



C.S.No.418 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 10.04.2024	Judgment Pronounced on 30.04.2024
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CORAM:

THE HONOURABLE MR. JUSTICE P.B.BALAJI

C.S.No.418 of 2017

Y.V.Shivapriya

.. Plaintiff

Vs.

R.Shyam Chandra

.. Defendant

Prayer: This Civil Suit is filed under Order IV Rule 1 of the Original Side Rules r/w Order VII Rule 1 of the Code of Civil Procedure, prayed for a judgment and decree against the Defendant:-

a) For a declaration that the document said to be settlement deed, said to have been executed by the mother of the plaintiff herein i.e. Late Mrs.Indira in favour of the defendant herein, purporting to convey the suit property in favour of the defendant herein, registered as Doc.No.1985 of 2013 dated 26.06.2013 in SRO, Mylapore, is fraudulent, illegal and void and not valid and not binding upon the Legal heir of Late Mrs.Indira, especially the plaintiff herein and for setting aside the same;

b) For a declaration that any further documents created by the defendant or any of his people purporting to transfer or deal with the suit property more fully described in Schedule A mentioned property to the



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plaint based on the document styled as Settlement Deed registered as Doc.No.1985 of 2013 dated 26.06.2013 in SRO, Mylapore as fraudulent and illegal and not valid and binding upon the plaintiff;

c) For a permanent injunction restraining the defendant herein, his men, agents, servants and everyone claiming under him and acting on his behalf from in any way further alienating or encumbering the property morefully described in the Schedule A hereunder in any manner whatsoever;

d) For permanent injunction restraining the defendant herein, his men, agents, servants and everyone claiming under him and acting on his behalf from in any way interfering with the plaintiffs peaceful possession and enjoyment of the suit property morefully described in the Schedule A hereunder in any manner whatsoever;

e) For a mandatory injunction directing the defendant to return the original title deed morefully described in the Schedule B hereunder to the plaintiff within a time limit fixed by this Court, failing which appoint an officer of Court to seize the same from the defendant and handover the same to the plaintiff herein;

f) Directing the defendant to pay the cost of the suit.

For Plaintiff

: Mr.P.P.Vikaram



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For Defendant

: Exparte

JUDGMENT

The above Civil Suit has been filed for declaration that the Settlement Deed said to have been executed by the mother of the plaintiff, namely late Mrs.Y.Indira in favour of the defendant, purporting to convey the suit property in favour of the defendant under Doc.No.1985 of 2013 dated 26.06.2013 on the file of the Sub Registrar Office, Mylapore is fraudulent, illegal, void and not valid and binding upon the legal heir of late Y.Indira, especially the plaintiff herein and for setting aside the same; for declaration that any further documents related by the defendant of any of the suit claim purporting to transfer or to deal with the suit property more fully described in Schedule 'A' in the plaint, based on the Settlement Deed registered vide Doc.No.1985/2013 26.06.2013 as fraudulent, illegal and not valid binding upon the plaintiff; for a permanent injunction to restrain the defendant, his men, agent, servants and everyone claiming under him or acting on his behalf from in any way further alienating or encumbering the property more fully in



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Schedule 'A' of the property; for a permanent injunction restraining the defendant, his men, agent, servants and everyone claiming under him and acting on his behalf from in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit property more fully especially Schedule 'A'; for mandatory injunction directing the defendant to return the original title deed more fully in Schedule 'B' to the plaintiff within a time limit fixed by this Court, failing which appoints an officer to seize the same from the defendant and hand over the same to the plaintiff.

2.The plaint in brief:

The plaintiff states that the suit property was originally purchased by her father, late V.Yegnanarayanan who was a practicing Advocate before the Hon'ble Supreme Court, from and out of his separate income in and by Sale Deed dated 15.12.1997 registered in Doc.No.173 of 1998. However, the property was purchased jointly in the names of her father and her mother and herself. According to the plaintiff, the plaintiff and her mother are only named vendors and the father purchased the property jointly to avoid problems. The father died on 28.04.2005.



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3.The defendant filed a suit in O.S.No.5448 of 2014 seeking partition of the suit property. The plaintiff's mother was a diabetic patient on continuous medications and the plaintiff was bearing all the mounting medical expenses even after her marriage. From January 2013, the plaintiff's mother was not even in a position to walk and needed round the clock assistance. The plaintiff alone was taking care of her mother. Only when the plaintiff received notice in the partition suit, she was shocked to know that the mother had executed a Settlement Deed in favour of the defendant. The defendant who was visiting the mother all of a sudden from May 2013, took advantage of her ill-health and brought about the Settlement Deed. The plaintiff's mother was not mentally alert because of old age and sickness and she was also not shrewd. Even in the pre-suit notice, prior to the filing of the partition suit, the defendant had not even disclosed the date and alleged document details relating to the Settlement Deed obtained by him fraudulently.

