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AS. No.513 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02 .2024

CORAM:

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

AS. No. 513 of 2017

P.D.Sivaji

...Appellants

Vs.

1.P.D.Dhanalakshmi
2.D.Yasodha
3.P.D.Dilipkumar
4.P.D.Balaji
5.P.D.Rajendran
6.P.D.Ramani
7.T.Karpagavalli

...Respondents

PRAYER : This first appeal is filed under Section 96 of CPC r/w Order 41 Rule 1 of CPC, to set aside the decree and judgment dated 07.03.2017 made in O.S No. 2638 of 2015 on the file of XIX Additional Judge, City Civil Court, Chennai.

For Appellant : Mr.M.Sankar

For Respondents : Mr.A.Prabakaran



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JUDGMENT

The appellant herein filed Suit In O.S No. 2638 of 2015 on the file of the XIX Additional City Civil Court, Chennai, for partition and for separate possession of plaintiff's 9/6 share in the suit property. The said suit was contested by the defendants stating the plaintiff is not entitle to share in the suit property. After considering the oral and documentary evidence the Trial Court held dismissed the suit. Challenging the same the plaintiff filed this appeal.

2. The brief facts of the plaintiff case is follows:

Originally the suit property belongs to one Gnanambal and she executed settlement deed in favour of her brother P.L. Saravanabavanandam and P.S.Deivaprasad and heirs to be take into equal share reserving life interest to herself and her sister Kokilambal. The said Kokilambal is predeceased her sister Gnanambal and such the life interest of Kokilambal became extinguished. After the death of Gnanambal, P.L. Saravanabavanandam and P.S.Deivaprasad are entitled to half share equally in the suit property. Thereafter, on 25.08.1970, the said P.L. Saravanabavanandam died issueless leaving behind his wife



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P.S.Thanalakshmi, who is entitled to half share in the suit property, while the remaining half share in the suit property shall be jointly entitled to P.S.

Deivaprasand and his heirs. On 05.10.1995, P.S.Thanalakshmi executed a sale deed in respect of her half share in the suit property in favour of P.D.Sivaje/Appellant herein. There was misunderstanding between the P.D.Sivaji and his father Deivaprasan in the year 2004. Thereafter there was agreement was entered into between the P.D.Sivaji and Deivaprasad, as per clause 1 said agreement the P.D.Sivajin has agreed to render all his assistance and co-operation to his father Deivaprasad to get possession of agriculture lands in Somangalam Village. Under clause 2 of the said agreement, P.D.Sivaji has agreed to settle his undivided half share in the suit property in favour of his father Deivaprasand. Accordingly, in compliance, the clause 1 and clause 2 of the agreement P.D.Sivaji assisted and get possession of the properties in Somangalam Village to his father. As per clause 3 of the agreement P.S. Deivaprasad has agreed to pay a sum of Rs.10,00,000/- to his son P.D.Sivaji, but paid only Rs.3,50,000/- and failed to pay the balance sum of Rs.6,40,000/- and similarly P.S.Deivaprasad had failed to comply with other condition in the said agreement for settling the lands in the Somangalam Village to the appellant P.D.Sivaji. Hence, the



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appellant father committed breach of trust. Two days after sivaji settled his half share in favour of his father, under the guise of executing a document of mortgage at the request of P.S.Deivaprasan, P.D.Sivaji accompanied his father for registration of the said document in which he had subscribed his signature as one of the witness to the said document. Further it has come to light to the knowledge of P.D.Sivaji at the later point of time that in the document which has been registered in which he has subscribed his signature as one of the witnesses in none other the deed of settlement executed by P.S.Deivaprasnd in favour of this two others sons. Viz., P.D.Dilip Kumar and Rajendran in respect of entire suit property. Thereafter, on 23.12.2005, P.D.Sivaji cancelled the settlement deed dated 10.09.2004 executed by him in favour of his father in favour of his two other sons. Thereafter, the said P.D.Deivaprasad died in the year of 2006. Thereafter, the appellant issued notice to the respondents in year of 2014 for partition but they have not replied to that notice. Hence, the appellant filed a suit. After considering the submissions on either side the Court below dismissed the said suit. Challenging the same the appellant filed this appeal.

