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S.A.Nos.198 & 199 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.02.2024

Coram:

THE HONOURABLE Mr. JUSTICE P.B.BALAJI

S.A.Nos.198 & 199 of 2018
& C.M.P.No.5094 of 2018

S.A.No.198 of 2018

M.Santhi. ... 2nd plaintiff/2nd respondent/Appellant

/versus/

1. Rangammal (died).
Sanjala (died)
2.V.Somasundaram.
3.Ambiga.
4.Rekha @ Sumathi. Defendants 2-4/Respondents 3 to 5/Respondents

1st Respondent Died, She has No LR's vide order of Court dated 01.07.2022 made in S.A.No.198 & 199 of 2018 (TVTSJ).

[No instruction, R1 dismissed as abated in S.A.No.198 & 199 of 2018]

Prayer : Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.78 of 2016, on the file of the Court of the Principal Subordinate Judge, Vellore, dated 12.01.2018 reversing the decree and judgment in O.S.No.115 of 1994, on the file of the Principal District Munsif, Vellore, dated 25.02.2011.

For Appellant : Mr.V.Raghavachari, Senior Counsel,



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for Ms.V.Srimathi.

For R2 to R4 : Mr.R.Ganesh Babu.

For R1 : Died

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M.Santhiyammal ... 2nd defendant/2nd respondent/Appellant

/versus/

1.Rangammal (Died).

Sanjala (died).

2.Ambiga.

3. Rekha @ Sumathi. ... Defendants/Respondents/Respondents

R1 Died recorded (She has No LR's) vide order of Court dated 01.07.2022 made in S.A.No.198 & 199 of 2018 (TVTSJ).

[No instruction, R1 dismissed as abated in S.A.No.198 & 199 of 2018]

Prayer : Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.79 of 2016, on the file of the Court of the Principal Subordinate Judge, Vellore, dated 12.01.2018 in partly allowing/partly dismissing the decree and judgment in O.S.No.45 of 1997, on the file of the Principal District Munsif, Vellore, dated 25.02.2011.

For Appellant : Mr.V.Raghavachari, Senior Counsel,
for Ms.V.Srimathi.

For R2 & R3 : Mr.R.Ganesh Babu.

For R1 : Died

COMMON JUDGMENT



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The 2nd plaintiff in O.S.No.115 of 1994 who was successful before the trial Court but suffered a reversal finding before the First Appellate Court is the appellant in Second Appeal No.198 of 2018. Similarly, S.A.No.199 of 2018 has been preferred by the 2nd defendant in O.S.No.45 of 1997. The 2nd defendant being successful before the trial Court but, however having suffered a reversal finding before the First Appellate Court has chosen to file the Second Appeal No.199 of 2018.

2. The parties are described as per their litigating status in both the suits, in view of the fact that the appellant in A.S.No.199 of 2018 is not a party in the other suit in O.S.No.155 of 1994.

3. The plaintiff in O.S.No.115 of 1994 sought for declaration of the 2nd plaintiff's title, (appellant herein) and to direct the defendants to quit and deliver vacant possession of the suit properties to the 2nd plaintiff. A relief of permanent injunction was also prayed for to restrain the defendants from interfering with the peaceful possession and enjoyment of the suit properties by the plaintiff.

4. The claim of the plaintiff is as hereunder:-

A registered settlement deed was executed by father Anurudran



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Udayar on 01.11.1965 in favour of the 1st plaintiff. The 1st plaintiff's daughters are the 3rd and 4th defendants in the above suit. As per the terms of the settlement deed, the father had settled the property in favour of her daughter namely, the 1st plaintiff Sanjala with a covenant that in the event of the daughter dying without encumbering the property, then the property shall go to her sandatais. It is the case of the plaintiff that pending the suit, the plaintiff sold the property to the 2nd plaintiff for a valid sale consideration under a registered sale deed dated 24.04.1998. In view of the daughter, namely, the 1st plaintiff, alienating the suit property during her lifetime, no right vested with her daughters namely, defendants 3 & 4. Therefore, the suit for declaration and recovery of possession was sought for.

5. The first defendant, Rangammal is the daughter of the 1st wife of Anurudra Udayar. The father of the 1st plaintiff filed a written statement stating that the settlement deed in favour of the 1st plaintiff was not valid, legal or binding. It is also stated that the execution of the said settlement deed has been denied and consequently, the 1st plaintiff right to dispose of the property in favour of the 2nd plaintiff is also questioned. The first defendant has also stated that even during the lifetime of her husband, she deserted her husband and she has been leading a wavered life for the past several years. Therefore, according



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to the 1st defendant, the plaintiff is not entitled to any of the reliefs.

