

(1985) 01 MAD CK 0042

In the Madras High Court

Case No : A.S. No. 520 of 1979 (Pauper)

Pownambal Ammal Mudaliar and others

APPELLANT

Vs

P. Balasubramanta Mudaliar and another

RESPONDENT

Date of Decision : 11-01-1985

Acts Referred:

Contract Act, 1872 — Section 16
Transfer of Property Act, 1882 — Section 39

Citation : (1985) 01 MAD CK 0042

Hon'ble Judges : Mohan, J

Bench : Division Bench

Advocate : R. Sundaravaradhan, for the Appellant; A.U. Ilango, for the Respondent

Final Decision : Dismissed

Judgement

1. Defendants 1(sic) 3 and 4 are the appellants in this appeal, which arises out of O.S. No. 118 of 1976 on the file of the Court of the Subordinate Judge of Cuddalore. The suit was filed by the first respondent (P. Balasubramania Mudaliar) for the reliefs of declaration and recovery of possession on the following averments: The plaintiff is the son through the first wife of paramasiva Mudaliar. The second wife is the first defendant through whom he had three daughters, defendants 2, 3 and 4. The plaintiff is employed as a teacher and is residing in Door No. 36, Vinayagar Koil Street, New Vandipalayam. The plaintiff's father was not properly treated and maintained by the second wife. He was subjected to ill treatment by the first defendant. He used to come to the house of the plaintiff at Vinayagar Koil Street, and used to stay with him. Out of love and affection, he executed Ex.A3 settlement deed on 3rd October, 1973 in respect of the plaintiff's schedule property, which is situated in Padhiri Street, Old Vandipalayam, Cuddalore. This settlement deed was acted upon. The plaintiff took possession of the suit property, had the registry changed in his name and was paying the municipal tax. He has also effected repairs and obtained electricity connection. The first defendant issued a notice under Ex.A10 to the plaintiff and his father,

Paramasiva Mudaliar, calling upon them to make the provision for the maintenance of the defendants. She also attacked the settlement as having been obtained by exercise of fraud and coercion. This was replied both by the plaintiff as well as his father under Ex.A11 wherein the father stood by the settlement categorically. Thereafter, defendants 1, 3 and 4 filed O.P. No. 3 of 1975 on the file of the sub-Court, Cuddalore, against the plaintiff and his father, praying for maintenance on the ground that the settlement Ex.A3 was obtained by fraud and undue influence. The father remained ex parte. Finally, the said O.P. was dismissed, as not pressed. In the meantime on 3rd April, 1975 the plaintiff's father executed a deed of revocation, revoking the settlement under Ex.B12. Since by reason of the revocation, a cloud has been cast on the title of the plaintiff and his right to recover, possession, pursuant to Ex.A3, is at mistake, the present suit has come to be filed.

2. In the written statement of the defendants it was urged that the first defendant was married to Paramasiva about 35 years ago. All were living amicably in the plaint schedule house. The plaintiff has been residing separately even before his marriage. The second defendant was married to a boy in Pondicherry in August, 1969, and she became a widow in two years from the date of the marriage. She got some money for her future maintenance and the father wanted her to come with the money and live in the suit property. The second defendant was not willing and this enraged the feelings between him and the daughters and the wife. The plaintiff took advantage of this momentary difference between the parties and took away the father to his house. There he obtained Ex.A3 settlement deed by fraud and undue influence. It was neither accepted nor acted upon. Till the father died, the plaintiff never came to the suit house. The father realised the mistake of executing the settlement deed and, therefore, he revoked the same. Out of mercy, a room was allotted to the plaintiff. The defendants are residing in two of the rooms and even otherwise the settlement deed in favour of the plaintiff is invalid, as there is the wife, viz., the first defendant, who is the maintenance holder and unmarried daughters. In view of S. 39 of the Transfer of Property Act, the settlement deed is invalid. It is not necessary such settlement deed, Ex.A3 must provide for a clause for revocation. The defendants are not barred nor estopped from questioning the validity of the settlement deed. The revocation deed is a voluntary Act. Hence, the suit is liable to be dismissed.

3. A reply statement was filed to the effect that the plaintiff also paid various amounts for maintenance of the defendants. On account of all these, Paramasiva felt that his son should be benefited. He has written letters, requesting the plaintiff to get a document executed in his favour. The contrary allegations are untrue.

4. To this reply there was a rejoinder by way of an additional written statement, reiterating the statement made earlier that the settlement deed, Ex.A3, was brought about by undue influence and fraud.

5 On these pleadings, the following issues were framed for trial :-

1. Whether the settlement deed, dated 3rd October, 1973 was validly attested, accepted and acted upon?
2. Whether the settlement deed was got executed by exercise of fraud and undue influence as contended by defendants?
3. Whether the revocation deed dated 3rd April, 1975 is true and valid?
4. Whether the defendants are barred and estopped from questioning the validity of the settlement deed?
5. Whether the daughters are entitled to any provision for marriage and maintenance?
6. To what relief, if any, is the plaintiff entitled?

