955 become acted upon. According to the plaintiff, by virtue of the settlement deed and dissolution of marriage deed, the plaintiff became the absolute owner of the suit property. In the meanwhile, taking advantage of the plaintiff's absence in the suit property, the said Kanagasundaram has fraudulently and unilaterally executed a cancellation of Settlement Deed and had also sold the property to the defendants. It is the submission of the plaintiff that the said Kanagasundaram did not have any right to unilaterally cancel the Settlement deed dated 12.09.1955. Therefore, when the property became the absolute property of the plaintiff, through the sale deed executed by Kanagasundaram, these defendants cannot derive any title over the same. Since the defendant has created cloud over her title, the plaintiff has come forward with a suit for declaration and for delivery of possession and also for mandatory injunction.

4. The said suit was resisted by the defendants by contending that though a settlement deed dated 12.09.1955 was executed by Late Kanagasundaram, the settlement deed did not come into operation as Kanagasundaram was all along residing in the suit property. It was also the contention of the defendants that, subsequent to the settlement deed, there was a compromise between the plaintiff and the defendants on 28.03.1969,



SA.No.434 of 2005

and that by virtue of such compromise, the plaintiff was only given life estate over the suit property. It was also submitted by the defendants that the plaintiff did not take possession of the property nor accepted the gift. It was also further stated that there was no dissolution of marriage between the plaintiff and the said Kanagasundaram so as to confer title upon the plaintiff. Therefore, the defendant submitted that the said Kanagasundaram has every right to execute the cancellation of settlement deed. Hence, prayed to dismiss the suit.

5. Before the Trial Court, the plaintiff has examined 2 witnesses as PW1 and PW2 and marked as many as 6 documents as Exs.A1 to A6. On behalf of the defendant, one witnesses were examined as DW1, and 15 documents have been marked as Exs.B1 to B15.

6. The Trial Court, after having considered the oral and documentary evidence, has found that the said Kanagasundaram did not have any right to unilaterally cancel the settlement deed. As a concomitant, the Trial Court further found that Kanagasundaram has no right to execute any sale deed in favour of the suit property, and ultimately, decreed the suit as prayed for. Not satisfying with the judgment of the Trial Court, when the defendants 1, 3 and 4 have preferred the First Appeal, the First Appellate Court has found



SA.No.434 of 2005

that the settlement deed dated 12.09.1955 has not at all been acted upon and that such factum could be inferred through compromise entered between the plaintiff and the defendants on 28.03.1969. Therefore, reversed the finding of the Trial Court with a finding that when no title was transferred to the plaintiff, in view of no valid dissolution of marriage between the plaintiff and Kanagasundaram, the said Kanagasundaram has retained his absolute right over the property. Therefore, the execution of unilateral cancellation of settlement deed is valid. Thus, the First Appellate Court dismissed the suit. Not satisfying with the judgment of the First Appellate Court, the plaintiff has approached this Court by way of this Second Appeal.

7. At the time of admitting the Second Appeal on 29.04.2005, this Court has formulated the following substantial questions of law:-

“a) Whether the first appellate Court is right in holding that the plaintiff's husband who settled the suit schedule property in favour of the plaintiff in Ex.A1 dated 12.09.1955 without reserving any right to revoke or cancel the same, revoked it by Ex.B1 dated 04.05.1966?

b) Whether Ex.B1 is valid in law and whether the same could be relied upon by the defendants to claim title through the same?”

8. The learned counsel appearing on behalf of the plaintiff would vehemently contend that after the execution of Ex.A1-settlement deed, the



SA.No.434 of 2005

title would vest with the plaintiff. Therefore, contended that Kanagasundaram has no right to unilaterally cancel the said settlement deed, and also cannot sell the property to the defendants. The learned counsel would also further contend that the plaintiff has all along been the possession of the property, and the factum of such possession could be proved through the tax paid under ExA3. The learned counsel would further contend that by virtue of Section 126 of Transfer of Properties Act, the revocation of settlement deed is invalid. The learned counsel would also submit that Ex.B2-Compromise Deed will have no impact upon the suit property as the compromise was for a different property. In support of her contention, the learned counsel for the plaintiff relied upon the following judgments:-

1. *M/s.Latif Estate Line India Ltd., Vs. Mrs.Hadeeja Ammal and others* reported in **2011-1-LW-673**;
2. *G.Saraswathi Vs. K.Ganesan and 3 others* reported in **2017 SCC OnLine Mad 4197**;
3. *Sasikala Vs. Revenue Divisional Officer and another* reported in **2022 SCC OnLine Mad 4343**;
4. Unreported judgment in *Mrs.Sunitha Gridharidas and 2 others Vs. The Sub Registrar and 3 others*.

