
(1999) 08 MAD CK 0096
In the Madras High Court

Kamalammal and Others

APPELLANT

Vs

Parvathi Ammal and Others

RESPONDENT

Date of Decision : 20-08-1999

Acts Referred:

Citation : (1999) 3 MLJ 598

Hon'ble Judges : A. Subbulakshmy, J

Bench : Division Bench

Judgement

A. Subbulakshmy, J.—Defendants 1 to 4 are the appellants.

2. The case of the plaintiffs is as follows:

The plaintiff Muthusamy Naicker, Krishna Naicker and Narayana Naicker were brothers and constituted an Hindu undivided family. They -possessed extensive and valuable joint family properties. On 5.6.1951, the four brothers and one Chinnapillai Ammal alias Nagammal entered into a registered partition deed and divided all their family properties. In the said partition A Schedule properties were allotted to the share of Munusami Naicker, the plaintiff Even at the time of the partition, the plaintiff was of weak intellect and poor understanding. His next younger brother Muthusamy Naicker was a very capable and suitable person and the plaintiff allowed his entire share to be managed by the said Muthusamy Naicker after partition. The income from the properties allotted to the plaintiff was considerable. The plaintiff had no children and even Muthusamy Naicker had no children. The latter had an invalid wife whose limbs were paralysed and therefore unable to move. The plaintiff and the said Muthusamy Naicker lived together in the same house. They had only common mess and the plaintiff's next friend was managing the house while Muthusamy Naicker managed the entire properties of the plaintiff all the while along with his own properties. The suit properties thus exclusively belong to the plaintiff got by partition and later improved from the income of the said properties. The said Muthusamy Naicker sent away his wife to her parent's house about 13 years ago. He married the first defendant who does not belong to the caste of the plaintiff. Defendants 2 to

4 are the issues of Muthusamy Naicker through the first defendant. Muthusamy Naicker was managing the properties and he acquired substantial buildings in the vacant plot near Shanmugham Talkies and a rice mill out of the income from the plaintiff's properties. The plaintiff had no children and his wife brought up one Loganathan who is the son of the brother of the plaintiff's next friend. Muthusamy Naicker was also well disposed to the said Loganathan. The plaintiff desired eventually to give the bulk of his properties to the said foster child whose mother died a few years after he came to live with the plaintiff. When Muthusamy Naicker was managing the properties, some misunderstanding arose between him and the plaintiff's next friend because he was found to be scheming to get at the entire properties of the plaintiff. As the plaintiff was of weak intellect and poor understanding, his next friend wanted to take upon the responsibilities of looking after the affairs of the plaintiff with the help of their foster son Loganathan. But, for carrying out his nefarious intentions the said Muthusamy Naicker and his henchmen abducted the plaintiff on 2.1.71 when the next friend was away from the house and fraudulently obtained a settlement deed from the plaintiff in favour of himself and his son and as a counter blast, he set up a case that the sale to the next friend of the plaintiff was nominal. Muthusamy Naicker got the sale deed registered at Madras. The plaintiff was completely under the influence of Muthusamy Naicker and he had not independent advice. Suddenly on 5.1.71, the document was executed and the plaintiff was not a willing party to the settlement deed. As he had been of unsound mind and unable to know the nature of the transaction, the settlement deed is void and of no effect. The settlement deed covers the entire suit properties and nothing is left undisposed of. The plaintiff would not have executed the document for he was not of sound mind. So, the settlement deed is ab initio void and it is liable to be set aside. The plaintiff's next friend has filed a petition in O.P.No. 10 of 1971 on the file of the District Judge, Salem under the Lunacy Act for the appointment of a guardian for the plaintiff because he has been of unsound mind and incapable of managing his estate and that case is still pending. Muthusamy Naicker died on 6.11.1971 and after his death defendants 1 to 4 are in possession of the properties as his legal representatives. Defendants 5 to 18 are in possession of the properties as tenants and lessees under Muthusamy Naicker and later on under defendants 1 to 4 who are claiming under a Will alleged to have been left by Muthusamy Naicker. Muthusamy Naicker is liable to account to the plaintiff for at least six years prior to the suit upto the death of the plaintiff. Defendants 1 to 4 are in possession of the estate of Muthusamy Naicker also. The plaintiff is entitled to get possession of the suit properties from the defendants, Hence, the suit is filed for recovery of possession, for accounting and for mesne profits.

