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S.A. No.889 of 2017



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 21.03.2024

Pronounced on: 12.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.889 of 2017

and

CMP. No.22329 of 2017

1.Anbarasu (died)
2.Thilagavthy
3.A.Raghuraman
4.A.Prasath
5.A.Ibrahim
(Appellants 2 to 5 bring on record
as LR's of deceased 1st Appellants
vide order dated 19.01.2022)

...Appellants

Vs.

Thiruvengadam (Deceased)
Manimegalai (Deceased)
1.T.Kalaiselvi
2.T.Kalaichezian (Died)
3.T.Ramesh
4.T.Cocrin
T.Kalaivanan (Deceased)
5.Tmt.K.Geetha Malini
6.K.SaranyaDharshini
7.K.Nevetha Dharshini
8.K.Yahwarth Sriram
(R5 to R8 are bring on record
as LR's of the deceased 2nd respondent
vide order dated 28.07.2023)

...Respondents



PRAYER : Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the decree and judgment of the First Appellate Court dated 18th November 2016 on the file of the XV Additional Judge, City Civil Court, Chennai confirming the decree and judgment of the XV Assistant Judge City Civil Court, Chennai dated 12.08.2011 in O.S. No.156 of 2000.

For Appellants : Mr.R.Krishnasamy

For Respondents : Mr.G.Thangavel for R1
R2 & R4 -Died
R3 & R5 to 8- Not Ready
(Notice served).

JUDGMENT

The plaintiff who suffered concurrent findings before the Trial Court as well the First Appellate Court, is the appellant.

2. The parties are described as per their litigative status before the Trial Court.

3. The plaintiff instituted the suit seeking to cancel a Settlement Deed executed by his father in favour of the 1st defendant on 09.02.1996, as null and void and not binding on the plaintiff and for a permanent



injunction to restrain the 1st defendant from interfering with the plaintiff's possession of 'C' schedule property (including 'D' schedule property).

4. The case of the plaintiff is that the plaintiff is the absolute owner of 'C' schedule property and that the plaintiff's father and the first defendant are brothers. According to the plaintiff, his paternal grandfather originally owned 'A' schedule property and it was equally partitioned between the plaintiff's father and the defendant in the year 1979. Under the said partition, 'B' schedule property, which is situated on the Northern side was allotted to the plaintiff's father and the property on the Southern side was allotted to the 1st defendant. The plaintiff's father executed a Settlement Deed on 10.02.1994 in favour of the plaintiff, settling 3180 sq.ft out of the 'B' schedule property allotted to him. However, in the month of November 1994, the 1st defendant and his son attempted to trespass into the plaintiff's property, claiming a right under the document executed by the plaintiff's father and on enquiries, the plaintiff came to know that an extent of 378 sq.ft was settled by the plaintiff's father in favour of the 1st defendant, in and by way of a Settlement Deed dated 09.02.1996.



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5. According to the plaintiff, his father did not have any right to execute a Settlement Deed in favour of the 1st defendant, since the 'C' schedule property absolutely belonged to the plaintiff under the Settlement Deed dated 10.02.1994. The plaintiff, claiming to be in absolute possession and enjoyment of 'C' schedule property (including 'D' schedule property), sought to declare the Settlement Deed as null and void and also sought for relief of permanent injunction to protect his possession.

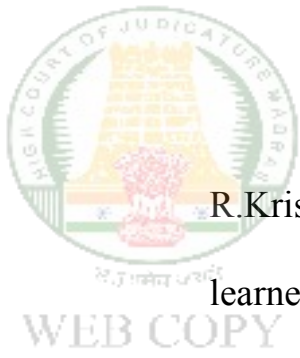
6. The 1st defendant filed a written statement stating that the plaintiff had filed a suit in O.S.No.9013 of 1994 already and having been unsuccessful in the earlier suit, he has preferred an Appeal in A.S.No. 232 of 1999. If really the Settlement Deed dated 10.02.1994 was executed by his father, the plaintiff would have relied upon the same in the earlier suit in O.S.No.9013 of 1994. The defendant further states that there is a super structure and a septic tank situated in 'B' schedule property and it is incorrect to state that the plaintiff is in possession of the same. Hence, he prayed for dismissal of the suit.



7. The 4th defendant filed a written statement which is adopted by defendants 2, 6 and 7. According to these defendants, the suit property is not ancestral in nature and the nature of property has already been decided in the earlier suit in O.S.No.9013 of 1994 which was filed by the plaintiff herein. The said suit was dismissed holding that the plaintiff had not proved his right over the suit property. According to these defendants, the father of the plaintiff not only executed the Settlement Deed in favour of the 1st defendant, but had also affirmed the same by way of a sworn affidavit marked as a document in the earlier suit in O.S.No.9013 of 1994. Therefore, these defendants also sought for dismissal of the suit.

8. The Trial Court dismissed the suit, after assessing the oral and documentary evidence adduced by both the parties. On appeal, the First Appellate Court, confirmed the findings of the Trial Court and dismissed the Appeal.