6. On issues 1 to 3, the learned trial Judge came to the conclusion that the settlement deed, Ex.A3, was acted upon by reason of Ex.A11, the reply to Ex.A10 notice, from which it is clear that the father stood by the document, that the allegation that it was brought about by undue influence and coercion could not be accepted and that Ex.A3 contained no clause for revocation and, therefore the revocation has no legal consequence. Accordingly, he answered these issues in favour of the plaintiff. On issue 4, he held that no question of estoppel would arise and, therefore, this issue was answered against the plaintiff. Issue No. 5 could not arise for consideration in the circumstances of the case. Therefore, under issue No. 6, it was held that the plaintiff would be entitled to the reliefs sought for. In the result, the suit was decreed. Aggrieved by this judgment and decree, defendants 1, 3 and 4, as I observed above, have come up by way of this appeal.

7. Mr. R. Sundaravaradan, learned counsel for the appellants would urge that, no doubt, Ex.A3 settlement did not contain a clause for revocation. The learned Subordinate Judge has not appreciated the case of the appellants properly. It is not by revocation under Ex.B12 alone that the settlement was sought to be defeated. On the contrary, when there was a second wife and the daughters including two unmarried daughters, the fact that the only property belonging to the father, viz., Paramasiva Mudaliar, was settled in favour of the plaintiff, would itself clearly show that it is a case of unconscionable bargain and, therefore, it is liable to be set aside, because there is every suspicion attending to the settlement. Such a test was laid down in Lakshmi Amma and Another Vs. Talengalanarayana Bhatta and Another, , where under, more or less, an identical circumstances the settlement was held to be vitiated. The same principle was followed by a learned single Judge of this Court in Chelladurai v. R. Guruvammal and others A.S. No. 1467 of 1976, which was confirmed in Chelladurai v. Guruvammal and others L.P.A. 26 of 1980 Therefore, by the application of the said principle, Ex.A3 settlement deed must be held to be bad. Even otherwise, in so far as the first defendant is concerned, as a widow, she has a Tight of

residence in the suit house; likewise the unmarried daughters. Therefore, that part of the decree relating to the recovery of possession may be deleted.

8. In answer to these contentions, Mr. A. U. Ilango, learned counsel for the respondents would submit that Ex.A3 does not contain a clause for revocation. The moment it was accepted and acted upon, that settlement cannot be revoked at all. In this case, there is enough evidence that the plaintiff took possession of the property, forming the subject-matter of settlement. He obtained electricity connection, effected repairs and constructed up-stairs portion. The Municipal registry was changed. The tax was paid. Therefore, as rightly held by the learned trial Judge, Ex.B12 will be of no legal consequence. There is not an iota of evidence that the first respondent-plaintiff brought about fraud and undue influence in having the settlement deed executed. On the contrary, there is documentary proof by way of Ex.B11 the reply notice given by the father himself in joining the plaintiff wherein in unequivocal terms he stood by the settlement. Under those circumstances, the finding, upholding the settlement deed, Ex.A3, is unassailable. All that a reading of the decision of the Supreme Court reported in Lakshmi Amma and Another Vs. Talengalanarayana Bhatta and Another, discloses is that if the entire property is settled, leaving the nearest heirs in the lurch, that would lead to a strong suspicion and that has to be dispelled by the person who wants to take advantage of the settlement. In this case, such is not the position at all, because, as stated above, the father stood by the settlement. Therefore, the question of suspicion cannot arise, nor again that suspicion remains not dispelled

9. Once the settlement is upheld, the plaintiff-first respondent is entitled to possession. If there are other rights under S. 39 of the Transfer of Property Act, that cannot be decided within the scope of the suit. That apart, if at all, it is only the first defendant-first appellant, who can claim the right of residence, the other daughters having been married pending this litigation as evidenced by Ex.A21 relating to the third defendant (P. Poongothai).

10. In view of the above arguments, the only point that arises for my determination is, whether Ex.A3 is vitiated in any manner ?

11. Ex.A3 is the registered deed of settlement dated 3rd October, 1973. It recites very clearly that the plaintiff is the only son of Paramasiva Mudaliar, the settlor. The said Paramasiva Mudaliar was under the care and protection of the settlee. To enrich the family of the settlee and out of love and affection, the house property, forming the plaint schedule property of the value of Rs. 3,000 is settled in favour of the plaintiff. One of the important terms of the settlement deed is that possession was handed over to the settlee on the date of the settlement and that henceforth the settlee shall enjoy the property by paying Municipal Tax, since the registry has been changed in the name of the settlee himself. It is added that under no circumstances the settlor will cancel the settlement deed. Therefore, there is no provision for revoking the settlement provided under the deed of settlement. Be that so. There is abundant evidence in