3. Defendants 1 to 4 filed written statement contending as follows:

The plaintiff is not of a person of unsound mind and the suit filed by the next friend is untenable. Muthusamy Naicker was a contractor and was earning well and was influential. He constructed shops and buildings in Ayyasamy Chetty

Road and also the rice mill building partly in his own share and partly in the share of Munusamy Naicker. The plaintiff never objected to such constructions. The plaintiff used to reside both in the house of Muthusamy Naicker and also in his own house. Muthusamy Naicker executed a sale deed in respect of 35 cents of land near Jawahar Mills in favour of Munusamy Naicker's wife and thereafter constructed a modern building that area at the cost of nearly one lakh. Though Muthusamy Naicker continued to be in possession of the said building, he allowed the plaintiff and his wife to reside there as long as they pleased. Muthusamy Naicker married the first defendant according to caste, custom long after the divorce of his first wife. The plaintiff was in a perfect state of mind and the settlement deed dated 5.1.1971 is perfectly valid. Munusamy Naicker was always very affectionate towards Muthusamy Naicker and his children. The properties were duly handed over to the settlees. Till the date of settlement, only Munusamy Naicker was in possession and there was no question of any accounting the properties and handing over of possession. The plaintiff has no right over the properties after 5.1.1971, The plaintiff is not entitled to any relief.

4. 16th defendant filed written statement contending as follows:

This defendant is in possession of the property as tenant and after the death of Munusamy Naicker, Muthusamy Naicker, wife the first defendant is receiving the rent. This defendant is in lawful possession of the property as a tenant.

5. The suit was tried by the Sub-Judge, Salem and it was decreed.

6. As against that judgment, the present appeal is filed by defendants 1 to 4.

7. Points that arise for determination are whether the settlement deed dated 5.1.1971 was not validly executed and whether the plaintiff is entitled to recovery of possession, accounting and mesne profits.

8. The joint family consisting of the plaintiff and his brothers. Muthusamy Naicker, Krishna Naicker and Narayana Naicker possessed extensive properties. On 5.6.1951, under Ex. A-1, the above said brothers and one Chinnapillai Ammal alias Nagammal divided the properties and under the partition, the suit properties were allotted to the share of Munusamy Naicker, the plaintiff. According to the plaintiff, the plaintiff was of weak intellect and poor understanding for the past 17 years and taking advantage of that the first plaintiff's next younger brother Muthusamy Naicker abducted the first plaintiff Munusamy Naicker when the plaintiff was away and obtained the settlement deed dated 5.1.1971 and the plaintiff was not a willing party to the settlement deed and the first plaintiff was in an unsound state of mind and the settlement deed is void and the defendants are in possession of the properties and so, the plaintiff is entitled to recovery of possession of the suit properties. Later the first plaintiff died. His wife Parvathy Ammal was brought on record as the second plaintiff. The defendants contend that on 5.1.1971, Munusamy Naicker was in a perfect state of mind and the alleged settlement deed is perfectly valid and by virtue of the settlement deed, the properties are in possession of the defendants

and the plaintiff is not entitled to the relief asked for.

9. Counsel for the plaintiff vehemently argued that the first plaintiff Munusamy Naicker was in an unsound state of mind and he was not able to understand and so the document styled as settlement deed Ex.A-5 is a void document.

10. On the other hand, counsel for the defendants submitted that the plaintiffs have no issues and the first plaintiff Munusamy Naicker wanted to give his properties to his brother and brother's son. The property being joint family properties and only with the sole intention of giving the properties to his brother and brother's son, the first plaintiff executed the settlement deed in their favour and he was in a sound state of mind and his wife, the second plaintiff with a view to give the property to her brother's son, wants to grab at the property as the legal heir of her husband and only with that view, she figuring as the next friend of the first plaintiff has come forward with this suit and the settlement deed was executed when he was in a sound state of mind and it is a valid document.

