

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-01-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Second Appeal No. 243 of 2010

and

M.P. No. 1 of 2014

1. Javeed Basha
2. Alimuddin
Rep. by Power of Attorney, Father Mohammed Ali
3. Raghmathunnisha
4. R. Syed Ibrahim
Rep. by Power of Attorney, Mr. R.S. Jalal, 5th Respondent
5. R.S. Jalal
6. Syed Ayuob
Rep. by Power of Attorney, Mr. R.S. Jalal, 5th Respondent
.. Appellants / Plaintiffs

Versus

1. Rukkamma
2. Rangamma
3. Manjunath
4. Baby Rani
5. Krishnamurthy @ Kittu
6. Sekar
7. Vasanthakumari
8. Devi @ Vanaja Shree
9. Ellamma
.. Respondents 1 to 9/
Defendants 1 to 9.
10. Mallika Jan
11. Rahath Jan
12. Khalifunnissa
.. Respondents 10 to 12/
Defendants 11 to 13 in AS
13. D. Kamalanathan
14. K. Dhinesh
.. Respondents 13 to 14
(Respondents 13 and 14 were impleaded
as per order dated 23.01.2015 made in
MP No. 1 of 2014 in SA No. 243 of 2010)

Second Appeal filed under Section 100 of CPC against the Judgment and Decree dated 13.10.2009 made in A.S. No. 4 of 2008 on the file of Principal District Court, Krishnagiri partly reversing and modifying the judgment and decree dated 20.11.2007 made in O.S. No. 53 of 2005 on the file of the Subordinate Judge, Hosur.

For Appellants : Mr. V. Raghavachari

<https://hcservices.ecourts.gov.in/hcservices/>

For Respondents : No appearance for R1
Mr. R. Subramanian

for Mr. V. Nicholas for RR2 to 8
RR9 to 12 were set exparte
Ms. R. Poornima for RR13 and 14

JUDGMENT

The Plaintiffs in O.S. No. 53 of 2005 on the file of Subordinate Judge, Hosur, are the appellants in this second appeal. The suit filed by the plaintiffs was dismissed by the trial court and it was partly allowed by the first appellate Court, which gave rise to the present second appeal by the plaintiffs.

2. For the sake of convenience, the parties to this appeal shall be referred to as "plaintiffs" and "defendants" as per their rank in the suit.

3. The Plaint averments in O.S. No. 53 of 2005 could be narrated in brief as follows:- The first defendant is the second wife of late K. Shivaram who died in the year 1992 and also mother of defendants 2 to 8. The ninth defendant is the first wife of deceased K. Shivaram. The 10th defendant is mother of plaintiffs 3, 4, 5 and 6. According to the plaintiffs, Krishnappa, father of late. Shivaram possessed immovable properties. The deceased Shivaram filed a suit in O.S. No. 59 of 1982 against his father Krishnappa seeking partition. The said suit ended in a compromise and it was recorded on 18.04.1990 in I.A. No. 427 of 1990 in O.S. No. 59 of 1982. The suit properties were allotted to the share of the deceased Sivaram consisting of four items. Subsequently, a final decree was passed in the suit in O.S. No. 59 of 1982 on 08.10.1991. Thus, the suit properties were in possession and enjoyment of the deceased Shivaram as Kartha and Manager of the joint family. According to the plaintiffs, the deceased Shivaram, as a Kartha and natural guardian for the minors in the joint family and for legal necessity, sold some of the properties fell to his share in the final decree aforesaid and discharged the debts incurred for the family, incurred expenditure for education and marriage of the girls and for general maintenance and protection of the family. In this context, the deceased Shivaram executed a registered sale deed dated 11.11.1991 in favour of the first plaintiff morefully described in "A" schedule of the plaint. On the same day, the deceased executed another sale deed in favour of second plaintiff, which is described as Schedule B in the plaint. Yet another sale deed dated 11.11.1991 was executed by the deceased in favour of one Shiva Kumari, daughter of Rudrappa. The said Shiva Kumari in turn sold the property purchased by her in favour of the third plaintiff on 15.03.2005 which is described as Schedule "C" in the plaint. On 11.11.1991, another sale was made in favour of Abdul Rasheed Sahib which is morefully described as schedule "D" in the plaint. After the death of Abdul Rasheed Sahib, the plaintiffs 3, 4, 5, 6 and 10, as legal heirs, have succeed to his estate and were in possession and enjoyment of the said property. Thus, the deceased Sivaram has alienated the suit properties for a legal necessity for and on behalf of the joint family and it is valid. While so, the defendants 1 to 8 served a caveat notice to the plaintiffs during February 2014 even though the sale deeds executed by the deceased Shivaram is binding on them. It is also not the case of the

