

(2012) 08 MAD CK 0102

In the Madras High Court

Case No : Appeal Suit No. 850 of 2010 and M.P. No. 1 of 2010

G. Mohanvelu

APPELLANT

Vs

G. Kokila and Others

RESPONDENT

Date of Decision : 02-08-2012

Acts Referred:

Contract Act, 1872 — Section 25

Transfer of Property Act, 1882 — Section 123, 53

Citation : (2012) 4 LW 702

Hon'ble Judges : R. Karupiah, J;C. Nagappan, J

Bench : Division Bench

Advocate : K.A. Ramakrishnan, for the Appellant; T. Karunakaran for R1 No Appearance for RR2 to 5, for the Respondent

Final Decision : Allowed

Judgement

C. Nagappan, J.—This appeal is preferred against the judgment and decree dated 29.4.2010, passed in O.S.No.25 of 2007 by the learned District Judge, Tiruvannamalai. The second defendant is the appellant. The first respondent herein/plaintiff filed the suit seeking for a judgment and decree for division of the suit properties into six equal shares and allot one such share to the plaintiff and put her in separate possession of the same and for a permanent injunction restraining the defendants from alienating the suit properties to third parties before the partition and allotment of share to the plaintiff, and for costs also.

2. The case of the plaintiff is that her father A. Govindasamy was doing real estate business and was also a building contractor at Bangalore and he purchased the suit properties out of his personal income in his name as well as in the name of his wife, who was only a name lender, and he died on 15.7.1999, at Bangalore leaving his wife, the first defendant, his two sons, namely defendants 2 and 3, and three daughters, namely defendants 4 and 5 and the plaintiff, as his legal heirs to succeed to his properties. It is further stated by the plaintiff that the second defendant has been managing the properties as being the eldest male

member in the family and the third defendant is unmarried and they are all as joint owners, were in joint possession of the properties and they are entitled to 1/6th share each.

3. According to the plaintiff, defendants 2 and 3 obtained her signature in some deed representing that they needed them for giving some of the Bangalore properties for rent and now they are saying that they obtained release deed from the plaintiff releasing her rights in Bangalore properties and even if there is any such document, it would not bind her. It is also stated by the plaintiff that she wanted partition of her 1/6th share and defendants 2 and 3 were avoiding it on some pretext or other and hence she has filed the suit.

4. Defendants 1 and 2 in their joint written statement, which was adopted by defendants 3 to 5, have admitted the relationship of parties as mentioned in the plaint, and have further stated that the suit properties were purchased by A. Govindasamy and he was doing real estate business besides being a building contractor. It is also stated in their written statement, that the first defendant was provided with financial assistance by her parents to purchase properties in her name and her husband did not contribute money for the purchase of properties standing in her name.

5. It is also stated in their written statement, that item I(c) and I(f) would refer to one and the same property and the properties purchased by first defendant, absolutely belong to her and they cannot be subjected to any partition. It is further averred in their written statement, that the other suit items standing in the name of A. Govindasamy, were purchased out of his own earnings and he died on 15.7.1999.

6. According to the defendants 1 and 2, the plaintiff was given in marriage to one J. Gajendiran and in March 2000, the plaintiff sought for partition of the properties left by her father and a panchayat was conducted and the first defendant offered to give the property in Vengikkal Village, measuring 1,573 sq. ft. to the plaintiff and sold the same in favour of the plaintiff without receiving any consideration and later, the plaintiff sold the said property for a good price in favour of one Vijayakumar by registered sale deed dated 4.1.2001. It is further stated in their written statement, that in such circumstances, the plaintiff is not entitled to any share in the properties left by her father A. Govindasamy and moreover, the plaintiff duly executed a registered release deed dated 29.4.2005, in favour of the second defendant relinquishing her share in item I(c) of the suit properties and hence she cannot seek a share in the said item, in which she had already relinquished her share under the registered release deed.

7. It is further averred in their written statement, that after having executed the release deed dated 29.4.2005, the plaintiff now wants to go back by stating that defendants 2 and 3 obtained her signature for renting out Bangalore properties. It is also specifically stated by defendants 1 and 2 in their written statement, that as a matter of fact, the plaintiff duly executed the release deed dated

29.4.2005, and got it registered before the Sub-Registrar and the said document is true and valid and is binding on the plaintiff and in the absence of a prayer for declaration that the release deed is not binding on her, by paying the requisite Court Fee, the suit itself is not maintainable.