9. Per contra, the learned Senior Counsel appearing for the defendants would submit that, there are no proof as to the acceptance of the gift made through Ex.A1. In this regard, the learned Senior Counsel would submit that there are no records filed so as to prove the acceptance such as mutation of



SA.No.434 of 2005

Revenue records. It was also contended by the learned Senior Counsel that there are no proof filed by the plaintiff to prove her possession. The learned Senior Counsel would also submit that after the advent of Hindu Marriage Act, 1955, any dissolution of marriage in contravention to the Hindu Marriage Act is invalid. Hence, the deed dated 08.06.1957 cannot be an evidence to prove the dissolution of marriage. Therefore, the learned Senior Counsel would contend that when there was no legally acceptable dissolution of marriage between the plaintiff and Kanagasundaram, then automatically Ex.A1-Settlement Deed will become unenforceable. Therefore, it was contended by the learned Senior Counsel that the right vest with Kanagasundaram so as to execute the sale deed in favour of the appellant. Apart from that, the learned Senior Counsel would further contend that, admittedly the property was in possession of the defendants. It is the case of the plaintiff that he left the suit premises about 30 years back. Therefore, the very suit filed after a period of 30 years is also barred by limitation. The learned Senior Counsel would invite the attention of this Court in respect of Order 22 Rule 3 of CPC and would contend that no right to sue survives after the demise of the appellant by virtue of Ex.B2-Compromise deed as the plaintiff had only life interest. Therefore, contended that the instant appellant



SA.No.434 of 2005

has no legal right to maintain the Second Appeal. Hence, prayed to dismiss the Second Appeal.

10. I have given my anxious consideration to either side submissions.

11. The gravamen of the plaint is that, there was a settlement deed on 12.09.1955 under Ex.A1, which came into effect after the execution of Ex.A2 viz., dissolution of marriage deed dated 08.06.1957. Therefore, by virtue of Exs.A1 and A2, the plaintiff became the absolute owner of the property. Now, we must see whether Ex.A1 actually has come into operation.

12. It is pertinent to mention here that under Section 122 of the Transfer of Property Act, a gift will be completed only if the same is accepted either by the donee or by some one on his behalf. In this regard, the learned Senior Counsel would invite the attention of this Court as to the absence of mutation in respect of the suit property, and that there are no proof to show the acceptance of gift by taking possession. In this regard, the learned Senior Counsel draw the attention of this Court about the admission made by the plaintiff. During cross examination, the plaintiff has admitted as follows:

“திருத்துறைப்பூண்டியை விட்டு போய் சுமார் 30 ஆண்டுகள் ஆகிவிட்டது. தாவா மனைச் சொத்து என் அனுபவத்தில் இருந்தது இல்லை. எந்தக் காலத்திலும் என் அனுபவத்தில் இருந்தது இல்லை.”



SA.No.434 of 2005

13. Even while perusing the exhibits, which has been marked by the plaintiff, except Ex.A3, no documents have been filed in respect of the payment of taxes to the Revenue authorities. Even while perusing Ex.A3, it was in the name of Shanmugasundaram. In this regard, the learned counsel for the plaintiff would contend that the said Shanmugasundaram is none other than the sister's son of the plaintiff, and that he has paid tax in one stroke since 1955 upto 1985. But, this Court feels unsafe to rely Ex.A3 as it not stands in the name of the plaintiff. Therefore, as rightly contended by the learned Senior Counsel, there are no proof to show that the plaintiff has taken possession of the property so as to infer her acceptance as contemplated under Section 122 of Transfer of Properties Act.

14. At this juncture, the learned Senior Counsel would further contend that, by virtue of Ex.B2-Compromise Deed, the effect and impact of Ex.A1 could be established. To substantiate this, the learned Senior Counsel would submit that under Ex.B2, the plaintiff was given only life interest over the suit property. At this juncture, it is appropriate to refer the admission of the plaintiff made during the cross examination:-

“தாவாச் சொத்து நான் ஆயுட்காலம் வரை இருந்துகொள்ள வேண்டியது என்ற அடிப்படையில் ராசி செய்யப்பட்டுள்ளது.”



