

(2005) 09 MAD CK 0051
In the Madras High Court
Case No : S.A. No. 1021 of 2003

Dhanalakshmi, T. Ravikumar, T. Geetha and T. Saravanan APPELLANT
Vs
S. Thangavelu RESPONDENT

Date of Decision : 23-09-2005

Acts Referred:

Citation : AIR 2006 Mad 1 : (2005) 5 CTC 33 : (2005) 4 MLJ 300 : (2005) 4 RCR(Civil) 705

Hon'ble Judges : M. Chockalingam, J

Bench : Single Bench

Advocate : K. Venkataraman, for the Appellant; J.R. Doss, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—This Second Appeal has been brought forth by the plaintiffs in a suit seeking to set aside the judgment of the learned

VI Additional City Civil Judge, Madras, in A.S. No. 12 of 2002 wherein the Judgment of the trial court granting a decree in favour of the

plaintiffs/appellants was set aside.

2. The appellants before this Court as plaintiffs filed the suit with the following allegations:

In respect of the suit property, the defendant executed a settlement deed on 9.7.1986 in favour of the plaintiffs. The said property was purchased

by him under three different sale deeds on 15.4.1982, 20.6.1984 and 14.6.1984 respectively. While the absolute right was given to the plaintiffs 2

to 4, the power over the property was given to his wife, the first plaintiff herein, till her life time. The possession was also given to her that day. She

was maintaining the family out of the income derived from the property by way

of rent. She borrowed money and constructed the building.

Plaintiffs 2 to 4 were put on education. The second plaintiff was employed. The fourth plaintiff was studying. The marriage of the third plaintiff was

held on 15.9.1997. The first plaintiff started a business under the name and style of Om Sakthi Oils. Out of the income derived from the said

business, the debts were discharged by her. As a husband, the defendant has failed in his responsibility. He left the family in lurch in the year 1990,

and he issued a notice on 6.11.1997 stating that the settlement deed dated 9.7.1986, was cancelled by way of a cancellation deed dated

5.11.1997. A reply notice was sent by the plaintiffs on 12.11.1997. The suit property was not mortgaged. There is no contingency under the

settlement deed. If the settlement is to be cancelled, then, the same can be done only through Court. The settlement made in favour of the plaintiffs

2 to 4 cannot be cancelled, since the cancellation deed will not bind them. Hence the suit.

3. The respondent/defendant contested the suit with the following allegations:-

The settlement deed executed by the defendant, was a revocable one. They were self acquired properties. Thus, he has got a right to cancel the

said deed. The first plaintiff was not treating him properly. She was harassing him by spending the rental amount for her brothers. She has not

constructed the first floor. She was not spending money for her children. The first son was employed. She was receiving more than Rs. 5,000/- as

rent. The daughter's marriage was conducted according to her will and pleasure. He has got a good name in the locality. But, the same was

spoiled by her by lodging a complaint before the Police Station against him. She had mortgaged the suit property in order to help his brother who

was residing and doing business at Soolurpet. She borrowed Rs. 40,000/- from one Mannar Chetty. He left the family for pilgrimage and returned

from Amarnath. The first plaintiff stopped paying Rs. 200/- to his mother. He has got a right to cancel the settlement deed, since the same has been

specifically mentioned in the document itself. Hence, the suit was to be dismissed.

4. Necessary issues were framed by the trial court namely the XVII Assistant City Civil Court, Madras, and on trial and after considering the

evidence, both oral and documentary, the trial Court granted a decree in favour of the plaintiffs declaring that the cancellation deed in respect of

Ex.A1, settlement deed, was not valid. Aggrieved, the defendant took it on appeal. The appellate forum, on enquiry, reversed the judgment of the trial Court. Hence, this second appeal at the instance of the plaintiffs.

5. At the time of admission, the following substantial questions of law were formulated by this Court.

1) When the deed of Settlement Ex.A1 is accepted and acted upon by the Settlee whether the Settlor can revoke the same?

2) When the Trial Court basing upon the oral and documentary evidence came to the conclusion that Ex.A1 is a settlement deed, whether the

Appellate Court is justified in reversing the said finding basing on mere presumption and surmises?

6. Heard the learned counsel for the appellants and also for the respondent.

7. Admittedly, the first appellant is the wife and the other appellants 2 to 4 are the children of the respondent herein. He executed a settlement

deed on 9.7.1986, which was marked as Ex.A1. Following the same, he executed a revocation deed marked as Ex.A6, on 5.11.1997, stating that

the settlement deed originally executed by him under Ex.A1, was cancelled. On exchange of notices, the plaintiffs filed the suit seeking a

declaration that Ex.A6 cancellation deed, dated 5.11.1997 was invalid in law.

8. The learned counsel for the appellants put forth before this Court two prime contentions. Firstly, the settlement deed executed by the defendant

in favour of the plaintiffs, was an absolute one, and it was irrevocable since no contingencies were stipulated therein for revocation, and apart from

that, the settlement has also been acted upon. Secondly, while the defendant himself put forth the plea that it was a settlement deed; but, he had the

power of revocation, the first appellate forum construed the document as one Will and also revocable and set aside the judgment of the trial Court.

