

(2016) 07 MAD CK 0059
In the Madras High Court
Case No : Second Appeal No. 196 of 2015

Durairasan

APPELLANT

Vs

D. Kuppuswamy

RESPONDENT

Date of Decision : 29-07-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Evidence Act, 1872 — Section 101, 104

Citation : (2016) 4 CTC 675 : (2016) 3 MadWN(Civil) 396

Hon'ble Judges : Mr. K. Ravichandra Baabu, J.

Bench : Single Bench

Advocate : Mr. S. Thiruvengataswamy, Advocate, for the Appellant; Mr. K.K. Ramakrishnan for M/s. P.T. Rama Devi, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Mr. K. Ravichandra Baabu, J.—The appellant is the plaintiff. The first respondent herein is the first defendant who is none else than the father of the plaintiff. The second and third defendants are Government officials. The appellant as the plaintiff filed the suit to declare the settlement revocation deed dated 23.08.2011 executed by the first defendant as null and void and for permanent injunction restraining the defendants 2 and 3 from registering the name transfer on the basis of the said revocation deed.

2. The trial court decreed the suit in so far as the relief seeking for declaration is concerned and however, rejected the relief of injunction sought against the defendants 2 and 3 as not necessary. The first defendant preferred an appeal before the lower Appellate Court. The appeal was allowed thereby dismissing the suit.

2-A. The case of the plaintiff is as follows:

The suit properties belonged to his father viz., the first defendant. The plaintiff, by putting up a house in the fourth item and cultivating the lands shown as item

1 to 3, is in possession and enjoyment of the suit properties. However on ill advise of some persons, the first defendant filed a suit against the plaintiff for permanent injunction. A compromise was arrived in the Lok Adalat. The first defendant executed a registered settlement deed dated 21.09.2010 in favour of the plaintiff settling the suit properties. Accordingly, a compromise decree was passed on 30.10.2010 in the said suit. As per the terms of the settlement, though the plaintiff was maintaining his mother and the first defendant, due to ill advise of some persons, the first defendant revoked the settlement by way of a deed of revocation dated 23.08.2011 and applied for patta transfer. Hence, the present suit is filed for declaration and permanent injunction.

3. The case of the first defendant is as follows:

The suit properties are the self acquired property of the first defendant and the plaintiff attempted to grab the properties. Hence, he filed the suit in O.S.No.186 of 2009 for permanent injunction against the plaintiff. It is false to state that the first defendant had executed the settlement deed on 21.09.2010 in favour of the plaintiff in pursuance of the compromise arrived before the Lok Adalat. The first defendant had not signed the compromise. The plaintiff has obtained signature of the first defendant in the settlement deed against his desire by assaulting him and his wife and also by threatening to murder. The first defendant was not in conscious state of mind at the time of executing and registering the settlement deed. The possession of the suit properties were not given to the plaintiff. The first defendant has been in possession of the suit properties as a true owner.

4. Before the trial court, the plaintiff examined himself as PW1 and marked Exs. A1 to A20 which include the original registered settlement deed dated 21.09.2010, patta transfer order, transfer of electricity service connection, E.B. Card, electricity charges payment receipt, house tax receipt, extract of chitta adangal, kist receipts, true copy of the lok adalat settlement memo. On the side of the first defendant, he examined himself as DW1, apart from examining two other persons as DW2 and DW3. The first defendant marked Exs. B1 to B25 which are again patta, adangal register, service connection given by the Tamilnadu E.B., house tax receipts, electricity summon charges, etc.,

