



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 04.10.2016

Coram:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

WEB COPY

S.A(MD)No.725 of 2015 & M.P(MD)2 OF 2015

1.Chinnasamy
2.Mokkaiyan
3.Karuthapandi

... Appellants/Appellants/Defendants

vs.

Muthu Pechi

... Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgement and Decree dated 18.03.2011 made in O.S.No.147 of 2008 on the file of the District Munsif-cum-Judicial Magistrate, Aundipatti, as confirmed by the judgement and Decree dated 23.09.2013 made in A.S.No.8 of 2012 on the file of the sub-Court, Theni.

For Appellants	: Mr.P.Mahendran
For Respondent	: Mr.M.Karuppasamy Pandian

JUDGMENT

The defendants in the suit in O.S.No.147 of 2008 on the file of the District Munsif cum Judicial Magistrate, Andipatti, are the appellants in the second appeal.

2. The respondent in this appeal filed a suit in O.S.No.147 of 2008 on the file of the District Munsif cum Judicial Magistrate, Andipatti, for declaration that the sale deed executed by the third defendant in favour of the defendants 1 and 2 on 06.06.2007, is null and void and for partition of plaintiff's 1/3rd share and consequential injunction restraining the defendants from alienating the suit property on the basis of the sale deed dated 06.06.2007 and for injunction restraining the defendants from interfering with her joint possession.

3. The case of the respondent in the plaint is as follows:-

3.1. The suit property originally belonged to the father of the plaintiff and the defendants 1 and 2, by name, Gurunatha Moopan, and the suit properties are the ancestral properties. The suit properties were in the joint enjoyment of the plaintiff and defendants 1 and 2. Since, the plaintiff was a minor and her mother Karunthammal was acting as the plaintiff's Guardian, even the revenue records were corrected in the name of the plaintiff's mother Karunthammal, in the place of plaintiff.



3.2. Defendants 1 and 2 with the help of the third defendant, obtained a power of attorney deed from the plaintiff under the pretext of getting loan from the Bank on the representation that the said registered document is required for availing loan for defendants 1 and 2. However, the third defendant has fraudulently sold the suit property in favour of the appellants 1 and 2 without any consideration in order to defraud the plaintiff. The sale deed executed by the third defendant in favour of the defendants 1 and 2 is void and not binding on the plaintiff.

4. The relationship between the parties and the character of suit properties are admitted. The trial Court as well as the lower appellate Court has concurrently held that the plaintiff is entitled to 1/4th share in all the suit properties and the power of attorney deed obtained from the plaintiff and the sale deed executed by the plaintiff through the said power of Attorney in favour defendants 1 and 2 are fraudulent.

5. It is also brought to the notice of this Court that before the lower appellate Court, the plaintiff filed two additional documents namely the judgment and decree in O.S.No.129 of 2008 on the file of District Munsif Court, Andipatti. It is discussed by the lower appellate Court about the judgment and decree in O.S.No.129 of 2008. From these documents, it is clear that the appellants herein have filed a suit in O.S.No.129 of 2008 for declaration of title and permanent injunction in respect of the same suit properties on the strength of the sale deed obtained by the defendants 1 and 2/appellants herein from the plaintiff through the power of Attorney.

6. It appears that the said suit was dismissed, specifically, holding that the power of attorney marked as Ex.B1 herein and the sale deed marked as Ex.B2 dated 06.06.2007 are invalid. It is also submitted by the learned Counsel for the respondent that the appellants herein have not filed any further appeal challenging the judgment and decree in O.S.No.129 of 2008 on the file of the District Munsif Court, Andipatti. The judgment and decree in O.S.No.129 of 2008 will certainly operate as *res judicata* and the lower appellate Court is perfectly justified in relying upon the judgment in O.S.No.129 of 2008, to hold that the plaintiff is entitled to partition of her 1/4 shares. In the earlier suit in O.S.No.129 of 2008, the appellants claimed title only on the basis of sale deed obtained from the plaintiff herein. They have not questioned the right of plaintiff and her mother in the suit properties as heirs of appellant's father. Though issues relating to succession was not raised in the earlier suit the doctrine of constructive *res judicata* is attracted.

7. Hence, the present appeal is liable to be dismissed on the ground that the judgment in the previous suit between the same parties are binding and the defendants are now estopped from questioning the right of plaintiff. Therefore, I find that there is



no merit in the present appeal.

8. The trial Court and the lower appellate Court in the present case have categorically held that the power of attorney deed under Ex.B1 dated 02.02.2007 and the sale deed obtained from the Power of Attorney Agent of plaintiff in favour of Defendants 1 and 2 are invalid. The Courts below have, therefore, specifically found in favour of the plaintiff on the basis of material documents and evidence. Having regard to the findings of the Courts below on the character of transactions under Exs.B1 and B2 this Court is not inclined to interfere with the finding of facts by the Courts below. Accordingly, this Court is of the view that no question of law, much less a substantial question of law, arise in this second appeal for consideration. The question of law raised by the appellant are in relation to the right of plaintiff to seek partition of her 1/4 share. The appellants though raised an issue in the written statement, did not give the specific date of death of plaintiff's father. In the memorandum of grounds of Appeal filed before the lower appellate court, no ground is raised disputing the quantum of share of plaintiff by alleging that the father of plaintiff and defendants 1 and 2 died prior to 1989 before the Tamil Nadu Amendment. Before this Court the appellants are not entitled to raise new plea. Hence, the substantial questions of law framed on a plea which was given up before the lower appellate Court cannot be entertained.

9. In the result, the second appeal is dismissed. No costs. Consequently, the connected Miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To

1. The District Munsif-cum-Judicial Magistrate,
Aundipatti.
2. The subordinate Judge, Theni.

Copy To:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+ 1 CC TO Mr.P.MAHENDRAN, ADVOCATE IN SR No. 58402
+ 1 CC TO Mr.M.KARUPPASAMY PANDIAN, ADVOCATE IN SR No. 58258
GSR

TE/KM : 21/11/2016 : 3P/6C

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