



SA. No.661 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2024

CORAM:

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

SA. Nos. 661 of 2017 & 662 of 2017

Varatharajan (Died)

2.Kiruthika

3.Minor Anushka (Represented by its guardian mother kiruthika)

4.Minor Tharanish (Represented by its guardian mother kiruthika)

(A1 died, A2 to A4 brought as legal heirs of the deceased A1 viz.,
Varatharajan vide Court order dated 09.09.2022 made in CMP Nos.14030,
14031, 14034 to 14037/22, CMP Nos. 16922, 16923 of 2017 in S.A No. 661
& 662 of 2017 (PTAJ))

...Appellant in both second appeals
Vs.

1.M.Kanthasamy

2.C.Mani

3.M.Yogeshwaran

4.M.Niranjani

...Respondents in both second appeals



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PRAYER IN SA No. 661 of 2017 : This Second appeal filed under Section 100 of Civil Procedure Code, to set aside the judgement and decree dated 01.06.2017 made in A.S No. 17 of 2016 on the file of Subordinate Court, Sathyamangalam, reversing the judgment and decree dated 06.01.2016 made in O.S No. 106 of 2014 on the file of the District's Munsif's court, Sathyamangalam.

PRAYER IN SA No. 662 of 2017 : This Second appeal filed under Section 100 of Civil Procedure Code, to set aside the judgement and decree dated 01.06.2017 made in A.S No. 18 of 2016 on the file of Subordinate Court, Sathyamangalam, reversing the judgment and decree dated 06.01.2016 made in O.S No. 4 of 2013 on the file of the District's Munsif's court, Sathyamangalam.

For Appellants : Mr.P.H.Aravind pandian
(in both second appeals)

For Respondents : Mr. N.Manokaran
(in both second appeals)

COMMON JUDGMENT

The Second appeal in S.A No. 661 of 2017 has been filed to set aside the judgement and decree dated 01.06.2017 made in A.S No. 17 of 2016 on the file of Subordinate Court, Sathyamangalam, reversing the judgment and



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decree dated 06.01.2016 made in O.S No. 106 of 2014 on the file of the District's Munsif's court, Sathyamangalam.

2. The Second appeal in S.A No. 662 of 2017 has been filed to set aside the judgement and decree dated 01.06.2017 made in A.S No. 18 of 2016 on the file of Subordinate Court, Sathyamangalam, reversing the judgment and decree dated 06.01.2016 made in O.S No. 4 of 2013 on the file of the District's Munsif's court, Sathyamangalam.

3. The brief facts of the case is as follows.

The first respondent herein filed O.S No. 106 of 2014 before the District Munsif Court, Sathyamangalam, for the relief of declaration against the deceased appellant herein and the respondents 2, 3 and 4 herein. While So, the respondents 2, 3 and 4 herein filed O.S No. 4 of 2012 before the District Munsif Court, Sathyamangalam, for the relief of declaration against the Kaliasammal, Kandasamy/deceased appellant herein and Varatharajan/First respondent herein. After considering the submissions on either side, the Trial Court pronounced the common judgment, thereby allowed the O.S No. 4 of 2012 and dismissed the O.S No. 106 of 2014. Challenging the same, the first respondent herein filed A.S No. 17 and 18 of 2016 before the Subordinate Court, Sathyamangalam, and same was allowed



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by the first appellate Court. Aggrieved the same, Varatharajan fourth defendant in both appeals filed the present second appeals against the plaintiff and other defendants. During the appeal proceedings the said Varatharajan died hence his legal heirs were impleaded as party and contested the proceedings.

4. It is an admitted fact that the suit property is originally belongs to one Shanmugam who is the brother of the appellant herein and he died leaving behind his mother/kaliammal as a legal heir. Thereafter the said Kaliammal enjoyed the suit property absolutely.

5. The said Kaliammal had three sons and one daughter namely, deceased Shanmugam, Kandasamy, Varatharajan and Malliga. The Said Malliga died leaving behind Niranjani, Mani and Yogeswaran as her legal heirs, who are respondents 2, 3 and 4 herein(plaintiffs in O.S No. 4 of 2012). The another son kandasamy/first respondent herein(Plaintiff in suit O.S No. 106 of 2012). The another son Vararajan/appellant herein is one of the defendant in both suits.

