

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 29.11.2016

Date of Verdict : 09.12.2016

CORAM

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

S.A.Nos. 248 & 249 of 1986

and C.M.P.Nos. 19785 and 19786 of 2016

1. Mani
2. Minor Dayalan
rep. By next friend
No.1 aboveAppellants in both SAs/
Plaintiffs

Vs.

1. Seethammal
2. Pandurangam
3. Navakoti Chettiar
4. Pichaikuppan ...Respondents in SA.248 of 1986/
Defendants

1. Navammal
2. Minor Annamalai
(Guardian by 1st respondent)
3. Narayana Goundar
4. Govindaswami ...Respondents in SA.249 of 1986/
Defendants

Prayer in SA.No. 248 of 1986:- This Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated passed on 17th day of October 1978 in A.S.No.39 of 1978 by the learned Principal Subordinate Judge at Cuddalore, South Arcot District against the judgment and decree of the Court of the District Munsif of Tirukoilur dated 04.10.1977 made in OS.No.40 of 1977.

Prayer in SA.No. 249 of 1986:- This Second Appeal is filed under Section 100 of Civil Procedure Code against the decree and Judgment of the learned Principal Subordinate Judge at Cuddalore dated 17.10.1978 in A.S.No.43 of 1978 against the judgment and decree of the Court of the District Munsif of Tirukoilur dated 04.10.1977 made in OS.No.40 of 1977.

For Appellants : Mr.M.Muruganandham
in both SAs. For V.Raghavachari
For Respondents: No appearance
in both SAs.

COMMON JUDGMENT

C.M.P.Nos. 19785 and 19786 of 2016

When these cases were listed for final hearing on 06.08.1998, there was no representation for the appellants. Hence the appeals were dismissed for default. The appellants have come to know about this later and had taken out the applications in C.M.P.Nos. 19785 and 19786 of 2016 to restore these appeals on file.

The learned counsel for the appellants submitted that he is ready to argue the merits of these appeals, if the Court please to restore these appeals. Since the matter involves property right, this Court is not to incline to dispose the matter on technicality. Therefore, these applications are allowed and both the second appeals are restored.

S.A.Nos. 248 & 249 of 1986

The plaintiffs are the appellants before this Court. The suit is filed for cancellation of the decree passed in O.S.No. 618 of 1968 as far as the plaintiffs' interest is concerned, for partition and allotment of plaintiffs' 2/3 share in the suit properties, and to direct an enquiry for ascertaining mesne profits. The plaintiffs have enumerated 16 items in the suit schedule properties. According to the plaintiffs, the first item of the properties was originally owned by Ramalinga Odayar and his brother Manicka Odayar. A settlement deed was executed in favour of Rangasamy Odayar by the said Ramalinga Odayar and Manicka Odayar on 09.01.1951 in respect of the first item of the suit schedule property and other items. Manicka Odayar executed a sale deed in favour of Padmavathi ammal, mother of the plaintiffs, under Ex.A.1, dated 17.03.1953. The said Rengasamy Odayar, who got the property under the settlement deed earlier, challenging the said sale in favour of Padmavathi ammal on his attainment of majority, in OS.No.618 of 1968 and succeeded up to second appeal. In the said suit, the plaintiffs and their father were parties. Now by filing the present suit the plaintiffs have sought for partition and declaration that the earlier suit is null and void, on the ground that his father who was the third respondent in the present suit and second defendant in the previous suit represented the plaintiffs who were arrayed as third and fourth defendants. However, he did not properly conduct the earlier suit properly. The third defendant leading a wayward life without caring his family. He is an innocent man and not well versed in Court affairs. He was a man of less morale having unauthorized conduct and he did not act properly to protect the interest of the minor plaintiffs and also alienated the suit schedule properties for his avyavaharika debt, incurred due to his bad habits.

2. The purchasers from the third defendant i.e., father of the plaintiffs, have contested this suit on two prime grounds. Firstly, the plaintiff has not challenged the decree of the earlier suit within three years on attaining majority and secondly defendants are bonafide purchasers for value and the sale consideration made by them were utilized by the third defendant for the betterment of the joint family. Further more, some of the defendants have contested that even before the birth of the plaintiffs, they have purchased the property and one of them was the Court auction purchaser. Therefore the suit is liable to be dismissed.

