

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.508 of 2009

and

M.P.No.1 of 2009

1. Namasivayam
2. Prabhakaran(Minor)
3. Thangadurai(Minor) ... Appellants/Plaintiffs
Minors 2 & 3 rep.by their
guardian & next friend natural
grandfather Govindasamy

Vs.

1. Thillai Govindan
2. Senthil
3. Mrs.Devaki
4. Govindaraj ... Respondents/Defendants

Prayer:- This Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 31.01.2007 made in A.S.No.76 of 2006 on the file of the Additional Subordinate Judge Court, Virudhachalam, partly allowed the judgment and decree dated 24.03.2006 made in O.S.No.1319 of 1994 on the file of the first Additional District Munsif Court at Virudhachalam.

For Appellants : Mr.V.Anand
For Respondents : No Appearance

J U D G M E N T

The plaintiffs are the appellants in a suit for declaration of title and for permanent injunction or in the alternative, for recovery of possession.

2. The case of the plaintiffs is that admittedly, the suit properties belonged to the joint family consisting of the first defendant, who is the father of defendants 2,3 and 4. The fourth defendant is the paternal aunt of the plaintiffs 1,2 and 3. The

plaintiffs 1,2 and 3 are born to one Subramaniam, who is one of the sons of the first defendant. The fifth defendant is the husband of the fourth defendant.

3. The suit claim is with respect to 19 items of the suit properties. The specific case of the plaintiffs is that there was a partition effected on 02.06.1978 by way of Ex.A1-Partition deed among the family members and the same was not registered. As per the said partition deed, item Nos. 1 to 11 were allotted to the plaintiffs' father. Item Nos.12 and 13 were given to the daughter, namely, the fourth defendant, i.e., the own sister of plaintiffs' father. Item Nos.14 to 19 were kept in common to be enjoyed jointly. Ever since the date of Ex.A.1, the properties have been enjoyed by the parties accordingly. The claim of the plaintiffs is that their father Subramaniam had been taking care of the entire family and he married the fourth defendant by spending huge amount. In consideration of the same, it is alleged by the plaintiffs that they had sold item Nos.12 and 13 of the suit properties orally in favour of their father. It is also the case of the plaintiffs that in pursuant to the oral sale, they have obtained patta in their name, as per Exs.A2 and A3. While so, the fourth and fifth defendants tried to trespass into the suit properties. Hence, the suit had been filed by the plaintiffs for declaration and permanent injunction.

4. The suit was resisted by the defendants on various grounds. While admitting the execution of the partition deed dated 02.06.1978, the defendants also admitted the rights of the plaintiffs in item Nos.1 to 11, the same having been allotted to them under Ex.A.1. Hence they prayed for dismissal of the suit with respect to the other items of the suit properties.

5. Before the trial Court, on the side of the plaintiffs, the first plaintiff examined himself as PW-1 and one more witness was examined as P.W.2 and they marked Exs-A1 to A13. The fifth defendant was examined as DW-1 and no Exhibit was marked on the side of the defendants.

6. The trial Court as well the first appellate Court decreed the suit with respect to Item Nos.1 to 11 of the suit properties and dismissed the same regarding Item Nos 12 and 13 and Items 14 to 19 of the suit properties. Aggrieved by the unanimous findings of the Courts below, the above Second Appeal has been filed.

7. At the time of the admission of the Second Appeal, the following substantial questions of law are framed:-

1. Whether the Courts below are correct in law in ignoring the evidentiary value of Ex.A6, the registered Mortgage deed through which the defendants father Ranganathan created a mortgage in favour of the fourth defendant, which by itself goes to show that the fourth defendant had no

inkling of title regarding items 12 and 13 of the suit properties?.

2. Whether the Courts below are correct in law in presuming title in fourth defendant against the recitals in Ex.A1, where items 12 and 13 have been set apart only for the marriage expenses of fourth defendant?.
3. Whether Courts below are correct in law in presuming title in fourth defendant against the recitals in Ex.A.1, where items 12 and 13 have been set apart only for the marriage expenses of fourth defendant?.