6. The suit property is in survey No. 52/A3A and new survey No. 51/1 is situated in Ariyappampalayam, originally it belongs to the deceased minor



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Shanmugam represented by his guardian Thimakal. Thereafter, the said Shanmugam and Thimakal died. Subsequently, as a legal heir the Kalliammal enjoyed suit property as a absolute owner. Now, according to the plaintiffs(legal heirs of Malliga) in O.S No. 4 of 2012, during the life time of the said Kalliammal, she executed a settlement deed in favour of Malliga on 23.10.2009 for an extent of 16 cents in survey No. 52 A 3 A and also handed over the possession. Thereafter, the said Malliga died on 11.03.2011 leaving behind the plaintiffs in O.S No. 4 of 2012 as legal heirs. On the same day 20.10.2009 the said Kalliammal executed settlement in favour of her son namely Kandasamy and Varatharajan. After the said execution Kalliammal has no right to cancel the settlement deed. But colluding with her son she cancelled the settlement deed on 23.12.2009 and executed the sale deed in favour of her son Kandasamy on the same day. Hence, the sale deed executed in favour of the Kandasamy would not bind the plaintiffs and another son Varatharajan against him executed another settlement deed. Hence, as a legal heir of Malliga the plaintiffs filed the suit for permanent injunction and to declare the sale deed dated 23.12.2009 as null and void. After the above suit the said Kandasamy filed suit in O.S No. 106 of 2014 before same Court against the plaintiffs in O.S No. 4 of 2012



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and Varadarajan stating that his mother executed the settlement deed on 05.12.2008 in his favour in respect of 68 cents. Thereafter, he enjoyed the property as absolute owner and also transferred the name in the revenue records but on collusion with her daughter Malliga, the said kalliammal cancelled the settlement deed dated 05.12.2008 and executed three settlement deed in favour of the plaintiff, his sister one Malliga and brother the fourth defendant regarding 16 cents each to them out of 68 cents of suit property. Further, the said Kandasamy was in possession and enjoyment of the suit property. Hence, the said Kandasamy filed the suit for declaration and other consequential relief.

7. Thereafter both suits were tried jointly by the Trial Court and framed the issues more particularly with regard to settlement deed executed by the Kalliammal in favour of the Malliga and another settlement deed executed in favour of the Kandasamy. Considering the submissions on either side, the Court below finally held that the cancellation settlement deed and sale deed executed by the Kalliammal on 22.12.2009 would not bind the plaintiff (legal heirs of the Malliga). Further, the settlement deed executed by the kalliammal on 05.12.2008 in favour of the Kandasamy never came into existence and cancellation of three settlement deed dated 23.10.2009 is not



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valid in law. Accordingly, allowed the suit in O.S No. 4 of 2013 and dismissed the suit in O.S No. 106 of 2014.

8. Aggrieved over the findings of the Trial Court, the Kandasamy preferred A.S No. 17 and 18 of 2016, the first appellate court independently analysed the facts and evidence available on records held that Gift deed executed by Kaliasammal on 05.12.2008 in favour of the Kandasamy is valid document since because there was no evidence on the side of the plaintiffs in O.S No. 4 of 2013 to prove that the said Gift deed was executed with undue influence. Further, also held that said Gift deed executed by the donor Kaliasammal in favour of her son with full consent without any condition. As on date, on execution of the Gift deed beneficiaries Kandasamy became the absolute owner and owner Kaliasammal has not right. Subsequently, as per the Section 122 of Transfer of Property Act, since there was no condition was imposed while executing the Gift deed she is not entitle to cancel the settlement deed as per Section 123, 127 of Transfer of Property Act. Accordingly, settlement deed executed in favour of the Kandasamy on 05.12.2008 is valid thereby suit filed by the Kandasamy in O.S No. 106 of 2014 is decreed in his favour by setting aside the judgment of the Trial Court. Further, after execution of the settlement deed the kaliasammal has no



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right to cancel the settlement deed. Accordingly, allowed the both appeals.

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9. Challenging the same third defendant in suit O.S No. 4 of 2016 and 216 of 2014 preferred these second appeals

10. The learned counsel for the appellant submits that the first appellate Judge erroneously declared the settlement deed dated 05.12.2008 is valid but he failed to take note of the fact that said settlement deed was never acted upon and even after the execution of the settlement deed possession was not handed over to the beneficiary said settlement deed has not been acted upon in spite of that suit has been decreed in favour of the kandasamy as such is totally erroneous and liable to be set aside. Further, he also pointed out that sale deed dated 23.10.2009 executed by Kandasamy in favour of sons were acted upon but without taking note of the fact that the first appellate Court erroneously allowed the appeal. Further, he submitted that since because the settlement deed dated 05.12.2008 was not acted upon said Kandasamy forcefully get another sale deed from his mother for entire extent as such is clearly established that gift deed has not been acted upon, instead of appreciating these facts the lower appellate Court granted relief in favour of the kanthasamy as such is erroneous liable to be set aside.