11. Learned trial Judge has found that the first plaintiff was in an unsound state of mind on 5.1.1971 and before that and so, the settlement deed dated 5.1.1971 is ab initio void.

12. P.W.1 speaks in her evidence that her husband Munusamy was in an unsound state of mind and he took treatment in mental hospital, Salem for three months, but he did not recover at all and only during that state of things, this document has got executed. Her evidence shows that the first plaintiff Munusamy Naicker and his brother Muthusamy Naicker were living together and his brother Muthusamy Naicker was looking after the affairs of Munusamy Naicker. P. W. 1 further speaks in her evidence that she filed O.P.No. 10 of 1971 for appointing herself as guardian for her husband as her husband was not a sound person. Ex.A-6 is the copy of the petition. Ex.A-7 is the photostate copy of final order passed by the District Judge in that O.P. The learned District Judge has observed in Ex.A-7 that the plaintiff was a person of unsound mind incapable of managing his affairs although capable of managing himself and is not dangerous to himself or to others. Accordingly he has appointed the petitioner therein as manager for the estate of the lunatic. So, the observation of the District Judge is that the plaintiff was capable of managing himself and he was incapable of managing his affairs and he was not dangerous to others. The plaintiff relies upon the medical certificates issued by Dr. S.P. Marappan under Exs.A-8 and A-9 and by Dr. K. Kailasam under Ex.A-10, Ex.A-11 is the certified copy of the deposition of P.W.1 Dr. N. Conelio, the medical officer attached to the Government Mental Hospital, Madras, He is the specialist in Psychiatric and was working in Government Hospital and he admitted Munusamy in that hospital and gave treatment on 2.5.1972. The said Munusamy was going to the recreation centre under medical supervision. Ex.A-11 shows that Dr. Conrelino, on 31.5.1972, on examination, found that Munusamy Naicker was found to be fairly cooperative, quiet and moderately interacting with other inmates and staff and on 6.6.1972, he was seen to attend to his personal needs and he was quiet. Ex.A-12 shows that

Munusamy Naicker should have been suffering from mental illness prior to his examination. Ex.A-24 certificate was issued by Dr. Ramdoss, Tutor in mental diseases, Government Kilpauk Medical College, Madras, He has stated in Ex.A-24 that the said Munusamy Naicker must have been suffering from psychosis for a long period. Ex.A-26 medical certificate also shows that the said Munusamy was found mentally and physically retarded and he needed supervision almost at all times and he was incapable of managing his affairs. Relying upon these documents, the counsel for the plaintiff submitted that Munusamy was a man of unsound state of mind and he had no capacity to execute any valid document.

13. The plaintiff also examined P.W.3 doctor who states that he gave certificate Exs.A-8 and A-9 and Munusamy was suffering from Schizophrenia. P.W.4 the doctor also examined the said Munusamy and has given Ex.A-10 stating that Munusamy was of unsound mind. P. W.4 is not a specialist in psychiatric.

14. D. W.5 Dr. Somasundaram who is the specialist in Psychiatric examined the plaintiff Munusamy on 10.1.1971 and 11.1.1971 has given Ex.B-8. He has filed his notes Ex.B-7. He states that Munusamy Naicker was in a sound state of mind at the that time. In the certificate Ex.B-8, he has stated that he examined Munusamy Naicker and the physical examination did not reveal any abnormality and mentally he is in contact with the surroundings, though slow in answering, he is oriented to time, place and persons and his emotion reactions were normal and speech was normal and no hallucination or delusion was seen and he could enumerate the immovable property though not sure of the value. It is further stated in Ex.B-8 that the said Munusamy told that the property should go to his brother's son. The doctor has stated in Ex.B-8 that his opinion is that he is a sane person and he has a disposable state of mind.

15. The doctors examined on the side of the plaintiff P.Ws.3 and 4 are not specialists in psychiatric whereas D. W.5 the doctor examined on the side of the defendant is a specialist in psychiatric and he was also working in Kilpauk Mental Hospital. So much weight is to be attached to his evidence than the evidence of P.Ws.3 and 4. D.W.5 in his evidence has stated that Munusamy was capable of managing himself.

