



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 13.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

S.A. (MD) No.312 of 2016

Jeyam : Appellant/Defendant

Vs.

Jeya Seela : Respondent/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 20.08.2013, made in A.S.No.2 of 2011 on the file of Sub Court, Vallioor, confirming the judgment and decree dated 30.09.2010, made in O.S.No.155 of 2007, on the file of learned Principal District Munsif, Nanguneri.

For Appellant : Mr.S.R.Anbarasu

JUDGMENT

This is an appeal preferred by the defendant in O.S.No.155 of 2007, challenging the judgment and decree dated 30.09.2010 on the file of learned Principal District Munsif, Nanguneri, as confirmed by the judgment and decree dated 20.08.2013, in A.S.No.2 of 2011 on the file of Sub Court, Vallioor.

2. The respondent, as plaintiff, filed the suit in O.S.No.155 of 2007 before the trial Court for a decree of declaration that the suit properties belonged to her, besides a decree of injunction.

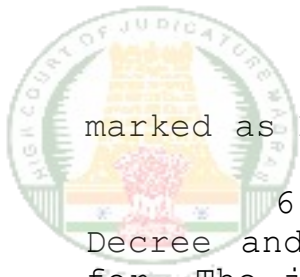
3. In the plaint in O.S.No.155 of 2007, it is the case of the respondent as plaintiff that the suit properties originally belonged to one Gurusamy Nadar. He had three female children and four male children and in the oral partition that took place amongst the legal heirs of Gurusamy Nadar, the suit properties and other properties were allotted to the share of Sudalaimani Nadar. The two female child relinquished their share through a registered as well as unregistered deeds. After that, the said Sudalaimani Nadar was in possession and enjoyment of the suit properties and patta was also issued in his favour. Sudalaimani Nadar died intestate in the year 2000. After his demise, his legal heirs obtained patta in their names and all of them executed three registered sale deeds in respect of the suit properties on 24.02.2006, 10.03.2006, 13.03.2006 in favour of the respondent and



right from that, the respondent is in absolute possession and enjoyment of the suit properties by paying kist. The appellant/defendant, who has absolutely no right over the suit properties, attempted to cut the 'Udai' tress standing in the suit properties. Earlier, a partition suit was filed in O.S.No.76 of 2004, which was dismissed and there is no cordial relationship between the family of the respondent's husband and her husband and taking advantage of this, the appellant/defendant attempted to grab the suit properties and hence, the present suit has been filed for declaration and injunction.

4. The appellant, as defendant, filed a written statement, apart from denying all the averments made in the plaint, stating that it is true that the plaint schedule properties originally belonged to one Gurusamy Nadar and he died intestate in the year 1978 leaving behind his wife and seven children. As alleged in the plaint, no oral partition took place amongst the legal heirs of Gurusamy Nadar and the plaint schedule properties were not allotted to Sudalaimani Nadar. In fact, the properties of Gurusamy Nadar including the plaint schedule properties were in joint possession and enjoyment of the legal heirs of Gurusamy Nadar. Each one of the legal heirs of late Gurusamy Nadar is entitled to undivided 1/8th share in the plaint schedule properties. After the death of Sudalaimani Nadar, his legal heirs were in joint possession of the plaint schedule properties and other properties of late Gurusamy Nadar with his other legal heirs. The defendant has purchased 1 acre 34 cents out of 1.53 cents in the plaint schedule properties, representing undivided 7/8th share of the legal heirs of Gurusamy Nadar, as per sale deed dated 18.05.2007 executed by Balakrishnan on his behalf and as power agent of other legal heirs. Thus, the defendant is entitled to 7/8th share and the plaintiff is a co-owner with the defendant and the defendant is in possession and enjoyment of the plaint schedule properties with the plaintiff. Sudalaimani Nadar was entitled to only an undivided 1/8th share in the plaint schedule properties and other properties and hence, his legal heirs are entitled to only undivided 1/8th share which Sudalaimani Nadar was entitled. The sale deeds dated 24.02.2006, 13.03.2006 and 10.03.2006 executed by the legal heirs of Sudalaimani Nadar in favour of the respondent/plaintiff are all fraudulent documents and they are not binding on the other legal heirs of late Gurusamy Nadar and the defendant. The earlier suit in O.S.No.76 of 2004 has no bearing on the present suit and the plaintiff has not produced any document with regard to the said suit. Hence, the defendant prayed for dismissal of the suit.

5. The trial Court framed appropriate issues in the light of the pleadings. On the side of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and as many as 25 documents were marked as EX-A1 to EX-A25. On the side of the defendant, two witnesses were examined as DW-1 to DW-2 and 7 documents were



marked as EX-B1 to EX-B7.

6. Having considered all the above, the Trial Court, by Decree and Judgment dated 30.09.2010, decreed the suit as prayed for. The judgment and decree of the Trial Court was challenged by the appellant before the first appellate Court in A.S.No2 of 2011 and the appeal was also dismissed as per judgment dated 20.08.2013 on the file of Sub Court, Vallioor and it is the said judgment which is now challenged in the present second appeal.

