
(2002) 09 MAD CK 0140
In the Madras High Court
Case No : Second Appeal No. 177 of 1991

Sundararaj

APPELLANT

Vs

R. Manoharan, Mallammal, Sarojini, Lakshmi, Hameeth,
Vasu, Ramalingam, Mohan, Sampath, Yusuf and
Bangarammal

RESPONDENT

Date of Decision : 06-09-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (2002) 09 MAD CK 0140

Hon'ble Judges : A. Ramamurthi, J

Bench : Single Bench

Advocate : Krishnaveni, for T.R. Rajaraman, for the Appellant; K.V. Sridharan, for the Respondent

Final Decision : Dismissed

Judgement

A. Ramamurthi, J.—The second defendant, who lost in both the courts below, is the appellant.

2. The case in brief is as follows:- The plaintiff filed a suit for declaration and directing defendants 1 to 5 to deliver possession of the property and also future mesne profits. The schedule mentioned properties originally belonged to one Chinnammal by virtue of a registered conveyance deed dated 27.05.1947 executed by Kumarasamy Chettiar. She was in actual possession and enjoyment of the properties and defendants 6 to 11 are tenants in a portion of the properties. The first defendant is the only son while defendants 3 to 5 are her daughters. The 2nd defendant is the son of the 1st defendant. The 1st defendant was given the ancestral house and it was sold by him. The fourth defendant was given a house in Salem, where she is living. Defendants 3 and 5 were left over without any property and Chinnammal out of her own free will and volition, executed a registered Will on 26.10.1977 giving the suit property to the plaintiff absolutely after her lifetime. There is a provision in the Will that the plaintiff is to

pay a sum of Rs.6,000/= to the 3rd defendant. Later on a second thought Chinnammal wanted to execute a settlement deed in favour of the plaintiff and she cancelled the Will dated 26.10.1977 by the subsequent document dated 24.11.1977. On 24.11.1977 Chinnammal executed a registered settlement deed in favour of the plaintiff and he was looking after her in the old age. She had directed the plaintiff to take possession of the property after her lifetime. After taking possession, he has to pay Rs.6000/= to the 3rd defendant. Chinnammal also handed over the original documents with the plaintiff. The income tax authorities also levied a gift tax of Rs.500/= and it was paid on 18.02.1981. Chinnammal was seriously ill due to a road accident in July 1983 and the plaintiff admitted her in the hospital and taking care of her. In spite of the best efforts, due to the fracture of the bone, the doctors had given up the hope and she was brought to the house in a hopeless condition. Defendants 1 to 3 came temporarily to live with her. Fifteen days later the 1st defendant picked up quarrel with the plaintiff and his mother and sent them away from the house. Defendants 1 to 3 were in actual and effective control of her till her death on 10.11.1983. Most of the time she was unconscious and defendants 1 and 2 seem to have fabricated a Will said to have been executed by Chinnammal. She could not have executed any Will after the execution of the settlement deed. After the death of Chinnammal, the plaintiff applied to the Municipality and got the property tax, water tax and electricity bills transferred in his favour. Hence the suit.

Defendants 1, 2 and 4 filed a written statement and denied the various averments. They have already filed a suit in O.S.No.487 of 1983. The settlement deed dated 24.11.1977 was brought about by fraud, misrepresentation and deception. They were visiting the suit property when she was progressing after discharge from the hospital. Chinnammal was in a conscious state and was having good health. The execution of the Will dated 31.08.1983 is true. The plaintiff has no right in the property and the suit is also barred by limitation.

The 3rd defendant filed a separate written statement. Admittedly Chinnammal out of free will and volition executed the registered Will on 26.10.1977 giving the suit property to the plaintiff absolutely. It is also true that on 24.11.1977 she executed the registered settlement deed in favour of the plaintiff with some conditions. It is also correct to state that Chinnammal was seriously ill due to the road accident in July and taking advantage of her hopeless condition, defendants 1 and 2 managed to get a fabricated document. A provision has been made for payment to her in the Will dated 26.10.1977 as well as in the settlement deed dated 24.11.1977. She is entitled to receive Rs.6000/= from the plaintiff. She undertakes to pay the necessary court fee for claiming her share.

The plaintiffs in O.S.487 of 1983 filed a suit to set aside the settlement deed dated 24.11.1977. The suit O.S.639 of 1984 has been filed for declaration and recovery of possession.