defendants that the deceased Shivaram alienated the suit properties for any immoral purpose. On 31.01.2005, the defendants 1 to 8 have also given a public notice in Tamil newspaper "Dinamalar" dated 01.02.2005 wherein they have alleged that after the death of the deceased Shivaram, they have entered into a partition deed and are in possession of the suit properties. By virtue of the public notice, the defendants have raised a cloud over the title of the plaintiffs in respect of the suit property. Subsequently, on 07.06.2005, the defendants 3, 5 and 6 along with some unknown persons attempted to enter upon the suit property and also to destroy the survey stones. In those circumstances, the plaintiffs have filed the suit for a declaration to declare that they are the owners of the suit property and consequential permanent injunction.

4. The defendants 1 to 8 have filed a written statement in which they have admitted that the deceased Shivaram was the head of the family comprising of defendants 1 to 8 and they were under his care and custody. It was also admitted that the suit property and other properties belong to the ancestral of deceased Shivaram and it fell to the share of the deceased Shivaram in the final decree passed in O.S. No. 59 of 1982. According to the defendants, the final decree passed in O.S. No. 59 of 1982 was not in force as it was struck down by the learned Subordinate Judge, Hosur in O.S. No. 229 of 1996 dated 03.07.1997. Therefore, according to the defendants, possession of the suit properties were never entrusted to the deceased and consequently, the plaintiffs were not in possession of the suit properties as alleged. On the other hand, it is the defendants who are in possession and enjoyment of the suit property. According to the defendants, the sale deeds executed by the deceased in favour of the plaintiffs will not bind them in any manner. Even at the time of execution of the sale deeds in the year 1991, some of the children of the deceased Shivaram have attained majority however, they were not parties to the sale deeds. Therefore, according to the defendants, the sale made by the deceased Shivaram in favour of the plaintiffs is not for any legal necessity nor for upliftment of the family of the defendants. Therefore, the defendants prayed for dismissal of the suit.

5. Before the trial court, on behalf of the plaintiffs, Syed Jalal and Mohammed Al were examined as PWs 1 and 2 and Exs. P1 to P8 were marked. On behalf of the defendants, Vasanthakumari, the seventh defendant was examined as DW1 and Exs. B1 and B2 were marked. On appreciation of the oral and documentary evidence, the trial court framed issues as to whether the sale deeds executed by the deceased Shivaram in favour of the plaintiffs are nominal and binding on the defendants. Ultimately, the trial court dismissed the suit on finding that at the time of execution of the sale deeds, some of the children of the deceased Shivaram, however, they were not parties to the sale deeds. It was further pointed out that the sale was not made for any legal necessity and therefore it will not bind the defendants in any manner.

6. Aggrieved by the decree and judgment passed by the trial court, the plaintiffs preferred A.S. No. 4 of 2008 before the first appellate Court. The first appellate Court pointed out that admittedly, the suit property is an ancestral property which fell to

the share of the deceased Shivaram. Therefore, atleast, the deceased Shivaram has got 1/4 share in the suit property and therefore, the sale made by the deceased Shivaram in favour of the plaintiffs is valid to that extent. Accordingly, the first appellate Court passed a partial decree holding that the plaintiffs are entitled for 1/4 undivided share of the suit property.

