

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.11.2016

PRONOUNCED ON :

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.337 of 2011

&

M.P.No.1 of 2011

1.Mahalakshmi
2.Radha
3.Hema
4.Baskar
5.C.K.Santhanam
6.Ramakrishnan

... Appellants

Vs.

1.Muthunarayanan
2.Jothi
3.Kothandam
4.Ravi
5.Vasu
6.Krishnaveni
7.Vijayaraghavan

... Respondents

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 12.01.2011 passed in A.S.No.28 of 2010 on the file of the Sub Court, Cuddalore confirming the judgment and decree dated 27.03.2010 passed in O.S.No.276 of 2008 on the file of the Additional District Munsiff Court, Cuddalore.

For Appellants : Mr.R.Gururaj
For RR1 to 5 : Mr.S.Kingston Jewed

J U D G M E N T

The plaintiffs have in this Second Appeal impugned the judgment and decree dated 12.01.2001 passed in A.S.No.28 of 2010 on the file of the Principal Subordinate Court, Cuddalore confirming the judgment and decree dated 27.03.2010 passed in O.S.No.276 of 2008 on the file of the Additional District Munsif Court, Cuddalore.

2.Suit for declaration and mandatory injunction.

3.Shorn of unnecessary details, the plaintiffs' case is as follows:

The suit properties originally belonged to Mangalam Ammal and Vaidyanathan being the issues of Subramania Pandaram. There were 5 items of agricultural land and 2 items of site with a building. After the sale of some of the items only suit "A" schedule properties remain. Items 1 to 4 are agricultural lands and

items 5 and 6 are house and site respectively. Both Mangalam Ammal and Vaidyanathan were minors and their guardian Nagaraja Pillai was taking care of the properties. One Kesava Reddiar became lessee of the agricultural lands and took possession of the properties and enjoying the same. As money was required for celebrating the marriage of Mangalam Ammal and for other expenses, the guardian Nagaraja Pillai executed a simple mortgage on 07.07.1961 in favour of Kesava Reddiar for a sum of Rs.3,000/- and the said mortgage was also registered. In as much as the guardian could not repay the mortgage amount, even after Mangalam Ammal and Vaidyanathan both attained majority, they also could not discharge the debt and for the other reasons the properties were agreed to be sold to Kesava Reddiar himself. Kesava Reddiar was given preference as he had been in possession of the properties. However, Kesava Reddiar could not mobilize the funds and therefore his brother-in-law Venkatasamy Reddiar offered to lend the amount and Kesava Reddiar agreed to purchase and the sale consideration was fixed at Rs.18,000/- and the properties were sold under a registered Sale Deed dated 21.04.1968. The understanding between Kesava Reddiar and Venkatasamy Reddiar was that on Kesava Reddiar returning the amount of Rs.15,000/- to Venkatasamy Reddiar, he should

formally execute a sale deed in his favour. The original documents were retained by kesava Reddiar and he was in possession of the properties. At no point of time Venkatasamy Reddiar was in possession and enjoyment of the properties and also did not assert his title over the same at any point of time as agreed between them. On 20.08.1994 an agreement was written and signed on stamp papers by both Kesava Reddiar and Venkatasamy Reddiar and regarding the possession of Kesava Reddiar, it was stipulated that Kesava Reddiar have to repay the amount and get a formal sale deed executed in his name. The plaintiffs are the issues of Kesava Reddiar. In as much as the fourth plaintiff wanted to commence business, he requested a loan from the Central Co-operative Bank and as the properties stood in the name of Venkatasamy Reddiar, he was also required to join the execution of the Mortgage Deed in favour of the Bank. Accordingly, on 05.05.1995, the fourth plaintiff and Venkatasamy Reddiar jointly executed a simple mortgage deed in favour of the Bank and the fourth plaintiff availed loan and ventured into the business. With the funds borrowed from the bank, Kesava Reddiar paid off Rs.15,000/- to Venkatasamy Reddiar on 27.06.1995 and also obtained due acknowledgment from him in the form of a receipt, wherein, he has also agreed to re-convey the property. Considering

