

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.08.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

SA.No.1262 of 1997
and
C.M.P.No.5733 of 2006

1. Jayaraman

2. Balaraman ... Appellants/Appellants/Defendants 2 & 3

vs.

1. Ponniammal (deceased)

2. Munusami Reddy

3. Shanthi

4. Nityanandam

5. Sumathy

6. Kumaravelu

7. Satyabama

8. Lalitha

9. Kavitha (died)

(R3 to R9 brought on record as the LRs
of the deceased R1 vide Order of this Court
Dated 28.1.2015 made in
CMP.Nos.10714 to 10716 of 2006

..R2 TO R9/LRS. OF R1/LRS. OF THE PLAINTIFF

10. M.Manokaran

11.A.Sankar

R10 and R11 impleaded vide order dated 15.9.2015
made in CMP.No.117/2015

12. Karthikeyan

R12 brought on record as LR

of the deceased R9 vide order dt.13.7.2016

made in CMP.No.10945 to 10947/2016 ...Respondent No.12

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 16.08.1996 passed in A.S.No.62 of 1992 on the file of the Subordinate Judge, Ranipet, confirming the judgment and decree of the trial Court dated 29.4.1992 passed in O.S.No.674 of 1985 on the file of the District Munsif Court, Sholinghur.

For Appellants : Mr.R.Subramanian

For Respondents : Mr.Sarath Chandran
for M/s.V.Raghavachari for R3.
Mr.K.V.Ananthakrushnan for R4 to R8
and R10 to R12.
R1 and R9-died
R2 - no Appearance

J U D G M E N T

The appellants are the 2nd and 3rd defendants in a suit for declaration, recovery of possession and for permanent injunction. The 1st respondent herein is the plaintiff.

2. The case of the plaintiff is as follows:

One Munusamy Reddy and Muthappa Reddy who are brothers jointly owned the property and entered into a partition in the year 1940 wherein and whereby 1.39 acres of land each was allotted to them at S.No.438/5. Thus, the said property measuring 1.39 acres allotted to Munusamy Reddy under such partition was sold by him on 27.11.1948 to one Dhanammal. The 1st defendant is the son of the said Muthappa Reddy. He filed a suit against Dhanammal for declaration and injunction in respect of the said property. The suit was dismissed for default. Restoration petition was also dismissed. Thereafter, Dhanammal sold the property to the plaintiff on 08.07.1976. Therefore, the plaintiff having purchased the property from Dhanammal, is the absolute owner of the same. However, when the defendants tried to interfere with the possession, the present suit is filed seeking the relief as stated supra.

3. The 1st defendant remained exparte. However, his sons viz., 2nd and 3rd defendants contested the suit. The case of the defendants is that the property was originally belonged to one Govinda Reddy and after his death, his four sons Perumal Reddy, Murugappa Reddy, Muthappa Reddy, Chinnamunusamy @ Munusamy Reddy jointly enjoyed the same. Murugappa Reddy died in the year 1930. Chinnamunusamy @ Munusamy Reddy died in the year 1945 and Perumal Reddy also died in the year 1950. Therefore, the grandfather of the 3rd defendant namely Muthappa Reddy got the entire 2.78 acres and died leaving the first defendant as legal heir. The 2nd and 3rd defendants being the sons of the first defendant are entitled to the suit property by their birth.

4.The plaintiffs, in support of their claim marked the sale deed executed by the said Munusamy Reddy in favour of Dhanammal dated 27.11.1948 as Ex.A1 and the sale deed dated 08.07.1976 executed by Dhanammal in favour of the plaintiff as Ex.A2. The plaintiff also filed the other exhibits namely Exs. A3 to A31 to

establish her title and also possession over the suit property. She examined three witnesses namely P.Ws.1, 2, 3 in support of her case.

5. The defendants examined D.Ws.1 and 2 and marked Exs.B1 to B9 in support of their case.

6. The trial Court accepting the case of the plaintiff and finding that the sale deed executed under Exs.A1 and A2 as true and valid documents, granted the relief to the plaintiff. The appeal filed by the 2nd and 3rd defendants came to be rejected by the lower appellate Court concurring with the findings rendered by the trial Court.

7. Challenging the concurrent decision of the Courts below, the present Second Appeal is filed before this Court which was admitted by raising the following question of law.

i) Whether the judgments of the Courts below are not vitiated by a wrong assumption of the scope of section 90 of the Evidence Act that the production of a document more than thirty years old raised a presumption that it is a genuine one forgetting that the presumption under Section 90 of the Evidence Act is a rebuttable presumption and not an irrebuttable presumption.

ii) Whether the Court below is right in holding that the dismissal of the earlier suit in O.S.No.364 of 1968 will be binding on the appellants when there is no final adjudication of the matter and the suit was not properly prosecuted and the father allowed the matter to go for default without safeguarding the interest of the appellants who were minors then?

iii) Whether the court below is illegally right in dismissing the application filed to mark the document of the year 1933 to verify and compare the thumb impression of Munuswami Reddy in 1933 and 1948 documents?