this case, which would disclose that immediately after the settlement, the Municipal registry was changed in the name of the plaintiff settlee. Ex.A4 is the order issued by the Commissioner of Cuddalore Municipality in favour of the plaintiff. That is dated 9th April, 1974, accepting the application for transfer of assessment No. 6379 assigned in his favour. Pursuant to this, under Exs.A5 and A6 he pays the house-tax for 1975-76, first and second halves. He had also obtained electricity connection. He had also paid/charges towards obtaining the connection as evidenced by Ex.A7. The receipts Exs.A8 and A9 show that it was the owner who paid the consumption charges towards electricity. The oral evidence shows that he has made vast improvements to the property. Therefore, it cannot be denied that the settlement deed, Ex.A3 was acted upon. Undoubtedly, there was serious difference of opinion between Paramasiva Mudaliar on the one side and the first defendant on the other, because she gave a registered notice under Ex.A10, dt. 4th July, 1974, claiming the right of maintenance. That was replied to by Paramasiva Mudaliar as well as the plaintiff under Ex.A11, dated 15th July, 1974. In that notice Paramasiva swears by the settlement. It is stated in the reply notice as follows:- The allegation that my client No. 1 is dancing to the tunes of his son or under his dominating influence are all false. My client No. 1 owns only one item of property which is an old and dilapidated house in Padiri Street, Old Vandipalayam. As my client No. 2 has been maintaining and looking after the welfare of client No. 1, the father has executed a settlement on 3rd October, 1973 in favour of his son. The said settlement has been accepted and acted upon and assessment has been changed in my client's name and my client has been paying tax. The said settlement is a true and valid document and your client is not entitled to question the same. Our client is not in unlawful occupation of the house. It is absolutely false to say that the settlement deed was brought into existence to deprive any claim for maintenance.

Further this notice also evidences the fact that the first defendant was not treating Paramasiva Mudaliar properly, because it is stated that he married the first defendant at an old age with the fond hope that she would look after him in his old age, that all his hopes were belied, that due to rude behaviour of the first defendant, Paramasiva Mudaliar had to borrow Rs. 1,000 on a promissory note executed in favour of his daughter, Thirupuram, that the said promissory note was assigned in favour of the father-in-law of Thirupuram and that a suit has been filed. This conduct would show as to how the first defendant was trying to harass Paramasiva Mudaliar in all possible ways. It was after this that Ex.B12, the deed of revocation came on 3rd April, 1973. I am of the view that this deed of revocation is of no legal consequence at all. As rightly held by the learned Subordinate Judge, because once Ex.A3 settlement has been accepted and acted upon, there being no express provision for revocation, it has become final and complete; more so, when the father stood by the settlement. However the case before me is that it is not by revocation alone that the settlement is sought to be set aside or defeated, but on the principle of unconscionable bargain, in that the

only house has come to be settled in favour of the first wife's son, leaving the second wife and the unmarried daughters in the lurch. Therefore, the principle as laid down in Lakshmi Amma and Another Vs. Talengalanarayana Bhatta and Another, should be made applicable. An extract of the head-note itself would be enough to bring out as to what exactly is the ratio of the Judgment:

Contract Act (1872), S. 16-Deed of settlement-entire property settled in favour of one of the grandsons by executant to the exclusion of his own issues and other grand children-Negligible provision made for wife, who was his third wife, the first two having died before executant married her-No provision made regarding her right to reside in the residential house till her death-Executant himself debarred from dealing with property as an owner during lifetime-Executant found to be of advanced age and in state of senility and suffering from diabetes and other ailments-Facts and circumstances leading to execution of deed raising grave suspicion as to genuineness of execution-Grandson, the settlee, failing to discharge the burden of establishing that deed was executed by executant voluntarily and without any external pressure or influence while he was not of infirm mind and was fully aware of dispositions-Held that settlement deed was invalid. Decision of Kerala High Court, Reversed.

It has to be carefully noted that the Supreme Court, on an analysis of facts came the following conclusion at page 1372:-

All these facts and circumstances raised a grave suspicion as to the genuineness of the execution of the documents Ex.B3 and it was for respondent No. 1 to dispel the same.

The question is whether this principle was applied to a case wherein a settlement was executed on 10th July, 1973 wherein all the properties belonging to the settlor was settled on his nephew without making any provision for the plaintiff, who was the wife of the settlor. The learned Judge held, relying on the ruling and after referring to the passage occurring at page 1372 as follows:-

The above passage clearly shows that where the nature of the document is such that it is unnatural and unconscionable, it is for the person who sets up such a document to prove the genuineness of the execution of the document and to dispel any suspicion regarding the same.

In this case in so far as the father stood by the document Ex.A3 and having regard to the relationship that existed between the first defendant and Paramasiva Mudaliar, I do not think this principle can be imported at all, so as to bring about a suspicion attending to Ex.A3. Equally, therefore, there is no question of the plaintiff dispelling such a suspicion.

In the result, I have not the slightest hesitation in upholding the finding that the settlement Ex.A3 is perfectly legal and valid. Once such a finding is arrived at, the question is whether the plaintiff is entitled to recovery of possession. Undoubtedly, he has every right to do so when once the title is upheld.

Therefore, the appeal will stand dismissed. I make it clear that if the appellants are entitled to any right of maintenance in law, that may be worked out in a separate suit, about which I say nothing. The Court-fee due to the Government shall be paid by the appellants. No costs.