.Ó IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6939 OF 2002

Meenakshi Ammal and others ...Appellant (s)

Versus

Manimekalai and others ...Respondent(s)

ORDER

1. This appeal is directed against judgment dated 1.7.1999 of the learned Single Judge of Madras High Court whereby he allowed Second Appeal No. 1726/1986 titled Manimekalai and others v. Meenakshi Ammal and others, set aside the judgments and decrees passed by the trial Court and the lower appellate Court and decreed the suit filed by the respondents for declaration of their rights in relation to the suit property and for grant of permanent injunction restraining the appellants from trespassing or causing disturbance to their peaceful enjoyment of the suit property i.e. land measuring 3 acres, 97 cents.

2. Duraisami Gounder (husband of appellant No.1, father of respondent No.5 and grand-father of respondent No.1) owned several parcels of land in village Vellainayakaneri, Tirupathur Taluk, North Arcot District (State of Tamil Nadu). Duraisami and his wife Meenakshi Ammal (appellant No.1) executed settlement deed dated 20.10.1948 (Ex.B1) in favour of their daughter, Dakshinavathiammal

(respondent No.5) in respect of the properties owned by the former and got the same registered. After two years and one month, Duraisami executed another deed (Ex.A-10) by which he revoked the settlement deed Ext.B1. The relevant portion of the revocation deed is extracted below:

> "Whereas, now I feel that you do not possess the capacity to manage the properties properly and with a view to avoid any disputes with regard to the properties mentioned in the settlement deed as such disputes have now been started to maintain harmony. Till now I have not handed over possession as per the Settlement Deed and I continue to possess the properties. Thus the Settlement has not come into operation at any time and I have been continuing to manage them. Now I feel that if the Settlement Deed is not revoked, it may create confusion and disputes in the future with regard to the properties. Hence, I felt that the settlement should be revoked. With a view to avoid disputes and to avoid unnecessary disturbances during my old age. As my wife Meenakshiammal do not have any semblance of right over the

properties described in the Settlement Deed, I hereby revoke the Settlement Deed executed and registered as a Document No. 2512 of 1948. Hence here afterwards the Settlement Deed shall not come into force and I continue to possess, hold and enjoy the properties more fully described in that Settlement Deed with absolute rights of alienation etc."

3. On 21.11.1966, Duraisami executed Will (Ex.A1) by which he bequeathed the property specified in 'A' Schedule to respondent No.5 for her life time, properties specified in 'B' Schedule to respondent No.1 for her life time and thereafter to her children (respondent Nos. 3 and 4) and property specified in 'C' Schedule to appellant No.1 for her life time and thereafter to one Kannan. Duraisami died on 6.5.1957. After seven months, respondent No.5 filed suit (O.S. No.817/1967) impleading M. Gopal, landlord and Village Munsif as

defendant No.1, Mani alias Muniraju (her husband) as defendant No.2, Vijay (her son) as defendant No.3 and appellant No.1, Meenakshi Ammal as defendant No.4 and prayed for declaration of title in respect of suit properties. In paragraph 3 of the plaint, respondent No.5 made a mention of Settlement Deed dated 20.10.1948 and Revocation Deed dated 5.2.1950. In paragraph 4, respondent No.5 averred that she continued to live with her father and reconciliation had taken place between them. In paragraph 5, she made a mention of the Will and in paragraph 6, she stated that possession of 'C' Schedule properties has been given to appellant No.1 and possession of 'B' Schedule properties has been given to respondent Nos.1 and 2 (her own daughter and son-in-law). For the sake of convenient reference, these paragraphs are extracted below:-

"3. The properties described in the schedule hereunder and some other properties, not described in this plaint, originally belonged to one Doraisamy Gounder son of Munisamy Gounder of Vellanayakaneri Village in Tirupattur Taluk. In or about 20.10.1948, the said Doraisamy Gounder and his wife Meenakshi Ammal (4th defendant herein) executed a deed of settlement in favour of the plaintiff giving her the suit properties described in the schedule hereunder and other properties with absolute power of alienation after their life time. The 4th defendant had no right in the suit properties and other properties at all, but as the plaintiff is the only daughter, the 4th defendant had also joined her husband in the execution of the said settlement deed. Thereafter, on account of some misunderstanding between the plaintiff and her father, the latter had executed a deed purporting to be a revocation of the settlement deed referred to above, in or about 5.2.1950. The plaintiff humbly submits that she had accepted the settlement deed dated 20.10.1948, and she had been in possession of the properties since then.

