# S.Saktivel (Dead) By Lrs vs M.Venugopal Pillai And Ors on 10 August, 2000

## Equivalent citations: AIR 2000 SUPREME COURT 2633, 2000 AIR SCW 2849, 2001 (1) ALL CJ 32, 2000 (3) BLJR 1996, 2000 BLJR 3 1996, (2000) 9 JT 345 (SC), 2001 ALL CJ 1 32, 2000 (5) SCALE 517, 2000 (7) SCC 104, 2000 (8) SRJ 53, 2000 (3) LRI 1087, 2000 (9) JT 345, (2001) 1 MARRILJ 199, 2001 (1) MARR LJ 199, (2001) 1 MAD LJ 40, (2001) 1 MAD LW 855, (2000) REVDEC 615, (2000) 3 SCJ 212, (2000) 5 SUPREME 450, (2000) 4 RECCIVR 93, (2000) 5 SCALE 517, (2000) 40 ALL LR 806, (2001) 2 CIVLJ 793

## Bench: V.N.Khare, S.N.Variava

CASE NO.:
Appeal (civil) 1555 of 1990

PETITIONER:
S.SAKTIVEL (DEAD) BY LRS..

Vs.

RESPONDENT:
M.VENUGOPAL PILLAI AND ORS.

DATE OF JUDGMENT: 10/08/2000

BENCH:
V.N.KHARE & S.N.VARIAVA

JUDGMENT:

KHARE, J.:

L...I...T.....T.....T.....T.....T.....T.....T..J The short question that arises in this appeal is whether any parol evidence can be let in to substantiate a subsequent oral arrangement rescinding or modifying the terms of a registered settlement deed.

The property in dispute in this appeal was self-acquired property of one Muthuswamy Pillai. The said Muthuswamy Pillai had a concubine named Papammal and through her three sons and one daughter were born. One of the sons, Appavu

Pillai died during the lifetime of Muthuswamy Pillai, leaving defendant nos.2 to 4 as his legal heirs. Singaravaelu Pillai (defendant No. 1) and Venugopal Pillai, plaintiff (respondent no.1 herein) are second and third sons of said Muthuswamy Pillai. Defendant No.6 who is the appellant in this case is the son of Singaravaelu Pillai (defendant No. 1) who died during the pendency of the suit. Muthuswamy Pillai who owned the property, settled the same under a registered settlement deed dated 26.3.1915 (Ext. A/1) in favour of Papammal and children born through her. At the time of execution and registration of settlement deed all the sons were minors and, therefore, their mother was appointed as their guardian who accepted the settlement in her capacity as a guardian of the minors. Muthuswamy Pillai died in 1954 and Papammal also died subsequently in the year 1957.

The plaintiff Venugopal Pillai claimed share in the property in dispute under the registered settlement deed. Since defendant no.1 refused to give any share in the property to the plaintiff, he brought a suit for partition and also for other consequential reliefs. Defendant No.1 filed written statement wherein he contested the claim of the plaintiff and whereas defendant nos.2 to 5 accepted the case of the plaintiff. After the death of defendant No.1, defendant No.6, who is the heir of defendant No.1 was substituted in the suit as defendant No. 6.

Defendant-appellant adopted the written statement filed by his father. In the written statement it was pleaded that as a result of the subsequent arrangement arrived at amongst the members of the family of Muthuswamy Pillai in the year 1941 the property in dispute was allotted to defendant no.1 exclusively and rest of the other sons were given money by cash. In sum and substance the case of defendant no.6 was that as a result of oral arrangement arrived in the year 1941, the settlement deed executed and registered on 26.3.1915 stood modified and, therefore, the plaintiff is not entitled to any share in the property. The registered settlement deed was filed in the suit and was exhibited as Ex.A/1. Before the trial court, a question arose as to whether the registered document is a settlement deed or a will. However, both the parties proceeded on the basis that document Ext. A/1 is a registered settlement deed and not a will. The trial Court treating the document Ex.A/1 as a settlement deed held that in view of proviso (4) to Section 92 of the Evidence Act the contesting defendant can lead oral evidence to substantiate the subsequent oral arrangements arrived at amongst the members of the family and believing the arrangements as set up by the defendant-appellant, the trial court dismissed the suit filed by the plaintiff -respondent.

In First Appeal filed by the plaintiff before the High Court the learned Single Judge of the High Court was of the view that in view of proviso (4) to Section 92 of the Evidence Act it is not open to the parties to let in oral evidence to modify, vary or subtract the terms of the registered document. Consequently, the First Appeal was allowed and the suit for partition was decreed. The Letters Patent Appeal preferred by the appellant was dismissed by a Division Bench of the High Court. It is against the said judgment the appellant is in appeal before us.