8. Learned counsel for the appellants vehemently contended that the Courts below failed to consider that there was no partition between Munusamy Reddy and Muthappa Reddy as claimed by the plaintiff in the year 1940 and therefore, Munusamy Reddy, namely, the paternal uncle of the first defendant was not entitled to sell 1.39 acres, out of the undivided share of the land in favour of Dhanammal. Therefore, he contended that

when there is no partition at all, the sale deed executed by the said Munusamy in favour of Dhanammal is not valid and consequently, the sale executed by Dhanammal in favour of the plaintiff is also not valid. He further submitted that when the defendants have disputed the very sale alleged to have been executed by the paternal uncle of the first defendant, Munusamy Reddy in favour of Dhanammal and when they filed an application before the lower appellate Court to mark the additional documents in order to establish that the thumb impression contained in Ex.A1 is not that of Munusamy Reddy, the lower appellate Court erred in rejecting such application as well.

9. Per contra, Mr.K.V.Anandhakrishnan, learned counsel appearing for the plaintiff/ first respondent submitted that both the Courts below have gone into the factual aspects of the matter based on both oral and documentary evidence let in by both parties and came to the conclusion that the sale deeds executed under Exs.A1 and A2 are valid documents. Learned counsel also pointed out that the defendants 2 and 3 who are the appellants herein represented through their mother, in fact, filed another suit in O.S.No.267 of 1979 on the file of the District Munsif Court, Sholinghur, against the said Munusamy Reddy, Dhanammal and others seeking the relief of declaration to declare that the plaintiffs therein are entitled to 1.61 acres in S.No.438/5 and for other reliefs, wherein they clearly admitted the execution of sale deed under Ex.A1 by the said Munusamy Reddy in favour of Dhanammal. Therefore, learned counsel contended that when the appellants represented through their mother have specifically admitted the execution of the sale deed under Ex.A1, they are estopped from disputing such execution in the present suit.

10. Heard Mr.R.Subramanian, learned counsel appearing for the appellant and Mr.K.V.Anandha Krishnan, learned counsel appearing for the contesting respondents and perused the materials placed before this Court.

11. The present suit is filed by the plaintiff seeking for the relief of declaration and for other reliefs by claiming title to the suit property based on a sale deed marked as Ex.A2 executed by the said Dhanammal on 08.07.1976 in favour of the plaintiff. It is seen that the said Dhanammal earlier purchased the suit property from the said Munusamy Reddy under Sale Deed dated 27.11.1948 marked as Ex.A1. It is also not in dispute that the said Munusamy Reddy and Muthappa Reddy are brothers and that the first defendant in the present suit is the son of the said Muthappa Reddy. It is claimed that those two brothers namely Munusamy Reddy and Muthappa Reddy partitioned the family property as early as in the year 1940 and out of such partition each was allotted 1.39 acres of land at S.No.438/5. It is seen that subsequent to such partition, the said Munusamy Reddy sold

the property allotted to him under partition to the said Dhanammal under Ex.A1. Now the said partition itself is questioned by the defendants 2 and 3.

12. In my considered view, the defendants 2 and 3 are not only entitled to question the partition but also estopped from raising such objection for the following reasons.

First of all, it is to be seen that the father of the first defendant namely Muthappa Reddy who was party to the partition has not questioned the sale under Ex.A1 executed by his brother in the year 1948 itself at any point of time. If no partition had taken place as claimed by these defendants 2 and 3, the first man to question the said sale is Muthappa Reddy who admittedly did not question the same. Secondly, his son namely, the first defendant herein has chosen to remain exparte in the present suit and thus it has to be construed that he has accepted the claim of the plaintiff. Thirdly, it is seen that the first defendant had already filed a suit against Dhanammal in O.S.No.384/1968 seeking for declaration and injunction in respect of the suit property and the said suit came to be dismissed for default. It is stated that the restoration application filed also was dismissed. Fourthly, the defendants 2 and 3 themselves as minors represented through their mother filed another suit in O.S.No.267/1979 against the very same plaintiff and others wherein they have admitted the execution of sale deed by Munusamy Reddy in favour of Dhanammal. Fifthly, Ex.A1 sale deed was also proved by examining one of the attesting witnesses. Therefore, the defendants 2 and 3 who are the sons of the first defendant cannot have any independent or better claim than the first defendant to question such partition at this length of time.

13. Both the Courts have gone into the factual aspects of the matter in detail and gave the concurrent findings in favour of the plaintiff. When that being the factual position, I find the questions of law raised in this appeal are to be answered against the appellants. Accordingly, I find that the Second Appeal fails and the same is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

vsi

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Subordinate Judge, Ranipet.
 2. The District Munsif, Sholinghur.
 3. The Section Officer, V.R.Section, High Court, Mds-104.
- + 1 cc to M/s.V.Raghavachari, Advocate Sr 43847
- + 2 ccs to Mr.K.V.Ananthakrushnan, Advocate Sr 43893
- + 1 cc to Mr.R.Subramanian, Advocate Sr 44382

KR/31/8/16

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