the relationship of the parties, Kesava Reddiar was not particular in getting the Sale Deed registered. Later, in order to put the records straight, on demand of Kesava Reddiar, the defendants, who are the issues of Venkatasamy Reddiar demanded more money and Kesava Reddiar paid huge amount and even thereafter, Venkatasamy Reddiar and the defendants demanded further amount and therefore, Kesava Reddiar filed O.S.No.314 of 2001 seeking specific performance. Further, he has also filed O.S.No.131 of 2002 for permanent injunction. The specific performance suit ended in a compromise decree. Kesava Reddiar died pending suit. The impleadment of the plaintiffs and the defendants was made in the above said suit. O.S.No.131 of 2002 was dismissed as not pressed. On 11.04.2003, a compromise was recorded in O.S.No.314 of 2001 and under the compromise the suit "B" schedule properties were allotted to the plaintiffs share while suit "C" schedule properties were allotted to the defendants share. In spite of the comprise effected and recorded, the possession of the suit "C" schedule properties continued with the plaintiffs along with the "B" schedule properties. The defendants were not interested in carrying on agricultural operations and the understanding was that the plaintiffs should continue to enjoy the suit "C" schedule properties and the plaintiff should later purchase them at market

value. The plaintiffs agreed to the same and it was a gentlemen agreement. Unfortunately after the death of Venkatasamy Reddiar and as the proceedings were initiated by the Government to acquire some items of the suit "B" and "C" schedule properties, the sixth plaintiff intervened in the proceedings by filing a writ petition in the High Court and obtained interim stay of dispossession, suppressing the oral understanding between the parties above mentioned with a view to make unjust enrichment. The defendants are attempting to dispose of the properties to third parties. The gentlemen agreement cannot be breached. While so, the seventh defendant is said to have purchased the suit "C" schedule properties pending litigation on 26.08.2008 and the sale is invalid. It is a fraudulent sale transaction collusively effected to defeat the rights of the plaintiffs. Hence, the suit.

4.The averments contained in the written statement filed by the second defendant and adopted by the other defendants are briefly stated as follows:

The suit is not maintainable either in law or in facts. The matters at issue between the parties were crystallized by the compromise decree in O.S.No.314 of 2001 dated 11.04.2003, wherein, the "C" schedule properties in the said suit were allotted

to Venkatasamy Reddiar, the father of the defendants, and the defendants took possession of the said properties and enjoyed the same without any obstruction by the plaintiffs. It is false to state that the plaintiffs are in possession and enjoyment of the said properties. The plaintiffs are not entitled to plead a term which is contrary to the terms of the comprise and such plea is barred by law. The plaintiffs are estopped from claiming any right or possession in respect of the suit "C" schedule properties in question. The defendants have already sold the suit properties to the seventh defendant under a sale deed dated 26.05.2008. He is in possession and enjoyment of the suit "C" schedule properties at present. Hence the suit has become infructuous and liable to be dismissed.

5.The averments contained in the written statement filed by the seventh defendant are briefly stated as follows:

The suit is not maintainable either in law or in facts. The defendant is a bonafide purchaser of the suit properties for value and the plaintiffs being the parties to the compromise decree are estopped from disputing the right and title of the defendant over the suit properties. The oral agreement pleaded in the plaint is not

true and it is false to state that the sale deed in favour of the defendant is hit by *lis pendens*. It is only the defendant, who is in possession and enjoyment of the suit properties, hence, the suit is liable to be dismissed.

6.In support of the plaintiffs case PW1 has been examined. Ex.A1 to A76 were marked. On the side of the defendants, DW1 to DW3 were examined and Ex.B1 & B2 were marked. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to dismiss the suit. The first Appellate Court also confirmed the judgment and decree of the trial Court. Aggrieved over the same, the plaintiffs have preferred this Second Appeal.

7.The plaintiffs have laid the suit for the relief of declaration that they have a right of preferential purchase over the suit "C" properties and also for the relief of mandatory injunction for a direction to the defendants to sell the suit "C" schedule properties to the plaintiffs for the value to be fixed by court by separate proceedings.

8.The plaintiffs claimed the above reliefs on the footing that

they are the legal heirs of one Kesava Reddiar. The defendants are stated to be the legal heirs of Venkatasamy Reddiar. For the disposal of this Second Appeal, it is unnecessary to refer to the transactions which had arisen between the parties concerned before the sale agreement dated 20.08.1994 between Kesava Reddiar and Venkatasamy Reddiar. It appears that the agreement of sale has been entered into between Kesava Reddiar and Venkatasamy Reddiar in respect of the suit properties. As per the agreement, it is stated that Kesava Reddiar had to repay the amount to get the sale deed in respect of the suit properties executed in his name from Venkatasamy Reddiar. Thereafter as the parties were unable to effect a settlement in respect of the suit properties one way or the other, it is found that kesava Reddiar had filed O.S.No.314 of 2001 for the relief of specific performance against Venkatasamy Reddiar. That apart it could also be seen that Kesava Reddiar also laid a suit for permanent injunction in O.S.No.131 of 2002 against Venkasamy Reddiar. In the said suit, the present plaintiffs and the defendants were impleaded as parties respectively and it is also admitted that O.S.No.131 of 2002 came to be dismissed as not pressed.