Subsequently, an additional written statement has been filed stating that the settlement deed was not acted upon and further, the father had no right to execute the settlement deed and more over, the defendant had a claim for maintenance. It is further contended that the 1st defendant has been residing in the suit property, paying property taxes.

6. The defendants 2 to 4 filed an additional written statement stating that the sale deed in favour of the 2nd plaintiff executed by the 1st plaintiff was not valid. The defendants 3 & 4 had right in the property and the right given to the 1st plaintiff was also a limited right of enjoyment and therefore, they also supported the defence set up by the 1st defendant and prayed for dismissal of the suit.

7. The 1st plaintiff filed a reply statement stating that the defendants are not in possession of the suit property and the interpretation sought to be given by settlement deed was incorrect and therefore, the sale deed executed by the 1st plaintiff in favour of the 2nd plaintiff was legal, valid and binding on all the defendants and therefore, reiterated the prayer for decreeing the suit.



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8. The other suit in O.S.No.45 of 1997 was filed by the 2nd wife of

Anurudra Udayar, who is the 1st defendant in other suit O.S.No.115 of 1994.

According to the plaintiff in this suit, the settlement deed was not true and genuine and in any event its execution was specifically denied. It is also stated that the settlor, Anurudra Udayar had no right to execute the settlement deed as the property was inherited by them. Being an ancestral property, it could not be alienated by way of settlement deed. It is also stated that the plaintiff in the said suit is in possession of the suit property and the plaintiff was entitled for partition of the suit property by metes and bounds and her share of $\frac{1}{2}$ was to be declared by the Court. She also sought for permanent injunction to restrain the defendants namely, the daughter of late Anurudran Udayar who is the 1st wife and subsequently pending the suit, the purchaser from the 1st defendant was also impleaded as 2nd defendant. In short, the plaintiff in O.S.No.115 of 1994 are the defendants in O.S.No.45 of 1997 and the 1st defendant in O.S.No.115 of 1994 is the plaintiff in O.S.NO.45 of 1997.

9. The written statement was filed by the defendants in O.S.No.45 of 1997 reiterating the plaint averments in O.S.No.115 of 1994 wherein they are the plaintiffs. Both the suits along with one another suit in O.S.No.101 of 1998 were jointly tried by the Principal District Munsif, Vellore. In fact, evidence



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was recorded in the suit in O.S.No.109 of 1998, which is a suit by the daughter of the 1st plaintiff in O.S.No.115 of 1994 and 1st defendant in O.S.No.45 of 1997. In the said suit in O.S.No.101 of 1998, the daughters sought for permanent injunction to restrain the defendants from alienating the suit property to the 3rd defendant or any other person and also to declare that the 1st defendant, their mother was entitled only to a life interest over the suit property, in view of the specific covenant in the settlement deed dated 01.11.1965 and further, for a declaration that the sale deed executed by the 1st defendant in favour of the 3rd defendant was not binding on them.

10. The trial Court, after assessing the pleadings of the respective parties, oral and documentary evidence adduced by them, dismissed the suit in O.S.No.45 of 1997 filed by the 2nd wife Rangammal. The suit filed by the daughters namely, Ambiga and Rekha @ Sumathi was also dismissed and interpreting the *Will* in favour of the plaintiff, O.S.No.115 of 1994 was decreed as prayed for.

11. The 2nd wife Rangammal preferred an appeal in A.S.No.78 of 2016 as against the judgment and decree in O.S.No.115 of 1994 and A.S.No.79 of 2016, insofar as the dismissal of her suit in O.S.No.45 of 1997. Insofar as the



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3rd suit in O.S.No.101 of 1998 filed by the daughters, they accepted the verdict of the trial Court and did not chose to prefer any appeal. The First Appellate Court proceeded to hear the appeal against O.S.No.115 of 1994 and O.S.No.45 of 1997 alone.

12. On re-appreciation of the oral and documentary evidence, the First Appellate Court allowed both the appeals and reversed the judgments and decree rendered by the trial Court.

13. Aggrieved by the said reversal findings rendered by the First Appellate Court, the 2nd plaintiff namely, the purchaser in O.S.No.115 of 1994 and the 2nd defendant in O.S.No.45 of 1997 has chosen to prefer the above Second Appeals.