4.According to the plaintiff, fraud has been played by the



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defendant to bring about the Settlement Deed. According to the plaintiff, she is in exclusive possession and enjoyment of the property and the Settlement Deed executed by the mother was brought about fraudulently and therefore, it was void and not valid and binding upon the plaintiff. According to the plaintiff, the defendant has entered into the family with malafide intention of grabbing the suit property and other valuables. Hence, the suit came to be instituted.

5.The defendant filed a written statement denying the plaint averments and allegations. According to the defendant, the plaintiff never took care of her mother and the defendant who was appointed as caretaker of her mother has spent huge sums of money on the mother and also for renovation of the suit property. According to the defendant, the Settlement Deed executed by his sister was valid and no illegality and fraud was played as alleged. According to the defendant, there is no cause of action for filing the suit and the defendant prayed for dismissal of the suit.

6.Pending this suit, the partition suit in O.S.No.5448 of 2014,



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on the file of the XVIII City Civil Court, Chennai was ordered to be transferred and the same was subsequently renumbered as Tr.C.S.No.88 of 2018 and the same came to be jointly tried along with the above suit.

7. On 19.09.2018, the following issues were framed in the above suit.

“(i) Whether the settlement deed dated 26.06.2013, registered as Doc.No.1985 of 2013 in the office of the Sub-Registrar, Mylapore, executed by the Mother of the Plaintiff, viz., V.Indira, conveying her share in the suit property in favour of the Defendant is true and valid and binds the Plaintiff?

(ii) Whether the Defendant has executed any document in favour of third parties, and if so, whether the same would bind the Plaintiff?

(iii) Whether the Plaintiff is entitled to relief of permanent injunction restraining the Defendant from alienating or encumbering the suit property and from interfering with the peaceful possession and enjoyment of the same?

(iv) Whether the Plaintiff is entitled to relief for return of the original title deeds of the suit property?

(v) To what other reliefs, if any, the



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parties are entitled?”

8.The following issues were also framed in the Tr.C.S.No.88 of 2018:

“(i) Whether the Plaintiff is entitled for preliminary decree of partition?

(ii) Whether the Plaintiff is entitled for half share in the suit property?

(iii) To what other reliefs?”

9.The plaintiff examined herself as P.W.1 and during the trial of the suit, the defendant in the above suit who is the plaintiff in Tr.C.S.No.88 of 2018 filed a memo seeking permission to withdraw the partition suit in Tr.C.S.No.88 of 2018. Along with the memo, an e-mail addressed to the learned counsel by the power agent of the defendant herein and the plaintiff in Tr.C.S.No.88 of 2018 wherein it has been informed to the learned counsel that the defendant was not interested in pursuing the litigation and he has requested the learned counsel to withdraw Tr.C.S.No.88 of 2018.

10.As the defendant did not come forward to cross-examine the



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plaintiff in the above suit, the defendant was set exparte on 12.10.2023.

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11.The plaintiff has deposed as P.W.1 and Ex.P1 to P23 have been marked in support of the suit claim.

12.A proof affidavit has been filed before the Additional Master, wherein the plaintiff has reiterated the plaint averments and allegations and has also stated that the partition suit filed by the defendant was at part heard stage even before transfer to this Court and the alleged Power of Attorney was also seriously doubted and questioned and only in order to avoid the implications and the illegalities being exposed, the defendant has chosen to withdraw the suit filed by him for partition and has also not contested the present suit.

13.The plaintiff has exhibited the following documents:

Ex.P1 is the certified copy of the Sale Deed in favour of the father of the plaintiff in Doc.No.173 of 1998 dated 15.12.1997; Ex.P2 is the original telephone bills issued in favour of the plaintiff from 28.10.1998 to 07.04.2008;