7. At the time of admission of the second appeal, the following substantial questions of law are framed for consideration:-

(1) Whether the courts below are justified in concluding that the sale made by Sivaraman does not bind the defendants, when the sale remains unchallenged from 1991?

(2) Whether the courts below are justified in concluding that Sivaraman has no alienable right over the suit property, when he obtained title by virtue of compromise decree in O.S. No. 59 of 1982 dated 18.04.1990?

8. The learned counsel appearing for the appellants vehemently contended that the courts below failed to consider that the defendants have never quesitoned the sale made in favour of the plaintiffs by the deceased Shivaram by filing separate suits. The suit properties have been alienated by the deceased Shivaram during the year 1991 as a Kartha of the joint family. The defendants remained silent till 1996 and filed a suit in O.S. No. 226 of 1996 to set aside the sale. Even this suit filed by the defendants is hopelessly barred by the period of limitation as contemplated under Article 109 of the Limitation Act. It is the contention of the defendants that some of the sons of the deceased Shivaram have attained majority at the time of execution of the sale deeds during the year 1991. Therefore, within three years from the date of knowledge of such sale, the minor son or daughter ought to have questioned the validity of the sale deed, but it was not done. Even some of the children of the deceased Shivaram signed as attesting witness in the sale deeds and with their knowledge, the sale deeds were executed in favour of the plaintiffs. It is well settled that even if one of the children attained majority, the period of limitation for questioning the act of the head of the family or kartha begins from that date on wards. However, in this case, the sale made by the father was never questioned by his legal heirs for more than 12 years. Therefore, the defendants have lost their right of defence, if any, by efflux of time and the period of limitation has come into force. The courts below erred in considering Exs. A1 to A3, the recitals of which would categorically indicate that the deceased Shivaram has sold the suit properties for a legal necessity which includes discharge of debts, purchase of a house in Bangalore and for development of motor business. It is also not the case of the defendants that the deceased Shivaram led an immoral life and spent the property vested in his hands without any legal necessity. When such being the case, the sale made by the deceased Shivaram will bind the defendants. The learned counsel for the appellants further would contend that even the first appellate Court failed to consider the fact that the sale made in favour of the appellants was never questioned by the legal heirs of the deceased Shivaram, while

so, the sale made by the deceased Shivaram in favour of the plaintiffs is valid and they are entitled to the relief of bare injunction. The learned counsel for the plaintiffs therefore prayed for allowing the suit as prayed for.

9. In support of his contentions, the learned counsel for the plaintiffs would rely on many decisions.

(i) The learned counsel relied on the decision of the Honourable Supreme Court in the case of (Sunder Das and others vs. Gajajanrao and others) reported in (1997) 9 Supreme Court Cases 701 to contend that a sale made by the karta or head of the joint family for a legal necessity will bind his legal heirs. In paragraph number 8, 9 and 10 of this decision, it was held as follows:-

"8. Having carefully considered the aforesaid rival contentions we find that the judgment and decree as passed by Trial Court and as confirmed with modification by the Division bench of the High Court cannot be sustained. However before we proceed to consider the merits of the case we may in the first instance deal with the question of limitation for filing the present suit. Article 109 in the Schedule to the Limitation Act, 1963 provides for a period of limitation of twelve years for a Hindu governed by Mitakshara law who files a suit to set aside his father's alienation of ancestral property and twelve years' period begins from the date when alienee takes possession of the property. In the present case the contesting alienees took possession of the suit property on 30th May 1959 when they got registered Sale Deed in their favour. Counting 12 years from 30th May 1959 limitation for filing the suit or challenging the said alienation would expire by 29th May 1971. The present suit was filed on 20th August 1970. Therefore it was clearly within limitation. However the said suit underwent rough weather It was originally filed in the court of Civil Judge Class II, Datia on the basis that the valuation for the purpose of jurisdiction of the court would be Rs.1800/- the consideration amount mentioned in the Sale Deed. In the first instance the said court took the view that the suit was within its pecuniary jurisdiction. However the High Court took a contrary view and held that the valuation of the suit should be equal to the market value of the property on the date of the suit and hence ordered return of the plaint for presentation to the proper court and that is how the suit was filed in the District Court on 26th November 1975 after valuing the suit at Rs.42,700/-. The contention of learned counsel for the contesting defendants is that the limitation for file in the suit will have to be seen from the date of filling of the second suit before the competent court and if 26th November 1975 being the date of filing of that suit is taken to be the date in the light of which limitation question is to be decided then the period of limitation of 12 years from the date of the Sale Deed dated 30th May 1959 must be treated to have expired and the suit was, therefore, beyond time. This contention was rightly not