8. The trial Court framed three issues for consideration and the plaintiff examined herself as P.W.1 and marked Exs.A1 to A16 on her side and the defendants 1, 2 and 4 examined themselves as D.Ws.1 to 3 respectively and Exs.B1 to B28 came to be marked on their side. On a consideration of oral and documentary evidence, the trial Court held that items I(b), I(d), II(b), II(e) and II(f) of the suit properties are the separate and self-acquired properties of the first defendant and the plaintiff is not entitled to claim partition and separate possession in the said properties and in respect of other items of the suit properties, the plaintiff is entitled to partition and separate possession of 1/6th share and at the same time, she is not entitled to the relief of permanent injunction and accordingly, granted partition preliminary decree in respect of the suit properties except items I(b), I(d), II(b), II(e) and II(f), and dismissed the suit as regards the relief of permanent injunction. Aggrieved by the judgment and decree in respect of item I(c) of the suit properties, the second defendant has preferred the present appeal. For the sake of convenience, in this judgment, the parties are referred to as arrayed in the Original Suit.

9. Learned Counsel for the appellant/second defendant submits that the plaintiff has clearly admitted the execution and registration of Ex.B11 release deed, dated 29.4.2005, by her in favour of the appellant/second defendant and the plaintiff has not alleged fraud in the execution of the said release deed and has also not prayed for setting aside the release deed and hence the plaintiff is not entitled to the relief of partition with regard to item I(c) of the suit properties and the trial Court misdirected itself by erroneously casting the burden on the defendants and its conclusion that the property in item I(c) is divisible is erroneous and the judgment and decree relating to the said property, are liable to be set aside.

10. Per contra, learned Counsel for the first respondent/plaintiff submits that no consideration is mentioned in Ex.B11 release deed, and hence the same is hit by Section 25 of the Contract Act and the plaintiff has alleged in the plaint, that Ex.B11 release deed, does not bind her and thus denied its execution and the first defendant has failed to prove the release deed in the manner known to law and the conclusion of the trial Court that the plaintiff is entitled to 1/6th share in item I(c) of the suit properties is sustainable.

11. We considered the rival submissions and perused the material records.

12. The points for determination in the appeal, are as to whether item I(c) of the suit properties is available for partition and whether the plaintiff is entitled to any share in it?

13. The relationship between the parties is admitted. Defendants 2 and 3 are sons and defendants 4 and 5 and the plaintiff are daughters of deceased

A.Govindasamy and the first defendant. It is also admitted that A.Govindasamy was doing real estate business and was a building contractor at Bangalore and he purchased some of the properties in his own name and he died intestate on 15.7.1999 at Bangalore, leaving the plaintiff and the defendants as his legal heirs. Some of the suit properties are standing in the name of the first defendant Saroja and the plaintiff has sought for 1/6th share in the properties standing in the name of Govindasamy as well as in the name of the first defendant Saroja. The trial Court held that the properties standing in the name of first defendant Saroja, are her separate and self-acquired properties and the plaintiff is not entitled to claim partition and separate possession in those properties. The said finding being not challenged, has become final. At the same time, the trial Court has granted decree for partition and separate possession of 1/6th share to the plaintiff with regard to other suit properties. Second defendant has preferred this appeal only with regard to the decree of partition granted in respect of item I(c) of the suit properties alone. There is no appeal preferred against the decree granted with regard to other suit properties standing in the name of Govindasamy, and that has become final. It is also relevant to point out that the suit properties mentioned in item I(c) and I(f) are one and the same. In the impugned judgment, the said property is mentioned as item I(c) of the suit properties and in the appeal memorandum also, the property appealed against, is mentioned only as item I(c) and in this judgment also, the subject property in the appeal, is referred to only as item I(c) of the suit properties.

14. Item I(c) of the suit properties is the terraced building and premises bearing Katha No.181, in Plot No.19, situated at Kammanhalli Village, Bangalore. Ex.B11 is the release deed, dated 29.4.2005, executed by the plaintiff in favour of her brother, the second defendant, releasing her 1/6th undivided right, title and interest in item I(c) of the suit properties. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof would be on a person, who leads his evidence to rebut the presumption. The relevant averments in the plaint with regard to the said document, read thus:

5..... The plaintiff submits that defendants 2 and 3 obtained her signature in some deed representing that they needed them for giving some of the Bangalore properties for rent. Now they are saying they obtained release deed from her other rights in Bangalore properties. Even if there are any such document they are frequently and would not bind her.