14. On 26.03.2018, the above second appeals were admitted by this Court on the following questions of law:

a). Having held that the 1st plaintiff in O.S.No.115 of 1994 has absolutely right in dealing with the property, is the lower appellate Court in granting a partition in O.S.No.45 of 1997?

b). Whether Exhibit B1 could be ignored, when the



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plaintiff in O.S.No.115 of 1994 had established that it had been acted upon by the settlee?

c).Whether the lower Appellate Court is right in concluding that the original of the settlement deed is not been produced when the same is available before the Court in Ex.B1?

d). When the settlement deed under Ex.B1 vests the property in Sanjala, could that same be ignored on fanciful and non-existing facts, especially when the lower Appellate Court tends to invoke non-production of original and inapplicability of Section 90 of the Evidence Act?

e). When the settlement deed had not been specifically challenged, and especially when it is over 30 years old, does not the law presume its due execution under Section 90 of the Evidence Act?

15. I have heard Mr.V.Raghavachari, Learned Senior Counsel for the appellant and Mr.R.Ganesh Babu, Learned Counsel for the respondents 3 to 4, the Counsel appointed by Legal Aid to represent the contesting respondents.

16. I have also gone through the pleadings, the oral and documentary evidence adduced by the parties before the trial Court as well as the judgment of the trial Court and Appellate Court.



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17. Mr.V.Raghavachari, Learned Senior Counsel appearing for

Mrs.V.Srimathi, Learned Counsel for the appellant would submit that the Appellate Court has, without appreciating the rank of the parties in the appeal has proceeded to arrive at erroneous finding that the plaintiffs in O.S.No.115 of 1994 have not produced the original settlement deed, despite seeking a declaration of title and therefore, non-suited the plaintiff in O.S.No.115 of 1994. According to the Learned Senior Counsel for the appellant, this is the primary reason on which the judgment and decree of the trial Court came to be reversed. He would also state that the defendant in O.S.No.115 of 1994 did not specifically deny the execution of the settlement deed and therefore, the non-examination of any of the attestors to the settlement deed cannot be held to be fatal to the case of the plaintiff in O.S.No.115 of 1994. He would therefore pray for the Second Appeals being allowed as prayed for.

18. Per contra, Mr.R.Ganesh Babu, Legal Aid Counsel appointed for contesting the appeals on behalf of the respondents 2 to 4 brought to my notice, the pleadings in the written statement in O.S.No.115 of 1994 as well as plaint in O.S.No.45 of 1997 where at paragraph No.4 of the written statement and paragraph No.5 respectively, there is a specific denial about the execution of the settlement deed on 01.11.1965. The Learned Counsel would therefore



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state that when there is a specific denial of execution of the settlement deed, it was the bounden duty of the plaintiff to examine atleast one of the witnesses to the said document, before the Court could accept the settlement deed as validly executed, in accordance with law, as required under Section 68 of Indian Evidence Act. The Learned Counsel for the respondents would fairly concede that the First Appellate Court has committed an error in holding that the plaintiffs in O.S.No.115 of 1994 had not produced the original settlement deed on the basis of which the claim was made in the suit.

19. Having considered the rival submissions put forth by the Learned Senior Counsel for the appellant as well as the Learned Counsel for the respondents 2 to 4, appointed by Legal Aid and in an attempt to address all the substantial questions of law, I have carefully gone the pleadings as well as the oral and documentary evidence in the present case.

20. As rightly contended by the Learned Counsel for the respondents, Mr.R.Ganesh Babu, in the written statement in O.S.No.115 of 1994 as well as the plaint in O.S.No.45 of 1997, the respondents, especially the 2nd wife of the settlor, Anurudra Udayar has specifically denied the execution of



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the settlement deed. Thus, normally in such circumstances, the settlement deed will have to be proved in accordance with Section 68 of Indian Evidence Act, by examining atleast one of the attesting witnesses to prove the due execution and attestation of the said settlement deed. However, I find that the settlement deed is dated 01.11.1965 and it has been registered on the same date. I find that the original settlement deed dated 01.11.1965 has been exhibited on the side of the defendants in O.S.No.101 of 1998 and the plaintiff in O.S.No.115 of 1994. The certified copy of the said settlement deed has been marked as Ex.A.1 in O.S.No.101 of 1998. It is pertinent to keep in mind that the evidence was recorded in common in O.S.No.101 of 1998.