accepted by both the courts below for the simple reason that originally the suit was filed within limitation, but it was filed before a court which was found to be lacking in pecuniary jurisdiction and when it was re-filed before a competent court the plaintiffs were entitled to the benefit of Section 14 of the Limitation Act enabling them to get exclusion of the time from 20th August 1970 to 22nd November 1975 when the High Court took the view that the suit should be returned for presentation to the proper court. It is obvious that the plaintiffs were prosecuting in good faith their suit before a court which from defect of pecuniary jurisdiction, was unable to entertain it and if this period gets excluded the re-filed suit on 26th November 1975 would remain within limitation of 12 years from the date of the impugned Sale Deed. The plea of bar of limitation as raised by the learned counsel for the contesting defendants, therefore stands rejected.

9. So far as the merits of the case are concerned certain salient facts which are well established on record deserve to be noted. There is ample evidence on record to show that the suit house was the ancestral house of the plaintiff and defendant no.6. Evidence shows that originally the suit house was occupied by plaintiffs' grand-father Mukundrao who had died 60 years prior to the filing of the suit. It is also revealed from the evidence that suit house was occupied by plaintiffs' father defendant no.6 and also by latter's uncle. They were staying together till defendant no.6 uncle died. Even the recital in the impugned sale Deed to the effect that the Sale Deed was executed on account of family necessity indicated that the suit house was treated as joint family property wherein obviously the plaintiffs would have interest. Both the courts below have held that the suit house was an ancestral property in the hands of plaintiffs' father, defendant no.6. This finding is well sustained on the record of the case and calls for no interference in this appeal. We, therefore, reject the contention canvassed by learned counsel for the appellants that the suit house was self-acquired property of defendant no.6.

10. Once it is held that the suit house was an ancestral property in the hands of plaintiffs' father, defendant no.6, the plaintiffs could naturally have right by birth in the suit house. However the moot question is whether the alienation of the suit house by the impugned Sale Deed by the plaintiffs' father, defendant no.6 to the contesting defendants was binding on the plaintiffs. So far as this question is concerned it must be kept in view that plaintiffs' father was the 'karta' of the joint Hindu family. The evidence shows that at the relevant time he was working as Upper Division Clerk in the civil court at Chhatarpur. His monthly income was Rs.150/- in 1958-59 when the sale Deed was executed as seen from his deposition as D.W.1. He has clearly recited in the impugned sale Deed in favour of the contesting defendants that he was selling the suit house for Rs.1800/- on

