



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.06.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

A.S(MD)Nos. 308 & 309 of 2023
and
C.M.P.(MD)No.16730 of 2023

A.S(MD).No. 308 of 2023

J. Peter

... Appellant

/Vs./

1. A. Shobana

2. A.Joshna

3. A. Jerina

...Respondents

A.S(MD).No. 309 of 2023

J. Peter

... Appellant

/Vs./

1. George Babu

Elizabath Rani (Died)

2. Lurthumary

3. Shobana

4. Joshna

5. Jerina

6. Amalraj



7. John Peterpaul

8. Rosin Jesintha

9. Julia Margaret

10. Christopher Dominic

...Respondents

COMMON PRAYER: Appeal Suit filed under order 41 rule 1 read with section 96 of Civil Procedure Code to set aside the Judgment and Decree passed in O.S Nos.32 of 2018 & 70 of 2021 on the file of Additional District Court, Virudhunagar, dated 18.07.2023.

In A.S(MD)No.308 of 2023

For Appellant : M/s.M.Ashok Kumar

For R1 to R3 : M/s.I. Suthakaran

In A.S(MD)No.309 of 2023

For Appellant : M/s.M.Ashok Kumar

For R1 : No Appearance

For R2 & R10 : Unserved

For R3 to R5 : M/s.I. Suthakaran

For R6 to R9 : Mr.A.Mohan

COMMON JUDGMENT

These Appeal Suits have been filed to set aside the Judgment and Decree passed in O.S Nos.32 of 2018 & 70 of 2021 on the file of Additional District Court, Virudhunagar, dated 18.07.2023.



2. The Plaintiff in O.S.No.70 of 2021 is the Appellant herein and the Defendants in O.S.No.70 of 2021 are the Respondents herein. For the sake of convenience, the contesting parties shall be referred to as Plaintiff and Defendants as per the ranking in O.S.No.70 of 2021 or by their names.

3(i). The suit in O.S.No.32 of 2018 was filed by Shobana and two others for declaration to declare the suit property belongs to the plaintiffs and consequential prayer to vacate and hand over possession of the suit property.

3(ii). The suit in O.S.No.70 of 2021 was filed by Peter for partition to divide the suit property 5 equal share and allot 1/5th share to the plaintiff, then granting permanent injunction restraining the defendants from alienating and encumbering the suit property, permanent injunction restraining from interfering in the plaintiff's joint possession and enjoyment, to declare that the gift settlement deed dated 07.04.2003 before the Joint Sub-Registrar, Virudhunagar as null and void and for other reliefs.

3(iii) The 3rd defendant in O.S.No.70 of 2021 Lurdhumary had filed counter claim and had prayed to declare the gift settlement deed dated 07.04.2003 before the Joint Sub-Registrar, Virudhunagar as null and void and to allot 1/5th share to the 3rd defendant.



4. After hearing rival submissions, the Trial Court has allowed the suit in O.S.No.32 of 2018 with costs. As far as the suit in O.S.No.70 of 2021 the same was dismissed with costs to the defendants 4 to 6 (Shobana and two others) and also had dismissed the counter claim. Aggrieved over the same, the present Appeal Suits are filed by the plaintiff Peter raising various grounds.

O.S.NO.32 of 2018:

5. In paragraph 5 and 6 the parties are referred as per the ranking in O.S.No.32 of 2018. The brief facts as stated in the plaint in O.S.No.32 of 2018 is that the plaintiffs 2 and 3 namely A.Joshna and A.Jerina are the daughters of the 1st plaintiff Shobana and her late husband Anthonyraj. The 1st plaintiff's husband Anthonyraj and the defendant Peter are brothers and the said Peter is the younger brother of Anthonyraj. The suit property is a house and the said Peter was residing in the first floor. The suit property was originally belonged to Regina Joseph who is the mother of Anthonyraj and the said Peter. The said Regina Joseph had purchased the property on 16.10.1975, thereafter she had executed a gift deed in favour of Anthonyraj on 7.4.2003. The gift came into effect and after that Anthonyraj changed the tax assessment in his name. The said Peter has knowledge about the gift deed. The said Anthonyraj died on 28.07.2008, thereafter the plaintiffs Shobana and two others had inherited the



property as legal heirs. The 3rd plaintiff has completed her collegiate education and the 2nd plaintiff has also completed her education. So, on 1.4.2016, the 1st plaintiff informed the defendant Peter that she wanted to sell the property and instructed him to vacate the building. But the said Peter had filed a suit before Subordinate Court, Virudhunagar in O.S.No.25/2016 praying that the gift deed is void and sought for partition. Since the defendant Peter is not vacating the property taking advantage of the death of Anthonyraj raising various issues, hence the suit is O.S.No.32 of 2018 was suit by the said Shobana and two others.