15. The plaintiff has not alleged fraud in the execution of the release deed. In the cross-examination as P.W.1, the plaintiff has admitted the execution of Ex.B11 release deed, in clear terms. For better appreciation, the relevant portion of her testimony in the cross-examination is extracted below:

16. The plaintiff in the averments in the plaint as well as in her testimony in cross-examination, has admitted that she put her signature in the release deed and the same was registered. In fact, the signature and thumb impression of the

plaintiff in Ex.B11 release deed, have been marked as Exs.B5 and B6 respectively. The contention of the learned Counsel for the first respondent/ plaintiff that the transfer effected in Ex.B11 release deed, is a fraudulent transfer as contemplated u/s 53 of the Transfer of Property Act, cannot be accepted for the reason that there is no allegation of fraud made by the plaintiff in the plaint.

17. The next contention of the learned Counsel for the first respondent is that release is made without any consideration and hence the same is hit by Section 25 of the Contract Act. Per contra, learned Counsel for the appellant submits that the relinquishment of share in the Indian context, may be for consideration or may not be for consideration and Section 25 of the Contract Act must be read and construed having regard to the factual situation in the present case and the relinquishment of a property by a sister in favour of her brother even in the absence of consideration, is valid in law. In support of the respective contentions, learned Counsel on either side, relied on the same decision of the Supreme Court in Ranganayakamma and Another Vs. K.S. Prakash (D) by L.Rs. and Others, .

18. Their Lordships of the Supreme Court in the said decision, considered as to what is meant by "release" and have laid down as follows:

48. We may now consider the submission of Mr Chandrashekhar as to what is meant by release. Reliance has been placed on De'Souza's Conveyancing, p. 1075, wherein it has been stated:

A deed of release does not create title. A release may be drafted in the same form as a deed of transfer or simply as a deed poll or a deed to which both parties may join stating the circumstances under which the release is based. Either the monetary consideration or the premises i.e. facts in consideration of which the release is made shall be stated.

49. Our attention has also been drawn to essentials of release from the said treatise, which are as under:

- (i) Full recitals of the origin of the claim, which form the most important part;
- (ii) Knowledge of the releaser about the claim, intended to be released;
- (iii) Words and expressions sufficiently clear to convey the intention of the releaser to discharge the right or the claim.

50. A deed of release for a consideration is a transaction. When, thus, a release is made for consideration, the particulars of consideration and other particulars which (sic) are required to be averred in the deed being essential elements thereof. Relinquishment of a property by a sister in favour of her brother for a consideration or absence of it, stands on a different footing. Section 25 of the Contract Act must be read and construed having regard to the fact situation obtaining in the cases. In Manali Singhal and Anr Vs. Ravi Singhal and others, , it was held:

20. Learned counsel for the defendants has then argued that the impugned

settlement is without any consideration. Hence the same is hit by Section 25 of the Contract Act. The contention of the learned counsel may be an ingenious one but can be brushed aside without any difficulty. Parties more often than not settle their disputes amongst themselves without the assistance of the court in order to give quietus to their disputes once and for all. The underlying idea while doing so is to bring an era of peace and harmony into the family and to put an end to the discord, disharmony, acrimony and bickering. Thus the consideration in such type of settlements is love and affection, peace and harmony and satisfaction to flow there from.

52. Renunciation in the Indian context may be for consideration or may not be for consideration. This has been so held by this Court in *Kuppuswamy Chettiar Vs. A.S.P.A. Arumugam Chettiar and Another*, in the following terms:

4. In the present case, the release was without any consideration. But property may be transferred without consideration. Such a transfer is a gift. u/s 123 of the Transfer of Property Act, 1882, a gift may be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. Consequently, a registered instrument releasing the right, title and interest of the releaser without consideration may operate as a transfer by way of a gift, if the document clearly shows an intention to effect the transfer and is signed by or on behalf of the releaser and attested by at least two witnesses. Exhibit B-1 stated that the releaser was the owner of the properties. It showed an intention to transfer his title and its operative words sufficiently conveyed the title. The instrument, on its true construction, took effect as a gift. The gift was effectively made by a registered instrument signed by the donor and attested by more than two witnesses.

53. The question again came up for consideration before a Special Bench of the Madras High Court in *The Chief Controlling Revenue Authority, Board of Revenue, Madras Vs. K. Manjunatha Rai*, in the context of the payment of stamp duty wherein it was categorically held:

14. For a release, in law, may be effected either for consideration or for no consideration. In either case, if the transaction operates as a relinquishment or a renunciation of a claim by one person against another or against a specified property, it will be a release.