9. Aggrieved by the concurrent findings of both the Courts below, the plaintiff has come up by the way of the present Second Appeal. The Second Appeal has not yet been admitted. However, I have heard Mr.



R.Krishnasamy, learned counsel for the appellants and Mr. G.Thangavel, learned counsel for 1st respondent. The learned counsel have argued for the final hearing of the Second Appeal.

10. According to the learned counsel for the appellant, the plaintiff had not suppressed any material facts viz., the earlier suit in O.S.No.9013 of 1994 and even though the suit was dismissed and the Appeal filed against the said decree was also consequently dismissed, it will not have any material bearing on the present suit seeking cancellation of the Settlement Deed.

11. The learned counsel would further state that when the father of the plaintiff had already settled an extent of 3180 sq.ft in favour of the plaintiff, he could not have settled an extent of 378 sq.ft in favour of the 1st defendant. The learned counsel would further submit that the Courts below have erroneously held that the plaintiff has not disclosed material facts and had come to Court with unclean hands without appreciating the fact that there was no occasion for the plaintiff to state anything about the Settlement Deed executed by the father, subsequent to the filing of the suit. The learned counsel for the appellant would also state that the



property was inherited by the appellant's father and hence, it was a coparcenary property and therefore, the Settlement Deed dated 09.02.1996, without the consent of the plaintiff, was invalid in the eyes of law. He would also further state that the affidavit filed by his father could not be relied on, since it had no probative value and the Settlement Deed, which has been called in question by the plaintiff, was hit by undue influence and coercion exercised by the defendants over his father.

12. The learned counsel would suggest the following substantial questions of law:

“(i) Whether the earlier Settlement Deed dated 10-02-1994 Ex-A.2 is valid for 1793 Sq.feet, which was in possession of the Appellant's father, under Section 48 of the Transfer of Property Act, 1882.

(ii) if the earlier Settlement Deed dated 10-02-1994 Ex-A.2 was valid to the extent of Property of 1793 Sq. feet the appellant's father had no right to dispose / convey by any instrument, the said Property in part subsequently. Can he make another Settlement conveying 378 Sq. feet out of 1793 Sq. feet, which was already Settled to the appellant by his father. Will the Settlement Deed dated 10-02-1994 Ex-A.2 HIT the subsequent Settlement Deed dated 09-02-1996 Ex-A.3 and make it invalid and void.

(iii) whether the Property inherited by the appellant's father and the first Respondent was a Hindu, Joint family Coparcenary Property.

(iv) whether the alleged affidavit of the appellant's father which was not acted upon nor proved by any manner be given - probative value.



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(v)whether the Settlement Deed dated 09-02-1996 Ex-A.3 is hit by undue influence and coercion of the Respondents.”

13. The learned counsel for the appellant would place reliance on the following case laws:

13(i). In *K.C. Laxmana vs K.C. Chandrappa Gowda and Another* reported in (2022) *SCC OnLine* 471, where the Hon’ble Supreme Court held that a Settlement Deed executed in respect of a joint family property was null and void.

13(ii). In *Thimmaiah and Others vs Ningamma and Another* reported in (2000) 7 *SCC* 409, where the Hon’ble Supreme Court held that in respect of coparcenary property, the Karta has power to dispose off the property only if it was necessary to protect the interest of the other coparceners and was for a recognised “pious purpose” and alternatively, such alienation must be done after obtaining the permission of the other coparceners.

13(iii). In *Rosammal Issetheen Ammal Fernandez (Dead) By LRs and Others vs Joosa Mariyan Fernandez and Others* reported in (2000) 7 *SCC* 189, where the Hon’ble Supreme Court held, referring to Section



68 of the Indian Evidence Act, 1872, when there is a denial of execution of a document, namely a gift deed, the said document cannot be tendered in evidence, without at least one of the attesting witnesses being called for proving its due execution.

13(iv). In *Tamilkodi vs N Kalaimani and Kalaiselvi and another* reported in (2015) 4 CTC 771, where this Court held that when not even one of the two attesting witnesses were examined, the Settlement Deed cannot be held to be proved.

14. Per contra, the learned counsel for the 1st respondent would submit that having attacked the Settlement Deed on the ground of undue influence and coercion, the burden was only on the plaintiff to establish the same. According to the learned counsel for the 1st respondent, the plaintiff has miserably failed to adduce any satisfactory evidence in support of the pleadings and both the Courts have rightly held that the plaintiff was not entitled to the relief of declaration as prayed for. The learned counsel for the 1st respondent would therefore, pray for the dismissal of the Second Appeal.



15. The learned counsel for the 1st respondent would place reliance on the following case law in *K.C. Laxmana vs K.C. Chandrappa Gowda and Another* reported in (2022) SCC OnLine 471, where the Hon'ble Supreme Court held that Article 58 of the 2nd schedule to the Limitation Act, 1963, provided a limitation of three years from the date of first accrual of right to sue and being a residuary Article, it would govern all suits for declaration which are not specifically governed by other Articles in the Limitation Act, 1963.