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11. By way of reply, the learned counsel for the respondents submitted that as per the settlement deed dated 05.12.2008 possession was hand over to the Kandasamy and it was immediately acted upon thereby he is in possession of the property and mutated the revenue record in his name the same was rightly appreciated by the lower appellate Court which needs no interference. Further, he submitted that once the settlement deed was executed by donee she has not right to revoke the same and the same was rightly appreciated by the Court below. Further, as rightly appreciated by the lower appellate Court which needs no interference.

12. This Court admitted these second appeals with the following substantial questions of law:

1. Whether in law the lower appellate court is right in giving a finding that the suit schedule property belongs to the first respondent on the basis of the settlement deed dated 05.12.2008 when there is no proof to show that the settlement deed was accepted, acted upon and came into existence.

2. Whether in law the lower appellate Court is right in not considering the subsequent events involved to find out whether the settlement deed dated 05.12.2008 was acted upon or not?

3. Whether in law the lower appellate court is right in not considering the execution of the sale deed dated 22.12.2009 is favour of the first respondent to prove the fact that the prior settlement deed dated 05.12.2008 was not acted upon and hence the sale deed dated 22.12.2009 was created by the first respondent ?

4. Whether in law the lower appellate Court is right in allowing the appeal on the basis of the settlement deed dated 05.12.2008 when the appeal was filed on the basis of the settlement deed dated 05.12.2008 when the



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appeal was filed on the basis of the sale deed dated 23.12.2009 as well?

5. Whether in law the lower appellate Court is right in reversing the well considered judgment and the decree of the Trial Court when it is proved that the first respondent has neither title nor possession of the entire suit schedule property ?

13. Considering the submissions on either side, the facts reveals that originally 68 cents belongs to the one Shanmugam who was minor through sale deed 14.07.1971. The said Shanmugam was died and his mother Kaliasammal became the absolute owner of the said property. The Kaliasammal had one daughter Malliga and three sons namely Varatharajan, Shanmugam, Kandasamy. The facts reveals that on 05.12.2008, Kaliasammal executed settlement deed in favour of her son Kandasamy. Subsequently, on 23.10.2009, she executed three settlement deed by giving 16 cents each to her sons and daughter. Thereafter, she cancelled the settlement deed and executed the sale deed in favour of her son Kandasamy on 23.12.2009. Thereafter, the dispute arose between the legal heirs of the Kaliasammal. The settlement deed executed by the Kaliasammal on 05.12.2008 also disputed by the Varatharajan and Malliga stating that said settlement deed was not acted upon and he has not taken the possession of the property thereby as a absolute owner of the suit property Kaliasammal executed the settlement deed in 23.10.2009. Moreover, the said settlement deed dated



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05.12.2008 was obtained by the kandasamy by undue influence. Now, the said Malliga died her legal heirs filed the suit, for the sake of convenience, the legal heirs of the Malliga denoted as Plaintiff.

14. The plaintiffs not adduced any evidence to show that said settlement deed was obtained by the Kandasamy by force or in coercion and the same was rightly observed by the first appellate judge. On the other hand, the Trial Court held that settlement deed was not acted upon for the reason that the said Kandasamy not took possession of the suit property which was enjoyed by the parties jointly. Thereby, held that settlement deed not acted upon. By way of reply the first respondent beneficiary kandasamy stated that once the settlement deed was executed donor has no right to cancel the same unless any conditions imposed. The main objection of the plaintiffs is that the settlement executed by the Kalliammal was not acted upon nor possession was taken over by the kandasamy. But on perusal of the evidence of the Kandasamy, it clearly reveals that immediately after the execution of the settlement deed he transferred the patta in his name in the year 2009 itself patta, kist receipt were marked as Ex.B12, 13 and 14 which proves that the settlement deed was acted upon thereby Kandasamy possessed and enjoyed the suit properties and same was rightly observed by



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the first appellate judge which needs no interference. Accordingly, questions of law 1 to 4 are answered.

15. Moreover, once the settlement deed is executed donor has no right to dealt with the property, subsequent settlement deed executed by the Kaliasammal on 23.10.2009 and the cancellation of settlement deed is invalid since because donee has no right to execute such settlement deed. Accordingly, these appeals are dismissed. No Cost. Consequentially, connected miscellaneous petitions are closed.

11.01.2024

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To

1. The District's Munsif's court, Sathyamangalam
2. The Subordinate Court, Sathyamangalam.
3. The Section Officer,
V.R Section.

T.V.THAMILSELVI,J.



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CMP No. 16922 of 2017

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