6. The said Peter had filed written statement, wherein it is admitted that the said Anthonyraj is the brother of the said Peter and he died on 28.07.2008. The other averments of the plaintiffs Shobana and others were denied and submitted that they ought to prove that they are residing in the ground floor of the suit property, they ought to prove that the suit property is purchased property of Regina Joseph and they ought to prove that the gift deed dated 7.4.2003 came into force and duly acted upon and assessment of the house tax was transferred in the name of Anthonyraj. It is false to allege that the gift deed dated 7.4.2003 is known to the defendant, the defendant Peter is on permissive possession granted by Anthonyraj and also false to allege that the



plaintiffs Shobana and two others had inherited the property as legal heirs of Anthonyraj. It is true that the defendant's mother Regina Joseph died on 20.07.2011. The defendant submitted that the original owner of the property is one Subbian, who had borrowed a sum of Rs.5,000/- from John Joseph and executed a mortgage deed dated 15.12.1967 in the name of wife of John Joseph namely Regina Joseph (mother of the said Anthonyraj and the defendant Peter). Mortgage amount of Rs.3,000/- was paid by John Joseph. The recitals of mortgage deed states that in front of the witness the said John Joseph had paid the amount for and on behalf of Regina Joseph. The mortgage deed was duly signed by John Joseph. Subsequently, the original owner of the suit property Subbian borrowed a sum of Rs.2,000/- and executed "Mel Othi" in favour of Regina Joseph on 15.05.1972. Again, the said Subbian borrowed a sum of Rs. 4,900/- and executed a "Mel Othi" dated 10.02.1975. The recitals of Mel Othi deed states that the said amount is paid by John Joseph in favour of Regina Joseph. Thereafter the said Subbian entered into a sale agreement with John Joseph on 11.06.1975 and as per the recitals, John Joseph paid an advance of Rs.1,001/- to the original owner. Therefore, the said property was purchased by John Joseph in the name of his affectionate wife Regina Joseph and she was only a name lender. The said John Joseph (father of Anthonyraj and the defendant Peter) died on 7.2.1982. After his demise, the defendant Peter along



with other family members become entitled to the suit property and they were in joint possession and enjoyment of the same. The suit property is a house property consists of ground, first and second floors. The defendant Peter started a clinical laboratory in the name Joseph Clinical Lab in ground floor portion in 1986 and he started to reside in the first-floor portion of the suit property along with his family members. This suit property is in Door No.46, Alagarsamy Street, Virudhunagar Town. The defendant borrowed some amounts as loan to run the clinical laboratory from Pandyan Grama Bank, Virudhunagar. A letter was sent by Pandyan Grama Bank in the above address. The bills issued by A.V.H. Enterprises Limited also mentioned the above door number. The driving license and Aadhar Card of the defendant shows that he is in possession of the suit property. The defendant's brother Anthonyraj died on 28.07.2008. His mother Regina Joseph died on 20.07.2011. After the death of his mother Regina Joseph, the defendant continued to run the Joseph Clinical Laboratory. The defendant along with plaintiff are in joint possession. The plaintiff proclaimed that the suit property absolutely belonged to them. This defendant immediately verified the record and shocked to know that Regina Joseph executed a registered gift deed on 7.4.2003. Regina Joseph has no absolute right to execute the gift deed. The defendant came to know about the settlement deed in the month of March, 2016. This defendant along with plaintiff and his other



brothers and sisters each entitled for 1/5th share. So, he filed suit as O.S.No. 325/2016 before Subordinate Court, Virudhunagar. The defendant is not a permissive occupant. The plaintiffs know well that the defendant is in possession and enjoyment of the suit property for more than 30 years, hence the plaintiffs are not entitled any reliefs.

