



S.A.No.429 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

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1. Minor Pavithran

Represented by his father and guardian

Raghuraman

2. Raghuraman

... Appellants

Vs.

Vijayalakshmi

... Respondent

Prayer: Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 18.12.2014 passed in A.S.No.53/2012, on the file of the Subordinate Court, Mannargudi reversing the decree and judgment dated 22.06.2012 passed in O.S.No.4/2009, on the file of the District Munsif, Mannargudi.

For Appellants : Mr.B.R.Ramamoorthy

For Respondent : Ms.P.Vidhya Shree

JUDGMENT

The appellants are the plaintiffs in O.S.No.4/2009 on the file of the District Munsif, Mannargudi. They filed the suit for a permanent



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injunction restraining the defendant from evicting the plaintiffs unlawfully from the suit property and for costs.

2. The suit property as described in the plaint is a house bearing door numbers 20 and 20/1, Akkarai Pattakkara Theru, Mannargudi, Thiruvarur District, admeasuring 2322 sq.ft., within the boundaries stated in the plaint schedule.

3. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court and at appropriate places, their rank in the present second appeal would also be indicated.

4. The case of the plaintiff in a nutshell is as follows :

The suit property originally belonged to one Manickam Pillai. The said Manickam Pillai executed a registered settlement deed, dated 12.02.2007 (Ex.B1) in favour of his grand son Akash born through his son, Raghuraman (2nd plaintiff) and Vijayalakshmi (defendant). Due to some misunderstanding between the couple, a divorce petition in H.M.O.P.No.52/2003 was filed before the Family Court, Pudukottai and



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the same is pending. However, Raghuraman married one Sangeetha as his second wife and Pavithran (first plaintiff) was born to them. In the circumstances, Manickam Pillai cancelled the settlement deed, dated 12.02.2007 (Ex.B1) executed in favour of minor Akash through a cancellation deed, dated 11.08.2008 (Ex.A4). Thereafter he executed a registered settlement deed, dated 08.09.2008 (Ex.A1) in favour of Pavithran (first plaintiff). According to the plaintiffs, ever since the date of settlement deed (Ex.A1), they are in possession and enjoyment of the suit property and that the defendant Vijayalakshmi should be restrained from interfering with their peaceful possession and enjoyment of the same.

5. The suit was resisted by the defendant on the following grounds:

- i. The defendant is the legally wedded wife of the second plaintiff Raghuraman and their marriage was not annulled in a Court of law.
- ii. The settlement deed, dated 12.02.2007 (Ex.B1) was executed by



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Manickam Pillai in favour of her son Akash and on the date of settlement deed, possession was also handed over to him.

- iii. As per Section 42 of the Transfer of Property Act, Manickam Pillai does not have any right to cancel the settlement deed through a cancellation deed, dated 11.08.2008 (Ex.A4).
- iv. Since the second plaintiff had encroached upon the suit property, the defendant sent a legal notice to him on 04.02.2008.
- v. Though the second plaintiff received the said notice, did not send any reply.
- vi. Since the defendant's son Akash is the absolute owner of the suit property and he is also in possession and enjoyment of the same, the suit filed by the plaintiffs is not maintainable.

6. On the basis of the above pleadings, the Trial Court framed the following issues:

- i. *Whether it is true that the plaintiffs are not in possession and enjoyment of the suit property?*
- ii. *Whether the plaintiffs are entitled to get the relief of permanent*



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injunction as prayed for?

iii. To what other reliefs, the plaintiffs are entitled?

7. In the Trial Court, the second plaintiff examined himself and three other witnesses and marked Ex.A1 to Ex.A14. The defendant examined herself and marked Ex.B1 to Ex.B13.

8. After full contest, the learned Trial Court Judge, vide his decree and judgment dated 22.06.2012, decreed the suit in favour of the plaintiffs on the following grounds:

- i. This is a suit for bare injunction and therefore the title of the suit property need not be gone into.
- ii. The second plaintiff had deposed that he and his minor son Pavithran (first plaintiff) are residing in the suit property.
- iii. He has also adduced sufficient evidence such as voter's list, Voter's identity card, Family card and summons served on him in H.M.O.P.No.109/2004 to show that he is in continuous possession over the suit property.



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- iv. The defendant had also adduced her Family card to show that her address is the suit property.
- v. The evidence of D.W.2 and D.W.4 would go to show that the defendant Vijayalakshmi is residing with her father-in-law in the upstairs of the suit property while the second plaintiff and his son are residing in the ground floor.
- vi. The second plaintiff as P.W.1 had deposed that he does not have any objection if the defendant resides in the upstairs of his house.
- vii. In the circumstances, the plaintiffs can be granted the relief of permanent injunction as prayed for by them.