16. I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the pleadings, oral and documentary evidence which have been produced by way of paper books, numbering two besides the original typed set of papers filed along with the Second Appeal.

17. Admittedly, the plaintiff's father and the 1st defendant were brothers. It is also admitted that the property originally belonged to the grandfather of the plaintiff and in a partition, the plaintiff's father was allotted with the Northern side and the 1st defendant was allotted with the Southern side. It has also come out in evidence that the plaintiff's father



had alienated an extent of 1560 sq.feet to the 1st defendant. Pursuant to the said Sale Deed, the plaintiff's father is not entitled to settle an extent of 3180 sq.ft to the plaintiff in the first place. However, we are presently concerned only with the Settlement Deed executed by the plaintiff's father in favour of the 1st defendant for an extent of 378 sq.ft, in and by way of a registered Settlement Deed dated 09.02.1996, registered as Document No. 652 of 1996, SRO, Villivakkam.

18. According to the plaintiff, the 1st defendant exercised undue influence and coercion on his father and obtained the Settlement Deed in his favour, which is the cause of action pleaded in the suit for declaration and permanent injunction. Admittedly, the said Settlement Deed has not been challenged by the plaintiff's father during his lifetime. Further, having specifically pleaded that the Settlement Deed was brought about by undue influence and mis-representation, the burden was very heavily placed on the plaintiff to establish the said allegations. However, I do not find any sufficient or satisfactory, leave alone strong pleadings in this regard as mandated under Order VI Rule 4 of the Code of Civil Procedure, 1908. Whenever such allegations of undue influence or mis-representation are pleaded, it is incumbent on the plaintiff to



specifically plead the instances of such undue influence and how it has been exercised or brought upon the executants of the document. Here, in the present case, except for baldly and vaguely saying that the Settlement Deed was brought about by undue influence and coercion, there is absolutely no pleading in support of the said allegations. Even in the evidence, I do not find that the plaintiff has adduced any satisfactory evidence in support of the pleadings in the plaint.

19. Insofar as the provisions on which reliance is placed on by the learned counsel for the plaintiff, the plaintiff himself seeks to take benefit under a Settlement Deed executed by his father. Under such circumstances, unless it was the separate property of his father, the plaintiff himself would not get valid title to the suit property. Moreover, no issue was framed by the Courts below as to whether the property was the separate property of the parties or joint family properties. The plaintiff has also not pleaded anything about the property not being alienable, being a joint family property. His only case is that the Settlement Deed was brought about by undue influence and coercion. Therefore, I do not find any of the judgements relied on by the learned counsel for the appellant applying to the facts of the present case.



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20. Insofar as the two decisions requiring proof of due execution of the Settlement Deed, the execution of the Settlement Deed is not denied by the plaintiff, even in the plaint. In fact, admitting to the execution of the Settlement Deed alone, the suit has been filed to declare the Settlement Deed to be null and void and not binding on the plaintiff. In such circumstances, I do not deem it necessary for the defendants to examine one of the attesting witnesses to the Settlement Deed to prove its due execution.

21. Insofar as plea of limitation, as contended by the learned counsel for the respondent, I do not find any issues framed by the Trial Court and I also do not find a plea of limitation being raised by the defendants in their written statement. Therefore, I do not deem it proper, at this stage, to go into the question of ascertaining as to whether the suit has been filed in time or not, in the absence of parties themselves not raising the plea of limitation and agitating the same before the Courts below, especially since limitation is mixed question of law and facts.



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22. Both the Courts below have rightly assessed the oral and documentary evidence adduced by both the parties and having rightly cast the burden on the plaintiff, found that the plaintiff has miserably failed to discharge the burden upon him, namely the Settlement Deed being brought about by undue influence and coercion. Consequently, the Courts have also arrived at the right conclusion that the plaintiff was not entitled to the relief of declaration that the Settlement Deed dated 09.02.1996, executed by his father in favour of the 1st defendant was null and void and not in favour of the plaintiff and consequently, to the relief of permanent injunction.

23. I do not find any substantial questions of law arising for consideration in the present Second Appeal, as the Courts below have judiciously applied their mind to the available facts, oral and documentary evidence. I do not find the findings arrived at by the Courts below to be materially irregular or perverse. Consequently, the Second Appeal must necessarily fail, since no substantial questions of law arise for consideration. The concurrent findings rendered by the Trial Court and confirmed by the First Appellate court do not warrant any interference under Section 100 of the Code of Civil Procedure, 1908.



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24. In fine, the Second Appeal is dismissed. Consequently, connected Civil Miscellaneous Petition is closed. There shall be no order as to costs.

12.04.2024

Index :Yes/No
Internet : Yes/No
Neutral Citation :Yes/No.
Speaking order/Non-speaking order
rkp

To

1. The XV Additional Judge, City Civil Court, Chennai.
2. The XV Assistant Judge, City Civil Court, Chennai.



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P.B.BALAJI, J.

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Pre-delivery Judgment in

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