



S.A.No. 1268 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2024

CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No.1268 of 2011

1. Gopalakrishnan
2. Balasubramaniyan

... Appellant / Plaintiffs

Vs.

The Director,
Tamil Nadu Public Health and Preventive Medicine
Department,
Chennai.

... Respondent / Defendant

Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, against judgment and decree of the Subordinate Judge's Court at Kallakurichi, dated 19.06.2007 in A.S.No.65 of 2005 confirming the judgment and decree of the Principal District Munsif Court at Kallakurichi, dated 20.11.2003 in O.S.No.907 of 1989.

For Appellant : Mr.P.Valliappan
Senior Counsel
for Mr.G.R.N.Palaniappan

For Respondent : Dr.S.Suriya
Additional Govt. Pleader



S.A.No. 1268 of 2011

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JUDGMENT

Heard Mr.P.Valliappan, the learned counsel for the appellants and Dr.S.Suriya, the learned Additional Government Pleader for the respondent.

2. The plaintiffs are the appellants who have filed the suit against the defendant for seeking the relief of declaration and permanent injunction. The trial Court dismissed the suit. The appeal preferred by the plaintiffs also got dismissed by confirming the judgment of the trial Court. Now the plaintiffs have preferred this Second Appeal.

3. The averments pleaded in the plaint are as follows:

The plaintiffs are the sons of one Govidasamy Naicker, an agriculturist of Thottiyam Village, Kallakurichi Taluk. They constituted a Hindu joint family and the suit properties belonged to Hindu joint family. The said Govidasamy Naicker had executed a gift deed dated 26.06.1989 (Ex.P1) in favour of the defendant for opening a primary health centre on 17.06.1988. Govidasamy Naicker has got no right to execute a gift deed on the joint family property without the knowledge of the joint family members. Joint family owns only a small extent of lands and hence there is no question



S.A.No. 1268 of 2011

of gifting any family property to anyone. As the gift deed has been executed by a person who did not have any exclusive right, that will not pass any title to the defendant. Hence, the plaintiffs have filed the suit for declaration and permanent injunction.

4. The averments pleaded in the written statement are as follows :

The suit property belonged to the father of the plaintiffs, Govidasamy Naicker and he has every right to alienate the same. Accordingly, the father of the plaintiffs had executed a gift deed in favour of the defendant and pursuant to that the defendant had also taken possession. The defendant had acquired title not only through the gift deed but also by open and continuous possession and enjoyment for more than a statutory period. Since there is no cause of action for the suit, the plaintiff is not entitled to the relief sought by him.

5. During the course of trial, on the side of the plaintiffs one witness was examined as P.W.1 and Exs.A1 to A12 were marked. On the side of the defendant, two witnesses were examined as D.W.1 and D.W.2 and Exs.D1 to D4 were marked. Two documents have been marked through witnesses as Exs.X1 and X2.



S.A.No. 1268 of 2011

WEB COPY 6. The trial Court has framed the following issues:

- “1. வாதி கோரும் வளம்புகை பரிகாரம் தாவா சொத்து குறித்து வாதிக்கு கிடைக்கக் கூடியதா ?
2. வாதி கோரும் நிரந்தர உறுத்துக்கட்டளை பரிகாரம் வாதிக்கு கிடைக்கக் கூடியதா ?
3. தாவா சொத்து பொது குடும்ப சொத்து என்று சொல்லுவது சரியா ?
4. வாதிக்கு கிடைக்கக் கூடிய பரிகாரம் என்ன ?”

7. At the conclusion of the trial and after considering the evidence available on record, the trial Court has dismissed the suit and the first appeal preferred by the plaintiffs was also dismissed by confirming the judgment of the trial Court. Now, the plaintiffs have preferred this Second Appeal by raising the following Substantial Questions of Law:

“ 1. *Whether the Courts below are correct in law in eschewing Exs.A3 to A6 registered sale deeds, which are more than 30 years old and establish the fact that the suit properties are joint family properties ?*

2. *Whether the Courts below are correct in law in discarding Exs.A3 to A6 in contravention of Section 90 of the Evidence Act,*



S.A.No. 1268 of 2011

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3. Whether the Courts below are correct in law in holding that the suit properties are the exclusive property of Govindasamy, without any evidence in that regard ?

4. Whether the lower appellate court is correct in law in rendering a cursory judgment especially when it is incumbent to deal with the appeal as though it is a suit ?

5. Whether the courts below are correct in law in ignoring Exs.A1 to A12 coupled with the evidence of P.Ws.1 & 2 which would clearly establish the case of the appellants ?

6. Whether dismissal of a suit for partition for default would operate as res-judicata the present suit for declaration and permanent injunction ?”