5. The trial court found that the first defendant has admitted the execution of the settlement deed unequivocally during his cross-examination; that the reasons stated in the revocation deed is not the reasons stated by the first defendant in his statement; that the original settlement deed has been handed over to the plaintiff, as it has been produced before the court from the custody of the plaintiff; that the plaintiff has taken possession of the suit properties in pursuance of the settlement deed on the date of execution itself; that the house tax and revenue records in respect of the suit properties have been transferred in the name of the plaintiff; that the plaintiff has accepted the gift and thus, the same is acted upon; that the first defendant has not proved his contention that the settlement deed was executed under threat, force and assault or when he was in unconscious state of mind; that the first defendant did not give any police

complaint or file any suit to cancel the settlement; that DW2 has no direct knowledge as to whether the plaintiff obtained signature of the first defendant in settlement deed under threat and coercion and that he did not inform the alleged incident to the nearest police station; that the evidence of DW2 is not trustworthy; that the first defendant has not reserved his right to revoke the settlement deed as no such recital is found in the said document and therefore, he has no right to revoke the settlement deed.

6. Based on such factual findings rendered on thorough consideration of the pleadings and the evidence let in by both parties, the trial court granted the decree of declaration and however, rejected the relief of injunction only on the reason that the very revocation deed itself has been declared as null and void and that the defendants 2 and 3 have stated in their written statement that they are ready to abide by the decision of the court.

7. The lower Appellate Court allowed the appeal mainly by observing that the compromise decree made in the Lok Adalat in respect of the injunction suit filed by the first defendant has not been signed by the head and panel members of the Lok Adalat, though the parties and the counsels have signed the terms of the compromise. The lower Appellate Court also came to the conclusion that the first defendant was compelled in the name of Mega Lok Adalat and his signature was obtained in Ex.A3 settlement deed by force and misrepresentation. The specific finding of the lower Appellate Court is that the first defendant was compelled and forced to execute the irrevocable settlement deed on 21.09.2010 under the threat caused by the plaintiff who used the Mega Lok Adalat as a tool to execute the said document. Thus, the lower Appellate Court by allowing the appeal has set aside the judgment and decree of the trial court.

8. Challenging the reversing finding of the lower Appellate Court, the plaintiff filed the present appeal which was admitted by this Court on 08.09.2015 by raising the following substantial questions of law:

"(a) Whether the judgment and decree of the lower Appellate Court is sustainable in law when the plaintiff has proved the valid execution of the registered settlement deed dated 21.09.2010(Ex.A3) and produced documentary evidences to substantiate his peaceful possession and enjoyment of the suit properties after getting the revenue records changed in his name?

(b) Whether the judgment and decree of the lower appellate court is sustainable in law when the first defendant has no authority or any right to execute any document as Cancellation Deed dated 23.08.2011 with the second defendant to cancel the Settlement Deed Ex.A3?

9. Heard Mr. S. Thiruvengatasamy, learned counsel for the appellant and Mr. K.K. Ramakrishnan, learned counsel for the first respondent and perused the materials placed before this court. There is no appearance for the respondents 2 and 3.

10. The learned counsel for the appellant submitted as follows:

The irrevocable registered settlement deed executed on 21.09.2010 was accepted by the plaintiff and acted upon by mutation of revenue records well before the execution of the cancellation deed dated 23.08.2011. Once the settlement is acted upon and the plaintiff has also taken possession, the first defendant has no right to cancel the same. The reason for revocation as found in Ex.B17 is something else, while the first defendant in his written statement has chosen to contend as though there was some threat, coercion, assault, etc., The first defendant did not reserve his right to revoke the settlement deed. The Appellate Court erroneously found that the Lok Adalat compromise was not a valid one, merely because two of its members have not signed, when admittedly parties and the respective counsels have signed the same. When the settlement deed was executed much earlier to the said compromise decree, the lower Appellate Court ought not to have given much importance to the validity of the compromise decree entered into a different suit. The lower Appellate Court proceeded to decide the matter as if it was hearing the appeal against the injunction suit which ended in compromise before the lok adalat. The unilateral cancellation of the settlement is not valid, unless fraud, misrepresentation, etc., are pleaded and proved. The decision made by this court in 2015(2) LW 163, B.K. Rangachari v. L.V. Mohan, is relied on in support of the above contention.

