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A.S.No.672 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	12.08.2024
PRONOUNCED ON	:	20.11.2024

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

A.S.No.672 of 2017

1. D. Araamuthu

2. A. Kalavathi

... Appellants/

Defendants 1 & 2

Vs.

T. Subramania Mudaliar

...Respondent / Plaintiff

PRAYER: Appeal Suit filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree dated 16.09.2017 in O.S.No.34 of 2015 on the file of Court of the II Additional District and Sessions Judge, Vellore @Ranipet, Vellore District.

For Appellants : Mr.A.K.Sriram, Senior counsel
for Mr.Venkatesh Mohanraj

For Respondent : Mr.M.Venkadesh Kumar



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A.S.No.672 of 2017

J U D G M E N T

(Judgment of the Court made by **J.NISHA BANU, J.**)

Aggrieved over the Judgment and Decree dated 16.09.2017 made in O.S.No.34 of 2015 on the file of II Additional District and Sessions Judge Vellore @ Ranipet, Vellore District, the aggrieved defendants 1 and 2 therein have preferred the present Appeal Suit before this Court under Section 96 of the Civil Procedure Code r/w Order 41 Rule 1 of the Civil Procedure Code seeking to set aside the decreetal order.

2. The crux of the case is that Suit in O.S.No.34 of 2015 was filed by the plaintiff/ respondent herein, seeking to cancel the registered settlement deed dated 22.11.2010 executed by the plaintiff in favour of the first defendant; for granting mandatory injunction thereby directing the defendants to cancel the registered settlement deed, dated 22.09.2011 created by them in respect of the suit properties and further by granting permanent injunction restraining the defendants from in any way creating any alienations or encumbrance over the suit property to the detriment of the plaintiff's right and title over the same.



A.S.No.672 of 2017

3. First and foremost, the plaintiff is the elder brother of the first defendant and the second defendant is the wife of the first defendant. For the sake of convenience, the parties are referred by their ranks mentioned in the Court below. The pleadings canvassed by Mr.A.K.Sriram, learned Senior counsel appearing on behalf of Mr.Venkatesh Mohanraj, learned counsel for the appellants / defendants 1 & 2 are as follows:-

3.1. Late Desappa Mudaliar is the father of the plaintiff as well as the first defendant and during his life span, he acquired number of properties by way of inheritance and also purchased number of properties in his name as well as his sons' name and all of them were living as joint family under one roof. In the year 1979, the first defendant joined in the Indian Army Service and he was sending his salary to his father regularly upto the year 1981.

3.2. After the demise of their father, the plaintiff became the Karta of the family and thereafter, the first defendant continued to send his salary to the plaintiff and his mother. Out of the money sent by the first defendant as well the money obtained from other joint family income, the plaintiff



A.S.No.672 of 2017

purchased number of properties in the name of the plaintiff, his brothers, including the first defendant, his mother and in the name of the plaintiff's wife. The learned Senior counsel also contended that the plaintiff started different kinds of businesses in his name, his wife's name as well as in the name of his son from the income that came from the joint family nucleus. At the same time, the learned Senior Counsel also submitted that the plaintiff, by using the salary sent by the first defendant, has purchased properties in the name of his wife under the colour of the joint family, for which the sale consideration and registration charges for those properties were paid by the first defendant alone. Therefore, according to the learned senior counsel, the first defendant is the owner of the suit properties and the plaintiff's wife is only a name lender of those properties.

3.3. After retiring from the Indian Army Service, the first defendant requested the plaintiff to re-transfer those purchased properties to his name. In this regard, the plaintiff has advised the first defendant that if he had to transfer the properties which stood in the name of the plaintiff's wife's name to the first defendant's name, it would incur several lakhs of rupees



A.S.No.672 of 2017

towards registration charges. Rather, if a settlement deed is obtained for those properties that stood in the name of the plaintiff's wife's name to the plaintiff's name and in turn, the plaintiff shall give those properties vide settlement deed to the first defendant thereafter, then, a huge amount of money shall be saved. Since the first defendant agreed to the same, settlement deeds were executed on 15.11.2010 and on 22.11.2010. Even for obtaining those settlement deeds, the expenditure incurred was borne by the first defendant alone. As a karta of the Hindu joint family, the plaintiff retained all the original title deeds in his custody.

