

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2017

CORAM

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

S.A.No. 1317 of 1994

V. Elangovan

...Appellant/Plaintiff

Vs.

1. Ramanujampillai (deceased)
2. Kanthamaniammal
3. Kuppusamy (deceased)
4. Neelavathi ammal
5. Velayuthampillai
6. Namachivayapillai
7. Manickavalli
8. Umadevi
9. Soundravalli
10. Mani
11. Dharabudharan
12. Valarmathu

(RR4 to 9 brought on record as
LRs of the deceased R1 vide
order dated 05.01.2017 made
in C.M.P.No.17605 to 17611
of 2016 in S.A.No.1317 of 1994)

(RR10 to 12 brought on record as
LRs of the deceased R3 vide
order dated 05.01.2017 made in
C.M.P.No. 17605 to 17611
of 2016 in S.A.No.1317 of 1994) ...Respondents/Defendants

Prayer:- This Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree in A.S.No.110 of 1993 on the file of the learned Additional Subordinate Court, Cuddalore, reversing the judgment and decree dated 31.03.1993 in O.S.No.738 of 1991 on the file of the learned Additional District Munsif, Cuddalore.

For Appellant : Mrs.P.V.Rajeswari

For Respondents : No appearance

JUDGMENT

The suit is for declaration and recovery of possession on the ground that the plaintiff's grand-father Muthu was assigned the suit property in the year 1950 and he was enjoying it absolutely. On the demise of Muthu, the suit property devolved upon his two sons Vadivelu and Srirangan. The said Srirangan sold his share to his brother Vadivelu and hence Vadivelu became the absolute owner of the property. On 09.05.1959, the said Vadivelu mortgaged the property to Neelayatchiammal W/o. Ramanujampillai and thereafter another usufructuary mortgage was created over the property in favour of Velayudam, who is none other than the son of the said Ramanujampillai.

2. While so, on 22.05.1997 the said Vadivelu after creating usufructuary mortgage over the property, in order to discharge the debt, sold away item No.1 of the property to the said Ramanujampillai, who in turn, on 06.08.1981, sold the same to the third defendant. The case of the plaintiff, who is the son of Vadivelu is that the suit properties are inalienable in view of the terms of the assignment marked as Ex.A.1 and the mortgage is deemed to be discharged in view of the statutory relief granted by the Government vide Act 38 of 1972 which relates to debts relief to the farmers. Further contention of the plaintiff is that at the time of usufructuary mortgage over the property, the plaintiff was a minor and the alienation was not for the benefit of the plaintiff and also not with the permission of the Court and on that score also the said alienation is bad and therefore he is entitled for declaration and recovery of possession.

3. The defendants contested the suit on the ground that the property is not a waste land and it was assessed by the land revenue. It is self acquired property of the said Muthu. Earlier he created mortgage over the property and sold to the vendors of the defendants through a valid sale deed and after alienation, neither Muthu or his family are in possession and enjoyment. In any event, Ex.A.1 assignment was made more than six years ago and the moratorium clause in Ex.A.1 will not affect the transaction made through Ex.A.17.

4. The trial Court after considering the documents and evidence let in by the parties, has decreed the suit in favour of the plaintiff in the light of the terms of assignment Ex.A.1. The trial Court held that the subsequent alienation reflected in Exs.A.2, A.3 A.17 and A.18 are non-est in law and invalid and the plaintiff is entitled for the relief sought.

5. On appeal, the first appellate Court has formulated the following points for consideration:-

1. Whether the respondent is having locus standi to file the suit for declaration of title to the suit property?
2. Whether the appeal has to be allowed?

6. After extracting the contention of the rival parties stated in the pleadings as well as the judgment of the trial Court, the appellate Court has allowed the appeal, holding that the alienation in favour of Ramanujampillai is valid. The judgment referred by the appellate Court reported in "1991 (1) LW 63 - C.Arumugam Vs. S.Muthusamy Naidu and 17 others" is not applicable to the facts of the case. Alienation of Panjanama land with prior permission of the government is not the pre-requisite and alienation of such land is valid and is not liable for cancellation. While reversing the judgement, the lower appellate Court referred the Land Reforms Act, 1960, State of Orissa and judgement of our High Court in "Ayi Gounder Vs. Gabriel" and held that the alienation has been made after 60 years from the date of assignment. Hence there is no impediment to alienate the property.

7. The learned counsel for the appellant submitted that the assignment was made in favour of Muthu as early as in the year 1923 and clause 2 of the assignment clearly prohibits that if there is any alienation of the property to any body else it will render the assignment cancelled. It is now borne out by records that through Ex.A.2, Vadivelu, one of the sons of Muthu has first mortgaged the property and later, in the year 1980 sold it, when the present plaintiff/appellant was minor.

8. On that circumstances, this Court is of the opinion that the alienation is bad in law for for alienating the minors land without Court permission and not assigning any reason for alienating the minor interest in the suit property. Therefore the question of law is answered in favour of the appellant.

9. In the result, the second appeal is allowed, the lower appellate Court judgment is set aside and trial Court judgment is restored. No order as to costs.

s/d-

Assistant Registrar(CS-VI)

True Copy

Sub-Assistant Registrar

To

1. The Additional Subordinate Court, Cuddalore.

2. The Additional District Munsif, Cuddalore

+1 CC to M/s. Vedavalli Kumar, Advocate sr 10054

S.A.No.1317 of 1994

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