

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

SECOND APPEAL No.1094 OF 1999

JUDGMENT:

Defendants 3 to 5 in Original Suit No.67 of 1986 on the file of the Court of Subordinate Judge, Ramachandrapuram, East Godavari District (for short, 'the trial Court'), preferred this Appeal challenging the decree and judgment dated 17.09.1999 passed in Appeal Suit No.162 of 1992 by the I Additional District Judge, East Godavari District at Rajahmundry (for short, 'the appellate Court'), wherein the Appeal Suit No.162 of 1992 preferred by the plaintiff-1st respondent herein for specific performance of agreement of sale dated 20.07.1983 was decreed *in toto*.

2. For convenience of reference, the ranks given to the parties before the trial Court in O.S. No.67 of 1986 will be adopted throughout this judgment.

3. The plaintiff filed the suit for specific performance of agreement of sale dated 20.07.1983 against the defendants 1 and 2. Ex.A-1 is the agreement of sale executed by 2nd defendant who is Special Power of Attorney Holder and also maternal uncle of the 1st defendant. 1st defendant is the Kartha and Manager of Hindu Undivided Joint family consisting of himself and 3rd defendant. The 3rd defendant is the undivided son and defendants 4 and 5 are the daughters of the 1st defendant, who are claiming to be coparceners of the family under the provisions of Act 13 of 1986. As the defendants 1 and 2 did not come forward to execute agreement of sale, receiving balance of sale consideration of Rs.5,100/-, the plaintiff got issued a legal notice dated 12.08.1984, marked as Ex.A-3; the 1st defendant refused to receive the same but issued a reply dated 04.09.1984, marked as Ex.A-6, alleging that the plaint schedule property consisting of Ac.1.15 cents was never in possession of the plaintiff as tenant and he was personally cultivating under the supervision of one K. Subba Rao of Kota village. To create obstacles in the way of plaintiff to obtain specific performance of agreement of sale, 3rd defendant filed a suit in O.S. No.21 of 1990 for partition of the plaint schedule property alleging that

defendants 4 and 5, who are the daughters of 1st defendant, are also entitled to equal share under the provisions of Act 13 of 1986. By the date of sale agreement, defendants 4 and 5 could not claim any right in the property but thereafter claiming to be coparceners claimed right as per Act 13 of 1986. The defendants traditionally belong to agricultural family. In order to discharge the antecedent debts contracted by the 1st defendant, in connection with purchase of land near Panduranga camp, he offered to sell the plaint schedule property at Kota village. In furtherance of his intention to sell, the 1st defendant executed registered Special Power of Attorney in favour of 2nd defendant to sell the plaint schedule property, execute necessary documents, receive consideration and present the same for registration on behalf of the plaintiff. Thereafter, the 2nd defendant executed an agreement of sale as the special power of attorney holder of the 1st defendant on 20.07.1983 and out of the total sale consideration of 50,100/-, received Rs.45,000/- as advance of sale consideration and delivered possession of the schedule property, agreeing to receive balance of sale consideration of Rs.5,100/- at the time of registration. Subsequently, the plaintiff started cultivating the land as a tenant at an annual rent of 15 kata bags. Though the plaintiff was ready and willing to perform his part of obligation, the defendants 1 and 2 dodged the matter and did not come forward to execute the registered sale deed, hence, the suit.

4. Defendants 1, 2, 4 and 5 remained *ex parte*.

5. 3rd defendant filed written statement denying material allegations of the plaint *inter-alia* contending that the special power of attorney executed by 1st defendant in favour of 2nd defendant is not binding on the 2nd defendant and the agreement of sale executed by 1st defendant through 2nd defendant in favour of the plaintiff is not enforceable against him. Similarly, defendants 4 and 5 who are the daughters of the 1st defendant are also entitled to claim share in the joint family property, thereby the decree cannot be passed in favour of the plaintiff for entire schedule property and prayed to dismiss the suit.

6. Basing on the above pleadings, the trial Court framed the following issues including 2 additional issues:

1. Whether the sale agreement dated 20.07.1983 is true, valid and binding against the 3rd defendant?
2. Whether the plaintiff is entitled to the specific performance of agreement of sale dated 20.07.1983?
3. Whether the plaintiff is entitled to the alternative prayer of the return of advance money of Rs.45,000/- together with interest at 12½% p.a.?
4. Whether the suit sale agreement dated 20.07.1983 was executed for illegal and immoral purposes as contended by the 3rd defendant and not for discharging antecedent debts contracted by 1st defendant?