account of family necessity. He revealed in his deposition before the court that he had a family of seven persons to be maintained out of his income of Rs.150/- per months as he had got his wife three sons namely tile present plaintiffs and two young daughters It is also revealed from his evidence that he was staying at Chhatarpur as he was serving as Upper Division Clerk in the Chhatarpur court. The suit house was situated at village Datia. According to defendant no.6 he occasionally came to Datia to look after the house. No attempt was made in his evidence to get out of the clear recitals in the Sale Deed that he had entered into the transaction for family necessity. It is also pertinent to note that out of the three plaintiffs plaintiffs no.1 was major at the time of the Sale Deed. Me his conspicuously remained absent from the witness box and avoided inconvenient cross examination which is might have faced, In support of the plaintiffs only plaintiff no.3 P.M.1 Govind Rao who was admittedly aged 8 years at the time of the Sale Deed has been examined. He naturally could not have any personal knowledge about what transpired in 1959 when his father who was serving in a Civil Court as Upper Division Clark thought it fit to sell the ancestral house in village Datia to the defendants and whether the recital made by him in the Sale Deed that the transaction was being executed for family necessity was right or not. Nor defendant no.6 vendor father of the plaintiffs; had even whispered about the necessity for inserting the recital in the Sale Deed that he was executing the same for family necessity. It has to be kept in view that defendant no.6 being the father of the plaintiffs and 'karta' of the joint Hindu family was legally entitled to alienate the suit house also the interest of the minor plaintiffs in the said house even for his won requirements unless it was shown that the transaction was tainted by any immoral or illegal propose. That is not the plaintiffs. Nor have they suggested that their father was addicted to any immoral conduct. Their only case is that their father had no right to alienate their undivided interest in the suit house. We must keep in view the fact that defendant no.6 father of the plaintiffs was a worldly person who was presumed to know the ways of the world as he was attached to the Civil Court as Upper Division Clerk at the relevant time. His evidence shows that upto 1954 he had worked in the Civil Court as a Lower Division Clerk. Then he was promoted by the High Court to the post of Upper Division Clerk in the year 1954 and he was transferred to Panna and from Panna he was transferred to Chhatarpur. He also deposed that he used to visit Datia in connection with supervision of the suit house. Therefore, defendant no.6, father of the plaintiffs apart from being the 'karta' of the joint Hindu family was well versad in the ways of the world and was not a novice or a layman. With his open eyes he disposed of the suit house which appeared to be almost a ruin for Rs.1800/- . It is easy to visualize that when defendant no.6 the vendor, was staying with his family at Chhatarpur

and when the ancestral house at Datia Village was in a ruinous condition and which would almost be a burden to them he thought it fit in his wisdom to dispose it of for Rs.1800/- in favour of the defendants and made an express recital in the Sale Deed that it was for family necessity that he was disposing it of. As a Hindu father and 'karta' of the family he had every right to do so and in the process could have legally disposed of the interest of his minor sons in the said property also for the benefit of the family and necessity of the family. The plaintiffs have not been able to lead any cogent evidence to rebut the clear recitals found in the Sale Deed to that effect....."

Relying on this decision, it is contended that the recitals in the sale deeds, Exs. A1 to A3, would establish that the suit property was sold by the deceased Shivaram for a legal necessity for the beneficial interest of the joint family.

(ii) Next, the learned counsel for the plaintiffs relied on the decision of this Court in the case of (Visvanathan vs. Ramanjiam and others) reported in 2011 2 Law Weekly 928 to contend that when the transfer of the ancestral property by the Kartha of the family is with the knowledge of the legal heirs who did not question it within the period prescribed under the statute. As per Mitakshara Law alienation by the father, if not questioned within 12 years, it cannot be set aside by the Court. By placing reliance on this decision, the learned counsel for the plaintiffs argued that as held by this Court, the sale made by the father during the year 1991 remains unchallenged all these years, while so, the defendants have lost their defence, if any, to be made in the present suit.

(iii) The learned counsel for the plaintiffs further relied on the decision of the Honourable Supreme Court in the case of (Venkatesh Dhonddev Deshpande vs. Sou. Kusum Dattatraya Kulkarni and others) reported in (1979) 1 Supreme Court Cases 98 wherein it was held that the Karta or Manager of joint Hindu family has implied authorities to borrow money for family purposes and such debts are binding on the other co-parceners and the liability of the co-parceners in such a case does not cease by subsequent partition. Relying on this decision, it was contended that Exs. A1 to A3 in the present case would categorically reveal the intention of the deceased Shivaram to alienate the suit properties for a legal necessity and therefore also, the sale made in favour of the plaintiffs is valid.