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Ex.P3 is the computer generated Death Certificate of late V.Yegnanarayanan dated 28.04.2005; Ex.P4 is the original Ration Card of the family from 2005 to 2009; Ex.P5 is the original domestic gas receipt in favour of the plaintiff dated 23.04.2005; Ex.P6 is the original Election Identity Card of the plaintiff dated 20.03.2008; Ex.P7 is the original receipts of payment issued bill BSNL in favour of the plaintiff dated 30.10.2008; Ex.P8 is the certified copy of the Settlement Deed in favour of the defendant executed by the plaintiff's mother by Doc.No.1985 of 2013 dated 26.06.2013; Ex.P9 is the office copy of the legal notice issued by the deceased mother of the plaintiff dated 12.05.2014; Ex.P10 is the office copy of the reply notice issued by the plaintiff to the mother of the plaintiff, Y.Indra dated 12.06.2014; Ex.P11 is the original medical paper of the deceased mother of the plaintiff; Ex.P12 is the computer generated Death Certificate of the deceased mother of the plaintiff dated 08.07.2014; Ex.P13 is the office copy of the legal notice sent by the defendant dated 24.07.2014; Ex.P14 is the copy of the reply notice sent by the plaintiff to the defendant dated 22.08.2014; Ex.P15 is the original re-joinder notice sent by the defendant to the plaintiff dated 03.09.2014; Ex.P16 is the true copy of the plaint in O.S.No.5448 of 2014 on the file of the XVIII Additional Judge, City Civil Court, Chennai, dated 18.09.2014; Ex.P17 is the true copy of the affidavit along with the petitions in I.A.No.14713 of 2014 in O.S.No.5448 of 2014 on the file of the XVIII Additional Judge, City Civil Court, Chennai; Ex.P18 is the



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office copy of the Court affidavit filed by the petitioner in I.A.No.14713 of 2014 in O.S.NO.5448 of 2014 on the file of the XVIII Additional Judge, City Civil Court, Chennai; Ex.P19 is the copy of the order and decree passed in I.A.No.14713 of 2014 in O.S.No.5448 of 2014 on the file of the XVIII Additional Judge, City Civil Court, Chennai; Ex.P20 is the copy of the extract of the “A” diary adjudication notes dated 12.09.2014; Ex.P21 is the copy of photo showing peaceful possession of the petitioner herein dwelling house; Ex.P22 is the office copy of the affidavit with petition filed in C.M.A.No.132 of 2015 on the file of the High Court of Madras by the plaintiff and Ex.P23 is the office copy of the grounds of C.M.A.No.132 of 2015 on the file of the High Court Madras by the plaintiff.

14.From Exs.P2, P4, P5, P6, P7 and P21, the plaintiff has established that the plaintiff alone has been in peaceful possession and enjoyment of the suit property.

15.Admittedly, the Sale Deed has been purchased in joint names of the plaintiff and her father and her mother. Consequent to the demise of the father, the plaintiff and her mother become entitled to one half share. The said one half share of the plaintiff's mother that is said to



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have been settled on her brother, namely the defendant herein. According to the plaintiff, the mother was not a strong person and she was also physically ailing and was a severe diabetic patient. Taking advantage of the absence of the plaintiff, she being employed in Bangalore, the defendant, who is none else than her maternal uncle, has brought about the alleged Settlement Deed in his favour, which according to the plaintiff is not valid and binding.

16.The plaintiff has also exhibited the medical records in Ex.P11 to evidence the ill-health of her mother in early 2013. The plaintiff has specifically alleged that the mother was brainwashed and being weak and a sick person, she had to believe the words of the defendant, her own brother and had no occasion to suspect the ulterior motives of the defendant. The plaintiff has also stated that the defendant, on the strength of the alleged Settlement Deed, has attempted to interfere with the plaintiff's possession and enjoyment of the suit property. The plaintiff's mother passed away on 08.07.2014 and on her demise, the plaintiff is the only surviving legal representative. But for the Settlement Deed, the plaintiff becomes the absolute owner of the entire suit property.



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17.The plaintiff has pleaded and also adduced evidence that the mother's ill-health and advanced age were taken undue advantage of by her own brother in bringing about the Settlement Deed in his favour and that there was absolutely no reason for settling the property in favour of her maternal uncle when the daughter, namely the plaintiff was very much alive and taking care of her mother in all respects.

18.The defendant has not chosen to enter the witness box. In fact, the defendant has also not cross-examined P.W.1 to elicit any favourable answers in support of his defense. Though the defendant has chosen to file a written statement, thereafter, he has not proceeded with the suit. The suit filed by him for partition has also been withdrawn, which in effect gives up his right to claim a share in the suit property by virtue of the Settlement Deed in his favour, which is the very same document which is under challenge in the present suit. Therefore, the plaintiff is entitled to succeed on the strength of the pleadings and evidence adduced in the above suit and the plaintiff has proved the suit claim, by letting in satisfactory oral and documentary evidence. The