O.S.NO.70 OF 2021:

7(i). The suit is filed by the said Peter for partition, permanent injunction from alienating and from interfering in possession and to declare the gift deed dated 07.04.2003 as null and void. Apart from the contents filed in the written statement in O.S.No.32 of 2018, the plaintiff Peter had stated in the present suit that the suit property is a joint family property consists of plaintiff Peter along with 1 to 6 defendants namely George Babu (son), Elizabeth Rani (daughter), Lurdhumary (daughter), Shobana (daughter-in-law), A.Joshna (granddaughter) and A.Jerina (granddaughter). The plaintiff's father John Joseph and mother Regina Joseph had three sons and four daughters. The plaintiff's father is a dentist by profession and he had occupied the suit property as tenant in the year 1956 and started clinic in a portion of the property and also lived along with the family in other portion of the suit property. Initially the owner had mortgaged the property and obtained loan. Later on, the father had purchased the property in the name of plaintiff's mother. The mother is not



having any independent income, hence she would not have purchased the property, hence the mother is only name lender. Hence the mother has no right to execute any settlement and hence the present suit is filed for partition and permanent injunction and to declare the settlement as null and void.

7(ii) The plaintiff had filed reply statement and stated that the contention of the defendants 4 to 6 that the property was absolute property of Regina Joseph is false. The further allegation that 4th defendant's husband Anthonyraj looked after the entire family including the plaintiff is false. The averment that said Anthonyraj looked after the medical expenses, food and shelter to his mother Regina Joseph is also denied. Elder brother George Babu constructed first and second floors of the suit property out of the joint family income. The allegation that Regina Joseph was in a sound state of mind executed gift settlement deed in favour of Anthonyraj is false. The allegation that at the time of transfer of property in the name of Anthonyraj by Regina Joseph, the plaintiff accepted to vacate building is false. The averment that the defendants 4 to 6 are paying the electricity bills and tax are false. The averment that the plaintiff knew well about the execution of the gift settlement deed is false.



WEB COPY

7(iii) The plaintiff filed reply statements to the counter-claim filed on the side of defendants 1 & 3, wherein it is stated that the averment that after demise of Regina Joseph, the legal heirs of deceased Regina Joseph are equally entitled to the suit property is admitted. The gift settlement deed dated 7.4.2003 is invalid and not acted upon. The 3rd defendant and the plaintiff are entitled for 1/5 share.

8. The 1st defendant George Babu had filed the written statement stating that the father had purchased the property out of the income derived from dental profession in the name of mother and the mother is only name lender. Further had submitted that the Peter is running a clinical laboratory in the ground floor and residing in the 1st floor. The plaintiff and defendants have joint possession and he is willing for partition and hence counter claim of partition was also filed.

9. The 2nd defendant Elizabeth Rani had filed written statement stating that the plaintiff had filed the suit only after the death of Anthonyraj without clean hands. The averment that the plaintiff's father John Joseph purchased the property out of his own earning or from joint family income is false. Regina Joseph purchased the property from her savings and money



received as dowry. If the property was purchased by John Joseph, during his lifetime he would have made some arrangements regarding the property. The said Regina Joseph executed the gift deed in favour of Anthonyraj in a good state of mind after informing all the legal heirs and execution of settlement deed is known to all including the plaintiff. The suit is filed only to harass the legal heirs of Anthonyraj and the suit is bad for partial partition. During the lifetime of Anthonyraj, he permitted the plaintiff to occupy the 1st floor. After the death of Anthonyraj, the plaintiff is not willing to vacate the suit building. If the gift deed was obtained by misrepresentation, Regina Joseph would have cancelled the gift during her lifetime. The plaintiff requested Regina Joseph to cancel the gift deed many times, but Regina Joseph refused to cancel the same.

10. The 3rd defendant filed written statement stating that the averment that John Joseph died on 07.02.1982, the said Anthonyraj died in an accident on 28.07.2008 and Regina Joseph died on 20.07.2011 are admitted. Further stated that this defendant does not know how the suit property belonged to Regina Joseph. This defendant's father John Joseph resided in the suit property and was running a dental clinic. After his death, his eldest son, the 1st defendant George Babu was running a clinic. At that time, Anthonyraj and the plaintiff were residing in a portion of suit property, The 2nd and 3rd defendants,



after their marriage went to their husband's house. The plaintiff is residing in the suit property and dental clinic is also in the suit property. The 5th defendant has completed dental surgeon course and she is running a clinic. The averment that Anthonyraj was taking care of Regina Joseph is false. After the death of Regina Joseph all her legal heirs are entitled for share in the property. The settlement deed dated 07.04.2003, is fraudulently created and is void ab initio. It was not given effect to. So, this defendant is also entitled for 1/5th share and claimed by way of counter-claim.