8. Mr.P.Valliappan, the learned Senior Counsel for the plaintiffs / appellants, submitted that the appellants who are the plaintiff have filed the suit by stating that the suit property is a joint family property and their father Govindasamy Naicker did not have any right to execute a gift deed in favour of the defendant on 17.06.1988 vide Ex.B1. It is further submitted that the courts below did not appreciate the sale deed executed in favour of grandfather and his brother dated 29.08.1943 (Ex.A4) to consider the suit



S.A.No. 1268 of 2011

property as a joint family property. It is further submitted that as the settlement is executed by a person who did not have title and the title vest with the plaintiffs, the Courts below ought to have decreed the suit and granted the relief of declaration and permanent possession against the defendant.

9. Dr.S.Suriya, the learned Additional Government Pleader, appearing for the respondent / defendant submitted that the suit property is very much a self acquired property of Govidasamy Naicker who is the father of the plaintiff. She further submitted that the first plaintiff who was examined as P.W.1 has himself admitted in his evidence that the suit property is the self acquired property of Govidasamy Naicker; without any basis, the plaintiffs have filed this suit and that too after knowing well that the defendant has taken possession; after the defendant has become the original owner, the plaintiffs cannot claim any right of entitlement or injunction against the true owner; the judgment and decree of the Courts below are based on the right principles of law applicable to the case of the plaintiffs and needs no interference.

10. The fact that the plaintiff's father Govindasamy Naicker had



S.A.No. 1268 of 2011

executed a settlement deed in favour of the defendant on 17.06.1988 through

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Ex.B1, was not denied. But the plaintiffs claimed that the properties are joint family properties and their father Govidasamy Naicker did not have any right to pass title in favour of third party like the defendant. The first plaintiff was examined as P.W.1 and has given a categorical admission that the said property has been purchased by his father.

11. Even though the suit property was a self acquired property of plaintiff's father, for the reasons best known to their father, he had included the names of the plaintiffs also who were minors then. It was probably because he intended that the defendant should not face any trouble at any future point of time. However, the plaintiffs have taken advantage of the same and claimed that their share in the property has been sold away by their father and it will not bind their interest. In fact the plaintiffs, though added as a parties to the sale deed, did not have any right over the property because the suit property was a self acquired property of the plaintiff's father and it has been dealt by the rightful owner during his lifetime. In fact the gift deed has been executed in favour of the defendant for establishing a primary health centre and immediately after the execution of the gift deed, possession



S.A.No. 1268 of 2011

has also been taken by the Government. Knowing all these facts, the plaintiffs have filed the suit for declaration and permanent injunction by claiming as though he continues to be in possession of the property.

12. The suit property is not a vacant land and in which primary health centre has also been constructed and it is functioning. Even with some remote imagination, if the property is presumed to be vacant site, the possession of property goes with the title and the defendant has the title over the property. But in the instant case it is learnt that the Government has utilized the lands for the purpose of building the primary health centre and it is functioning now. Without having any right over the suit property, the plaintiffs have just tried their luck by stating that the suit property has been purchased from the joint family nucleus. In fact, knowing well that the plaintiffs are parties to the gift deed, they did not even seek the relief to cancel the deed but has filed the suit for the relief of declaration and permanent injunction.

13. As the plaintiff's father is the rightful owner and the suit property is the self acquired property and only on that basis he has passed title in favour of the defendant by executing a registered gift deed, the plaintiffs



S.A.No. 1268 of 2011

cannot raise a novel claim by stating that the suit property has been purchased from the joint family nucleus. Both the courts below have rightly appreciated the evidence by giving due credit to Section 91 of the Indian Evidence Act.

14. The plaintiff's father who had title over the property, had passed the title in favour of the defendant by executing a registered gift deed and the defendant has also accepted the same and taken possession of the same and started using it for the purpose for which it has been gifted. Even though the plaintiffs might be the legal heirs of their father Govidasamy Naicker who is the original owner, they cannot claim any right over the suit property after that has been alienated in favour of the defendant. As the trial court have rightly appreciated the facts and applied the law to dismiss the claim of the plaintiffs, the first appellate Court is right in dismissing the first appeal by confirming the judgment and decree of the trial Court. None of the question of law would arise in the second appeal. Even if it is presumed to have arisen, the evidence on record and the position of law is against the appellants and hence the Second Appeal fails.



S.A.No. 1268 of 2011

WEB COPY 15. In the result, the Second Appeal stands dismissed and the judgment and decree dated 19.06.2007 made in A.S.No.65 of 2005 on the file of the learned Subordinate Judge, Kallakurichi is confirmed and the suit O.S.No.907 of 1989 on the file of the Principal District Munsif Court at Kallakurichi, is dismissed. No costs.

22.11.2024

Index:Yes/No

Speaking Order / Non-speaking order

Neutral Citation Case : Yes / No

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S.A.No. 1268 of 2011

To:
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1. The Subordinate Judge, Kallakurichi
2. The Principal District Munsif,
Kallakurichi.



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S.A.No. 1268 of 2011

R.N.MANJULA, J.

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S.A. No.1268 of 2011

25.11.2024