(iv) The learned counsel also relied on the decision of the Honourable Supreme Court in the case of (Subodhkumar and others vs. Bhagwant Namdeorao Mehetre and others) reported in (2007) SCCR 287 wherein it was held that the Karta of the Joint Hindu family has power to alienate for value the joint family property either for necessity or for benefit of the family. The suit filed by the plaintiffs for possession cannot be dismissed on the ground of lack of legal necessity.

(v) Reliance was also placed on the decision of the Honourable Supreme Court in the case of (S.M. Jakati vs. S.M. Borkar) reported in 1959 SCR 1384 = AIR 1959 SC 282 wherein it was held that when the sons do not challenge the liability of their interest in the execution of the decree against the father and the Court, after attachment and proper notice of sale sells the whole estate and the auction purchaser pays for the whole estate, then the mere fact that the sons were co nominee not brought on the record would not be sufficient to defeat the rights of the auction purchaser or put an end to the pious obligation of the sons.

(vi) The learned counsel for the plaintiffs also relied on the decision in the case of (Sneh Gupta vs. Devi Sarup and others) reported in (2009) 6 Supreme Court Cases 194 wherein it was held that even if an order is void or voidable, sale must be set aside. There is no law where the decree is void, no period of limitation for setting aside thereof shall be attracted at all.

(vii) Lastly, the learned counsel for the plaintiffs/appellants relied on the decision rendered in (M. Meenakshi and others vs. Metadin Agarwal (dead) by Legal Heirs and others) reported in (2006) 7 Supreme Court Cases 470 wherein in paragraph No.18, it was held as follows:-

"18. It is well settled principle of law that even a void order is required to be set aside by a competent court of law inasmuch as an order may be void in respect of one person but may be valid in respect of another. A void order is necessarily not non est. An order cannot be declared to be void in a collateral proceeding and that too in the absence of the authorities who were the authors thereof. The orders passed by the authorities were not found to be wholly without jurisdiction. They were not, thus, nullities."

(viii) The learned counsel for the plaintiffs also relied on the decision in the case of (Madhukar Vishwanath vs. Madhao and others) reported in (2002) 4 CTC 49 wherein it was held that a suit filed by the minor after three years from the date of attaining majority is barred by the period of limitation under Article 60 of the Limitation Act.

10. Contra, the learned counsel appearing for the respondents 2 to 8 would contend that even as per the admission of the plaintiffs, the suit property is the ancestral property which fell to the share of the deceased Shivaram as per the final decree passed in the suit filed by him against his father. The Plaintiffs did not produce any document to show that it is the self-acquired property of the deceased Shivaram. The defendants 3 and 6 namely Manjunath and Sekar have attained majority even on 11.11.1981. However, the Kartha without the consent of the sons who have attained majority has alienated the suit property without any legal necessity. Further, the defendants continue to remain in possession and the plaintiffs were never put in possession of the suit property. The Plaintiffs also did not seek for recovery of possession, but filed the suit only for a bare injunction. In support of this contention, the learned counsel for the respondent 2 to 8 would rely on the

decision of the Division Bench of this Court in the case of (Sonnappa Iyer vs. K.R. Ramuthaiammal and 6 others) reported in 1994 Law Weekly 273 to contend that when the sale made by the Kartha without any legal necessity or for the beneficial improvement of the joint family, such sale will be void and the properties shall be presumed to be the joint family property even after such sale. It was further held that the burden is heavy on the plaintiff to prove that such sale was made for legal necessity.

11. Reliance was also placed by the learned counsel for the respondent 2 to 8 on the decision of this Court rendered in the case of (R. Sridharan and others vs. Ammaniammal and others) 2006 (2) CTC 377 wherein it was held that the alienee has to prove that the sale consideration has been utilised for a worthy cause and for the benefit and upliftment of the joint family. In the absence of such evidence, the sale made by the Kartha cannot be said to be for a legal necessity. Mere retention of the amount in the hands of the alienee for the purchase of the lands would not suffice and there must be actual proof of purchase of other lands.