11. The 4th defendant filed written statement which was adopted by the defendants 5 & 6, wherein it is stated that the suit is not maintainable. The averment in the plaint that suit building is having ground floor, 1st floor and 2nd floor is true. The relationship between the parties is admitted. But the averment that the scheduled property is joint family property and it was purchased in the name of Regina Joseph from and out of joint family income are false. The plaintiff's father was a dentist is admitted. It is for the plaintiff to prove that previous owner of the property namely Subbiah mortgaged the property in favour of Regina Joseph. That fact is not relevant to this case. The averment that the suit property was purchased from the earnings of plaintiff's father in the name of his mother is false. The suit property was purchased by the said Regina



Joseph on 16.10.1975 (mother-in-law of 4th defendant) by selling her gold ornaments and dowry amount, hence she is the absolute owner. At the time of purchase, the building was having ground floor. Subsequent to the death of plaintiff's father, the defendant's husband Anthonyraj took care of the family and made further constructions. Therefore, on 07.04.2003 the said Regina Joseph executed settlement deed in favour of 4th defendant's husband Anthonyraj when she was in good state of mind. The reason for executing the gift deed is stated in the deed and if the plaintiff aggrieved over the said deed, he would have taken necessary legal steps at the time of execution of gift deed. The fact remains at that point of time the plaintiff did not object it. On 28.07.2008 Anthonyraj died in an accident. After that as legal heirs of said Anthonyraj the defendants 4 to 6 effected mutation and paying tax to the scheduled property. During the lifetime of Anthonyraj, the said Anthonyraj had permitted the plaintiff, being his brother to reside in the first floor of scheduled property. The plaintiff did not even pay the water charges and electricity charges. The 4th defendant has spent a sum of Rs.25,00,000/- for the maintenance of the building. Taking advantage of the death of Anthonyraj, now the plaintiff is refusing to vacate the building. The plaintiff schedule property is the absolute property of Anthonyraj which was inherited by these defendants 4 to 6. The averment that the plaintiff is in joint possession is false.



11 (ii). The 4th defendant had filed additional written statement which was adopted by the defendants 5 & 6, wherein it is averred that the averment of the plaintiff in reply statement are false. He knew well about the execution of gift deed at the time of execution itself and falsely stated that he knew it only on 23.04.2016. After marriage of this 4th defendant with Anthonyraj, she was living in joint family. The 1st defendant left the joint family in the year 1991. He has taken all the household articles and after that this defendant's husband purchased the household articles. During the marriage of plaintiff in the year 1996, 4th defendant's husband Anthonyraj met all the expenses.

12. The appellant / plaintiff had raised various grounds in the First Appeal. The primary ground raised by the plaintiff Peter is that the mortgage amount is paid by the father John Joseph as per the mortgage deed. And the sale agreement is the name of the father and hence the mother is only name lender. Further the mother is not having any independent personal income to purchase the suit property and the said fact is admitted by the defendants 4 to 6 also. Hence the property belongs to the father and mother is not having any right to execute the settlement deed. Since father died intestate the plaintiff and the other legal heirs are entitled to the relief of partition. It is seen that the said mortgage deeds are marked as Ex.A2 to Ex.A4. On perusal of the Ex.A2, the



mortgage deed is executed for Rs.5000/- and father had paid the same. Ex.A3 is executed for Rs.3000/- and father had paid the same. Ex.A4 is executed for Rs. 4,900/- and father had paid Rs.2,300/-, hence it indicates the remaining amount was paid by the mother. Ex.A6, the sale deed was executed in the name of the mother and the sale consideration was fixed as Rs.15,000/-, which is more than the mortgage amount. Therefore, as rightly held by the Trial Court, the plaintiff had not proved that the entire sale consideration was paid by the father.

13. Even if it is taken that the father had purchased the property through his income in the name of the mother, under section 3(2) of the Prohibition of Benami Property Transactions Act, 1988 it has to be presumed that the property was purchased by the husband for the benefit of the wife. One of the legal heirs DW1 had admitted that the father had purchased the property in the name of the mother out of love and affection towards mother. Therefore, it is evident that the property is exclusively belonging to the mother and she has every right to deal with the property and she had exercised her right and executed the settlement deed in the name of Anthonyraj. After the demise of Anthonyraj the property devolved around his legal heirs i.e. his wife and two daughters (the defendants 4 to 6).



