

(2010) 11 MAD CK 0269

In the Madras High Court

Case No : S.A. No's. 318 and 319 of 1998

Santharaju and Paulraj

APPELLANT

Vs

Chinnamma
K. Puspavathi Vs Elizabeth Ammal and
Chinnamma

RESPONDENT

Date of Decision : 11-11-2010

Acts Referred:

Transfer of Property Act, 1882 — Section 123, 126

Citation : (2012) 1 LW 432

Hon'ble Judges : K.B.K. Vasuki, J

Bench : Single Bench

Advocate : K. Ramachandran in both the Appeals, for the Appellant; N. Manokaran in both the appeals, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Ms. Justice K.B.K. Vasuki

1. Both the appeals are arising out of common judgment and decree made in O.S. Nos. 808 and 781 of 1987. O.K. 781 of 1987 was filed by the daughter of Peter and Elizabethammal in respect of A and B schedule properties belonging to father and mother respectively, on the strength of Ex.A1 Settlement deed dated 06.06.1978 executed by father and Ex.A4 settlement deed dated 10.04.1987 executed by mother respectively in favor of the plaintiff. The suit is filed against the brothers, for the relief of permanent injunction restraining them from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. Whereas O.S.No.808 of 1987 was filed by the daughter-in-law of Peter and Elizabethammal in respect of the same property, on the ground that the property belonged only to the father-in-law Peter and mother-in-law Elizabethammal, has no right over the same and father-in-law died, leaving behind his sons and daughter and he executed registered Will dated 05.08.1982, bequeathing the property in favor of the second son and his wife and from the date of death of father-in-law, the daughter-in-law, who is the wife of the second

defendant in the other suit filed by the daughter and the plaintiff in O.S.No.808/1987 has been in possession and enjoyment of the property and the same was sought to be interfered with. The relief's sought for in O.S.No. 808 of 1987 filed by daughter-in-law against mother-in-law and sister-in-law are for declaration and injunction on the basis of Ex.B3 Will and Ex.B2 Revocation of settlement deed both executed by the father-in-law.

2. While the daughter of the original owner as the plaintiff in O.S.No.781 of 1987 claims that she has been in possession and enjoyment of the properties on the basis of the settlement deeds, her claim is resisted by the sons and daughter-in-law as if the settlement deed is not acted upon and by reason of the failure on the part of the plaintiff to fulfill the condition, subject to which, settlement deed was executed, the same was subsequently revoked and the owner had, during his lifetime executed a Will in favor of other parties, as such, the daughter cannot claim any right on the basis of the settlement deeds. The trial Court tried both the suits together and decreed the suit in O.S.No.781/1987 filed by the plaintiff/daughter on the ground that the owner having executed Ex.A1 Registered settlement deed in favor of the daughter, had no right to revoke the same and to further execute a registered Will under Ex.B2 revocation deed and under Ex.B3 Will respectively and the daughter-in-law is not the beneficiary under the so called Will and she further failed to prove the genuineness and voluntary execution of Ex.B3 Will and it is the daughter, who has been, from the date of settlement deed, in possession and enjoyment of the suit property on the strength of the settlement deeds executed by both father and mother in respect of A and B schedule properties.

3. Aggrieved against the same, the sons of the original owner and brothers of the plaintiff and who are the defendants in O.S.No. 781 of 1987 and the daughter-in-law who is the plaintiff in O.S.No. 808 of 1987 filed two separate appeals in A.S.Nos.76 and 75 of 1991 respectively and both the appeals are dismissed by common judgment dated 28.02.1994 thereby confirming the findings rendered by the trial Court in favor of the daughter on the ground that A and B schedule properties are assigned to the daughter on the strength of settlement deed executed by the father and mother in respect of the same and she has been in possession and enjoyment of the same and the settler, after the settlement, had no right to execute Ex.B2 revocation deed and Ex.B3 Will.

4. Hence, these second appeals before this Court by the sons/defendants in O.S.No.781/1987 and by the daughter-in-law/ plaintiff in O.S.No.808/1987. Both the appeals are admitted on the following common substantial questions of law.

a. Whether the Courts below have not erred in holding that Ex.A1 settlement was irrevocable?

b. Whether the Courts below erred in rejecting the contention of the defendants that the Deed of Settlement was not a gift deed but was an arrangement made at the time of the marriage and therefore it could always been revocable?

c. Whether the Courts below have not erred in rejecting Ex.B2 revocation deed?

5. The subject matter of both the suits are one and the same. While the properties are described as A and B Schedule in O.S.No.781 of 1987 filed by the daughter, the same are described as Suit schedule properties in O.S.No.808 of 1987 filed by the daughter-in-law. The daughter in her suit in O.S.No.781/87 claims right, title, interest and possession of the Suit A and B Schedule properties, on the strength of Exs.A1 and A4 settlement deeds executed by her father Peter and her mother Elizabethammal respectively. The relief's claimed in O.S.No.781/87 are against her two brothers arraying them as the defendants 1 and 2. Whereas, the plaintiff/daughter-in-law in O.S.No.808/87 claims right, title, interest and possession of the properties comprising both A and B Schedule in the suit filed by the daughter on the strength of revocation of settlement deed and registered Will executed by the father. According to the daughter-in-law, her father-in-law is the exclusive owner of the properties and the settlement deed executed by the father is conditional and revocable one and the same is subsequently revoked on the failure of her daughter to fulfill the condition, subject to which, the same is settled and thereafter, her father-in-law executed registered Will bequeathing the properties to the second son and his wife and the second son has subsequently executed an agreement, in and under which, the daughter-in-law is given the right to be in exclusive possession of the properties.