4. The plaintiff continued to live with her father and reconciliation had taken place between them and as the plaintiff is the only daughter, she was looking after Dorisamy Gounder, her father, affectionately and with all respects and reverence. The said Doraisamy Gounder had been assisting the plaintiff in the cultivation of the lands including the suit properties till his death which took place on 6.5.1967.

5. In or about November, 1966, the said Doraisamy Gounder expressed a desire to give some properties to his wife, the 4 th defendant, for her maintenance for life to be enjoyed by her without any power of alienation with remainder to be enjoyed by one Kannar alias Krishnamurthi absolutely after the 4th defendant's life time. He further wanted to give some properties to Manimekalai, daughter of the plaintiff and M. Devaraja, the son-in-law of the plaintiff, the plaintiff being very affectionable to her father had no objection in the said Doraisamy Gounder executing a registered will in respect of the properties covered by the settlement deed dated 20.10.1948, as the said Doraisamy Gounder wanted to have a family arrangement to be made even during his life time. Accordingly, the said Doraisamy Gounder executed a will on 21.11.1966 in sound disposing state of mind, out of his own free will. The said will was duly registered also. The plaintiff had assured her father Doraisamy Gounder that she would respect his wishes, and that the terms of the will would be duly given effect to by her.

6. As already stated above, Doraisamy Gounder, father of the plaintiff, died on 6.5.1957. The plaintiff had given possession of the property described in the 'C' schedule to the said will to her mother, the 4th defendant herein, and the properties described in 'B' schedule to the said will to her daughter and son-in-law.

7. The plaintiff is in possession and enjoyment of the properties described in the plaint schedule hereunder in her own right. The defendant have no manner of right to the suit properties."

(underlining is ours)

4. During the pendency of the suit, the parties settled their disputes and filed a compromise petition which was made part of decree dated 7.3.1970 passed by

Additional District Munsif, Tirupattur declaring the title of respondent No.5 in respect of the suit properties (which were also specified in 'A' Schedule appended to Will dated 21.11.1966) till her life time without any power to alienate with a stipulation that after her death, her sons - Mahendran and Mathailagan will inherit the suit properties. The relevant portions of the decree are as under:

"1. That the plaintiff's title to the suit properties be and hereby is declared title her life time without any power to alienate.

2. That after the death of plaintiff, her sons Mahendran and Mathialagan and the male heirs if born to the plaintiff and 2 nd defendant will inherit the suit properties with equal shares, and

3. That each party will bear their own cost.

Some members of panchayat have decided as per the decision taken by the concerned parties that the under mentioned properties are the properties of the plaintiff alone and the defendants do not have any right or title in the suit properties and that the plaintiff can enjoy the suit properties till her life time without any right to alienate and after her life time and after the death of plaintiff, her sons Mahendran and Mathialagan and the male heirs if born to the plaintiff and 2nd defendant will inherit the suit properties with equal shares and that the defendants would not claim any right or title in the suit properties. And that this decision of the panchayat was agreed and accordingly a decree be passed."

