



S.A. No.575 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 25.03.2024

Pronounced on: 05.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.575 of 2018
and
CMP. No.17660 of 2018

S.Anitha

...Appellant

Vs.

G.Geetha

...Respondent

PRAYER : Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the decree and judgment dated 16.06.2017 made in A.S. No.291 of 2015 on the file of the III Additional Judge, City Civil Court at Chennai in reversing the decree and judgment dated 30.06.2015 made in O.S. No.5799 of 2011 on the file of 1st Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.G.Ethirajulu

For Respondent : Mr.G.RM.Palaniappan



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JUDGMENT

The unsuccessful defendant in a suit for declaration and permanent injunction is the appellant.

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

3. The material facts that are necessary to adjudicate the Second Appeal are as hereunder.

3.1. The plaintiff and the defendant are sisters, being children of late Parthasarathy Naidu. The case of the plaintiff is that the suit property belongs to the father, Parthasarathy Naidu and he died on 17.05.2009, leaving behind three daughters and two sons as his legal heirs. The father, a widower, stayed with the plaintiff who was the last daughter and the plaintiff was taking care of the father in an excellent manner. In consideration of love and affection towards the plaintiff, the father executed a settlement deed in favour of the plaintiff, settling the suit property in



favour of the plaintiff. However, when the plaintiff's father went to stay with the defendant, the defendant tortured her father and confined him in a small room without food and forced him to cancel the settlement deed in favour of the plaintiff. On the same day of cancellation of settlement deed, the father executed another settlement deed settling the suit property equally to both the plaintiff and the defendant. Challenging the said documents and also seeking relief of injunction to protect her possession and to restrain the defendant from encumbering the suit property, the suit came to be filed.

3.2. The defendant filed a written statement denying the plaintiff allegations and contending that after execution of the settlement deed in favour of the plaintiff, the father realised his mistake and in order to provide the defendant as well, he cancelled the settlement deed and executed the fresh settlement deed on the same date, benefiting both the plaintiff and the defendant equally. The defendant also denies the allegations of torture and confinement as alleged by the plaintiff and sought for dismissal of the suit.

4. The Trial Court held that the settlement deed in favour of the



plaintiff had been acted upon and the plaintiff was in possession of the suit property and therefore, partly decreed the suit by granting the relief of permanent injunction and observing that the defendant ought to have filed a suit for declaration of her title based on the subsequent settlement deed and suit for partition and separate possession.

5. On appeal, preferred against the judgment and decree granting relief of permanent injunction, the First Appellate Court, reversed the findings of the Trial Court and held that the plaintiff being already in a possession of the suit property cannot be the sole criteria to hold that the settlement deed was acted upon, since the plaintiff was already in possession of the suit property even on the date of the Ex.A1, settlement deed and the First Appellate Court, reversed the findings of the Trial Court.

6. Aggrieved by the said reversal findings, the defendant has preferred the present Second Appeal. The above Second Appeal is not yet admitted. However, I have heard Mr.G.Ethirajulu, learned counsel for the appellant and Mr.G.RM.Palaniappan, learned counsel for the respondent for final



disposal of the Second Appeal. I have also gone through the pleadings made available to me by way of typed-set which includes the Settlement deed marked as Ex.A1, Cancellation deed of settlement deed marked as Ex.A6 and Fresh settlement deed executed by the father in favour of the appellant marked as Ex.B1.

7. The learned counsel for the appellant, Mr.G.Ethirajulu, would contend that the First Appellate Court has erroneously granted a decree in favour of the plaintiff and failed to appreciate the oral and documentary evidence adduced by the defendant regarding the manner in which the plaintiff's father was treated, which necessitated cancellation of the Settlement Deed in favour of the plaintiff and also execute a fresh settlement deed in favour of both the plaintiff and the defendant.

8. The learned counsel for the appellant would contend that the plaintiff has suppressed the earlier suit in O.S. No. 5294 of 2011, which was filed by the defendant for the relief of permanent injunction and the plaintiff had therefore, suppressed material circumstances and had not approached



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the Court with clean hands. He would further refer to the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, with specific reference to Section 23 and justify the father's action in cancelling the settlement deed in favour of the plaintiff and also executing a fresh settlement deed in favour of both the plaintiff and the defendant. The learned counsel would also contend that the original settlement deed has not been produced before the Trial Court and therefore, the First Appellate Court, ought not to have disturbed the findings of Trial Court and granted all the reliefs as prayed for by the plaintiff.