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plaintiff therefore is entitled to the relief of declaration that the Settlement Deed executed by her mother Indra in favour of the defendant in Doc.No.1985 of 2013 dated 26.06.2013 on the file of the Sub Registrar Office, Mylapore is null and void and not binding on the plaintiff. The plaintiff is also entitled to the relief of permanent injunction to restrain the defendant from in any manner alienating and encumbering the suit property and also from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The plaintiff is also entitled to mandatory injunction seeking return of the original title deed set out in Schedule B in the plaint. However, the plaintiff is not entitled to declaratory relief that any future documents that may be created by the defendant purporting to transfer or dealing with the suit property based on the Settlement Deed in Doc.No.1985 of 2013 dated 26.06.2013 as fraudulent, illegal, not valid and binding upon the plaintiff since admittedly, such blanket prayer, that too by way of declaratory relief cannot be granted and admittedly, there is no further document executed by the defendant as on date.

19.In fine, the suit is partly decreed and the plaintiff shall be



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entitled to prayer a), c), d) and e) and in so far as the prayer b) the suit is negatived. The defendant shall also hand over the Schedule 'B' listed parent documents to the plaintiff within a period of two months. The plaintiff shall also be entitled to costs.

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Index : Yes / No

Neutral Citation : Yes / No

List of Witness on the side of the plaintiff:

P.W.1 – Y.V.Shivapriya

List of Exhibits on the side of the plaintiff:

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description</i>
1.	Ex.P1	Certified copy of the Sale Deed in favour of the father of the plaintiff in Doc.No.173 of 1998 dated 15.12.1997.
2.	Ex.P2	Original telephone bills issued in favour of the plaintiff from 28.10.1998 to 07.04.2008.
3.	Ex.P3	Computer generated Death Certificate of late V.Yegnanarayanan dated 28.04.2005.
4.	Ex.P4	Original Ration Card of the family from 2005 to 2009.
5.	Ex.P5	Original domestic gas receipt in favour of the plaintiff dated 23.04.2005.
6.	Ex.P6	Original Election Identity Card of the plaintiff dated 20.03.2008.



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7.	Ex.P7	Original receipts of payment issued bill BSNL in favour of the plaintiff dated 30.10.2008.
8.	Ex.P8	Certified copy of the Settlement Deed in favour of the defendant executed by the plaintiff's mother by Doc.No.1985 of 2013 dated 26.06.2013.
9.	Ex.P9	Office copy of the legal notice issued by the deceased mother of the plaintiff dated 12.05.2014.
10.	Ex.P10	Office copy of the reply notice issued by the plaintiff to the mother of the plaintiff, Y.Indra dated 12.06.2014.
11.	Ex.P11	Original medical paper of the deceased mother of the plaintiff.
12.	Ex.P12	Computer generated Death Certificate of the deceased mother of the plaintiff dated 08.07.2014.
13.	Ex.P13	Office copy of the legal notice sent by the defendant dated 24.07.2014.
14.	Ex.P14	Copy of the reply notice sent by the plaintiff to the defendant dated 22.08.2014.
15.	Ex.P15	Original re-joinder notice sent by the defendant to the plaintiff dated 03.09.2014.
16.	Ex.P16	True copy of the plaint in O.S.No.5448 of 2014 on the file of the XVIII Additional Judge, City Civil Court, Chennai, dated 18.09.2014.
17.	Ex.P17	True copy of the affidavit along with the petitions in I.A.No.14713 of 2014 in O.S.No.5448 of 2014 on the file of the XVIII Additional Judge, City Civil Court, Chennai.
18.	Ex.P18	Office copy of the Court affidavit filed by the petitioner in I.A.No.14713 of 2014 in O.S.NO.5448 of 2014 on the file of the XVIII Additional Judge, City Civil Court, Chennai.
19.	Ex.P19	Copy of the order and decree passed in I.A.No.14713 of 2014 in O.S.No.5448 of 2014 on the file of the XVIII Additional Judge, City Civil Court, Chennai.
20.	Ex.P20	Copy of the extract of the "A" diary adjudication



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		notes dated 12.09.2014.
21.	Ex.P21	Copy of photo showing peaceful possession of the petitioner herein dwelling house.
22.	Ex.P22	Office copy of the affidavit with petition filed in C.M.A.No.132 of 2015 on the file of the High Court of Madras by the plaintiff.
23.	Ex.P23	Office copy of the grounds of C.M.A.No.132 of 2015 on the file of the High Court Madras by the plaintiff.

List of Witness on the side of the Defendants:

Nil.

List of exhibits marked on the side of the plaintiff:

Nil.

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P.B.BALAJI.J.

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Pre-delivery judgment made in
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30.04.2024