9.Further, it is also admitted that a compromise decree was

effected in O.S.No.314 of 2001 and the compromise decree has been marked as Ex.A61. The sale agreement dated 20.08.1994 has been marked as Ex.A55. As found earlier, based upon Ex.A55, the suit in O.S.No.314 of 2001 has been instituted. Now according to the plaintiffs, though under the compromise decree marked as Ex.A61, the suit properties were given to Venkatasamy Reddiar and the defendants i.e., life estate being given to Venkasamy Reddiar and thereafter, the defendants have to take absolute interest, according to the plaintiffs, they continued to remain in possession and enjoyment of the suit properties alongwith the properties allotted to them under the compromise decree and further according to the plaintiffs there was a gentlemen oral agreement between the parties that the suit properties should continue to be enjoyed by the plaintiffs and that the plaintiffs should later purchase the same from the defendants at the market value. Based upon the said gentlemen oral agreement alone the plaintiffs have claimed the present reliefs in the suit. It is not stated in the plaint as to when and between whom and under what mode the alleged gentlemen oral agreement was entered into. The particulars with reference to same are very vague. It has been stated that gentlemen oral agreement has been entered into in respect of the suit "C" schedule properties.

10.As found by the Courts below as per the terms of the compromise decree marked as Ex.A61, it is found that the "C" schedule suit properties (E" schedule properties in O.S.No.314 of 2001) had been allotted to Venkatasamy Reddiar to be enjoyed during his life time and thereafter given to the defendants absolutely and it has also been mentioned in the terms of the compromise decree that the plaintiffs herein are not to interfere with possession and enjoyment of the defendants in respect of the suit "C" schedule properties and they are enjoined in doing so by means of permanent injunction.

11.Further, it is also found that the possession of the suit "C" schedule properties had been handed by the plaintiffs to the defendants and after recording the same the plaintiffs have also given assurance that they would not interfere with the possession and enjoyment of the defendants in respect of the suit "C" schedule properties and that assurance had also been recorded. Therefore, it could be seen pursuant to the compromise decree Ex.A61, it is only the defendants, who have given absolute right over the suit "C" schedule properties and it could be also be seen since then, it is only the defendants who have taken possession

and enjoyment of the suit "C" schedule properties and the plaintiffs have also given undertaking and assurance that they would not interfere in any manner with the possession and enjoyment of the defendants in respect of the suit "C" schedule properties in any manner.

12.As found by the Courts below this fact has also been clearly admitted by PW1 and PW1 during his cross examination has admitted that the terms of the compromise decree, Ex.A61, are true whatsoever be the rights of the parties prior to Ex.A61 pursuant to Ex.A61, it is only Venkatasamy Reddiar and the defendants who are entitled to take suit "C" schedule properties absolutely and he has further admitted that he has claimed preferential right only under Ex.A55. However based upon Ex.A55, he had laid the suit and only after Ex.A55, a compromise decree has been entered into and marked as Ex.A61. Further he has also admitted that under Ex.A61, compromise decree, the plaintiffs were not given preferential right to purchase the suit "C" schedule properties and it is also correct to state that the plaintiffs have handed over the possession of the "C" schedule properties to the defendants as per the term No.9 of the Compromise decree, Ex.A61 and from then on the suit "C" schedule properties are in

possession and enjoyment of the defendants.

13.As per the terms of Ex.A61, the suit "C" schedule properties belonged only to Venkarasamy Reddiar. Therefore, from the above categorical and unambiguous admission of PW1 and also seen from his deposition *vis-a-vis* the terms of the compromise decree, it could be seen that only the defendants have absolute title interest and right over the suit "C" schedule properties. It is also found that it is only the defendants, who are in possession and enjoyment of the suit "C" schedule properties and it is also evident that the plaintiffs have not been given any preferential right to purchase the suit "C" schedule properties under Ex.A61. Such being the position, it is not explained as to how the plaintiffs would be entitle to claim preferential right to purchase the suit "C" schedule properties from the defendants in the event of the sale of the same.