11. Per contra, the learned counsel appearing for the respondent, after reiterating the findings rendered by the lower Appellate Court, has submitted that when there was no valid compromise entered before Lok Adalat, as it did not contain the signatures of the presiding Judge and other member, the settlement deed executed resulting out of such compromise is not valid and therefore, the first defendant has rightly revoked the settlement deed. In support of his submission, the learned counsel relied on 2014 (3) LW 726, Saroja v. R.P. Matheswaran.

12. The point for consideration, based on the substantial questions of law framed by this court, is as to whether the revocation of the settlement is valid in law.

13. As I have already stated the facts of the case and the findings rendered by both the courts in detail, I am not reiterating the same once again, except some factors which are relevant for the purpose of deciding the present second appeal.

14. The plaintiff is the son and the first defendant is the father. There is no dispute to the fact that the suit properties originally belonged to the 1st defendant. Equally the execution of the settlement deed under Ex.A3 dated 21.09.2010 is not disputed by the first defendant, though he has chosen to contend that the same was obtained by compulsion, threat and assault, that too when he was not in a conscious state of mind. Likewise, it is a fact that the recitals under Ex.B17 cancellation deed dated 23.08.2011 are not in line with or similar to the contention raised by the first defendant in his written statement while describing the circumstances under which the cancellation deed came to be

executed. While the reason stated in the cancellation deed is that the plaintiff, in pursuant to settlement, failed to maintain the first defendant and his wife, the first defendant in his written statement has stated that since the settlement deed was obtained by force, threat and coercion, the same was later cancelled. Thus, it is evident that the stand of the 1st defendant is self contradictory. It is also an admitted fact that the first defendant has not given any police complaint immediately after the execution of settlement deed nor he filed any suit to cancel the same before any court of law. On the other hand, nearly after one year, he has chosen to revoke the settlement deed on 28.03.2011. In the mean time, mutation of revenue records has already taken place, by transferring the name of the plaintiff in the relevant records as could be seen from Exs. A3 to A15. The settlement deed has also referred the factum of handing over of the possession of the suit properties to the plaintiff.

15. It is further seen that the original settlement deed was in the possession of the plaintiff who alone produced the same before the court and marked it as Ex.A3. It is also a matter of fact that the first defendant has not reserved his right under the settlement deed to cancel the same at any point of time. The first defendant contended as though he was not in a conscious state of mind at the time of executing and registering the settlement deed. I wonder as to how a person who was not in a conscious state of mind can execute a document, even assuming by force, and go to the Registrar Office along with attesting witnesses and register the same by making necessary signature or thumb impression before the Registering Authority. It is beyond any body's imagination, except for the 1st defendant, that such thing could happen. Hence, the said contention of the first defendant has been rightly found to be false by the trial court especially in view of his admission made in the cross-examination that Ex.A3 Settlement deed was executed by him; that the signature found therein is that of himself; that the said document was registered at the Sub Registrar Office; that the document was written by one Viswanathan, document writer and that the attesting witnesses as well as the plaintiff were there by his side when the document was executed. This categorical admission made by the first defendant falsifies his contention made in the written statement. It only shows that it is nothing but an after thought to support the revocation deed.

16. Further, it is contended by the first defendant that there was no specific acceptance of the settlement by the plaintiff and therefore it has not been acted upon. I do not think that such contention is sustainable in view of the facts and circumstances of the present case. Needless to say that the factum of acceptance of a gift or settlement can be inferred either by the expressed or implied conduct of the donee. Such conduct may be in so many ways. One such conduct indicating the acceptance of the gift is taking possession of the gift deed by the donee without any protest. In other words, the very possession of the settlement deed with the donee will be a sufficient proof to hold that he has accepted the gift, unless he himself has chosen to contend contra. In this case, apart from such conduct of having possession of the document, the plaintiff mutated the

revenue records in his name, in pursuant to the execution of the settlement deed. Thus, it shows that the settlement deed has been accepted by the plaintiff and also been acted upon. The revenue documents marked and relied on by the 1st defendant are seemingly earlier to the settlement deed and therefore, they are not helpful to him in any manner. Even otherwise, once the title is passed on to the plaintiff by way of settlement which has been acted upon by the donee, having the name of the first defendant continuously in the revenue records cannot retain the title in his favour.