16. Learned Trial Judge found that D.W.5 has not offered any explanation with reference to original of Ex.B-7 inasmuch as he has conceded in the cross-examination that the particulars in Ex.B-7 had been given by Muthusamy Naicker as Munusamy Naicker could not furnish the same, he was inclined to accept the contention of the plaintiff's counsel. He found that as seen from Exs.A-13 to A-26 relating to the examination of Munusamy Naicker in the Government Mental Hospital the said Munusamy Naicker cannot be said to be sane. Accordingly, he found that the circumstances would reveal that the medical evidence adduced by the plaintiff, is reliable and had come to irresistible conclusion that Munusamy was in an unsound state of mind.

17. A perusal of the evidence of P.Ws.3 and 4 establishes that it cannot be said

to be entitled to any credence when there is the evidence of the expert Ex.D. W.5. The learned District Judge who had examined the plaintiff passed the order that he was not capable of managing his affairs although capable of managing himself and is not dangerous to himself or to others. The second plaintiff has issued notice to Muthusamy Naicker under Ex.A-2 and also effected paper publication under Ex.A-3 stating that the said Munusamy Naicker was a mentally affected person and he has been abducted by Muthusamy for creating documents. The evidence of D.W.5 clearly establishes that Munusamy Naicker was a sane person at that time. The learned trial Judge found that lack of qualification in psychiatric for P.Ws.3 and 4 is not a ground for brushing aside their evidence. But, the expert's opinion is to be preferred in the place of the opinion given by a general doctor. D.W.5 who is specially qualified in the field of psychiatry has given evidence that Munusamy was of sound mind at that time. Hence, I am of the view that reliance can be placed on the evidence of D.W.5. So, the said Munusamy was capable of understanding things and he was in a position to execute documents. D.W.5 has also spoken in his evidence that Munusamy told him when he was questioned that he was going to give the property to his own brother. So, it is well evident that the first plaintiff Munusamy was capable of understanding things and he was fit to execute documents.

18. The expression "unsound" implies some unusual feature of the mind as has tended to make it different from the normal and has in effect impaired the man's capacity to look after his affairs in a manner in which another person without such mental irregularity would be able to do in a matter of his own. The idea suggests some derangement of the mind, whatever, be its degree, and it is not to be confused with or taken as analogous to a mere mental weakness or lack of intelligence. In AIR 1926 Cal. 155 , it has been held that

A person whose mental condition has been affected by the stroke of paralysis from which he suffered and both owing to this and owing to his age his memory has been seriously affected and he is unable to recognize his relations, but he is able to answer questions with regard to his estate with a certain amount of intelligence, and also questions with regard to his family, cannot be said to be of unsound mind and incapable of managing himself and his affairs.

In AIR 1934 27 (Nagpur) it has been observed that a person who is not sufficiently intelligent to manage his own affairs is not necessarily of unsound mind. In *Joshi Ram Krishan v. Rukmini Bai* 1949 A.L.J. 158, it has been held that:

A man may find it difficult to answer questions of a particular class but if he intelligently answers questions of various other sorts concerning himself, his family and property, he cannot be classed with men of unsound mind being unable to manage their affairs.

From the above decisions, it is evident that if a man is able to understand and answer questions on various matters excepting to arithmetical calculations, he cannot be regarded as mentally unsound, although he would be held as having a

weak or undeveloped mind.