9. Per contra, G.RM.Palaniappan, learned counsel for the respondent would contend that the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, came into force only in September 2008 and the settlement deed in Ex.A1 was prior to the said Act coming into force namely having been executed on 02.07.2008 and therefore, the plaintiff's father had no right to cancel the settlement deed. He would further contend that the settlement deed has not been challenged by the defendant. He would also invite my attention to the contradictions in the pleadings in the written



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statement in O.S. No.5799 of 2011, out of which the present Second Appeal arises. In the plaint in O.S. No.5294 of 2011, as plaintiff, the appellant has taken a stand that in the suit property, the respondent has put up a hut, contrary to the contention in the written statement in O.S. No. 5799 of 2011, where it is stated that the suit property is a vacant land. With regard to mutation of revenue records being made in favour of the plaintiff after the cancellation was effected, he would contend that at no point of time, the cancellation was brought to the notice of the plaintiff and therefore, merely because mutation of records was effected in favour of the plaintiff after the cancellation deed came to be executed, it would not be fatal or affect the plaintiff's case in any manner.

10. The learned counsel for the respondent would also place reliance on the following decisions:-

(i) *D.V.Loganathan Vs. The Sub-Registrar reported in 2014 (3) CTC 113;*

(ii) *Satya Pal Anand Vs. State of M.P. & Others reported in 2107 (1) CTC 414; and*

(iii) *Daulat Singh (Dead) through Legal Representatives Vs. State of Rajasthan and others reported in (2021) 3 SCC 459.*



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10.1. In *D.V.Loganathan's* case, referred herein supra, this Court held that cancellation of settlement deed was against public policy and when the settlement deed was unconditional and irrevocable, the party aggrieved has to only approach the Civil Court and not go to the Sub Registrars and have the settlement deed cancelled.

10.2. The learned counsel for the respondent would also place reliance on *Satya Pal Anand's* case, referred herein supra, where the Hon'ble Supreme Court, dealing with the role of Sub Registrars, after registration of Instruments/Deeds held that, the Registrar cannot unilaterally recall registration and the role of Registrar would stand discharged after the registration of the document.

10.3. He would also place reliance in *Daulat Singh's* case, referred herein supra, where a larger Bench of the Hon'ble Supreme Court held that in a transaction involved in a gift of immovable property, it would become complete on acceptance by the donee by himself or on his behalf, during the lifetime of the donor. The Hon'ble Supreme Court further held that once execution of the gift deed was registered and attested in accordance with



Section 123 of the Transfer of Property Act, 1882 and the same being accepted, the gift would become complete and thereafter, the donor would be divested of title or interest in the property. The Hon'ble Supreme Court also held that acceptance of gift being an act of receiving willingly, it could be inferred from conduct of donee in the facts and circumstances of each case. The learned counsel for the respondent would therefore, pray for the Second Appeal being dismissed as there was no patent error committed by the First Appellate Court.

11. I have carefully considered the rival submissions advanced by the learned counsel on either side. I have also carefully gone through the pleadings, the oral and documentary evidence adduced by the Trial Court and the First Appellate Court as well as the judgments of the Courts below and the judgments relied on by the learned counsel on either side.

12. With regard to the reference of Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (in short 'Act'), I deem it appropriate to extract the said provision for easy reference:-



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“23. Transfer of property to be void in certain circumstances.- ?

(1)Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.

(2)Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

(3)If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.

13. The above provision would not apply to the facts of the present case for more than one reason. Firstly, the phraseology employed in Sub Section 1 of Section 23, clearly states that transfer of property by way of gift or otherwise should be after the commencement of the Act. The Act must receive the assent of the President of India, on 29.12.2007, and has been published in the Gazette of India on 31.12.2007. Section 1 (3) of the Act, stipulates that the Act shall come into force on such date as the State Government may, by notification in the official Gazette, appoint. In the State of Tamil Nadu, the said Act was brought into force only on 29.09.2008. Even otherwise Section 23 of the Act, render the gift of



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immovable property void only when the transfer by way of gift or otherwise of immovable property is subject to the condition that the transferee or donee shall provide basic amenities and basic physical needs to the transferor and subsequently such transferee refused to provide such amenities and physical needs. Here, admittedly, there is no such condition imposed on the donee viz., the plaintiff. Thus viewed from both angles, the settlement deed cannot be cancelled invoking Section 23 of the Act, or even justifying the cancellation taking shelter under the said Act, would not be available to the defendant.

14. Admittedly, as contended by the learned counsel for the respondent the settlement deed has not been challenged at all and the defendant has only sought for injunction. Applying the ratio laid down by the Hon'ble Supreme Court in *Daulat Singh's* case, referred herein supra, the moment the settlement deed was executed and registered, the father lost all his rights and interest in suit property and therefore, the cancellation deed executed by him subsequently, was not valid in the eye of law, applies to the facts of the present case. The plaintiff has to necessarily



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succeed and I do not find any material irregularity, illegality or perversity in the findings rendered by the First Appellate Court, warranting interference under Section 100 of the Code of Civil Procedure, 1908. I do not find any substantial question of law arising for consideration and accordingly, the Second Appeal is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. No costs.

05.04.2024

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

1. The III Additional Judge, City Civil Court at Chennai.
2. The 1st 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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