8. The Second Appeal has been filed only with respect to the disallowed portions of the reliefs. The defendants have admitted in the written statement about the execution of the partition deed dated 02.06.1978 and also conceded that the plaintiffs are entitled to right and title with respect to item Nos.1 to 11 of the suit properties. So far as the items 12 and 13 are concerned, admittedly, they were allotted to the share of the fourth defendant, namely, the sister of the plaintiffs' father. The said items are enjoyed by the fourth and fifth defendants. The father of the plaintiffs had also admitted in Ex.A.1 that item Nos. 12 and 13 were allotted to the sister. Nevertheless, the claim of the plaintiffs is that their father expended huge sum for the purpose of the marriage of the fourth defendant. In view of the said expenses, it is alleged that the fourth defendant had orally sold the properties to the plaintiffs' father. However, the plaintiffs are unable to say as to what exactly was the expenses incurred by their father for the marriage of the fourth defendant and also as to what was the consideration passed for the sale of the properties under Item Nos.12 and 13. Curiously, the plaintiffs have produced Exs.A2 and A3 patta and also the receipt for the properties comprised in Item Nos.12 and 13. Admittedly, the said pattas were obtained by the plaintiffs without due notice to the original owner of the properties. Hence they cannot claim title on the basis of the said pattas. Even presuming for a moment that the plaintiffs have the pattas in their favour, the same would not confer title on them over items 12 and 13. It is also pointed out that properties have been purchased by them by way of oral sale from the fourth defendant. However, such sale is impermissible under the provisions of Section 54 of Transfer of Property Act, the value being more than Rs.100/-. Further to substantiate their right on item Nos. 12 and 13, the plaintiffs produced Ex.A6, which is a registered mortgage deed in favour of the fourth defendant executed by the first defendant.

9. The learned counsel for the appellants specifically drew the attention of this Court to the boundary description in the said mortgage deed. In the boundary description, the mortgaged property was described as North of Vijaya Kumari's land. The said Vijaya Kumari is the grandmother of the plaintiffs. However, the said

mortgage deed under Ex.A6 is held to be invalid by the Courts below and that has got no relevance to claim title by the plaintiffs to the properties allotted in favour of the fourth defendant. Therefore, the Courts below have rightly come to the conclusion that the plaintiffs cannot have any right or title in items 12 and 13, which was allotted to the fourth defendant and the substantial questions of law with respect to the same are answered accordingly.

10. Insofar as items 14 to 19 are concerned, admittedly, they have been enjoyed them in common by all the parties as per the partition deed under Ex.A.1. There is no iota of evidence to show that the properties under Items 14 to 19 belong to the plaintiffs. Ex.A1 is admitted by both parties, under which the items 14 to 19 are allotted to be enjoyed by all the parties and in the absence of any partition between the parties, the plaintiffs cannot have claim any exclusive rights over items 14 to 19. Therefore, the relief of declaration that the above said items belong to the plaintiffs exclusively, cannot also be granted in favour of the plaintiffs. Hence, the contention of the learned counsel for the appellants that they have got share in items 12 and 13 which were allotted to the paternal aunt and also in items 14 to 19 which are kept in common enjoyment by all is rejected as unacceptable.

11. In view of the above discussion, the substantial questions of law having been answered in the negative, the Second Appeal has to fail. The dismissal of the suit by Courts below with respect to items 12 to 19 is confirmed and the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CSIII)

dt:07/10/2015

True Copy

Sub-Assistant Registrar

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To

- 1.The Additional Subordinate Judge Court, Virudhachalam
- 2.The I Additional District Munsif Court at Virudhachalam.
- 3.The Record Keeper, V.R.Section, High Court, Madras
+1 cc to Mr.C.Prabakaran, Advocate sr.44949

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