Additional Issues:

5. Whether the defendants 4 and 5 are also entitled to a share in the coparcenary property in the joint family assets of defendants 1, 3, 4 and 5?
6. Whether there is collusion between the plaintiff and 2nd defendant?
7. During course of trial, on behalf of the plaintiff, PWs.1 to 4 were examined and Exs.A.1 to A.21 were marked. On behalf of the defendants, DWs.1 and 2 were examined and no documents were marked.
8. Upon hearing argument of both the counsel considering oral and documentary evidence, the trial Court decreed the suit directing the defendants 1 and 2 to execute registered sale deed in respect of half of the plaint schedule land *i.e.*, to an extent of Ac.0.57½ cents within one month from the date of decree and also directed the 1st defendant to pay a sum of Rs.19,950/- together with interest at 12½% from 20.07.1983 till the date of suit and with subsequent interest at 6% p.a. from the date of suit till the date of realization.
9. Aggrieved by the decree and judgment dated 17.07.1992, passed in O.S. No.67 of 1986, the unsuccessful plaintiff preferred Appeal Suit No.162 of 1992 and the 1st defendant preferred Appeal Suit No.151 of 1992, separately, before the II Additional

District Judge, East Godavari at Rajahmundry.

10. Upon hearing argument of both the counsel, considering oral and documentary evidence available on record, II Additional District Judge, Rajahmundry, allowed the Appeal, preferred by the plaintiff, directing the plaintiff to deposit a sum of Rs.5,100/- agreed to be paid to the 1st defendant to the credit of suit in O.S. No.67 of 1986 within one month and thereafter defendants 1 and 3 to 5 are directed to execute registered sale deed to the total extent of Ac.1.15 cents of land, within two months from the date of decree and dismissed the Appeal Suit No.162 of 1992, preferred by the 1st defendant.

11. Aggrieved by the decree and judgment dated 17.09.1999, passed in A.S. No.162 of 1992 by the II Additional District Judge, Rajahmundry, defendants 3 to 5 preferred the instant Appeal. The following substantial questions of law were framed at the time of admitting the Appeal:

- 1) Whether the agreement of sale executed by the power of attorney of one of the coparceners is binding on the other coparceners, when there is no consent to sell away the property covered under the agreement of sale?
- 2) Whether the agreement of sale executed by the power of attorney holder of coparceners binds the other coparceners, who are minors by that time, when the said sale is not in the interest of the minors?
- 3) Whether the plaintiff can seek specific performance of agreement of sale, when the same is hit by Section 8(2) of the Hindu Minority and Guardianship Act, 1956?
- 4) Whether the agreement of sale alleged to have been executed prior to commencement of the Act 13 of 86 binds the daughters who became coparceners after commencement of the said Act?

12. During course of argument, Sri K. Chidambaram, learned counsel for the 1st

defendant-appellant, contended that without obtaining prior permission from the competent Court under Section 8(2) of the Hindu Minority and Guardianship Act, the 1st defendant is incompetent to sell the property. Therefore, the agreement of sale executed by 1st defendant, through 2nd defendant, special power of attorney holder, is not enforceable against the 3rd defendant. At the same time, the sale was not for the benefit or necessity of the family, consequently the agreement of sale cannot be enforced against the other members of the coparcenary. Though the decision rendered by the Madras High Court in ***V.X. Joseph Vs. T. Pasupathi and another*** is not binding precedent, the appellate Court totally placing reliance on the said judgment, erroneously decreed the Appeal preferred by the plaintiff. Finally, it is contended that the special power of attorney executed by 1st defendant in favour of 2nd defendant in his individual capacity will not bind the other defendants, who are his children. Therefore, the decree and judgment of the appellate Court is not sustainable and prayed to allow the Appeal.

13. *Per contra*, Sri V.L.N.G.K. Murthy, learned counsel for the plaintiff-1st respondent, argued totally in support of the finding recorded by the appellate Court since the agreement of sale was executed on behalf of 1st defendant as kartha of the joint family for the benefit of the joint family and the evidence on record clinchingly established that with the sale proceeds of the schedule property, the 1st defendant purchased property at Karnataka, therefore, it is for the family necessity. It is also contended that permission under Section 8(2) of the Hindu Minority and Guardianship Act is not required to sell the property of undivided share of minors in the coparcenary. Therefore, the Appeal is devoid of merits and prayed to dismiss the Appeal.

14. In view of the rival contentions, the following recasted substantial questions of law fell for consideration in this Appeal:

- 1) Whether permission under Section 8(2) of the Hindu Minority and Guardianship Act is necessary to sell undivided share of minors in the coparcenary?

2) Whether the agreement of sale executed by 2nd defendant, being the special power of attorney holder of 1st defendant, who is kartha of joint family, is enforceable against defendants 3 to 5? If not, whether the decree and judgment of the appellate Court be set-aside?

