
(2014) 08 MAD CK 0119

In the Madras High Court

Case No : O.S.A. Nos. 159 and 190 of 2014 and M.P. Nos. 1 and 2 of 2014

Sujatha Elizabeth Prasad

APPELLANT

Vs

Shermila Ann Sherry

RESPONDENT

Date of Decision : 21-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 32 Rule 15, Order 32 Rule 3, Order 32 Rule 4, Order 9 Rule 7

Citation : (2014) 5 CTC 595

Hon'ble Judges : Sanjay Kishan Kaul, C.J;M. Sathyanarayanan, J

Bench : Division Bench

Judgement

Sanjay Kishan Kaul, C.J.—The property of an aged lady, whose mental health is now in question, is the subject matter of litigation between her siblings. A land measuring 10 grounds and 2185 sq.ft. in Old Survey No. 447, R.S. No. 3173/19, Kilpauk Village, Perambur-Purasawalkam Taluk, Chennai, was purchased by Mrs. Annamma Chinnan jointly with two other persons vide a registered Sale Deed dated 12.6.1958, which was subsequently partitioned vide two Partition Deeds dated 3.11.1958 and 4.10.1961. The result was that she became the absolute owner of 5525 sq.ft. of land, on which she raised constructions.

2. Annamma has two daughters, who joined her as Plaintiffs in the Suit. Her son Chinnan Sherry passed away and was survived by a daughter, impleaded as the First Defendant in the Suit, while his widow was impleaded as the Second Defendant in the Suit. Annamma is alleged to have executed a Settlement Deed duly registered on 15.8.2008 in favour of her grand daughter from her son, who in turn executed a Sale Deed dated 13.6.2011 in favour of Defendants 3 to 6. It is the case of the original Plaintiffs that no such Settlement Deed was ever executed by Annamma and her signatures were also forged.

3. It is the case of the original Plaintiffs (Appellants before us) that Annamma was residing in the first floor of the Suit property, while her deceased son and the first two Defendants were residing in the ground floor, as the relationship was

never cordial. It is, in order, to assist her deceased son for obtaining financial assistance from Banks that Annamma had agreed to offer her property as collateral security for business loan in the year 1997 to the Bank of India. On the demise of her son, the business came to a standstill and she expressed her wish that her property be substituted as security by her daughter-in-law. The Plaint also alleges that due to the sudden demise of her son, Annamma became quite disturbed and went into deep depression, with the result that her two daughters had to take her to Vellore for treatment and that ultimately had to shift her. The allegations are also of her daughter-in-law taking advantage of her ill-health made her to sign several blank documents.

4. The second limb of facts relate to allegation of fraud in respect of two Settlement Deeds being executed on 30.3.2011, duly registered in terms thereof. Shares have been given to her two daughters, as well as to her grand daughter from her son, while Annamma retained her life-interest.

5. The action taken by Annamma is to protect her property which is subject matter of averments in the Plaint. Suffice to say that it is the stand of the first two Defendants in the Suit that all these were written by the daughters and Annamma only affixed her signature. Interestingly, the nature of allegations affecting the mental health of Annamma would certainly have a bearing even on these subsequent documents, which are two settlement deeds, though they are broadly in line with the ultimate law of succession which would arise after the life time of Annamma.

6. Insofar as the controversy in the present Appeal is concerned, the Order passed appointing the original Plaintiff No. 2 (Appellant No. 2 herein) as the guardian ad litem of Annamma, being Plaintiff No. 3 (Appellant No. 3 herein) came to be assailed by the first two Respondents seeking recall and revocation of the Order passed in A. No. 5303 of 2012 dated 2.1.2013 (vide Application filed under Order 14, Rule 8 of the Original Side Rules read with Order 9, Rule 7 of the Code of Civil Procedure, 1908).

7. The relief prayed for in the Suit is for declaring the Settlement Deed dated 15.8.2008 as a rank forgery and consequently the Sale Deed dated 13.6.2011 to be declared null and void, apart from seeking partition of the property and damages.

8. The case of the first two Defendants is that there is no dispute as to whom the property would devolve by succession after the life time of Annamma, and the two sets of parties, being daughters on one side and the daughter-in-law and grand daughter from the son on the other side, neither should be permitted to take advantage of the situation on account of the alleged dementia of Annamma. It is of course, their stand that when the document was executed in the year 2008, Annamma did not suffer from such dementia. The plea is that the daughters should not be permitted to steal a march.

9. On the other hand, the submission of the Appellants is that what is to be seen

is whether there is any conflict of interest between the persons appointed as guardian ad litem and for whom she is so appointed.