3. The Trial Court on the issue of ascertaining the age of the first plaintiff relied upon his S.S.L.C. certificate, marked as Ex.A.5 and fixed the date of birth of the first plaintiff as 04.05.1956. Since the suit was presented on 30.03.1977, the trial Court held that the suit is well within the period of limitation. In so far as the alienation of the minor property by the third defendant is concerned, the trial Court after appreciating the submission made by the rival parties, has held that plaintiffs' father who is the third defendant in the suit, was not a man leading wayward life and indulging in immoral activities by visiting brothel houses as alleged by the plaintiffs. The trial Court held that the evidences tendered by the plaintiffs establishes that the third defendant is a worldlywise diligent man. He was not influenced by vices. He was taking care of the joint family interest. Further held that, the evidence reveals that, the third defendant who is the father of the minor plaintiffs, was attending the affairs of the family and cultivation as a responsible and respectful man. It is admitted that third defendant had contested Panchayat Elections twice. He was also doing business in paddy, casuarina and running a cycle shop at his village and also found that one of the exhibits marked as Ex.B.11, a sale deed was written by the third defendant in his hand. With these observations the trial Court held that the property were not sold for any avyavaharika to set aside the sale or the decree passed in O.S.No.618 of 1968.

4. The trial Court further held that the some of the schedule items were sold by the third defendant even before the birth of the plaintiffs and held as under :-

"31.....the plaintiffs cannot challenge the alienations in respect of suit items 2 to 5 and 8 as the alienations have been made prior to the birth of the plaintiffs. The alienations in respect of the suit items 16 and 14 are not liable to be set aside and there are not binding on the plaintiffs herein. In respect of the suit 6th item, the sale deed dated 26.05.1957 should be set aside so far as it relates to the plaintiffs' interest is concerned on payment of Rs.600/-

to the 13th defendant and the amount shall have a charge over this item of property. In respect of suit item No.9, the plaintiffs are not entitled to seek any relief in the present suit. The sale deed dated 29.11.1965 in respect of 15th item shall be set aside in so far as the plaintiff's interest is concerned on payment of Rs.500/- to the 12th defendant and the property shall stand as a charge. In respect of suit items 7, 10 to 12, the alienations are not binding on the plaintiffs and they are entitled to ignore the same. The plaintiffs will be entitled to partition of their 2/3 share in these items. The plaintiffs will also be entitled to 2/3 share in the suit 13th item."

Aggrieved by this judgment, the plaintiffs have preferred an appeal in A.S.No.43 of 1978 against the disallowed portion, whereas, the defendants 10 to 13 have filed A.S.No. 39 of 1978 for allowed portion.

5. The first appellate Court has re-appreciated the evidence and held that the first plaintiff on the date of filing the suit had crossed 21 years. The decree passed in the previous suit binds the plaintiffs. The SSLC certificate, which was marked as Ex.A.5, is not a conclusive proof. The earliest document namely sale deed Ex.B.6, executed by the third defendants shows that his minor son was about four months old on 19.04.1955. In Ex.B.7, sale deed dated 29.11.1965, executed by the third defendant in favour of the 12th defendant, the age of the first plaintiff is mentioned as about ten years. In Ex.B.9, sale deed dated 26.05.1967 executed by the third defendant in favour of the 13th defendant, the age of the first plaintiff is shown as twelve years. In Ex.B.13, sale deed dated 29.11.1963 executed by the third defendant in favour of one Vadivel, the age of the first plaintiff is shown as nine years. In all these documents, if the age of the plaintiff is taken note, then on the date of filing the suit, he has completed 21 years. Further the first appellate Court has held that the suit in OS.No.618 of 1968 alienation in favour of the defendants 10-13 i.e., appellants in A.S.39 of 1978 are held valid, true and binding upon the plaintiffs. Similarly the alienation of the items 14 and 16 by the third defendant, are also valid and binding upon the plaintiffs. The plaintiffs are not entitled for partition and separate possession in these items of properties. Accordingly, the appeal filed by the defendants 10 to 13, in A.S.No. 39 of 1978, was allowed and appeal filed by the plaintiffs in AS.No.43 of 1978 was dismissed.