15. **POINT No.1:** The first and foremost contention of learned counsel for the defendants-appellants is that unless permission was obtained under Section 8(2) of the Hindu Minority and Guardianship Act, the agreement of sale is not enforceable. Undisputedly, the schedule property is ancestral property; 1st defendant and defendants 3 to 5 are the members of Hindu coparcenary. Thus, at best, defendants 3 to 5 are entitled to claim share in the property but 1st defendant being kartha of the joint family executed an agreement of sale Ex.A-1, through 2nd defendant, who is the special power of attorney holder, but without obtaining any permission under Section 8(2) of the Hindu Minority and Guardianship Act. This question is no more *res-integra* in view of the law declared by the Apex Court in ***Sri Narayan Bal and others Vs. Sridhar Sutar and others***, wherein the Apex Court held that Hindu joint family being a separate entity, can be disposed of by kartha of the family including the undivided interest of a minor in the joint family property without obtaining any prior permission under Section 8(2) of the Hindu Minority and Guardianship Act.

16. In view of the law declared by the Apex Court in ***Sridhar Sutar²***, no permission under Section 8(2) of the Act is required for sale of undivided share of a minor in the coparcenary property. Hence, this contention of the learned counsel for the defendants-appellants is without any substance. Accordingly, the point is held in favour of the plaintiff-1st respondent and against the defendants-appellants.

17. **POINT No.2:** The 2nd contention raised before this Court is that 1st defendant being the kartha of the joint family is not competent to sell the shares of other coparceners in the undivided coparcenary property, when it is not for the benefit and necessity of joint family. It is not the case of the defendants, at any stage, that 1st defendant sold the property for immoral or illegal purpose; on the other hand, the evidence on record established that 1st defendant sold the property being kartha of

the joint family and with the sale proceeds he acquired property at Rayachoti District, Karnataka and such acquisition of property can be said to be for the benefit of the joint family, in view of the law declared by this Court in ***Dasari Jayachandra Prasad and others Vs. Dasari Venkata Subbaiah and others***. Similar question came up before the Apex Court in ***Vriddhachalam Pillai Vs. Chaldean Syrian Bank Limited and another*** and in ***Cheedella Kotaiah Vs. Wakf Board, Andhra Pradesh, Hyderabad and others***.

18. The admitted fact in the present case is that the 1st defendant is kartha of the family; he executed a special power of attorney in favour of 2nd defendant, marked as Ex.A-2, dated 07.07.1983 authorizing him to execute agreement of sale and registered it in favour of plaintiff. Therefore, the power of attorney executed for sale of immovable property in the capacity of kartha of joint family is binding on the minor children also as 1st defendant is entitled to deal with the joint family property for the benefit and necessity of joint family. Therefore, by applying the law laid down by the Apex Court in ***Vriddachalam Pillai⁴*** to the present facts of the case, I hold that the agreement of sale executed by 1st defendant through 2nd defendant, special power of attorney holder, under Ex.A-2 is enforceable against the defendants 3 to 5. Hence, the contention of learned counsel for the defendants-appellants that agreement of sale is not enforceable against the defendants 3 to 5 is without any substance. Therefore, I hold that the agreement of sale executed by 1st defendant through 2nd defendant, agreeing to sell the joint family property, to acquire property at Raichoti, is valid and binding on the defendants 3 to 5. Accordingly, the point is answered in favour of the plaintiff-1st respondent and against the defendants-appellants.

19. A vague allegation is made regarding enforcement of agreement against the daughters of 1st defendant *i.e.*, defendants 4 and 5. After the advent of amendment to Section 29-A of the Hindu Succession Act, 1956 the agreement of sale was executed on 20.07.1983, almost 3 years prior to commencement of A.P. Act 13 of 1985 and by the date of execution of Ex.A-1, defendants 4 and 5 were not coparceners, this contention holds no substance. Even otherwise, defendants 4 and 5 being coparceners by virtue of amendment to the Hindu Succession Act, still they

are bound by the agreement executed by 1st defendant in favour of the plaintiff, through the 2nd defendant, special power of attorney holder, being the kartha of the joint family.

20. In view of my foregoing discussion, I find no ground to reverse the finding recorded by the appellate Court in A.S. No.162 of 1992.

In the result, the Appeal Suit is dismissed confirming the decree and judgment dated 17.09.1999, passed in A.S. No.162 of 1992 by the learned II Additional District Judge, East Godavari at Rajahmundry.

In consequence, miscellaneous petitions, if any, pending in this Appeal shall stand dismissed. No order as to costs.

M. SATYANARAYANA MURTHY, J

Date: 01-07-2015.

Dsh

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

04.08.2015

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DSH