10. The learned Single Judge, as per the impugned Order, has found that there is conflict of interest between the two set of Legal Heirs. The learned Single Judge in Paragraph-17 thus framed an issue as one of appointing as guardian under Order 32, Rule 15 of the Code where there is a conflict of interest between the parties, who are on equal footing. The learned Single Judge, thus, recalled the Order dated 2.1.2013, while directing the Court Guardian to be appointed for the Third Plaintiff-Annamma. Not only that, in view of the legal position that no Plaintiff in the Suit could have independent version in the Plaint contrary to the version of the other Plaintiffs, transposed Annamma as the Defendant in the Suit. It is this order which is assailed by the Appellants.

11. We heard the learned Senior Counsel appearing for the Appellants and the learned Counsel appearing for the two sets of Respondents.

12. We would like to note at the threshold itself that the Madras High Court Amended Rules 3 & 4 of Order 32 of the Code stand substituted by a new Rule 3. Rule 3(1), as it stands in the Code, reads as under:

"3. Qualifications to be a next friend or guardian.- (1) Any person, who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the Suit:

Provided that the interest of that person is not adverse to that of the minor and that he is not in the case of a next friend a Defendant, or in the case of a guardian for the Suit, a Plaintiff."

13. The corresponding provision originally reads as under:

"3. Guardian for the Suit to be appointed by Court for minor Defendant.- (1) Where the Defendant is a minor the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the Suit for such minor."

14. The crucial difference is that as per the Proviso, a person cannot be a Plaintiff and yet be guardian ad litem of the Defendant. This aspect was emphasised by the learned Counsel for the first two Respondents to canvass a case that once transposition takes place of Annamma as the Defendant in the Suit, Plaintiff No. 2 cannot continue to be guardian ad litem.

15. On the other hand, the submission of the learned Senior Counsel for the Appellants is based on the plea that it is really a right of Plaintiff No. 3-Annamma to assail the Settlement Deed, as it is executed by her.

16. We are of the view that what is crucial would be also the nature of the Suit and the reliefs prayed for in the Plaint. The Settlement Deed dated 15.8.2008 seeks to exclusively settle the property in favour of the First Defendant to the complete exclusion of Annamma, who is Plaintiff No. 3. Some reports have been

obtained of the Handwriting Expert disputing the signatures. Suffice to say that whether she actually signed the Settlement Deed or not is the material question to be decided in the Suit and linked to the issue would be the question whether, even if it is proved that she has signed, did she have the mental capacity to so do on account of the allegation of her suffering from dementia, for which material has been placed on record. The question of other two Plaintiffs individually to the exclusion of Annamma assailing those documents really would not arise.

17. As far as the submission of Settlement Deeds are concerned, while 60% of the property is settled in favour of two daughters and 40% in favour of the First Defendant, what is crucial is that Annamma has kept life interest on herself. Once life interest has been kept to herself, there can be no question of any partition and division of property during her life time, as she has absolute right of enjoyment of the property to the exclusion of others during her life time. It, thus, appears at this stage that the question of separate possession and division by metes and bounds may not at all arise during the life time of Annamma, though, of course, we are not inclined to give any final finding in this behalf, as evidence is yet to be let in the Suit.

18. What is material while appointing a guardian ad litem is whether the guardian so appointed has interest adverse to that of the person of whom he/she is appointed as the guardian. In the facts of the present case, the answer to the same would be in the negative. The fact that the daughters have set up one case, while the grand daughter and daughter-in-law has set up another case is not germane to the issue. It is not their inter se interest which is in question. But, adversity of interest between the person, who is appointed as guardian and of whom he/she is appointed as guardian. Assailing the Settlement Deed dated 15.8.2008 entails no conflict of interest between the daughters and the mother, as it seeks to deprive the mother (Annamma) as the owner of the property. Consequently, appointing guardian by the Court also entails her transposition as the Defendant which may remove the substratum of the Suit qua the right to claim a declaration at least during the life time of Annamma.

19. We are, thus, of the view that the learned Single Judge appears to have fallen into an error of looking into the conflict of interest inter se the two sets of Legal Heirs, yet what is to be seen is diversity of interest between the guardian appointed and of whom he/she was appointed.

20. Thus, there was really no reason to recall the Order already passed appointing Plaintiff No. 2 as the guardian of Plaintiff No. 3 in terms of Order dated 2.1.2013. We, thus, set aside the impugned Order dated 18.3.2014 restoring the earlier Order passed dated 2.1.2013 appointing Plaintiff No. 2 (Appellant No. 2 herein) as the guardian ad litem and next friend of Plaintiff No. 3 (Appellant No. 3) herein, as well as the impugned Order dated 17.6.2014 transposing Plaintiff No. 3 (Appellant No. 3) as Defendant No. 7 in the Suit The Appeals are allowed. The parties are directed to bear their own costs. The

Miscellaneous Petitions are closed.