5. It is borne out from the record that even though respondent No.5 had accepted the revocation deed and Will executed by her father late Doraisami, and gave possession of 'B' Schedule properties to her daughter and son-in-law (respondent Nos.1 and 2), she interfered with their possession compelling

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respondent Nos.1 to 4 to file suit (O.S. No.833/1979) for declaration of their rights in relation to 'B' Schedule properties enumerated in Will Ex.A1 and for restraining the defendants (appellants and respondent No.5 herein) from trespassing over the suit property or disturbing their possession. Appellant No.1, who was impleaded as defendant No.1 did not file written statement to contest the suit but in her written statement, respondent No.5, for the first time, disputed the execution of Will by her father, Duraisami. She relied upon the settlement deed Ex.B1 and claimed that she is in possession of the property for last more than 29 years. She expressed ignorance about the revocation deed Ex.P10 and pleaded that plaintiffs do not have any right over the suit property.

6. The suit filed by respondent Nos.1 to 4 was dismissed by the trial Court vide judgment and decree dated 8.2.1982. On appeal, the lower appellate Court reversed the decree and remanded the case to the trial Court for fresh adjudication. Thereafter, plaintiffs (respondent Nos. 1 to 4 herein) filed rejoinder stating therein that settlement deed Ex.B1 was no longer in existence because the same had been revoked by Ex.A10 vide 5.2.1950. Respondent Nos.4 to 6 also referred to the averments contained in the plaint of O.S. No.817/1967 filed by respondent No.5 and pleaded that after having accepted the revocation deed and Will, she is estopped from disputing their title.

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7. On the pleadings of the parties, the trial Court framed the following issues:

"1. Whether the plaintiffs are entitled to the declaration of their right to and permanent injunction prayed for?

2. Whether the gift deed of 20.10.48 is true, valid, and binding on the plaintiffs?

3. Whether the defendants or any of them are in possession of the suit properties?

4. Whether the defence is barred by res judicata by reason of the 3rd defendant having filed O.S. 817/67 as plaintiff?

5. Whether the 3rd defendant is estopped from claiming any right in respect of the suit properties?

6. To what relief are the plaintiffs entitled?"

8. After evaluating the pleadings of the parties and evidence produced by them, the trial Court held that in view of the settlement deed Ex.B1, respondent No.5 is entitled to the entire property and the principle of estoppel cannot be invoked to defeat her rights. The appeal preferred by respondent Nos.1 to 4 was dismissed by Sub-ordinate Judge, Tirupattur. However, the second appeal filed by them was allowed by the impugned judgment. The learned Single Judge considered the entire record including the settlement deed Ex.B1, revocation deed Ex.A10, Will dated 21.11.1966, decree dated 7.3.1970 passed in O.S. No.817/1967 and observed/held as under:

"Ex.A-4 the extract of suit register will show that the decree was passed in accordance with terms of the compromise Ex.A-11 the

copy of the decree will show that as per panchayat, it was agreed that the third defendant who is plaintiff in the above suit is entitled to the property described in the above suit. It is significant to note that in the above compromise, the third defendant herein and the first defendant, the mother of the third defendant also signed. Defendants 5 to 7 who are defendants 1 to 3 in the above suit have also signed the above compromise accepting the terms of the compromise. As already stated the fact that Doraisamy Gounder executed the Will as family arrangement has been admitted by the third defendant herein in the above suit. It is no doubt true that the suit property is not included in the earlier suit. But, it is seen that the third defendant has admitted the right of the plaintiffs to the suit property as per the terms of the Will Ex.A-1. Relying upon the above facts it is contended by the plaintiffs that the third defendant herein is estopped from denying the validity of the will and claiming right to the suit property by virtue of Ex.B-1. It is also pleaded in paragraph 3 of the reply statement filed by the plaintiffs that third defendant is estopped from claiming right in the suit property. But, the third defendant has not whispered anything about the earlier compromise decree in the written statement. The compromise decree has not been challenged as fraudulent or collusive by the third defendant in this suit. It is not even stated that admissions in the earlier suit were made by the third defendant under erroneous circumstances. In fact, the third defendant has not been examined in this suit to speak to the fact

under what circumstances the compromise decree came to be executed, D.W.1 the 2nd defendant and D.W. 2 the first defendant have admitted in their evidence that they have signed in the compromise. It is within the knowledge of the third defendant as to why and how the compromise decree came to be passed in the earlier suit.