3. The case of the defendant is follows:



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The defendants completely refuted the settlement deed executed by the Ganambal in favour of Mr.P.s.Veerpadran @ P.S.Deivaprasad and his legal heirs. Thereafter, there was dispute with regard to sharing of the other joint family properties, an agreement was executed between these defendants and the plaintiff and their father P.S.Deivaprasad on 20.08.2004 and as per the clause of the agreement the plaintiff settled his undivided share in the suit property in favour of his father P.S.Deivaprasad and he is peaceful possession and enjoyment of the entire suit property. Further, there was no compulsion on the part of Deivaprasad to settle half share in the suit property which subsequently was purchased by the plaintiff in his favour. The plaintiff only out of his love and affection towards his father has settled half share in the suit property and in turn P.S.Deivaprasad out of his love and affection settled the entire suit property in favour of the defendants 3 and 5. The plaintiff stood as witness to the settlement deed executed in favour of these defendants don't have locus standi in executing cancellation deed dated 23.12.2005 vide Doc.No. 1613/2005, the said document is non est and non binding upon these defendants. The suit property is absolutely belongs to these defendants, which was settled in their favour by his father P.S.Deivaprasad. Hence, prays to dismiss the



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suit.

4. Heard the learned counsel for the appellant and the learned counsel for the respondents.

5. 1The point to be decided is whether the appellant is entitled to claim the relief of partition in suit properties ?

5.2. Whether the settlement executed by the appellant in favour of his father is conditional one?

6. Considering the submissions on either side and also evidence available on record it reveals that there is no dispute with regard to the relationship of the parties as well as nature of the suit properties, hence those facts need not be discussed. Based on Ex.A3/deed of agreement dispute arose between the parties in respect of terms of Ex.A3 and subsequent execution of settlement deed marked as Ex.A4, Ex.A5 and Ex.A6. According to the appellant in respect of settling the issues pertaining to the joint family properties between the appellant and his father and his brothers, the Panchayat was held in the presence of the elders based on that deed of agreement/Ex.A3 was executed on 08.09.2004 between the parties, in the said Deed the plaintiff was referred as second part and this father and



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brothers are referred as first part. The terms of the agreement is follows:

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1. *The party of the second part shall render all assistance and cooperation to party No.1 of the partes of the first part. in his court proceedings, to get possession of two pieces of agricultural lands in Somangalam village. comprised in survey No. 174 measuring an extent of 0.67 acres and in survey No. 245 measuring an extent of 0.74 acres respectively.*

2. *The party of the second part shall settle the undivided 1/2 share in the property bearing Door No. 7 Perumal Mudaliar Stree, Royapetah, Chennai 600 014 purchased by him from Dhanalakshmi Ammal under sale deed dated 05.10.1995 in favour of the Party No.1 of the parties of the first part:*

3. *The party No.1 of the parties of the first part shall pay a sum of Rs.10,00,000/- (Rupees Ten lakhs Only) to the party of the second part as compensation for settling his 1/2 share in the property bearing Door No. 7, Perumal Mudali Street, Royapettah, Chennai - 900 014. Out of this Rs.10,00,000/- (Rupees Ten lakhs only), the party No.1 of the parties of the first part shall settle the agricultural lands in Somangalam Village in S.S No. 174 measuring 0.67 acres and in S.NO. 245 measuring an extent of 0.74 acres in favour of the party of the second part and thus adjust a sum of Rs.3,60,000/- (Rupees Three lakhs and sixty Thousand only) on that account and shall pay the balance of Rs.6,40,000/- (Rupees Six Lakh Forty Thousand Only) to this party of the second part within three months from this date.*