12. The learned counsel appearing for the respondents 13 and 14, who are the subsequent purchasers of the suit property pending this second appeal, would contend that they are bonafide purchasers for valuable sale consideration and she prayed for dismissal of the second appeal.

13. I have carefully considered the submissions made by the counsel for both sides, perused the decree and judgment passed by the trial court, first appellate court as well as other documentary evidence made available. It is an admitted fact that the suit property is the ancestor property which fell to the share of the deceased Sivaram in the final decree passed in O.S. No. 59 of 1982. The suit property is not the self-acquired property of the deceased Shivaram. While so, whether the deceased Shivaram has a right to execute the sale deeds in favour of the plaintiffs has to be examined.

14. The plaint averments would indicate that the deceased Shivaram, as Kartha of the joint family, sold the property to the plaintiffs for a legal necessity, which are clearly revealed in the recitals of the sale deeds, Exs. A1 to A3. The sale was made for and on behalf of the legal heirs of Shivaram and therefore it will bind them. Admittedly, the sale deeds were executed by the deceased Shivaram during the year 1991. Even on 11.11.1981, before execution of the sale deeds during 1991, defendants 3 and 6 namely Manjunath and Sekar have attained majority. Therefore, at the time of execution of the sale by deceased Shivaram, two of his children have attained majority. The recitals in the sale deed would indicate that the deceased Shivaram intended to purchase some other properties for beneficial enjoyment of the joint family and to clear the family debts. However, there is no evidence forthcoming whether the deceased Shivaram utilised the sale consideration for purchase of any other property for the beneficial enjoyment of the joint family. When the plaintiffs purchase the property which belong to joint Hindu undivided family, it is their duty to verify as to whether such sale is being made for a legal necessity by the Kartha

and whether the sale consideration thereof has been utilised for a just cause. In the normal circumstance, this Court can take in to account the recitals contained in the sale deed. However, when there is specific denial of the title of the plaintiffs by the defendants, the burden is on the plaintiffs to prove the contrary. In the absence of any proof, mere recitals in the sale deed that the Kartha intended to purchase some other property out of the sale consideration is not sufficient. The Plaintiffs should have ensured that the sale was made by the Kartha for a legal necessity and such legal necessity was accomplished in the best interest of the joint family, however, that was not done.

15. PW1, during the course of examination stated that even though he knew very well that there are minor as well as major children of the seller, Shivaram, they did not obtain the signature of major children even as attestors. This would only indicate that the sale made by the deceased Shivaram was without the knowledge and consent of the children who attained majority by then. This was also pointed out by both the courts below to reject the claim of the plaintiffs. In fact, the trial court pointed out that even before the sale was made, the daughters of the deceased Shivaram were given in marriage or there is nothing on record to show that the deceased Shivaram settled the dues of the joint family. Therefore, both the courts below held that the sale is not for and on behalf of the minors or for their beneficial interest and such sale will not bind the defendants.

16. Admittedly, the sale made by the deceased Shivaram during the year 1991 was not subjected to challenge by the legal heirs of the deceased Shivaram, the defendants herein, till date. They could not also do so hereafter owing to the bar under Section 60 and 65 of the Limitation Act. In fact, the learned counsel for the plaintiffs/appellant argued that the plaintiffs need not be put to any harassment when the defendants did not question the validity of the sale made by the deceased Shivaram in their favour. On the contrary, the plaintiffs did not seek for recovery of possession especially when it is contended by the defendants that they are in possession of the suit property. There is a categorical assertion made by the defendants that they are in possession and enjoyment of the suit property. To contravert this, the plaintiffs did not file any documentary evidence to substantiate that they are in possession of the suit property. Having regard to such circumstances, the first appellate granted liberty to the plaintiffs to seek for equity in a suit for partition. Therefore, I hold that the question of non-filing of the suit by the defendants from 1991 need not be considered at all and it will not have any bearing on the claim of the plaintiffs.