The trial court framed 4 issues and 2 additional issues in O.S.No.487 of 1983 and

6 issues in O.S.No.639 of 1984. Common trial was conducted and evidence recorded in O.S.No.487 of 1983 was treated as evidence in the other suit. The trial court dismissed the suit O.S.No.487 of 1983 and decreed O.S.No.639 of 1984. Aggrieved against this, the 2nd defendant in O.S.No.639 of 1984 preferred A.S.No.50 of 1988 on the file of District Court, Coimbatore and no appeal was filed in respect of dismissal of the suit in O.S.No.487 of 1983. The learned Judge after hearing the parties, dismissed the appeal and confirmed the judgment and decree in O.S.No.639 of 1984 u/s 11 of CPC as no appeal has been preferred in the connected suit. Aggrieved against this, the 2nd defendant has come forward with the present second appeal.

3. At the time of admission of the second appeal, this Court framed the following substantial questions of law for consideration:

(1) Is the learned District Judge right in upholding the validity of the settlement in favor of the plaintiff purported to have been executed by the 1st defendant's grandmother, when the same is not a valid transfer as per the Transfer of Property Act ?

(2) Is not the learned District Judge wrong in holding that the Will is not valid as the testator had already bequeathed her right under the settlement deed when the settlement deed itself is not valid and no right of the testator was transferred under this document ?

4. Heard the learned counsel for the parties.

5. It is admitted that the plaintiffs in O.S.No.487 of 1983 filed a suit to set aside the settlement deed executed by Chinnammal dated 24.11.1977 whereas the plaintiff in O.S.No.639 of 1984 filed a suit for declaration that the plaintiff in that suit is entitled to get a declaration and directing defendants 1 to 5 to deliver possession of the property. The parties in both the suits are more or less the same and as such, there was common trial and the evidence recorded in O.S.No.487 of 1983 was treated as evidence in the other suit also. The trial court dismissed O.S.487 of 1983 and decreed O.S.No.639 of 1984, thereby indicating that the suit filed to set aside the settlement deed dated 24.11.1977 was dismissed. No appeal has been filed in respect of the judgment and decree in O.S.No.487 of 1983. But the aggrieved 2nd defendant in O.S.No.639 of 1984 alone preferred an appeal in A.S.No.50 of 1988 on the file of District Court, Coimbatore relating to the judgment and decree made in O.S.No.639 of 1984. The lower appellate court also dismissed the appeal.

6. The learned counsel for the appellant mainly contended that the lower appellate court failed to see that the evidence of the plaintiff side witnesses do not specify the requirements of Evidence Act to prove the execution of Ex.B-5. The appellate court also erred in holding that the relationship between the testator and the defendant's family was not cordial at the time of execution of the settlement deed when the same is spoken otherwise by the plaintiff's witnesses. The court also erred in holding that the testator was not in a sound

and disposing state of mind at the time of executing the document. The court also erred in holding that the Will executed in favour of the defendants cannot be true for the reason that it was executed after six years from the date of execution of the settlement deed. The appellate court also erred in holding that the appeal is not maintainable.

7. It is admitted that the appellant filed a suit in O.S.No.487 of 1983 to set aside the settlement deed dated 24.11.1977. When the suit was dismissed and judgment and decree had become final and conclusive, it is no longer open to dispute the truth and validity of the settlement deed dated 24.11.1977. Now, the appellant relied upon Ex.A-7 dated 31.08.1983 said to be a Will executed by the deceased Chinnammal in his favour. Now, admittedly the settlement deed was executed on 24.11.1977, whereas the Will dated 31.08.1983 was executed six years later. It is admitted that Chinnammal met with a road accident and was hospitalised and she had sustained fracture in femur. She was taking treatment till 01.08.1983. Sufficient evidence has been let in in the trial court that the relationship of the deceased with the appellant was not cordial and only under such circumstance, the appellate court came to the conclusion that the Will projected by the appellant dated 31.08.1983 has not been proved. Moreover, even on 24.11.1977 the settlement deed had come into effect and the deceased Chinnammal had no right whatsoever to execute any Will subsequently.

8. It is also seen from para 22 of the judgment of the lower appellate court, relying upon Fathima Bi Ammal Vs. A.A. Mahomed Mohideen and Others,

that in a case of joint trial of two suits between the same parties and if an appeal is filed against only one decree, the other decree operates as res judicata. It is only under such circumstance, the lower appellate court came to the conclusion that as no appeal has been filed, the judgment add decree in O.S.No.487 of 1983 will operate as res judicata. Hence, I am of the view that the finding given by the lower appellate court is proper and correct and no interference is called for.

9. For the reasons stated above, the Second Appeal fails and is dismissed. No costs.