17. The lower Appellate Court, no doubt, proceeded to decide against the plaintiff mainly relying upon the procedural lapse committed in the Lok Adalat while recording the compromise between the parties. It is seen that parties to the compromise in the injunction suit viz., the plaintiff herein and the first defendant and also their respective counsels have signed the said compromise. The first panel member has signed whereas the head of the panel and second panel member have not signed. It is very pertinent to note at this juncture that the said award came to be passed on 30.10.2010, wherein the terms of the settlement specifically referred that parties have settled their dispute as advised by the middle men by executing a settlement deed dated 21.09.2010 registered as Doc.No. 984/2010. Therefore, it is evident that on the date of recording such compromise viz., 30.10.2010, already the settlement deed was executed on 21.09.2010 itself i.e., a month ago. Therefore, the lower Appellate Court is not correct in holding that the settlement deed was executed in pursuant to the compromise entered into between the parties before Lok Adalat on 30.10.2010. What was recorded in the Lok Adalat is the settlement arrived between the parties much earlier to the date of such recording. Therefore, the fact remains that on the date of getting the injunction suit dismissed in view of the compromise entered between the parties, already a settlement deed was executed and registered a month's ago. The lower Appellate Court erroneously harped upon the award passed in the lok adalat to decide against the plaintiff on the reason that it was not signed by two other members. In fact if no such compromise was entered into at all, the 1st defendant should have challenged the same in a manner known to law. It appears that no such challenge is made so far.

18. In this case, I have already pointed out that the 1st defendant, except stating in the written statement about the threat and coercion, has not chosen to prove the same through any convincing evidence. On the other hand, his plea in the written statement contradicts the recitals made by him in the revocation deed. If the settlement deed was obtained under threat and coercion as alleged by the first defendant, he would have definitely stated the same as reasons in his deed of revocation. No such recitals are made in the revocation deed. Therefore, it is very clear that the contention of the first defendant with regard to the so called threat and coercion is an after thought. At this juncture, the recent decision of this court reported in 2015(2)LW 163, B.K. Rangachari v. L.V. Mohan, relied on by the learned counsel for the appellant is useful to be referred to. After

analysing various case laws on this issue, the learned Judge has observed at paragraph No.10 as follows:

"10. From the above judgments, it is clear that the settlement deed cannot be cancelled unless either one of the elements of fraud, misrepresentation, undue influence or coercion is present. Such revocation is also possible only through a civil court. In S. Ganesan's case (supra), relying upon the judgment of the Apex Court reported in 2004 (1) CTC 146 SC (K. Balakrishnan" case), this court has held that the settlement deed would not be invalidated on the ground that possession was not handed over to the donee or because donee failed to mutate the records. The judgment is squarely applicable to the present facts of the case."

19. The decision relied on by the learned counsel for the first respondent reported in 2015 (2) LW 726, Saroja v. R.P. Matheswaran, is not applicable to the facts and circumstances of the present case. In that case, the learned Judge has pointed out that the settlement deed therein was executed by misrepresentation and fraud and that the same was not acted upon by putting possession of the properties as well. Therefore, the said decision upholding the revocation of settlement deed based on the factual findings rendered cannot be pressed into service in this case, when the facts herein are totally different and distinguishable.

20. Therefore, I find that the learned Appellate Court totally erred in reversing the well considered judgment and decree of the trial court. Accordingly, I find that both the questions of law raised in this second appeal are to be answered in favour of the appellant/plaintiff and thus, they are answered as above. Consequently, the second appeal is allowed and the judgment and decree of the appellate court are set aside and the judgment and decree of the trial court are restored. No costs.