6. The learned counsel for the appellants vehemently contented that the previous suit in OS.No. 618 of 1968 was not contested properly by the third defendants. He failed to

protect the minor's interest properly. Further he submitted that the alienations made by the third defendant who is the appellants' father is invalid. He has sold the property not for the benefit of the joint family. Therefore it ought to be held not binding on the minor plaintiffs. Further, he contended that alienee has failed to prove that the sale consideration for transfer of the property was utilized for the welfare of the family.

7. In support of his submission he has referred catena of judgments wherein Court have held that the alienee has to be prove the sale consideration has been utilized for the worthy cause and benefit and uplift of the joint family. In the absence of these reasons, the sale deed made by the Kartha can not be said to be for legal necessity.

8. The kartha of the family may be compelled to sell the joint family property, for the minor's interest or for various other reasons. Law provides for avoiding such alienation. The minor when attains majority can challenge such alienation before he complete 21 years. While challenging such alienation, it is the burden of the plaintiff to primafaciely establish that such alienation was not done for the benefit of the joint family and the kartha has utilized the joint family property for clear avyavaharika debts. If such a plea is put fourth by the plaintiffs challenging the sale, the defendants can disprove the same that the alienation was done for the benefits of the family and they have bonafidely purchased the minor interest after making enough enquiry about the necessity of the family to sell the minor properties.

9. In this case, the Kartha is the third defendant. Though the plaintiffs have pleaded that their father leading wayward life, the third defendant has submitted to decree without any protest. Whereas the evidence available on records shows he was a gentleman leading respectable life and was wordlywise.

10. The learned trial Court has pointed out that there is no evidence to show that the third defendant was infested with vices as alleged by his own sons in their plaint. In this context, it is pertinence to refer the following judgment reported in 1974 TLNJ 139 (Krishnaswami Naidu Vs. Velumani and ors.) which reads as follows :

"13. A Division Bench of this Court in the decision in Sengoda Goundan Vs. Muthuvellappa Goundan MANU/TN/0204/ 1955: AIR1955Mad531, considered the question as to whether the alienation could be justified on the ground of benefit to the family when the minor's share of the consideration had been left with the vendee as per the recital of the sale deed and laid down the law as

under:

In the absence, therefore, of any proof of utilization of the sale proceeds in the purchase of other property for the family, we must hold that the alienations were not for the benefit of the family. In this view, it is immaterial whether the plaintiff's share of the consideration was received by the mother in any of these transactions or whether the plaintiff's share was retained by the respective vendees. We agree with Subba Rao, J. that the alienations were not for the benefit of the family and therefore were not binding on the plaintiff.

14. In the decision in A.Subramanian Asari Vs. Jayadevan Nair and ors. LW.215, a Division Bench of this Court followed the above decision and incorporated the above referred to para of the Judgement and held as follows:

Therefore the view taken by Ramanujam, J., that since the 9th defendant had not proved the utilisation of 6,065 fanams for purchase of another item of property for the benefit of the family, the sale cannot be held valid, is fully in accordance with law.

15. A learned single Judge of this Court in the decision in Krishnaswami Naidu Vs. Velumani and ors. 1974 T.L.N.J. 139 considered the question as to whether the sale can be held to be for the benefit of the joint family, even though the sale proceeds has not been utilised for the purchase of better lands and observed thus:

But the Courts have always made a distinction between an alienation made for legal necessity and one made for the benefit of the family. In cases coming under the former category, the alienation is upheld even if the sale consideration has not been utilized as was expected of the manager at the time of entering into the transaction as the alienee need not look to the proper application of the sale proceeds. But as already stated, the Courts have consistently taken the view that in the latter type of cases, the alienee has to prove that the sale consideration was actually utilised for the purpose of purchasing other lands for

the family and that in the absence of such evidence the alienation cannot be taken to be beneficial for the family.

.....

23.

The question is as to whether the alienation of minor's share was for the benefit of the family. In the absence of any proof of utilization of the sale consideration of Rs. 25,000/- in the purchase of some other property for the minors, it must be held that the alienation of the minor's share was not for the benefit of the family. In that view, it is immaterial whether the minor's share was retained with the vendee viz., the third defendant. Therefore, the sale deed in respect of the minor's 3/8 shares is not binding on the plaintiffs and liable to be cancelled. The plaintiffs are also entitled to partition and separate possession of 3/8 shares in the suit properties. The findings of the Trial Court in this regard are liable to be set aside. The point Nos.1 to 3 are answered accordingly.

