

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.11.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.735 of 2015

Malathy Bai

.. Appellant

-Vs-

1.C.Lakshmik Narasimma Sah

2.M.Krishnamurthy

3.K.Varada Sha

4.K.Ravi Sha

.. Respondents

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 28.12.2006 made in A.S.No.122 of 2005 on the file of the Principal District Judge, Chengalpattu reversing the judgment and decree dated 05.10.2004 made in O.S.No.210 of 1999 on the file of the Subordinate Judge, Kancheepuram.

For Appellant : Mr.T.Sathyamoorthy

For 1st Respondent : Mr.T.R.Rajaraman

J U D G M E N T

The plaintiff in O.S.No.210 of 1999 on the file of the learned Subordinate Judge, Kancheepuram is the appellant herein. The said suit was filed for declaration that the sale deed executed by the defendants 1 to 3 in favour of the 4th defendant on 01.12.1995 in respect of the suit property is void and to pass a decree for partition allotting 1/4th share in the suit property to the plaintiff. By decree and judgment dated 05.10.2004, the trial court decreed the suit as prayed for. As against the same, the 4th defendant filed an appeal in A.S.No.122 of 2005 before the learned Principal District Judge, Chengalput. By decree and judgment dated 28.12.2006, the lower appellate court allowed the appeal thereby setting aside the the decree and judgment of the trial court and dismissed the suit. Challenging the same, the plaintiff is before this Court with this Second Appeal.

2. This Second Appeal has come up before me today for admission. I have heard the learned Counsel for the appellant and the learned Counsel for the 1st respondent and I have also perused the records carefully.

3. The case of the plaintiff is as follows:

The plaintiff is the daughter of the 1st defendant. The defendants 2 and 3 are the other children of the 1st defendant. The suit property, according to the plaintiff, is the joint family property in which she has got 1/4th share. According to her, in the year 1995, the plaintiff was only a minor, hardly aged about 15 years. While so, the defendants 1 to 3 had sold away the suit property in favour of the 4th defendant by means of a sale deed dated 01.12.1995. From the date of sale, the 4th defendant has been in possession and enjoyment of the same. On attaining majority, the plaintiff filed the present suit contending that the sale deed dated 01.12.1995 is void in so far as it covers her undivided 1/4th share also. It is her contention that the sale was not made for her benefit. Therefore, according to the plaintiff, the sale deed dated 01.12.1995 should be declared void and there should be a decree allotting 1/4th share in the suit property.

4. The defendants 1 to 3 remained ex-parte before the trial court. The 4th defendant, the purchaser, contested the suit wherein he contended that the sale was made for the benefit of the entire family including the plaintiff and the same is binding on the plaintiff also.

5. Based on the above pleadings, the trial court framed appropriate issues. In order to prove the case, on the side of the plaintiff, she was examined as P.W.1 and one document was exhibited that is Partition Deed entered into between the 1st defendant and his brothers in order to show that it is a joint family property. On the side of the 4th defendant, he was examined as D.W.1 and as many as 3 documents were exhibited. Ex.B.1 is the Sale Deed dated 22.11.1995. Ex.B.2 is the Encumbrance Certificate and Ex.B.3 series are the Tax Receipts.

6. Having considered all the above, the trial court decreed the suit as prayed for. As against the same, the 4th defendant filed an appeal. The lower appellate court, as I have already stated, allowed the appeal and set aside the decree and judgment of the trial court. That is how, the appellant/plaintiff is before this Court with this Second Appeal.

7. In this Second Appeal, it is contended by the learned Counsel for the appellant that the lower appellate court had failed to appreciate that the sale deed in question is void because the said sale was not made for the benefit of the plaintiff who was a minor then. The learned Counsel would further submit that since there can be no dispute that the suit property is the joint family property, the appellant is entitled for 1/4th share and therefore, the lower appellate court was in error in setting aside the decree and judgment of the trial court.

8. The learned Counsel for the 1st respondent would submit that this Second Appeal deserves to be dismissed as there is no substantial question of law involved. He would further submit that the lower appellate court has considered the oral evidence of the plaintiff wherein she has stated that the sale was made for the benefit of the entire family to improve the joint family business. Thus, according to the learned Counsel for the 1st respondent, the well considered judgment of the lower appellate court does not require any interference at the hands of this Court.

9. I have considered the above submissions.

10. In this Second Appeal, as rightly contended by the learned Counsel for the 1st respondent, I do not find any question of law much less a substantial question of law warranting admission of the Second Appeal. The only issue is as to whether the sale in question was made for the benefit of the plaintiff who was then a minor also. The lower appellate court has referred to the evidence of the plaintiff wherein she has admitted tacitly that the sale was made for the benefit of the plaintiff also. During cross-examination, she has admitted that in the year 1995, the 1st defendant was doing business and by selling the suit property, the sale consideration was invested in the business for the benefit of the entire family. This has been made much reliance by the lower appellate court coupled with the other evidences available to come to the conclusion that the sale is valid. This being a factual finding, I do not find any reason to interfere with the same. In short, as I have already pointed out, there is no substantial question of law involved at all warranting admission of this Second Appeal.

11. In view of the foregoing discussions, the Second Appeal fails and the same is accordingly dismissed. The decree and judgment of the lower appellate court is confirmed. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

tsi
To

- 1.The Subordinate Judge, Kancheepuram.
- 2.The Principal District Judge, Chengalput.

+1 cc to Mr.T.Sathiyamoorthy, Advocate, sr.61050

pa co, kra 30.11.2015

S.A.No.735 OF 2015