

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.573 of 2009

and

M.P.No.1 of 2015

D.Kaliyanathan Appellant/2nd Defendant

Vs.

1.Jayamalini

2.Meera

3.Gandimathi

4.Kamaraj

5.Mani Chettiar

6.Varadhammal

(Respondents 4 to 6 having remained
ex parte in the courts below the notice
to them in this appeal is dispensed with) ... Respondents/Plaintiffs
1 to 3 Defendants 1,3 & 4

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 29.07.2008 made in A.S.No.11 of 2007 on the file of the Principal Subordinate Judge, Villupuram, confirming the judgment and decree dated 04.11.2004 made in O.S.No.102 of 2004 on the file of the Additional District Munsif, Villupuram.

For Appellant सत्यमेव जयते : Mr.N.Suresh

For Respondents 1 to 3 : Mr.A.Muthukumar

Respondents 4 to 6 : Exparte before Lower Court

J U D G M E N T

The second defendant in a suit for partition is the appellant. The property was originally belonged to one Kulasekaran Kounder, who died in the year 1998, leaving behind the legal heirs, the plaintiffs 1 to 3 and the first defendant. The plaintiffs specifically claimed that the said Kulasekara Kounder got the suit properties by virtue of

a Will dated 17.06.1935, by which, the said Kulasekaran Kounder's mother got the 'C' schedule properties. When the Will came into force, Kulasekaran Kounder's mother Andalammal got the property by way of Will, which was succeeded by the said Kulasekaran Kounder. The said Kulasekaran Kounder died in the year 1998. After his death, the properties devolved upon the legal heirs equally. The first defendant, who has got only 1/4th share right in the suit property, had sold 1 Acres 21 cents in favour of the second and third defendants on 17.06.1999. Hence, the second and third defendants are impleaded in this suit. The sale by the first defendant in favour of the second and third defendants is not binding on the plaintiff. Even if it is binding, only to the 1/4th share of the first defendant. Hence, the suit for partition is filed.

The first defendant, who sold the property to the appellants, remained exparte.

2. The second defendant - purchaser has filed the written statement, denying all the allegations. He contended that the said Kulasekaran Kounder had mortgaged the suit property with him and thereafter, the first defendant sold the property after discharging the family debts on 17.06.1999. Therefore, the second defendant / appellant claimed right over the property purchased by him under Exs.A3 and B1.

3. Before the Trial Court, the second plaintiff was examined as PW-1 and Exhibits A1 to A6 were marked. On the side of the defendants, second defendant was examined as DW-1 and one more witness was examined as DW-2 and Exhibits B1 to B3 were marked .

4. The Trial Court, after considering both the oral and documentary evidence, passed a preliminary decree in favour of the plaintiffs.

5. Aggrieved, the second defendant preferred first appeal before the Principal Sub Court, Villupuram in A.S.No.11 of 2007 and the same was dismissed. Hence, this second appeal has been filed by the second defendant.

6. At the time of admission, the following substantial questions of law were formulated for consideration:-

1. Whether the courts below have not correctly approached the position of law with regard to the responsibilities of the Karta of a Hindu Family to discharge a secured debt contracted by the father.?
2. Whether the Courts below have ignored the settled legal position while appreciating the evidence on the point of legal necessity.
3. Whether the Courts below have not appreciated the evidence on record?."

7. This Court heard the submissions of the learned counsel for both the parties and perused the material records placed.

8. The trial court had held that the first defendant has sold the undivided share of the plaintiffs 1 to 3 also, when he has got no right over the same and hence, the same to be not binding on the 3/4th share of the plaintiffs and granted a preliminary decree for partition of 3/4th share of the plaintiffs. The Appellate Court had also confirmed the same holding that the plaintiffs were each entitled to 1/4th share in the suit property and the sale deed dated 17.06.1999 is not binding on the plaintiffs so far as their shares are concerned. The appellant had also not pleaded and proved that the said alienation was for legal necessity. There is also no convincing evidence that the property was sold for discharge of secured debt contracted by the father. In such circumstances, the appellant herein can only claim 1/4th share that may be allotted to his vendor in the final decree proceedings, as the sale by the first defendant in favour of the appellant is not binding the entire share of the plaintiffs. In fine, there is no necessity to interfere with the concurrent findings of the Courts below.

9. In the result, the Second Appeal is dismissed, confirming the judgments and decrees of the courts below. It is open to the appellant to work out his remedy in the final decree proceedings. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

srn

To

1.The Principal Subordinate Judge, Villupuram

2.The I Additional District Munsif, Villupuram

+1 cc to M/s.A.Muthukumar, Advocate sr.34045

+1 cc to M/s.N.Suresh Advocate sr.34030

S.A.No.573 of 2009
and

M.P.No.1 of 2015

aa10/08/2015