7. After executing the deed of agreement the plaintiff executed the settlement deed on 10.09.2004 in favour of his father by settling his share in the property which is marked as Ex.A5. As per the terms of the said settlement deed Ex.A5 plaintiff not received any consideration from his father. The plaintiff complied his part of the agreement by executing the



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settlement deed in favour of his father but the contrary to the deed of agreement/Ex.A3 his father failed to pay a sum of Rs.6,40,000/- as the terms of the said deed of agreement. As per the terms of the said deed of agreement his father bound to pay a sum of Rs.10,00,000/- to the plaintiff and to be paid Rs.6,40,000/- in cash and for remaining 3,60,000/- his father agreed to allot agriculture land situated in Somangalam village. Admittedly, his father paid a sum of Rs. 6,40,000/- but he failed to allot agriculture land in Somangallam Village in favour of the plaintiff but the defendants contended that entire ten lakhs was paid by his father to the plaintiff but there is no proof on the side of the defendants to prove the same. Admittedly, the agriculture land Somangallam village was sold by his father during his life time but not settled in favour of the plaintiff as per the terms of the deed of agreement/Ex.A3. The plaintiff admits that he received 6,40,000/- from his father but not received remaining 3,60,000/- from his father therefore the plaintiff established that his father not complied the terms of the agreement as he promised in deed of agreement it amounts to breach of trust hence the plaintiff cancelled the settlement deed because the said settlement was executed as per the terms of the deed of agreement/ Ex.A3 executed between the parties which is conditional one. Moreover, the



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settlement deed is executed based on the deed of agreement and it is not independent one therefore as per the terms of the deed of agreement the plaintiff bound to execute the settlement deed in favour of his father in turn his father bound to pay a sum of Rs.10,00,000/- to the plaintiff but he failed. As rightly pointed out by the plaintiff's counsel immediately within three days the plaintiff executed settlement deed in favour of his father on 10.09.2004 which was marked as Ex.A4. The learned counsel for the defendants submitted that the plaintiff aware of the settlement deed executed by his h father to other sons since he is attestor of the said document. This fact was denied by the plaintiff stated that in order to pledge the property his father wanted to sign him in the document hence he signed the document as witness later the plaintiff came know that settlement was executed. The facts reveals that the plaintiff complied his part of the terms of the agreement but his father failed to complied the terms of the deed of agreement hence the plaintiff is entitled to cancel the settlement deed but the Trial Court failed to appreciate the above facts as such is erroneous and liable to be set aside. Accordingly, issue No.2 is answered

8. Further the plaintiff received 6,40,000/- from his father as part of the agreement the plaintiff bound to return the said amount who are legal



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heirs of his father. Therefore cancellation of settlement deed on 20.03.2012

is valid. Furthermore, plaintiff's issued notice to his father though received notice but no reply was given, if at all his father had any grievances he should have raised his objections but he failed to do so till his death. The Court draw adverse interference against his father as he failed to reply by denying allegations made by the plaintiff and the issuance of notice is also not denied by the D.W.1 during cross examination. Therefore, by complying the terms of the agreement the plaintiff executed the settlement deed but on the other side his father failed to comply his part of the agreement and also sold the property to third party besides immediately he settled the suit property in favour of his other sons as such clearly indicates that he breach the terms of the deed of agreement. Furthermore, the settlement is conditional one hence the plaintiff is entitle to revoke the same. Further the plaintiff is liable to return a sum of Rs.6,40,000/- to the defendants with 12% interest per month. Though there was no prayer having admitted to receipt the said amount. When he cancelled the said settlement deed he bound to return the said amount to his father as he died his legal heirs entitled to receive the said amount. Accordingly, issue is answered. Hence the plaintiff is entitle to 9/6 share in the suit property. Thus, suit is partly



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allowed.

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To

1. The XIX Additional Judge, City Civil Court, Chennai.
2. The Section Officer,
V.R Section.



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T.V.THAMILSELVI,J.

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