3.4. After the settlement deeds between the plaintiff and the first defendant was executed, the first defendant effected mutation and executed a registered settlement deed in favour of his wife, who is the second defendant and the second defendant alone was enjoying the said properties in her own accord. The main contention of the learned Senior counsel is that the suit properties are separate properties of the first defendant and he executed registered settlement deed in his wife's name. Therefore, the plaintiff nor his wife have no claim or interest or title over the said properties. The plaintiff



A.S.No.672 of 2017

with an ulterior motive has filed the suit with false particulars in O.S.No.34 of 2015.

3.5. Moreover, at the instigation of the plaintiff, one of his sister has filed a suit in O.S.No.10 of 2015 for partition of the joint family properties. According to the learned Senior Counsel, with an intention to grab the properties of the first defendant, the plaintiff has played fraud and has filed the suit in O.S.No.34 of 2015. The Court below, without considering the merits of the case, has granted the decree in favour of the plaintiff, which is liable to be set aside.

3.6. It is the specific allegation made by the plaintiff that the properties were transferred in the name of the first defendant, only for the purpose of obtaining IOCL Dealership, which was published in the Tamil Daily Dinakaran dated 14.02.2010 calling for applications from Ex-serviceman for appointment of petrol bunk dealers. According to the learned Senior Counsel, the observation made by the lower Court is unsustainable for the reason that when the plaintiff has deposed during the cross examination



A.S.No.672 of 2017

that the first defendant has shown an advertisement dated 14.03.2010 published in the Dinakaran newspaper and on that date, it can be averred that the first defendant was still serving in the Indian Army. If that being the case, the first defendant retired from service only on 31.07.2010 and therefore, the first defendant did not submit any application for petrol bunk dealership on the basis of the advertisement published on 14.03.2010. Hence, the plaintiff has falsely projected the case and fabricated the records to play fraud on the first defendant. Accordingly, the learned Senior Counsel submitted that the decree granted in favour of the plaintiff in O.S.No.34 of 2015 on the file of II Additional District and Sessions Judge Vellore @ Ranipet, Vellore District deserves to be set aside and therefore, prayed for allowing this appeal suit.

4. Per contra, Mr.M.Venkadesh Kumar, learned counsel appearing on behalf of the respondent herein elucidates the following:-

4.1. The learned counsel submits that the property described in the schedule originally belonged to his wife Mrs.Lakshmi Ammal, as she purchased the same under the registered sale deeds dated 29.01.1982, 04.02.1982 and 29.10.1984 from various persons. The said Lakshmi Ammal



A.S.No.672 of 2017

was in possession and enjoyment of the said properties by having patta for the said lands in her name and paying kist for the said lands, as they were referred as cultivable lands in Government Revenue records.

4.2. The first defendant, who is the younger brother of the plaintiff was employed in Defence service and got retired in the year 2010. After retirement, the first defendant has informed the plaintiff, regarding the retail outlet of IOCL for running a petrol bunk, which is reserved for ex-service man category. In order to avail the outlet of IOCL, the first defendant informed the plaintiff that for obtaining the retail outlet, the first defendant is required to show that the suit properties stand in his name for the purpose of applying under the 'ex-service man' category. Therefore, the first defendant instigated the plaintiff to transfer the suit properties from the name of the plaintiff's wife to the name of the plaintiff and thereafter, to transfer the same to the name of the first defendant.

4.3. According to the learned counsel for the respondent, the first defendant has promised to cancel the 'to-be executed' registered settlement



A.S.No.672 of 2017

agreement deed, if no such outlet of IOCL was granted to the first defendant.

On such promise, the plaintiff executed the registered settlement deed dated 15.11.2010 in respect of the suit properties that stood in the name of his wife Lakshmi Ammal and then executed the registered settlement deed dated 22.1.2020 in the name of the first defendant to enable him to apply for the outlet of IOCL.