6. Thus, the points arise for consideration herein are:

(i) Whether, the father alone or both the father and mother are the owners of Suit A and B Schedule properties; and

(ii) Whether, Ex.B2 revocation of settlement deed and Ex.B3 registered Will are true and valid and prevail over A1 and A4 settlements.

7. The plaintiffs in both the suits have in order to establish the true and valid execution of settlement deeds and true and valid execution of revocation of settlement deed and registered Will respectively, examined themselves and the witnesses to the documents. The defense raised on the side of the defendants/ sons and the plaintiff/daughter-in-law in the connected Suit about the right of the father-Peter and in respect of the properties particularly Suit A Schedule and revocation of settlement deed would lead to an inference that the execution of the Settlement deeds in favor of the daughter is admitted by them. The only ground on which, they claim Exs.A1 and A4 Settlement deeds to be ineffective is that the same are revocable and conditional one and are executed subject to condition that the daughter shall take care of both her parents.

8. It may be true that Exs.A1 and A4 Settlement deeds contain recitals to the effect that the donors believe that the daughter will well take care of her parents. But the recitals of the documents do not disclose that it is made as a pre-condition, subject to which, the settlement is executed by the settler and is accepted by the settle. There is absolutely no evidence on the side of sons and daughter-in-law of the original owner in this regard. The other contention that

the settlement came into existence in favor of the daughter in lieu of the marriage is also, for well considered reasons disbelieved by the courts below. The Courts below, having found that the transfer of immovable of property by way of gift or settlement, having been validly effected by the owners under registered instrument and having been accepted as contemplated u/s 123 and having found non existence of any of the circumstances contemplated u/s 126 of the Transfer of Property Act for legally suspending or revoking the same, rightly answered in negative the claim of the right of the original owner-Peter to effect revocation of the same. As no right is available to the father to undo what is already legally done, the validity of the settlements and the legal right accrued to the daughter is in no manner affected by the subsequent revocation deeds if any. In that event, the father, who conveyed his right in the property, is not entitled to execute any Will bequeathing the same property in favor of others.

9. In so far as Suit B schedule property is concerned, the same is on the basis of available documents, rightly found to be belonged to the mother-Elizabethammal, who is one of the defendants in the suit filed by the daughter-in-law. The mother-Elizabethammal having been in possession of the property by obtaining the same by way of assignment under Ex.A5 patta, executed Ex.A4 settlement deed in favor of her daughter in respect of the same. In the absence of any document to prove the ownership of the father in respect of Suit B schedule property and to disprove the ownership of the property claimed by the mother in respect of the same, Ex.B2 deed of revocation and Ex.B3 registered Will executed by the father would not be of any help to the sons and daughter-in-law of the original owner to deny the right of the daughter.

10. Even otherwise, the Courts below have, on the basis of oral evidence of DW1, who is none else than the grand son through second son, of Peter and Elizabethammal and on the basis of recitals contained in Ex.B3 registered Will, rightly found that the daughter-in-law is not conveyed any right in respect of either of the properties. Further, Ex.B10 unregistered agreement executed between the husband and wife does not clothe the wife with any right or title and the same can be construed only as authorization given to the wife to manage the property and nothing more. That being so, the daughter-in-law has no legal legs to maintain her suit O.S.No.808 of 1987 for any right, title, interest and possession in respect of either of the properties. Both the courts below have rightly decided that the claim made by daughter-in-law in O.S.No.808/87 is totally false and contrary to the documents relied upon by her.

11. In so far as the execution of Ex.B3 Will is concerned, the truth and genuineness of the same and the legal and valid execution of the same is disbelieved by the Courts below by reason of inconsistencies, contradictions and infirmities in the evidence of so called beneficiaries and the so called attestors of the Will on material aspects, regarding the person who dictated the recitals of the document, the persons who were present and who accompanied the executor to the register office etc. Thus, the claim of the sons/defendants in

O.S.No.781/1987 and the claim of the daughter-in-law/plaintiff in O.S.No.808/1987 on the strength of Exs.B2 and B3 registered and Ex.B10 unregistered documents is not only factually established, but also legally unsustainable.

12. On the contrary, the daughter along with support of her mother, who is also one of the parties to the suit filed by the daughter-in-law, has duly established her right, title, interest and possession of the Suit schedule properties and the Courts below have rightly granted the suit relief's to the daughter. The rival claimants have not made out any ground much less valid legal ground to interfere with the well considered judgment of the Courts below and the substantial questions of law are hence answered against the appellants.

13. In the result, both the appeals stand dismissed. Having regard to the relationship between the parties, there is no order as to costs.