SA.No.434 of 2005

WEB COPY

15. Therefore, even according to her own admission, subsequent to Ex.A1, there was a compromise under Ex.B2. Wherein the plaintiff was only given life interest in the suit property. It is pertinent to mention here that, as per the oral and documentary evidence the plaintiff was not at all in possession of the suit property for more than 30 years prior to filing of this suit. Further, there are also no proof to show the acceptance of the gift by the plaintiff. Though the learned Senior Counsel would contend that Ex.A2 will not help the plaintiff to sustain the claim over the suit property as the dissolution of marriage deed become not valid subsequent to the advent of the Hindu Marriage Act, while seeing the recitals in Ex.A2, Kanagasundaram has categorically stated that the settlement deed - Ex.A1 is the consideration for the dissolution deed. Therefore, as rightly contended by the plaintiff, the plaintiff can have a right over the suit property by virtue of Ex.A1 subject to the compliance of Section 122 of Transfer of Property Act. Whereas, in the present case, the plaintiff did not produce any document so as to prove her acceptance of gift by producing either the parent document of the suit property, or any Revenue records or the transfer of revenue records from the name of Kanagasundaram to the plaintiff, besides her long absence from suit property for more than 30 years.



SA.No.434 of 2005

WEB COPY

16. In the above background, if we look at Ex.B2- Compromise deed, which emerged between the plaintiff and the defendants, as fairly admitted by the plaintiff in her cross examination, though there was a Gift Settlement deed in her favour, subsequently the right of the plaintiff over the suit property was restricted to life interest. When the plaintiff herself admits that she has got only a life interest over the suit property, she become estopped to rely Ex.A1 so as to claim the absolute right in the suit property. Therefore, this Court is of the firm view that the finding recorded by the First Appellate Court that there is no proof to show that the settlement deed has come into force, and that admission of the plaintiff herself about her life interest by virtue of Ex.B2 are sufficient to come to the conclusion that the plaintiff cannot have any remedy in respect of the suit property. The above findings are well merited and based on evidence.

17. Apart from the above ground, the learned Senior Counsel has also raised a contention on the ground of the suit become barred by limitation. Admittedly, there are no Revenue records to show that the plaintiff is in constructive possession of the suit property. On the other hand, it is the plaintiff's case that she was not at all in possession and she had been away



SA.No.434 of 2005

from the suit properties for more than 30 years. Therefore, as rightly contended, her right to recover possession is squarely hit by Article 65 of the Limitation Act.

18. At this juncture, it is relevant to refer the judgments of *Latif Estate Line India Ltd.*'s case (cited supra), *G.Saraswathi*'s case (cited supra) and *Sasikala*'s case (cited supra) relied by the learned counsel appearing on behalf of the appellant/plaintiff. All those above rulings are in respect of unilateral cancellation of either settlement deed or sale deed. The proposition in the above ruling is that, once the title transferred to the transferee, the transferor has no right to unilaterally cancel the document. But in the case on hand, this Court is of the firm view that no title was transferred to the plaintiff as Ex.A1 did not come into operation. Therefore, notwithstanding the cancellation of settlement deed, by virtue of Ex.B2-compromise deed, the plaintiff's right becomes a right only upto her lifetime. Therefore, in such a background, the judgment relied by the learned counsel for the plaintiff/appellant is not applicable to the facts of the case on hand though, this Court is fully concurred with the ratio enunciated in those rulings.

19. At this juncture, the learned Senior counsel by referring Order 22 Rule 3 of CPC, contended that the present appellant cannot have any right to



SA.No.434 of 2005

continue with the suit. In this regard, it is appropriate to refer Order 22 Rule 3 of CPC.

“R.3. Procedure in case of death of one of several plaintiffs or of sole plaintiff.- (1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.”

20. According to the above provisions, when the sole plaintiff dies, unless his right to sue survives, the legal representative cannot proceed with the *lis*. In the present case, by virtue of Ex.B2, the right of the plaintiff over the suit property is only upto her lifetime. Therefore, after her demise, no right survives in favour of the plaintiff. Therefore, even otherwise, under Order 22 Rule 3 CPC, the appeal fails.

21. In view of the above detailed discussions, all the substantial question of law are answered in favour of the respondents.



SA.No.434 of 2005

WEB COPY

22. In the result, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous petition is also closed.

30.04.2024

kmi

Index : yes

Speaking Order

Neutral Citation Case: Yes

To

1. The District Munsif,
Thiruthuraipoondi.

2. The Subordinate Judge,
Thiruvarur.

C.KUMARAPPAN, J

kmi



WEB COPY



SA.No.434 of 2005

S.A.No.434 of 2005

30.04.2024