11. It is evidently proved by the defendants that the sale consideration has been used by the third defendant either to clear his earlier debt or to improve his land by purchasing oil engine or to save his properties from Court auction. Even it is not the case of the plaintiffs that the defendants are not bonafide purchasers for value. Even though in the absence of such pleadings, the defendants have established that they are bonafide purchasers for a valuable consideration and they have put in possession and enjoyment for considerable period of time. Whereas the plaintiffs miserably failed to prove the contrary. The law does not expect the bonofide purchasers of a minor property to follow the Kartha and have an account of every rupee he spends out of the sale consideration. In case of purchaser of minor interest the law expect that the sale should be for the welfare of the minor or the joint family and their interest should be protected. Looking into the facts of this case, even before the plaintiffs have born the third defendant has alienated some properties inherited from the elders. He had been utilised the funds for improving the land, his business and to carry out his political activities. While so no reasons to hold that the alienation are voidable for want of legal necessity.

12. In view of the above, this Court hold that there is no substantial question of law, in this case to interfere the judgment of the first appellate Court.

13. In the result, both the second appeals are dismissed and the first appellate Court orders are confirmed. No orders as to costs.

Sd/-
Asst.Registrar (CCC)

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Sub Asst. Registrar

To

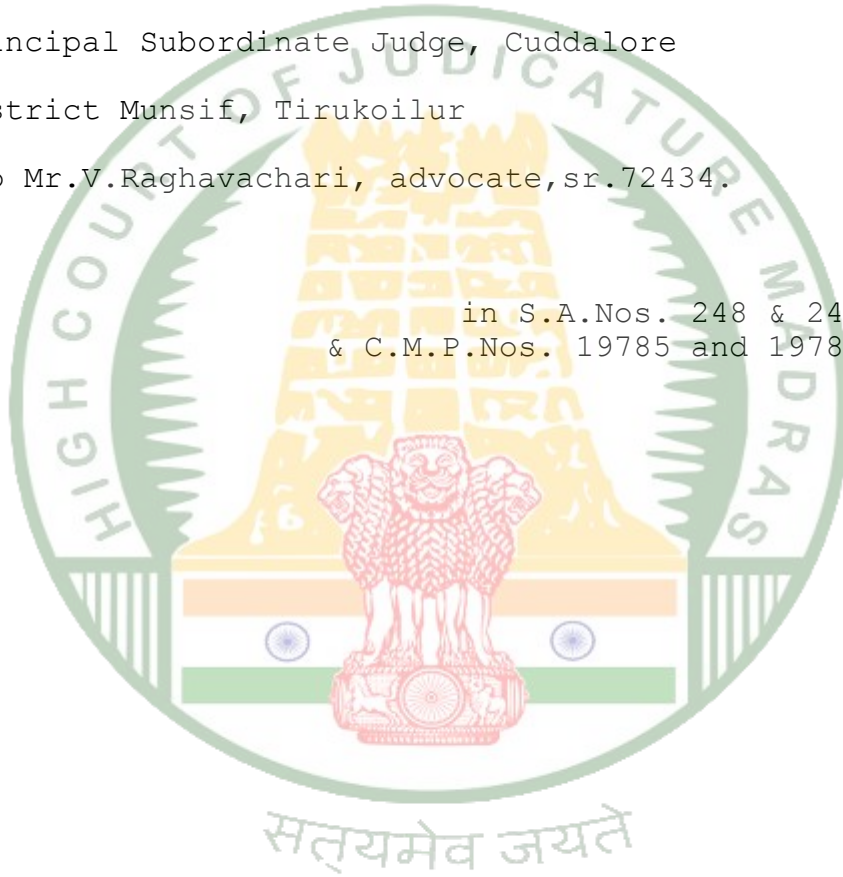
1. The Principal Subordinate Judge, Cuddalore

2. The District Munsif, Tirukoilur

+2 cc's to Mr.V.Raghavachari, advocate,sr.72434.

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krd 13/2

in S.A.Nos. 248 & 249 of 1986
& C.M.P.Nos. 19785 and 19786 of 2016



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