19. The evidence of D.W.1 is that Munusamy Naicker, her husband's brother used to come to her husband and talk with the children since he had no issues and only her husband was looking after the affairs of Munusamy and managing the properties. She has further stated that since the plaintiffs have no issues, P. W. 1 was pressing her husband the first plaintiff to give the properties to her brother's son Loganathan and because she was pressing like that, the first plaintiff Munusamy Naicker executed the settlement deed in favour of his brother and brother's son and both her husband's brother and her husband the first plaintiff Munusamy went to Madras. Consulted an advocate and wrote the document and Munusamy was sane and he validly wrote that document. D.W.2 the Village Administrative Officer speaks in his evidence that till the death of Munusamy, he was in sound state of mind and only D. W. 1 is in possession of the suit properties. So, the evidence of D. Ws. show that Munusamy Naicker Validly executed the settlement deed Ex.B-4 and presented for registration. D.W.3 is the scribe of Ex.B-4. He states that the document was written in Madras and registered in Madras and one day prior to the execution of the document, the first plaintiff, his brother Muthusamy Naicker, Kumara Gounder, Palanichamy and D. W. 1 all came to Madras. He states that only the first plaintiff Munusamy Naicker consulted the advocate at Madras and the Advocate prepared one draft and then, he wrote Ex.B-4. He states that to that advocate only Munusamy Naicker gave all the particulars and after writing Ex.B-4, it was read over to the first plaintiff and he accepted it and then, he signed it. The evidence of D.W.3 is that Munusamy Naicker was in a sound state of mind at that time, He has also stated that Palanichamy and Kumara Gounder attested Ex.B-4. He states that they all came to Madras by car and only on consultation with the advocate, the document was written and Ex.B-4 was not fraudulently obtained. D.W.4 was working as District Registrar in Madras in the year 1971. He registered the document Ex.B-4 dated 5.1.71. He has stated that only Munusamy Naicker executed the document Ex.B-4. and his thumb impression was obtained in that document and he went through that document and asked the first plaintiff Munusamy Naicker and he replied that he has executing the document in favour of his brother and brother's children. He states that Munusamy understood everything and then only he answered. Even though in cross-examination he has stated that he did not see Munusamy Naicker before 5.1.1971, his evidence is that when he questioned Munusamy, he understood and then only he obtained his thumb impression. He states that he questioned the first plaintiff Munusamy only to ascertain whether Munusamy Naicker was executing the document out of his own free will. His evidence cannot be brushed aside. Normally, an officer who registers a document used to question the person executing a document and accordingly he had examined. His evidence also shows that Munusamy was capable of understanding and he was in a sound state of mind and presented the document and answered the questions put by the registration officer. The entire evidence goes to establish that Ex.B-4 was validly executed.

20. The learned trial Judge has placed reliance mainly on the documents Exs.A-13 to A-26 and came to the conclusion that Munusamy Naicker was in an unsound state of mind. Only after execution of Ex.B-4, the second plaintiff filed O.P.No. 10 of 1971 and also issued notice to the brothers of Munusamy Naicker, and also made publication in the newspapers. On going through the entire evidence and documents, I am of the view that the said Munusamy was in a sound state of mind at the time of executing Ex.B-4 and he wanted to give his properties to his brother and brother's son and only with that intention, he executed the document Ex.B-4. In O.P.No. 10 of 1971, the learned District Judge had considered the medical evidence and the documents Exs.A-13 to A-26 and had come to the conclusion that the plaintiff was a person of unsound mind incapable of managing his affairs although capable of managing himself and is not dangerous to himself or to others and the petitioner has to be appointed only as Manager for the estate. The finding has already been given in the guardian petition that he was able to manage himself. So, it cannot be stated that he is a person of unsound mind incapable of managing himself. The recital in Ex.B-4 is to the effect that the settlees are the brother and brother's son and the intention to give the properties is that the settlor has no issues. The properties being joint family property, the settlor wanted to give his property to his brother and brother's son and accordingly executed the document. It is also recited in Ex.B-4 that the settlees have to look after the settlor and his wife the plaintiffs by providing them with food and cloth till the life time. Nothing unnatural turns out of this document.

21. It is borne out by evidence that the second plaintiff the settlor's wife wanted to give the property to her brother's son and accordingly she was pressing her husband and that necessitated the first plaintiff to go to Madras and execute and register the document. On a careful analysis of the entire evidence and documents, it has been clearly established that Munusamy Naicker was in a sound state of mind to execute the document and Ex.B-4 was validly executed. So, I find that the judgment and decree of the trial court is liable to be set aside.

22. In the result, the first appeal is allowed setting aside the judgment and decree of the trial court. No costs. Connected pending C.M.Ps. are closed.