4.4. Further the learned counsel would state that the survey field numbers, viz. 942/1A1B was left out in the sale deed and in the registered settlement deed that was executed by the plaintiff in favour of the first defendant, it was mistakenly referred as 941/3. Therefore, the first defendant wanted to execute a correction deed in respect of the said survey number and by including the new sub-divisions of the survey fields under the registered correction deed dated 31.01.2011.

4.5. For the sake of making application for the retail outlet of IOCL , the original of the registered settlement deed dated 22.11.2010 and the correction deed dated 31.01.2011 were handed over to the first defendant



A.S.No.672 of 2017

but the possession of the lands were not delivered to him. Whenever the plaintiff asked about the status of the application for retail outlet of IOCL, the first defendant would state that the application is under scrutiny and the outlet of IOCL would be granted to the first defendant. Lastly on 31.01.2013, the plaintiff came to know that the said outlet of IOCL was not granted to the first defendant and when the plaintiff questioned him, the first defendant gave evasive answers. The learned counsel for the respondent would state that both the first defendant and his wife/ second defendant colluded together and created false and vexatious registered deed of settlement dated 22.09.2011 in respect of the suit properties by taking advantage of the registered settlement deed dated 22.11.2010 and the correction deed dated 31.01.2011.

4.6. The learned counsel for the respondent would further submit that the plaintiff, on availing certified copy of the said registered settlement deed dated 22.09.2011 alleged to have been executed by the first defendant in favour of the second defendant on 04.02.2013, he came to know that he was cheated by the first defendant and the registered settlement deed dated



A.S.No.672 of 2017

22.11.2010 and the correction deed dated 31.01.2011 were obtained by the first defendant, only with an intention to grab the properties under the guise of making application for the retail outlet of IOCL.

4.7. The learned counsel further contended that the suit lands were also not delivered to the first defendant. He would contend that the registered settlement deed dated 22.11.2010 and the correction deed dated 31.01.2011 are not true and valid documents and the same were availed by the first defendant by playing fraud upon the plaintiff. Therefore, the plaintiff and his wife lodged a complaint before the police station against both the defendants under the Land Grabbing Prohibition Cell at Vellore on 15.11.2014 and the same is pending for enquiry. Thereafter, the plaintiff issued a notice dated 02.03.2015 to the defendants by calling upon them to cancel the said documents dated 22.11.2010, 31.01.2011 and 22.09.2011 and to execute a registered document in favour of the plaintiff to clear the cloud at the Sub-Registrar office over the suit properties, within a week from the date of receipt of such notice.



A.S.No.672 of 2017

WEB COPY

4.8. The first defendant has received the above said notice on 04.03.2015 and the notice addressed to the second respondent was not yet returned. Subsequently, the plaintiff filed a suit to cancel the said registered settlement deed dated 22.11.2010 executed by the plaintiff in favour of the first defendant and for mandatory injunction directing the defendants to cancel the other documents following the said registered settlement deed, for permanent injunction restraining the defendants from in any way creating any alienation or encumbrance over the suit properties and for other reliefs.

5. The Trial Court framed the following issues:

"1. Whether the suit properties are separate properties of 1st defendant?

2. Whether the Suit is barred by Limitation?

3. Whether the Suit is Bad for non joinder of necessary parties?

4. Whether the Plaintiff is entitled for cancellation of document dated 22.11.2010?

5. Whether the Plaintiff is entitled for declaration as prayed for?

6. Whether the Plaintiff is entitled for permanent injunction?

7. To What relief?



A.S.No.672 of 2017

WEB COPY

6. Before the Trial Court, the plaintiff examined two witnesses- PW.1 and P.W.2 and exhibits Ex.A.1 to 16 have been marked. On the side of defendants, DW1 was examined and exhibits Ex.B.1 to 15 have been marked.