19. Though compromise decree passed under Ex.A-11 will not operate as res judicata, the decree will bar the third defendant from denying right of the plaintiffs under the will. As already stated, the third defendant has clearly admitted in the earlier proceedings that the suit property was bequeathed to plaintiffs by Doraisamy Gounder by way of family arrangement and that the third defendant herself claim right to the property as per the terms of the will. The admission made by the third defendant in the earlier suit is clear and unambiguous. Hence, it is for the third defendant to explain that the above admission is erroneous, though admission is not conclusive as the truth of the matters stated therein, the weight to be attached to the above admission would

depend upon the circumstances under which it is made. (Vide Nagubai v. B. Sharma Rao (1956 SC page 593). In Hem Nolini v. Isolyne Sarojbashini (AIR 1962 SC 1471), the Apex Court has held that estoppel can only arise when one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief. In the above case, the party in the application for letters of administration contended that certain property belonged to the testator. It is held that she could be estopped from subsequently showing that the testator was not the owner."

9. On the issue of possession, the learned Single Judge referred to various documents and concluded that once appellant No.3 herein admitted the title of respondent Nos.1 and 2, she cannot continue to occupy the same. This is evinced from paragraph 25 of the impugned judgment, which reads as under:

"The possession of the suit property by the third defendant will not show that she was in possession only on the basis of Ex.B-1 Settlement deed. In the will itself it is recited that the third defendant was appointed as guardian for the minor first plaintiff. The first plaintiff is none other than the daughter of the third defendant. There is no dispute that all the parties were residing together in one family till the dispute arose between them. In the above circumstances, the possession of third defendant will not in any way defeat the right of the plaintiffs to the suit property. As third defendant was appointed as the guardian for the first plaintiff, the possession of the suit property by the third defendant is referable to the possession on behalf of the first plaintiff. The other defendants have no right in the suit properties since the third defendant was given A Schedule property. But the right of other defendants are governed under complied decree. It is seen that after dispute arose between the parties, the plaintiffs sent kist by money order, which is evident from Exs. A-5 to A-7 Exs. A-8 and A-9 are the pattas. The conduct of the third defendant in admitting the title of the plaintiff to the suit property in the earlier suit and agreeing to take the property set out in A-Schedule in the will in the earlier suit will estop the third defendant from denying the title of the plaintiff to the suit property in this suit. By conduct, the third

> defendant admitted the title of the plaintiffs in the earlier suit. In the above circumstances, it is not open to the third defendant now to contend that the will Ex.A-1 is not valid in law. Moreover, as the third defendant has admitted the will as family arrangement, she is bound by the terms of the will. The above aspect of the case was not properly considered by the courts below. Even assuming that the third defendant was entitled to the property by virtue of Ex. B-1, she has admitted the title of the plaintiffs to the suit property in the will in the earlier suit. As the alleged will is admitted by the third defendant as family arrangement, the third defendant cannot contend otherwise. For the reasons stated above, I hold that the concurrent findings of the court below cannot be sustained."

10. Shri A.T.M. Sampat, learned counsel for the appellants argued that the impugned order is liable to be set aside because the learned Single Judge committed serious error by interfering with the concurrent findings of fact recorded by the trial Court and the lower appellate Court. Learned counsel then argued that compromise decree dated 7.3.1970 cannot operate as res judicata against the appellants and respondent No.5 and the learned Single Judge was not justified in invoking the doctrine of estoppel in holding that by virtue of the Will executed by Duraisami, respondent Nos.1 and 2 had acquired title over the suit property. Learned counsel extensively referred to the settlement deed Ex.B1 and argued that even though the appellants and respondent No.5 did not challenge the Will, they could not be precluded from relying upon the terms of settlement deed for contending that Duraisami had no right to execute the revocation deed and Will. Learned counsel for respondent Nos.1 to 4 supported the impugned judgment and argued that the finding recorded by the learned Single Judge on the issue of estoppel is based on correct appreciation of

evidence produced by the parties including the revocation deed, Will and compromise decree dated 7.3.1970 and the judgment under challenge does not call for interference by this Court. He strongly relied on the averments contained in the plaint of O.S. No.817/1967 and argued that after having accepted the revocation deed and Will, respondent No.5 is estopped from claiming title over the property which was subject matter of O.S. No.833/1979.

