



S.A.No.499 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 19.03.2024

Pronounced on: 22.03.2024

Coram:

THE HONOURABLE Mr. JUSTICE P.B.BALAJI

S.A.No.499 of 2018
& C.M.P.No.13705 of 2018

1. Seenuvasan,
2. Chiranjeevi (minor),
Rep. by its Guardian father
1st respondent Mr.Seenuvasan. ... Appellants

2nd Appellant declared as major his Guardian father 1st appellant Mr.Seenuvasan discharged from the Guardianship vide order of Court dated 12.06.2018 made in C.M.P.No.8425 of 2018 in SA.SR.No.15286 of 2015 (VMVJ).

/versus/

Kalaivani ... Respondent

Prayer: Second Appeal has been filed under Section 100 of C.P.C., against the Judgment and Decree dated 31.07.2017 in A.S.No.9 of 2015 on the file of the Subordinate Judge, Gingee reversing the Judgment and decree dated 27.04.2015 in O.S.No.350 of 2008 on the file of Additional District Munsif, Gingee in decreeing the suit for partition.

For Appellants : Mr.K.Balasubramaniam

For Respondent : Mr.B.Jawahar



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J U D G M E N T

The defendants who initially succeeded before the trial Court but however, suffered a reversal finding before the First Appellate Court are the appellants before him.

2. The parties are described as per their litigating status before the trial Court.

3. The plaintiff is the sister of the 1st defendant. The 2nd defendant is son of the 1st defendant. According to the plaintiff, the property belonged to her grand mother who had settled the said suit property in favour of the plaintiff in and by a settlement deed dated 13.07.1995. The plaintiff came to know that the settlement deed was cancelled by her grand mother. However, contending that the settlement deed was acted upon and the plaintiff was enjoying the property settled on her, the plaintiff sought for declaration of her title to the suit property.

4. The 1st defendant filed a written statement stating that the settlement deed was never acted upon and in fact, the grandmother cancelled



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the settlement deed on 13.01.2000 and thereafter, on 11.07.2000, she has executed a *Will* in favour of the 2nd defendant, namely, her great grand son, being the son of the 1st defendant. The 1st defendant therefore sought for dismissal of the suit.

5. The trial Court dismissed the suit and aggrieved by the same, the plaintiff preferred an appeal in A.S.No.9 of 2015. The First Appellate Court reversed the findings of the trial Court and proceeded to decree the suit as prayed for by the appellant/plaintiff.

6. As against these reversal findings of the First Appellate Court, the present Second Appeal has been preferred by the defendants.

7. The Second Appeal has not been admitted. However, I have heard Mr.K.Balasubramanian, Learned Counsel for the appellants and Mr.B.Jawahar, Learned Counsel for the respondent for final disposal of the Second Appeal.

8. The Learned Counsel for the appellants would submit that the settlement deed was in respect of two items, one being a residential house and



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other being agricultural lands. Insofar as residential house, the Learned Counsel for the appellants would submit that the 1st defendant permitted the plaintiff to reside in the said property and her possession was not in pursuance of the settlement deed in her favour. The Learned Counsel for the appellants also state that insofar as the agricultural lands, the settlement deed was never acted upon. In fact, he would take me through the written statement where it has been specifically mentioned that even after the settlement deed, the grand mother had mortgaged the property for purchase of a tractor and subsequently, it was only the grandmother who had discharged the mortgage. According to the Learned Counsel for the appellant, the plaintiffs waited for discharge of the mortgage and also only after the death of the settlor, her grand mother, has chosen to come forward to file the suit to declare the suit property, namely, the agricultural land as her absolute property, claiming under the settlement deed.

9. The Learned Counsel for the appellants would state that admittedly, the plaintiff has not chosen to seek for cancellation of the cancellation deed dated 13.01.2000 and therefore, the suit as framed was also not maintainable and liable to be dismissed. He would also refer to the deposition of the plaintiff where she had admitted to knowledge about the mortgage and according to the Learned Counsel for the appellant, the plaintiff



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has not been able to satisfy that the settlement deed was acted upon.

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10. Per contra, Mr.B.Jawahar, Learned Counsel for the respondent/plaintiff would submit that the settlement deed was acted upon and in respect of the residential property, even according to the defendants, the plaintiff was in possession, though it is claimed that possession of the plaintiff was permissive in nature. However, no evidence was adduced to establish the said contention. Even with regard to the agricultural lands, the respondent's counsel would submit that though there was pleading with regard to a mortgage by the grand mother along with the 1st defendant and the same was also subsequently discharged, even the mortgage deed and the discharge receipt were never produced by the defendants during the trial. He would also state that it is shown that the settlement deed has been acted upon in respect of even one of the item of the settled properties, it cannot be stated that the settlement deed was not acted upon in so far as another item. He would also contend that once the settlement is found to be complete, the settlor had no right to cancel the same and the cancellation being a void document, it would not be binding on the plaintiff and therefore, it would not be necessary for the plaintiff to seek for a declaration that the cancellation of the settlement deed was not valid or binding on her.