7. The Trial Court, after analysing the oral and documentary evidence filed on either side, found that the Registered Settlement deed dated 22.11.2010 is null and void as the property was transferred only for getting the outlet of IOCL, as no prudent person would gift the property of value more than 67 lakhs for love and affection. Therefore, the Court below held that the properties cannot be considered as a separate property of the 1st defendant. With regard to the period of limitation of the suit, the trial Court held that the same is within the limitation; the suit is not affected by non-joinder of necessary parties and passed a decreetal order in favour of the plaintiff. Aggrieved over the same, the defendants filed the present Appeal Suit.



A.S.No.672 of 2017

WEB COPY

8. This Court heard the submissions made by both the learned counsel for the appellants/defendants 1 & 2 as well as the respondent /plaintiff and perused the materials placed before this Court.

9. The points for determination that arise in the present appeal are as follows:-

i) Whether the Registered Settlement Deed dated 22.11.2010 executed by the Respondent in favour of the 1st Appellant under Ex.S.6 and Ex.B.4 is liable to be cancelled?

ii) Whether the Registered Settlement Deed dated 22.09.2011 executed by the 1st Appellant in favour of the 2nd Appellant under Ex.A.8 and Ex.B9 is liable to be declared as Null and void?

10. It is pertinent to note that the respondent/plaintiff stated that the property was purchased in the name of his wife under Ex.A.1 to 4 as early as in 1982 and 1984. The 1st appellant/1st defendant stated that the said property was purchased from and out of his income after joining in the Army.



A.S.No.672 of 2017

It can also be transpired from Ex.B.15 that the 1st appellant/1st defendant joined service in March 1979. It is the 1st defendant's evidence before the trial court that his earning was sent to his father and he used the same to purchase the properties in the name of his family members and one such property is the suit property. The trial court has also pointed out that the suit property was acquired by the plaintiff's wife in the year 1982.

11. It is translucent that the 1st defendant has not let in any evidence to show what was his income and what amount was sent from his savings to the family headed by his father or if given to the plaintiff, what was the specific amount transferred for the purchase of the suit properties. Therefore, there is no nexus or evidence to show the source of income of the 1st defendant for the purchase of the property in the name of plaintiff's wife viz., Lakshmiammal. Neither there is any reason to state why those properties were not purchased in the name of defendants, if at all, the money was sourced by the first defendant by way of sending his salary. The trial court holding so, rejected the argument of the defendants that the property is a benami one, as the said contention was not substantiated through valid



A.S.No.672 of 2017

documents by the defendants. Admittedly, during the cross examination, the 1st defendant himself has stated that the property is an absolute property of his sister-in-law viz., Lakshmiammal and that she has been enjoying the property as her absolute property.

12. Even though it is the contention of the 1st defendant that he is the owner of the said property and the plaintiff's wife is only the name lender, the evidence and the case of the defendants is totally contra to the stand taken by them and there is no evidence to show that they are the absolute owners of the suit properties. In the judgment made in ***Ponnuswamy vs. Meenakshi Ammal and others*** reported in 1989 2 LW 227, the relevant portion of the said order is extracted hereunder:-

“Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the



A.S.No.672 of 2017

WEB COPY

joint family property." "Whether the evidence adduced by the plaintiff was sufficient to shift the burden which initially rested on him of establishing that there was adequate nucleus out of which the acquisitions could have been made is one of fact depending on the nature and the extent of the nucleus. The important thing to consider is the income which the nucleus yields. A building in the occupation of the members of a family and yielding no income could not be a nucleus out of which acquisition could be made, even though it must be of considerable value. On the other hand, a running business in which the capital invested is comparatively small might conceivably produce substantial income, which may well form the foundation of the subsequent acquisitions. These are not abstract questions of law, but questions of fact to be determined on the evidence in the case.

He also relies upon the decision of this Court in Srinivasan v. Sundaramoorthi and Ranganayaki Ammal v. Snnivasan in support of his contention that if the property stands in the name of a co-parcener of joint family, mere proof of the existence of the joint family owning some joint family property does not give rise to any presumption and that it must be established that there was sufficient nucleus of the joint family for purchasing the property which stands in the name of the co-parcener. In so far the principles laid down in all these cases are concerned there cannot be any difference of opinion."