17. As far as question of law is concerned, first it has to be considered whether the sale made by the deceased Shivaram is for a legal necessity and such necessity has been proved by the plaintiffs by legally acceptable evidence. As per the decision of the Honourable Supreme Court in (Sunder Das and others vs. Gajajanrao and others), reported in (1997) 9 Supreme Court Cases 701 the sale made by a Kartha of a joint family will bind his legal heirs. Of course, to nullify such a sale, it has to be proved that the head of

the family indulged in immoral activities or illegal transaction. In the present case, it has not even averred that the Kartha Shivaram led a immoral life. Similarly, it was also not proved by the plaintiffs that there was legal necessity for the Kartha to sell the property in their favour. As held in the decision (Subodhkumar and others vs. Bhagwant Namdeorao Mehetre and others) reported in (2007) SCCR 287 the Karta of the Joint Hindu family has power to alienate for value the joint family property either for necessity or for benefit of the family. However, it should be shown that there was legal necessity for selling the property and that the sale consideration obtained thereon has to be utilised for the beneficial improvement of the joint family. In the present case, it was not proved by the plaintiffs that the sale was made by the deceased Shivaram for a legal necessity or the sale amount was utilised by him for the upliftment of the joint family. In fact, in the decision rendered in (R. Sridharan and others vs. Ammaniammal and others) 2006 (2) CTC 377 it was held that the alienee has to prove that the sale consideration has been utilised for a worthy cause and for the benefit and upliftment of the joint family. In the absence of such evidence, the sale made by the Kartha cannot be said to be for a legal necessity. Mere retention of the amount in the hands of the alienee for the purchase of the lands would not suffice and there must be actual proof of purchase of other lands. When such evidence is missing in this case, the Courts below are justified in coming to the conclusion that the sale made by the deceased Shivaram does not bind the defendants in any manner. Therefore, the first question of law in this appeal is answered against the plaintiffs/appellants.

18. As far as the second question of law is concerned, the first appellate Court rightly held that the deceased Shivaram himself has a share over the suit properties and therefore, the sale made by him to that extent is valid and binding. This legal position was correctly appreciated by the first appellate Court, modifying the decree and judgment of the trial court. The first appellate Court rightly pointed out that when the suit property is the ancestor property and it fell to the share of the deceased Shivaram, he is entitled to 1/4 share and the purchasers from the deceased Shivaram, being the plaintiffs, also can have title to the extent of 1/4 share of the suit property. Therefore, the plaintiffs cannot assert a right, title and interest over the entire extent of the suit property. As pointed out by the first appellate Court, if at all, they are entitled to 1/4 share in the suit property, being the share which fell to the deceased Shivaram. In such circumstances, I do not find any reasons to interfere with the decree and judgment passed by the first appellate Court. Consequently, the second question of law involved in this appeal also has to be answered against the plaintiffs /appellants.

19. Before concluding, the subsequent development that took place in this appeal has to be considered. Pending this second appeal, the defendants have sold the suit property in favour of the respondents 13 and 14, who were impleaded as parties to this appeal and they are also represented by a counsel. It is needless to point out that the impleaded respondents 13 and 14 will not have any title better than their vendors.

20. In the result, the decree and judgment passed by the first appellate Court is confirmed. The second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

rsh

To

1. The Principal District Judge
Krishnagiri
2. The Subordinate Judge
Hosur.

Copy to :

The Section Officer,
VR Section, High Court, Madras.

+4 ccs to Mr.V.Nicholas, Advocate, sr.3846

+1 cc to Mr.V.Raghavachari, Advocate, sr.3464

+1 cc to M/s.R.Poornima, Advocate, sr.3805

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S.A No. 243 of 2010

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