9. Aggrieved over the decree and judgment passed by the Trial Court Judge, the defendant filed an appeal in A.S.No.53/2012 before the Subordinate Court, Mannargudi. The learned Subordinate Judge, on considering the oral and documentary evidence adduced on both sides, allowed the appeal and dismissed the suit filed by the plaintiffs, vide his decree and judgment dated 18.12.2014 on the following grounds:

- i. The suit property has already been settled by Manickam Pillai in



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favour of Akash, son of the second plaintiff through a registered settlement deed, dated 12.02.2007 (Ex.B1) and the defendant and therefore, he cannot cancel the same.

- ii. Though it is contended that divorce petition in H.M.O.P.No. 52/2003 was filed before the Family Court Pudukottai, till date the decree of divorce has not been granted by the Family Court. Therefore the marriage between the second plaintiff and Sangeetha is not a lawful marriage.
- iii. In any event as per Section 126 of the Transfer of Property Act, a gift can be cancelled or rescinded only under the circumstances mentioned in the Section.
- iv. Since Manickam Pillai had already executed the settlement deed in favour of Akash, Akash has become the absolute owner of the suit property. The plaintiffs did not implead him as a party to the suit.

10. Aggrieved over the decree and Judgment passed by the first appellate Court, the present second appeal is filed. The appeal has not been admitted so far. The appeal is listed under the caption 'adjourned



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admission'.

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11. Heard Mr.B.R.Ramamoorthy, learned counsel for the appellants and Ms.P.Vidhya Shree, learned counsel appearing for the Respondent.

12. It is seen from the records that Manickam Pillai, the owner of the suit property had executed the settlement deed, dated 12.02.2007 (Ex.B1) in favour of his grandson Akash, born through his son Raghuraman (second plaintiff) and Vijayalakshmi (defendant). It is an admitted fact that there was a misunderstanding between the couple Raghuraman and Vijayalakshmi and therefore, a divorce petition was filed in H.M.O.P.No.52/2003 before the Family Court, Pudukottai. The counsel for the appellants and respondent contended that till date the divorce petition has not been disposed of by the Family Court. In any event, Raghuraman (second plaintiff) married one Sangeetha for the second time and gave birth to Pavithran (first plaintiff). Manickam Pillai cancelled the settlement deed, dated 12.02.2007 (Ex.B1) executed in favour of Akash through the cancellation deed dated 11.08.2008



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(Ex.A4) and subsequently executed a registered settlement deed, dated 08.09.2008 (Ex.A1) in favour of Pavithran (first plaintiff).

13. The plaintiffs have filed the suit for a bare injunction restraining the defendant from interfering with their peaceful possession and enjoyment of the suit property. When it is admitted by both the parties that Manickam Pillai had executed the settlement deed in favour of Akash, son of Vijayalakshmi, he has become the absolute owner of the suit property. However, he has not been shown as a party to the present suit. It is settled law that an order of injunction can be granted against any one except the true owner. In the instant case, true owner of the suit property is Akash and he is not a party to the suit. He is a minor and is residing with his mother Vijayalakshmi in the suit property. In any event, as per Section 126 of the Transfer of Property Act, a gift can be cancelled or rescinded only under the following circumstances:

- a) On the happening of an event specified in the gift deed.
- b) The donor and the donee must have agreed to such condition; acceptance of such condition specified in the gift deed must be



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agreed to by the donee while accepting the gift;

- c) The event agreed upon must be such that the happening of it does not depend on the will of the donor;
- d) The conditions so imposed must not be repugnant to the gift and should not be illegal and immoral;
- e) A gift may also be revoked or rescinded as if it were a contract on the same grounds on which a contract may be rescinded except on the ground of failure of consideration.

14. In the instant case, Manickam Pillai after executing the registered settlement deed (Ex.B1), had unilaterally cancelled it even though the settlement deed is an irrevocable one. He has subsequently executed a settlement deed in favour of the first plaintiff. On the date of execution of the Settlement deed, dated 12.02.2007 (Ex.B1), Manickam Pillai did not have title to the suit property. The plaintiffs claimed possession over the suit property on the strength of the settlement deed, dated 08.09.2008 (Ex.A1) and the cancellation deed, dated 11.08.2008 (Ex.A4). When the cancellation deed and subsequent execution of the



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settlement deeds are null and void, the plaintiffs cannot claim any possession over the suit property especially when the owner of the suit property is the son of the second plaintiff. The second plaintiff also knew the execution of settlement deed in favour of his son Akash by his father Manickam Pillai. Hence, the whole suit is misconceived. In the circumstances, I do not find any substantial question of law involved in the present second appeal.

15. In the result,

- i. The Second Appeal is dismissed. No costs.
- ii. The decree and judgment dated 18.12.2014 passed in A.S.No.53/2012, on the file of the Subordinate Judge, Mannargudi are upheld.
- iii. The suit in O.S.No.4/2009, on the file of the District Munsif, Mannargudi is dismissed with costs.

16.12.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.

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To

1. The Subordinate Judge, Mannargudi.
2. The District Munsif, Mannargudi.
3. The Section Officer, VR Section,
Madras High Court, Chennai.

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