In the present case, the burden of proof shifts upon the first



A.S.No.672 of 2017

defendant, who alleges the ownership of the suit properties as his separate property, which was purchased out of his salary and it is for the first defendant to establish affirmatively that the property was acquired without the aid of the joint family income, which the first defendant failed to do so.

13. Further, the Court below has pointed out that the deposition of 1st defendant is that it is a family arrangement in which he was allotted the suit property. If that being the case, there arises a question as to why only the deed of settlement was given to the defendants, while all other original documents were retained by the plaintiff. If at all it is going to be a family arrangement, then why the properties that stood in the name of Lakshmi Ammal/sister-in-law of the defendant could be transferred in the name of the first defendant under the cover of family arrangements. It could be averred that the first defendant could not explain what was the family arrangements and what were the properties arranged to be settled to the family members and to who and whom the properties were settled. Considering the above aspects, there is no iota of truth in the contention of family arrangement made by the first defendant. Further, the reason for re-transfer in the name of



A.S.No.672 of 2017

his wife/ second defendant is also not explained satisfactorily by the first defendant. All these facts and circumstances, substantiates the intention of the 1st defendant was to grab the suit properties from the plaintiff and his wife.

14. Moreover, it can be specifically averred from the cross examination of the first defendant, wherein, he himself has admitted that an application was made for the IOCL outlet dealership and he has attended the interview on 17.02.2011; but carefully replied that he did not know the date of the advertisement. On the contra, in the grounds, at paragraph no.7 submitted in support of this present Appeal, the appellant/first defendant has stated that on the date of advertisement, he was not eligible for applying for the IOCL dealership, as at that point of time, he was still in service. These contra statements triggers suspicion on the genuineness of the statements made by the first defendant and he has not come to the Court with clean hands.

15. Even though there shall be no evidence contrary to the recitals



A.S.No.672 of 2017

of the registered deed of settlement, it is relevant to look into the circumstances immediately before and after the execution of the deed and those circumstances would clearly reveal the fact that, the document has been transferred in the name of the 1st defendant only for the purpose of making application for obtaining the IOCL outlet dealership. Having obtained the document and attended the interview, the proceedings were not followed up and the promises were thrown out by the first defendant since his ultimate intention was only to take away the property from the plaintiff and his wife.

16. The decision made in the case of *Thangachi Nachial and Another Vs. Ahmed Hussain Maluminar and Others [1956 CJ Madras High Court 277]*, it is held that each circumstances by itself may not mean much, but taking all of them together, they may reveal a fraudulent or dishonest plan. Here in the present case on hand, the 1st defendant has failed to prove as to why and for what reason the document was executed in his favour to prove that his contention that he was the owner of the suit properties. Moreover, the deposition of P.W.2 would infer that the property was transferred only for the purpose of getting the IOCL outlet dealership.



A.S.No.672 of 2017

No prudent person will gift the property of value more than 67 lakhs for love and affection. On such findings, the Court below rightly held that the respondent/plaintiff herein is entitled to permanent injunction as prayed for and passed a decreetal order in favour of the plaintiff in O.S.No.34 of 2015, which this Court finds no reason to interfere with.

17. Accordingly, the argument advanced by the learned Senior counsel for the appellant does not find any merit. The points for determination in this Appeal Suit are answered as against the appellants/defendants.

18. In the result, we find no illegality in the judgment of the trial court warranting our interference. Hence, this Appeal suit stands dismissed.
No costs.

[J.N.B.,J.]

[R.K.M.,J.]

20.11.2024

Index:Yes/No

Internet : Yes/No.

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A.S.No.672 of 2017

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To:

The II Additional District and Sessions Judge,
Vellore @Ranipet,
Vellore District.



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A.S.No.672 of 2017

J.NISHA BANU, J.,
AND
R.KALAIMATHI, J.,

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Judgment made in
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Dated:
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