It is, therefore, not a pure question of law.

19. In the light of the legal propositions laid down by the Apex Court in the above decision, the facts of the present case have to be seen. The plaintiff is the sister of the second defendant and she has executed Ex.B11 release deed, releasing her 1/6th undivided share in item I(c) of the suit properties in favour of the second defendant. For better appreciation, the relevant recitals in Ex.B11 release deed, are extracted below:

WHEREAS the said Sri. A.Govindaswamy the father of the parties herein passed

intestate on 15.07.1999 leaving behind the Releasor, Releasee and two daughters and one son and his wife Smt. G. Sarojamma. Subsequent to death of Sri. A. Govindaswamy the children and wife Smt. G. Sarojamma are in joint possession and enjoyment of the said property and thus each having 1/6th undivided right, share, title and interest over the said property. Subsequent to death of Sri. A. Govindaswamy the Katha in respect of the above property has been transferred in the name of Smt. G. Sarojamma, the mother of the parties herein.

WHEREAS the mother of the parties herein and Smt. G. Sumathi have Released and relinquished their 2/6th undivided share in the above property in favour of the Releasee through a Registered Release dated 15.12.2003, which Document has been Registered as No. 36262/03-04, in Book-1, in the office of the Sub-Registrar, Bangalore North Taluk, Bangalore.

WHEREAS another sister Smt. R. Amruthaveni also released her 1/6th undivided share in favour of the Release herein through a Registered Deed of release dated 6.11.2004, which Document has been Registered as No.33569/2004-2005, in the Office of the Sub-Registrar, Bangalore North Taluk, Bangalore.

WHEREAS the above property does not call for equal partition and the Releaser is not interested to continue to be the joint owner of the above property has decided to release and relinquish her 1/6th undivided right, title and interest in the above property in favour of the Release herein.

NOW, THEREFORE, THIS DEED OF RELEASE WITNESSETH:-

The Releasor hereby releases, transfers and renounces all her right, title and claim in regard to the property to the Katha No.181, Assessment No.4/1, Plot No.19, situated at Kammanahalli Village, Kacharakana Dhakale, Kasaba Hobli, Bangalore North Taluk, Now B.M.P.No.808/A, Nehru Road, Kacharakana Halli, Bangalore, together with building standing thereon, which is more particularly described in the schedule hereunder in favour of the Release to HAVE AND TO HOLD the same as absolute owner freed from every right, title and interest of the Releaser or other person/s claiming through or under her the Releaser has this day Released and relinquished her 1/6th undivided right, title and interest in the schedule property in favour of the Release and he shall be entitled to enjoy 5/6th share in the schedule property and he deal with the schedule property in any manner he deems fit absolutely without any form of interference from the Releaser.

20. It is true that the release has been made in the above deed without any consideration. But, the contention of the first respondent/plaintiff that it is hit by Section 25 of the Contract Act has to be negated for the reason that relinquishment in the Indian context, may be for consideration or may not be for consideration as held by the Supreme Court in the decision referred above. Ex.B11 release deed, is signed by the Releasor and attested by two witnesses and it is a registered instrument. The execution of the same has also been

admitted by the plaintiff in clear terms as discussed supra.

21. The plaintiff has not challenged Ex.B11 release deed, in the plaint and has also not asked for the relief of cancellation or setting aside of the same. No such plea was raised and no issue has been framed in that regard. But, the trial Court erroneously has held that the plaintiff has challenged the execution of Ex.B11 release deed, and duty is cast upon the defendants to establish that the said release deed is true and valid. Its conclusion that it is not prudent to place reliance on the relinquishment plea set up by the defendants based on Ex.B11 release deed, is erroneous in law and liable to be set aside. In view of the above, Ex.B11 release deed, executed by the plaintiff, is valid in law and the plaintiff having relinquished her 1/6th undivided share in item I(c) of the suit properties in favour of the second defendant, is not entitled to seek for partition of the said property in this suit. The points are determined accordingly. In the result, this appeal is allowed and the judgment and decree of the trial Court insofar as granting the relief of partition and separate possession of 1/6th share of the plaintiff in item I(c) of the suit properties, are set aside and the suit shall stand dismissed with regard to item I(c) of the suit properties. However, considering the relationship of the parties, there shall be no order as to costs. Consequently, connected MP is closed.