21. I find from the evidence that the original settlement deed dated 01.11.1965 has been marked through D.W.1 namely, Sanjala who is the 1st plaintiff in O.S.No.115 of 1994. Her chief examination has been recorded only in the year 2010 and through her, the original settlement deed has been marked. The proof affidavit has been received by the Court only on 08.11.2010 and therefore, the original settlement deed has been exhibited before the Court only some time after November 2010. Thus, it is evident that the original settlement deed has been introduced during the time of trial, clearly after a lapse of 30 years from the date of its execution.



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Section 90 of Indian Evidence Act is extracted hereunder:

“90. Presumption as to documents thirty years old.—Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.”

22. In view of the phraseology employed in Section 90 of Indian Evidence Act, when a document is more than 30 years old, then its due execution may be presumed by the Court. This aspect of the settlement deed being an ancient document, has in fact been considered by the First Appellate Court also. However, the First Appellate Court has found that the original settlement deed has not been produced by the person claiming benefit under the said settlement deed and on that score proceeded to non-suit the respondents in the First Appeal and chose to reverse the findings of the trial Court.

23. The First Appellate Court has failed to note that the original settlement deed has in fact been marked as Ex.B.2 only by the plaintiffs in O.S.No.115 of 1994 and not by the contesting the defendant namely, the 2nd



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wife Rangammal or the daughters Ambika and Rekha @ Sumathi, who are the plaintiffs in O.S.No.101 of 1998. In fact, in O.S.No.101 of 1998, the daughters of the 1st plaintiff, Sanjala in O.S.No.115 of 1994 have chosen to file only a certified copy of the settlement deed. Unfortunately, the First Appellate Court has misconstrued the true facts and probably mixed up the rank of the litigating parties before it. Thus, in this perspective the First Appellate Court has clearly committed an error in holding that the plaintiffs in O.S.No.115 of 1994 have not produced the original certificate.

24. The next submission with regard to necessity of proof of the due execution of the settlement deed Ex.B.1 (original) equal to Ex.A.1(certified copy), this Court is unable to accept the submission of the Learned Senior Counsel Mr.V.Raghavachari that even though there is a specific denial in the written statement as well as the plaint of the contesting respondents, yet when the said denial has been diluted by claiming that the settlor had no right to execute the settlement deed, the Court should construe it as a case of “not been specifically denied.”

25. The contesting respondents were entitled to take mutually contradictory pleas. Therefore, when they had at one breath specifically denied



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the execution of the settlement deed and at another breath stated that the settlor had no right to execute the settlement deed, in my opinion, it would not in any way dilute the specific denial, initially made in the written statement as well as the plaint in O.S.No.115 of 1994 and O.S.No.45 of 1997 respectively. Therefore, finding that once there is a denial, proof of the document would be required as contemplated under Section 68 of Indian Evidence Act.

26. However, Section 90 of Indian Evidence Act, would come to the rescue of the appellants. As already discussed herein above, the document has been exhibited before the Court after a period of 30 years, from the date on which it came to be executed. Thus, the document would clearly fall within the ambit of Section 90 of Indian Evidence Act and the Court is entitled to draw a presumption with regard to its due execution. More so, in the instant case, the contesting respondents themselves have chosen to exhibit the certified copy of the said settlement deed and besides also taking a plea that settlor had no right to execute the settlement deed. The claim of the daughters of the 1st plaintiff in O.S.No.115 of 1994 has already been negatived and the suit in O.S.No.101 of 1998 has been dismissed, as against which there is no appeal filed and therefore, the question of entitlement of the settlor to execute the settlement deed is no longer available for deliberation at this length of time.



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27. In view of the above findings and the mandate available under

Section 90 of Indian Evidence Act, the registered settlement deed executed on 01.11.1965 is an ancient document and Court can presume its due execution and attestation, without calling upon atleast one attesting witness to satisfy the due proof of execution of the document as required under Section 68 of Indian Evidence Act.

28. In fine, all the substantial questions of law are answered in favour of the appellants and these Second Appeal stands allowed. I place on record my appreciation to Mr.R.Ganesh Babu, Learned Counsel appointed by Legal Aid who has made a sincere and conscious effort to defend the judgments in favour of the contesting respondents.

29. Accordingly, these *Second Appeals are allowed*. No costs. Consequently, connected Miscellaneous Petition is closed.

23.02.2024

Index :Yes/No.

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2. The Principal District Munsif, Vellore.



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