9. In order to substantiate his contentions, the learned counsel for the appellants relied on the following decisions:

1. Ponnuchami Servai v. Balasubramanian alias Suresh-1981II MLJ 455.

2. Sarojini Ammal and 5 Ors. v. Krishnaveni Ammal alias Baby Ammal and 3 Ors. - 1990 1 LW 599.

10. Countering the above contentions, the learned counsel for the respondent would submit that the document what was executed by the

respondent was a Will; that in order to construe the document, the entire

document should be read; that a reading of the document would clearly reveal that he retains the right of revocation; that it is not correct on the part of the appellants to state that there is no contingency in the document; that the contingency in the document itself is implied; that the purpose is also stated therein, and under the circumstances, it has got to be construed as a Will. He would further add that in the instant case, it was not the intention of the defendant to execute a settlement deed, and the same is also evident from the document. In his endeavour, he took the Court to the recitals in the deed.

11. In support of his contentions, the learned counsel for the respondent has placed reliance on the following decisions:

1. Tamil Nadu Electricity Board and 2 others Vs. Maheswari Fish seed Farm and 3 others, .
2. Poongavanam v. Perumal Pillai and Anr. - 1997 I MLJ 169.
3. Mauleshwar Mani and Ors. v. Jagdish Prasad and Ors. - 2002 1 CTC 443.
4. Ramaswami Naidu and Another Vs. Gopalakrishna Naidu and Others, .
5. Ponnuchami Servai v. Balasubramanian alias Suresh and Ors. -1981 II MLJ 455.

12. The Court made its attention on the submissions made and had a perusal of the judgments relied on by either side.

13. Admittedly, the defendant executed a deed on 9.7.1986. The document is also named as one ""Settlement Deed"". Needless to say that merely

because a document is styled as a settlement deed, it should be a settlement deed. The Court has to necessarily look into the recitals of the

document before taking a decision on the question whether it is a settlement deed or otherwise. It would be more appropriate to reproduce the

wordings as employed by the defendant in the document. Ex.A1 reads as follows:

Now that the settlor out of his love and affection towards his wife Smt. Dhanalakshmi the settlee herein is desirous of settling the aforesaid

property for her life time and thereafter after her death the entire property shall be devolved and taken over and may be succeeded to their legal

representatives viz., the children of the settle absolutely with full powers of alienation and dispossession, and in the meantime if the settlee wants to

raise any moneys or funds for her family purposes, for the upliftment of the children she can mortgage the property without any alienation and enjoy

the mesne profits absolutely to herself during her life time. This settlement is revocable, and can be modified at any time during the life time of the

settlor. There is no consideration is passed to the settlor by the settlee for executing this Settlement deed but purely out of love and affection.

14. It is well settled proposition of law that to construe a document as a settlement, there should be a specific or clear and absolute instant

disposition and transfer of interest in the property in preasenti in favour of the beneficiary under the document. In the instant case, the very reading

of the recitals found therein, would clearly reveal that the document is acted upon the very time, and the dispossession has been made in preasenti.

Thus, it would indicate that it is a settlement, if that test is applied. Nowhere in the written statement, the defendant has whispered that it is a Will;

but, it is a settlement and he reserves the right of revocation. It is a matter of surprise to note how the appellate forum took its own view and

branded the document as a Will.

15. Now coming to the contention put forth by the learned counsel for the respondent that he is having the rights reserved for revoking the

document, the Court has to necessarily disagree with him for the simple reason that in a given case like this, once a settlement deed is executed, the

Court has to look into whether the mere statement that he reserves a right of revocation would be suffice, or the document would speak of the

contingencies under which he can revoke the same. A thorough reading of Ex.A1 does not reveal any contingency at all, and thus, the contention

put forth by the learned counsel for the respondent that contingency is employed has got to be discountenanced. Once the entire document is gone

into, as rightly put forth by the learned counsel for the respondent, it would clearly reveal that it is a settlement deed and not a Will at all. Apart

from that, from the evidence available, it would be clear that the entire property was handed over to the first plaintiff, and she has been maintaining

the other plaintiffs and the plaintiffs 2 to 4 were put on education out of the income therefrom, and a part of the property has also been

constructed, and thus, the settlement deed has been acted upon pursuant to the handing over of possession in preasenti. All these would go to

show that it is only a settlement deed and the document has also been acted upon. The mere recital that he reserves the right of revocation, cannot

give him a power of revocation. Under the circumstances, the first appellate Court has thoroughly failed to appreciate the positions, both factual

and legal, and the judgment of the trial Court has got to be restored. Accordingly, the judgment and decree of the first appellate Court are set

aside, and the judgment and decree of the trial Court are restored.

16. In the result, this second appeal is allowed, directing the parties to bear their cost`