WEB COPY

14. The plaintiff and the defendants 1 and 3 tried to impress the Court that the settlement deed is executed by excluding other legal heirs, hence there is suspicious circumstances. Further submitted that the defendants 4 to 6 at no point of time before filing of suit has whispered about the settlement deed till filing the suit. It is seen that the settlement was executed on 07.04.2003 and the mother died on 20.07.2011. The 2nd defendant Elizabeth Rani had filed a written statement stating that the mother had executed the settlement deed after informing to all the legal heirs and the execution of the deed is known to the plaintiff also. The 1st defendant in his deposition had admitted that he is aware of the execution of the settlement deed. If the other legal heirs are aware of the execution of the settlement deed and if the legal heirs are aggrieved over such execution of the settlement deed excluding the other legal heirs, they would have challenged during 2003. Or at least during the life time of the mother (died on 20.07.2011). Therefore, the plea that the settlement deed is executed under suspicious circumstances by excluding other legal heirs is not proved. Also, the plea of the plaintiff that the defendants 4 to 6 had not whispered about the settlement deed is false and not proved.

15. The next plea of the plaintiff is that the witnesses to the alleged settlement was not examined as mandated by law. As held supra, when the other



legal heirs had admitted the execution of settlement deed, then it is not necessary to prove through the witness, since it is settled proposition of law that the admitted facts need not be proved.

16. The next contention of the plaintiff is that the plaintiff is in possession and enjoyment of the suit property for more than 30 years and running Chemical Lab as per family arrangement, hence the Trial Judge ought to have dismissed the suit as the plaintiffs have not proved their possession in the ground floor of the suit property. And further the respondents never asked the appellant to vacate from the house at any point of time before filing of suit. This contention of the plaintiff was refuted by the defendants stating that the plaintiff was given permissive possession and to substantiate this the defendants had submitted that the deceased Anthonyraj after execution of the settlement deed dated 07.04.2003, he had effected name transfer through patta transfer order dated 25.01.2005 marked as Ex.B4. Thereafter the house tax receipts, water tax receipts, electricity bills marked as Ex.B6 to Ex.B14 are in the name of Anthonyraj and after his demise the same stands in the name of defendants 4 to 6 as per the exhibits. When the patta transfer order was passed as per Ex.B4, that too during the life time of the said Regina Joseph, then the property was transferred in the name of the said Anthonyraj. Thereafter the said



Anthonyraj had paid house tax, water tax, electricity bills which are marked as Ex.B7, B9 and B10 would indicate he was in possession of the property. After his demise the legal heirs of Anthonyraj the patta was transferred in their name through Ex.B6, thereafter they had paid house tax, water tax, electricity bills through Ex.B8, B11, B12, B13, and B14. When the patta was in the name of Regina Joseph, she was paying the house tax, water tax and electricity bills. Then when the property was transferred to Anthonyraj, he was paying the house tax, water tax and electricity bills. Then when the property was transferred to Shobana and her daughters, when are paying the house tax, water tax and electricity bills. This would indicate that the plaintiff was never ever allowed to claim ownership and possession of the property and it is only permissive possession. Therefore, this Court is of the considered opinion that the plea of permissive possession is acceptable.

17. The next contention of the plaintiff is that the prayer for recovery of possession is barred by Limitation as the alleged settlement deed is of the year 2003 and the suit is in the year 2018, hence the suit filed by the Shobana and others ought to be dismissed. For arguments sake, if the plea of limitation is entertained, then the plaintiff suit is also barred by limitation, since the plain-



tiff is aware of execution of settlement in the year 2003 and the suit is filed in the year 2021.

18. The next contention of the plaintiff is that the plaintiff and other legal heirs are holding the property as coparceners and hence the question of recovery of possession will not arise as against another coparcener. Further the plaintiff was in possession and enjoyment as coparcener, with the knowledge of the plaintiff. This contention of the plaintiff is legally not sustainable. The concept of coparcener is applicable to Hindus under Hindu Law and the same cannot be made applicable to Christians, since the parties herein Christians.

19. This Court is of the considered opinion that the Judgment of the Trial Court is well reasoned judgment. The appellant / plaintiff had not raised any legally sustainable ground to interfere with the said judgment. Therefore, this Court is not inclined to entertain both the Appeals. Accordingly, both the Appeals are dismissed and confirming the Judgment and Decree, dated 18.07.2023 passed in O.S No.32 of 2018 and O.S No.70 of 2021 on the file of the Additional District Court, Virudhunagar.



20. The Defendant is directed to vacate and hand over the possession to the plaintiffs, on or before 30.12.2024. No Costs. Consequently, Connected Civil Miscellaneous Petition is closed.

10.06.2024

Index : Yes / No
NCC : Yes / No

KSA



WEB COPY

TO:

1. The Additional District Court,
Virudhunagar.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.SRIMATHY, J.

KSA

Common Judgment made in
A.S(MD)Nos. 308 & 309 of 2023

Dated:
10.06.2024