7. I have heard the learned counsel appearing for the appellant and also perused the materials available on record in the form of typed-set of papers including the judgments rendered by both the Courts below.

8. The learned counsel for the appellant submitted that no oral partition took place after the demise of the original owner of the suit properties, by name Gurusamy Nadar and the suit schedule properties were not allotted to the share of Sudalaimani Nadar and after his demise, his legal heirs were not in joint possession and enjoyment of the suit properties and that the alleged sale deeds dated 24.02.2006, 13.03.2006 and 10.03.2006 executed by his legal heirs in favour of the respondent/plaintiff had been fraudulently obtained by the respondent/plaintiff. He further submitted that even prior to the alleged sale deeds executed in favour of the respondent by the legal heirs of Sudalaimani Nadar, the other legal heirs of Gurusamy Nadar executed power of attorney deeds dated 20.08.2002 and 06.09.2002, marked as Exs.B.5 and B.6 in favour of one Balakrishnan, one of the legal heirs of Gurusamy Nadar and the defendant has purchased 1 acre 34 cents out of total extent of 1 acre 53 cents, i.e., undivided 7/8th share from Balakrishnan, on his behalf and as power agent of other legal heirs of Gurusamy Nadar, through a registered sale deed dated 18.05.2007, marked as Ex.B.2. Therefore, when there was no oral partition took place after the death of the original owner Gurusamy Nadar, the respondent has not made out a case for decree as sought for in the plaint and hence, both the Courts below committed an error in deciding that the respondent has proved the factum of oral partition. Therefore, he prays that the Judgment and Decree passed by both the Courts below need to be interfered with by this Court.

9. I have considered the above submissions.

10. Admittedly, the suit properties were originally belonged to one Gurusamy Nadar, who died intestate in the year 1978. In the oral partition that was effected amongst the legal heirs of Gurusamy Nadar, the suit properties and some other ~~properties~~ were allotted to Sudalaimani Nadar and from that time, Sudalaimani Nadar was in possession and enjoyment of the suit properties and patta was also issued in his name and to evidence



the same, Ex.A.1 was marked. After the death of Sudalaimani Nadar, his legal heirs were in joint possession and enjoyment of the properties and to prove the same, Ex.A.4 was marked. The respondent purchased the suit properties from the legal heirs of Sudalaimani Nadar, through registered sale deeds dated 24.02.2006, 13.03.2006 and 10.03.2006 and to evidence the same, Exs.A.6, A.7 and A.8 were marked. On going through the oral and documentary evidences, the Trial Court as well as the first appellate Court had come to the conclusion that the respondent has proved the possession of the properties by Sudalaimani Nadar, by way of oral partition, by examining the witnesses and by adducing documentary evidences.

11. Coming to Ex.B.1-joint patta issued in the name of legal heirs of Gurusamy Nadar, it does not relate to the suit properties. It is the specific case of the defendant that he purchased 1 acre 34 cents out of 1 acre 53 cents in the plaint schedule properties representing undivided 7/8th share from the legal heirs of Gurusamy Nadar through Ex.B.2-a registered sale deed dated 18.05.2007 executed by Balakrishnan, one of the legal heirs of Gurusamy Nadar on his behalf and as power agent of other legal heirs of Gurusamy Nadar through power of attorney deeds dated 20.08.2002 and 06.09.2002, the certified copies of which, have been marked as Exs.B.5 and B.6.

12. Furthermore, D.W.2-Balakrishnan, in his cross-examination, has categorically admitted that one of the legal heirs of Gurusamy Nadar, namely Poonkani died in the year 2003 and the same is evident from Ex.A.21-the death certificate of Poonkani and he has also admitted in his cross-examination that he suppressed the fact that Poonkani died and sold the suit properties in favour of the defendant through Ex.B.2. It is trite that when a person, who gives power, dies, the power became invalid automatically. Therefore, when Poonkani died in the year 2003 itself, which fact was admitted by D.W.2 himself in his cross-examination, the subsequent sale made by D.W.2 in favour of the defendant through Ex.B.2, dated 18.05.2007, on the basis of the power deeds, does not hold good, because the sale deed does not confer any right in respect of the share of the deceased Poonkani and D.W.2 has no right to sell the share of Poonkani and hence, the very sale of 7/8th share in respect of the suit properties through Ex.B.2 sale deed, dated 18.05.2007 does not hold good. Such being the case, the trial Court as well as the first appellate Court considered the issue in proper manner and came to the correct conclusion to the effect that the respondent is entitled to the decree of declaration and injunction and the same does not call for interference in second appeal. Therefore, I do not find any question of law much less substantial question of law in the present second appeal, which requires adjudication by this Court exercising jurisdiction under Section 100 of the Civil Procedure Code. There is no merit in the appeal



and the same is liable to be dismissed.

13. In the result, the Second Appeal is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

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Sd/-

Assistant Registrar (CS-I)

Sub Assistant Registrar

To

- 1.The Sub Judge, Vallioor.
- 2.The Principal District Munsif, Nanguneri.

Judgment made in
S.A. (MD) No.312 of 2016

SML

SH/SKN/SAR-I:01.06.2016:5P/3C