11. We have considered the respective submissions. Admittedly, the suit filed by respondent No.5 (O.S. No.817/1967) was confined to the properties specified in the Schedule appended to the plaint and the same did not relate to the properties specified in ‘B’ and ‘C’ Schedules appended to Will dated 21.11.1966 executed by Duraisami. In the plaint filed by her, respondent No.5 unequivocally

accepted the Will executed by Duraisami in respect of the properties covered by settlement deed dated 20.10.1948 by making the following statement:

> "He further wanted to give some properties to Manimekalai, daughter of the plaintiff and M. Devaraia, the son-in-law of the plaintiff, the plaintiff being very affectionable to her father had no objection in the said Duraisami Gounder executing a registered will in respect of the properties covered by the settlement deed dated 20.10.1948, as the said Duraisami Gounder wanted to have a family arrangement to be made even during his life time. Accordingly, the said Duraisami Gounder executed a will on 21.11.1966 in sound disposing state of mind, out of his own free-will. The said will was duly registered also. The plaintiff had assured her father Duraisami Gounder that she would respect his wishes, and that the terms of the will would be duly given effect to by her."

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12. In addition to the above statement, respondent No.5 gave effect to the Will by effecting delivery of possession of 'C' Schedule properties to her mother (appellant No.1 herein) and 'B' Schedule properties to respondent Nos.1 and 2 herein. Thus, in effect she had accepted the title of respondent Nos.1 and 2 over 'B' Schedule properties specified in the Will executed by Duraisami. This was the property for which respondent Nos.1 to 4 had filed suit. The learned trial Court and the lower appellate Court did not properly appreciate the averments contained in the plaint of O.S. No.817/1967 and discarded the plea of respondent Nos.1 and 2 by assuming that they had set up res judicata as a ground for seeking declaration of their title over the suit properties. What respondent Nos.1 to 4 had pleaded was that after having accepted Will dated 21.11.1966 and acted upon the same, respondent No.5 is estopped from questioning their title. This being the position, the learned Single Judge had rightly invoked the principle of estoppel and reversed the finding recorded by the courts below on the issue of entitlement of respondent Nos.1 and 2 to the suit property.

13. We are further of the view that the finding recorded by the learned Single Judge on the issue of illegal occupation of the suit property by respondent No.5 is correct and does not require interference.

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14. In the result, the appeal is dismissed. However, keeping in view the fact that the parties are closely related and the appellants and respondent No.5 have succeeded in two courts, we do not consider it proper to saddle them with costs.

.....
J.

[G.S. Singhvi]

.....J
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[Asok Kumar Ganguly]

New Delhi
February 24, 2010

ITEM NO.101 COURT NO.8 SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 6939 OF 2002

MEENAKSHI AMMAL AND ORS. Appellant (s)

VERSUS

MANIMEKALAI AND ORS. Respondent(s)

(With appln(s) for substitution,permission to place addl. documents on record and office report)

Date: 24/02/2010 This Appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Appellant(s) Mr. A.T.M. Sampath, Adv.
Ms. T.S. Shanthi, Adv.

For Respondent(s) Mr. R. Anand Padmanabhan, Adv.
Ms. Amritha Sarayoo, Adv.
For Mr. Pramod Dayal,A.O.R.

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed in terms of signed order placed on the file. However, keeping in view the fact that the parties are closely related and the appellants and respondent No.5 have succeeded in two courts, we do not consider it proper to saddle them with costs.

(A.D. Sharma) (Phoolan Wati Arora)
Court Master Court Master
(Signed Order is placed on the file)