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11. The Learned Counsel for the respondent would also take me through the evidence of D.W.1 on which heavy reliance has been placed by the First Appellate Court and referring to the same, the Learned Counsel for the respondent would pray for dismissal of the Second Appeal.

12. The learned counsel for the respondent would also state that the cancellation was also in any event not brought to the notice of the plaintiff at any point of time by issuance of any notice or otherwise and only after the suit came to be filed by way of written statement, the cancellation of the settlement deed was pleaded and the document was marked on the side of the defendants during the trial of the suit. Therefore, being a void document, it was not required to be challenged.

13. I have paid my anxious and careful consideration to the rival submissions advanced by the Learned Counsel on either side.

14. Admittedly, the settlement deed comprises of two items of properties, namely one being a residential house and another being agricultural lands. The present suit is filed for declaring the title of the plaintiff only in respect of the agricultural lands. She has not included the residential property as



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one of the items of the suit property and in fact, it is also admitted by the defendants that the plaintiff is residing in the said residential property that has been settled by the grandmother on the plaintiff. Though the defendants attempted to state that it was only a permissive possession, that too under the 1st defendant, I do not find any satisfactory evidence, oral or documentary, to substantiate such claim. In any event, the said item of the suit property is not subject matter of the present suit.

15. The dispute is only with regard to the agricultural lands that has been settled on the plaintiff. The law is well settled that once the settlement deed is validly made, the same cannot be revoked, unless and until a revocation clause was available in the settlement deed itself. In the present case, there is no such covenant that the settlor reserved her right to cancel the settlement deed. In fact the settler has expressly covenanted that she would not cancel the settlement deed. However, it remains to be seen whether the settlement deed has been acted upon and has resulted in a concluded gift/settlement, for it to be irrevocable. The plaintiff has stated that she has taken possession of both the items of the suit properties and she has been paying taxes and other charges. In this connection, the plaintiff has exhibited Ex.A.8 to Ex.A.18 referred to the residential property and it is clear that the plaintiff has mutated the revenue



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records in respect of the residential property that has been settled on her by the grandmother and therefore, there is no difficulty to hold that the settlement deed has been acted upon. Even in respect of the agricultural lands, the plaintiff has produced Chit in Ex.A.2 and Kist receipt in Ex.A.3 to Ex.A.7.

16. In this scenario, the evidence of D.W.1 assumes significance. The 1st defendant has admitted that the grandmother executed the settlement deed in favour of the plaintiff on 13.07.1995 and it was a registered settlement deed. He has also stated that the reason for settling the property was only because the plaintiff did not have any property in the said village. It is also stated that the Patta No.102 relating to the suit property, Chitta and another revenue records are only in the name of the plaintiff i.e., his sister. He has also stated that until 2014, patta was in the plaintiff name and that until such time, he and his sister, the plaintiff were jointly paying the taxes and that, he paid taxes for the first time only in 2008. However, he has admitted that he has not produced any document to substantiate such payment of taxes. He also stated that the grandmother never issued any notice after execution of the settlement deed at any point of time during her lifetime. He has also admitted that the document contains a clause that the settlement deed would not be revoked by the grandmother. It is also admitted that neither he nor his son enjoyed the suit



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properties and any point of time. He also admitted to the fact that the plaintiff has obtained electricity service connection to the residential portion in her name and she has also put up constructions after the settlement deed was executed in her favour. Thus, it is clear that the settlement deed was acted upon in respect of both the residential property as well as the agricultural lands. As rightly contended by the Learned Counsel for the respondent, it cannot be stated that the settlement deed can be said to be acted upon in piecemeal, agreeing that in respect of one portion, it has been acted upon and in respect of another portion, it has not been acted upon. Once it is established that there is an acceptance of the gift and in furtherance of the same, the plaintiff has established her right in the said property and it would amount to completion of the gift and thereafter, the same would become irrevocable.

17. As rightly contended by the Learned Counsel for the respondent, once the settlement deed is found to be complete and acted upon, the grandmother had no right to cancel the same unilaterally, behind the back of the plaintiff. The said cancellation is therefore a void document and can certainly be ignored by the plaintiff and it was not necessary for the plaintiff to seek declaration that the said cancellation of the settlement deed would not bind her. As already seen from the evidence of D.W.1 himself, the settlement deed



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was acted upon in respect of both the items of the suit property and therefore, I do not find any infirmity, illegality or perversity in the findings arrived at by the First Appellate Court. Consequently, no substantial question of law arising for consideration. Hence, the ***Second Appeal is dismissed***. No costs. Consequently, connected Miscellaneous Petition is closed.

22.03.2024

Index :Yes/No.
Internet :Yes/No.
Neutral Citation :Yes/No.
Speaking Order/Non-Speaking order.
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Copy to:-

1. The Subordinate Judge, Gingee.
2. The Additional District Munsif, Gingee.



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P.B.BALAJI, J.

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Pre-delivery judgment made in
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