Learned counsel appearing for the appellant urged that the view taken by the High Court in decreeing the suit of the plaintiff was erroneous inasmuch as the settlees under Ex.A/1 got the suit property and by the subsequent oral arrangement, they agreed to work out their rights without varying or substituting the terms of Ex.A/1 and, therefore, the High Court was not right in not considering the oral arrangement as pleaded by the defendant/appellant. It is not disputed that disposition under Ex.A/1 in the present case is by way of grant and under the said disposition all the sons of Muthuswamy Pillai acquired rights. It is also not disputed that the settlement deed is a registered document and by virtue of alleged subsequent oral arrangement other sons of Muthuswamy Pillai were divested with the rights which they acquired under the settlement deed. Under such circumstances the question that arises for consideration is as to whether any parol evidence can be let in to substantiate subsequent oral arrangement rescinding or modifying the terms of the document which, under law, is required to be in writing or is a registered document, namely, Ex.A/1. Section 92 of the Evidence Act reads as thus:

> "92. Exclusion of evidence of oral agreement. - When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:
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> Proviso (4) - The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents."

A perusal of the aforesaid provision shows that what Section 92 provides is that when the terms of any contract, grant or other disposition of the property, or any matter required by law to be reduced in the form of document, have been proved, no evidence of any oral agreement or statement is permissible for the purpose of contradicting, varying, adding or subtracting the said written document. However this provision is subject to proviso 1 to 6 but we are not concerned with other provisos except proviso 4, which is relevant in the present case. The question then is whether the defendant-appellant can derive any benefit out of proviso (4) to Section 92 for setting up oral arrangement arrived at in the year 1941 which has the effect of modifying the written and registered disposition. Proviso (4) to Section 92 contemplates three situations, whereby (i) the existence of any distinct subsequent oral agreement as to rescind or modify any earlier contract, grant or disposition of the property can be proved.

(ii) However, this is not permissible where the contract, grant or disposition of property is by law required to be in writing.

(iii) No parol evidence can be let in to substantiate any subsequent oral arrangement which has effect of rescinding a contract or disposition of property which is registered according to the law in

force for the time being as to the registration of documents.

In sum and substance what proviso (4) to Section 92 provides is that where a contract or disposition, not required by law to be in writing, has been arrived at orally then subsequent oral agreement modifying or rescinding the said contract or disposition can be substantiated by parol evidence and such evidence is admissible. Thus if a party has entered into a contract which is not required to be reduced in writing but such a contract has been reduced in writing, or it is oral in such situations it is always open to the parties to the contract to modify its terms and even substitute a new by oral contract and it can be substantiated by parol evidence. In such kind of cases the oral evidence can be let in to prove that the earlier contract or agreement has been modified or substituted by new oral agreement. Where under law a contract or disposition are required to be in writing and the same has been reduced in writing, its terms cannot be modified or altered or substituted by oral contract or disposition. No parol evidence will be admissible to substantiate such an oral contract or disposition. A document for its validity or effectiveness is required by law to be in writing and, therefore, no modification or alteration or substitution of such written document is permissible by parol evidence and it is only by another written document the terms of earlier written document can be altered, rescinded or substituted. There is another reason why the defendant/appellant cannot be permitted to let in parol evidence to substantiate the subsequent oral arrangement. The reason being that the settlement deed is a registered document. The second part of proviso (4) to Section 92 does not permit leading of parol evidence for proving a subsequent oral agreement modifying or rescinding the registered instrument. The terms of registered document can be altered, rescinded or varied only by subsequent registered document and not otherwise. If the oral arrangement as pleaded by the appellant if allowed to be substantiated by parol evidence it would mean re- writing of Ex.A/1 and, therefore, no parol evidence is permissible.

In view of the aforesaid legal position on interpretation of proviso (4) to Section 92 we have to examine as to whether settlement deed Ex.A/1 was required to be in writing under the law or not. It is not disputed that by settlement deed Ex.A/1 which is a disposition Muthuswamy Pillai passed on right to property to all his sons who acquired right in the property. Where there is such conferment of title to the property, law requires it be in writing for its efficacy and effectiveness. A document becomes effective by reason of the fact that it is in writing. Once under law a document is required to be in writing parties to such a document cannot be permitted to let in parol evidence to substantiate any subsequent arrangement which has effect of modifying earlier written document. If such parol evidence is permitted it would divest the rights of other parties to the written document. We are, therefore, of the view that the subsequent oral arrangement set up by the defendant-appellant cannot be proved by the parol evidence. Such a evidence is not admissible in evidence.

The learned counsel for the appellant then urged that Ex.A/1 in fact is not a settlement deed but is a will and, therefore, parol evidence is admissible to substantiate the subsequent oral arrangement. This controversy also arose before the trial Court. Before the trial Court the plaintiff and the defendants agreed that Ex.A/1 is a settlement deed and not a will and the trial Court proceeded on the basis that the document Ex.A/1 is a registered settlement deed. We are, therefore, not deposed to entertain the argument of learned counsel for the appellant.

For the aforesaid reasons, we do not find any merit in this appeal. It is accordingly dismissed. There shall be no order as to costs.