14.As regards the preferential right to acquire properties in certain cases conditions are laid out under Section 22 of the Hindu Succession Act 1956, Admittedly, the plaintiffs and the defendants are not the co-owners or related to each other as Class-I legal heirs prescribed under Section 22 of the Hindu Succession Act 1956 and

in such a case, when the conditions laid out under Section 22 are not at all satisfied in the present case to enable the plaintiffs to claim preferential right to purchase the suit "C" schedule properties, when a query to that effect has been put to the learned counsel for the plaintiffs, the learned counsel for the plaintiffs fairly admitted that it is true that Section 22 would not be applicable to the present case. However, he would submit that his request would be only to the extend the benefit provided under Section 22 of the Hindu Succession Act 1956 to the plaintiffs and enable them to purchase the suit "C" schedule properties under the preferential right category. However, it does not stand to reason legally as to how the said benefit could be extended to the plaintiffs when there is no basis to extend the same either on facts or under law.

15.As adverted to earlier, according to the case of the plaintiffs, subsequent to Ex.A61 there was a gentlemen oral agreement between the parties conferring the preferential right to the plaintiffs to purchase the suit "C" schedule properties. However, when there is nothing on record to show that such an agreement had been entered into between the parties concerned and when as rightly found by the Courts below, no iota of evidence

has been adduced on the side of the plaintiffs to point out to such and oral agreement and when it is the admitted case of both parties that they are claiming right over suit "C" schedule properties only as per the terms of compromise decree, Ex.A61, when under the same absolute right over the suit "C" schedule properties had been given to the defendants and no preferential right as such had been given to the plaintiffs under the same, it could be seen that the plaintiffs have filed the suit without any cause of action and accordingly it is found by the Courts below that the plaintiffs are not entitled to obtain the reliefs sought for by them in the suit.

16.As rightly found by the Courts below, the plaintiffs have to stand or fall on the strength of their own case. When they have no foundation for laying this case and when the basis on which the case is alleged to have been laid by them has also not been established and when it is found that there is no cause of action at all to institute the present case, the findings of the Courts below negating the plea of the plaintiffs do not warrant any interference of this Court.

17.Even then, the plaintiffs' counsel contended that the

defendants 1 to 6 have no right to alienate the suit "C" schedule properties in favour of the seventh defendant and the sale in favour of the seventh defendant is hit by *lis pendens* and would not confer any title on him.

18.However, as rightly argued by the learned counsel for the defendants only when the plaintiffs are able to establish that they have preferential right to purchase the suit "C" schedule properties, they would be entitled to question the sale made in favour of seventh defendant by the other defendants and when the plaintiffs have failed to establish their basic case, the argument put forth that the sale made in favour of D7 would be hit by *lis pendens* and would not be a valid transaction cannot be countenanced in the eyes of law. Therefore, the attack made by the plaintiffs as regards the sale deed of seventh defendant cannot be accepted in any manner.

19.In support of the plaintiffs case, the learned counsel for the plaintiffs has relied upon the decisions reported in **(i) AIR 1984 SC 1789(Ayyaswami Gounder and others Vs. Munnuswamy Gounder and Others, (ii) 95 L.W. 708(Thangavelu. P. Vs. R.Dhanalakshmi Ammal (iii) AIR 1951 SC 16(Yeshwant Deorao Vs. Walchand Ramchand (iv) AIR**

1959 SC 31(Moran Mar Basselios Catholicos Vs. Thukalan Paulo Avira and Others (v) AIR 1975 SC 1534(1) (Dr.N.G.Dastane Vs. Mrs.S.Dastane) (vi)AIR 1951 SC 469 (Collector of Bombay Vs. Municipal Corporation of the City of Bombay and others (vii) AIR 1991 SC 2234(1) (Byram Pestonji Gariwala Vs. Union Bank of India and Others (viii)AIR 1955 SC 206(1) Gurunath Vs. Kamalabai and others.

20.As rightly put forth by the learned counsel for the defendants, the authorities relied upon by the learned counsel for the plaintiffs have no application to the facts and circumstances of the present case. In any event, the principles of law adumbrated in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the present case.

21.In the light of the above discussions, sans any substantial question of law being involved in this Second Appeal, I hold that the Second Appeal is devoid of merits. Accordingly, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

.11.2016

Index: Yes/No
Internet:Yes/No

dn

To

- 1.The Sub Court,
Cuddalore
- 2.The Additional District Munsif Court,
Cuddalore.

T.RAVINDRAN.J.,
Dn

S.A.No.337 of 2011

.11.2016

<http://www.judis.nic.in>