

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-06-2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE M.S.RAMESH

Appeal Suit No.564 of 2016

1.A.Arun Saravanan

2.A.Vignesh

3.Minor.N.Kavinraj

4.Minor.N.Atchiya

(Minors 3 and 4 are represented
by Mother and Guardian
Mrs. Prema)

5.Minor.P.Arunachalam

rep.By Mother and Guardian
Mrs.Kalamani

6.Minor.G.Tanush Aditya

7.Minor.G.Pranitha

(Minors 6 and 7 are represented by
Mother and Guardian Mrs. Sivaranjani)

8.Pushpavathi

... Appellants/Plaintiffs

Versus

1.Vasanthamani

2.T.A.Balasubramaniam

3.T.A.Shanmuga Sundaram

(Respondents 2 and 3 are impleaded
as party respondents as per order dated
13.04.2017 made in CMP No. 19401
of 2016 in AS No. 564 of 2016)

... Respondents/Defendants

Appeal filed under Section 96 read with Order 41 Rule 1 of
of the Code of Civil Procedure, 1908 against the Fair and Final
Order dated 26.02.2016 made in I.A. No. 674 of 2014 in O.S. No.
18 of 2014 on the file of Second Additional District and
Sessions Judge, Tirupur.

For Appellants : Mr.R.Pradeep
for Mr.D.R.Arun Kumar

For Respondents : Mr.S.V.Jayaraman,
Senior Advocate
for Mr.C.S.Saravanan for R1

JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J)

The Plaintiffs in O.S. No. 18 of 2014 on the file of the Second Additional District and Sessions Judge, Tirupur are the appellants in this appeal. The plaintiffs have filed the suit for a decree of declaration to declare that the sale deed dated 17.06.1974 executed by one Arunachala Gounder in favour of Nanjappa Gounder in respect of the suit property is void ab initio, not valid or binding upon them and for directing division of the suit properties into 120 equal shares and allot and deliver possession of 81 such shares to the plaintiffs and for cost. Pending suit, the 8th defendant in the suit/first respondent herein has filed I.A. No. 674 of 2014 in O.S. No. 18 of 2014 under Order VII Rule 11 (a) and (d) of Civil Procedure Code to reject the plaint as the same has been instituted without any cause of action. The trial court allowed the application in I.A. No. 674 of 2014 in O.S. No. 18 of 2014 by an order dated 26.02.2016 against which the present appeal has been filed.

2. The case of the plaintiffs, as unfolded from the plaint averments, is that one Rangasamy Gounder and Arunachala Gounder are the sons of Rangappa Gounder. According to the plaintiffs, the family of Rangappa Gounder owned and possessed several lands, including the suit land measuring 4.48 acres comprised in Survey No.22/2 in Pudupalayam Village, Avinashi Taluk and it was in possession and enjoyment of Rangappa Gounder and his two sons as a joint family property. On the death of Rangappa Gounder, his two sons viz., Rangasamy Gounder and Arunachala Gounder have partitioned their ancestral joint family properties by a deed of partition dated 20.05.1958 registered as document No. 827 of 1958 on the file of Sub-registrar, Avinashi. As per the said partition, the suit property came to be allotted to the share of Arunachala Gounder, morefully set out as "B" schedule in the Deed of Partition dated 20.05.1958. It is further contended that the defendants 1 to 3 and one Arjunan are the sons of Arunachala Gounder while defendants 4 to 7 are his daughters. The Plaintiffs 1 and 2 are the minor sons of the deceased Arjunan. The Plaintiffs 3 and 4 are the minor son and daughter of the second defendant in the suit and the fifth plaintiff is the minor son of the eighth defendant. Similarly, the plaintiffs 6 and 7 are the minor son and daughter of the fourth defendant. It is claimed that the defendants 1 to 3 and deceased Arjunan are entitled to the properties allotted to their father Arunachala Gounder in the partition deed dated 20.05.1958 and as their legal heirs, the plaintiffs as well as the defendants have equal share in the suit property. While so, during the life time of Arunachala Gounder, he has sold the suit property by executing a sale deed dated 17.06.1974 in favour of one Nanjappa Gounder without any family necessity and therefore, such sale is not valid in law. The alleged sale deed dated 17.06.1974 will be valid at the best, only to the extent of 1/5 share, which Arunachala Goudner is entitled to in the suit

property. On coming to know about the sale, the defendants 1 to 3 and deceased Arjunan have filed O.S. No. 206 of 1986 before the Subordinate Judge, Tirupur against the above said Nanjappa Gounder questioning the right of Arunachala Gounder to sell the suit property, however, the suit was not prosecuted and therefore it was dismissed for default. The plaintiffs 1 to 7 being the children of defendants 1 to 3 and Arjunan and the 8th plaintiff, being the widow of Arjunan, are entitled to a share in the suit property as it is their ancestral property. In any event, according to the plaintiffs, the sale deed dated 17.06.1974 has been executed by Arunachala Gounder without consulting the other co-parceners in the suit property and he has unilaterally sold the same to Nanjappa Goudner which had affected their right in the suit property. Therefore, the suit was filed by the plaintiffs.

3. Pending suit, the 8th defendant has filed an application in I.A. No. 674 of 2014 in O.S. No. 18 of 2014 under Order VII Rule (a) and (d) of CPC praying to reject the plaint as it was filed without any cause of action. It was vehemently contended by the 8th defendant that the suit filed for declaring the sale deed dated 17.06.1974 after a period of 40 years is hopelessly barred by limitation. At the time of execution of the sale deed dated 17.06.1974 by Arunachala Gounder in favour of the father of the 8th defendant namely Nanjappa Goudner, none of the plaintiffs were born and some of them were born after 23 years from the date of execution of the sale deed. Further, for the very same prayer, earlier, a suit was filed in O.S. No. 206 of 1986 but it was not prosecuted and ultimately it was dismissed for default on 16.11.1989. Therefore, according to the eighth defendant, when none of the plaintiffs were born at the time of execution of the sale deed dated 17.06.1974, they derive no right to question it, that too, after 40 years of its execution. Therefore, the eighth defendant prayed for rejecting the plaint.

4. The trial court, after hearing the rival contentions, allowed the application for rejecting the suit by concluding that the suit has been filed without any cause of action and it is hopelessly barred by limitation.

5. We have heard the learned counsel for both sides and perused the materials placed on record. In the suit in O.S. No. 18 of 2014, the Plaintiffs questioned the validity and or enforceability of the sale deed dated 17.06.1974, which was executed by their grand father Arunachala Gounder, in favour of the father of the eighth defendant namely Nanjappa Gounder. As rightly pointed out by the trial court, at the time when the sale deed dated 17.06.1974 was executed, none of the plaintiffs were born. In other words, 23 years after the sale deed dated 17.06.1974 came to be executed, some of the plaintiffs were born. Further, the plaintiffs have filed the suit in the year 2014 nearly after four decades from the date on which the sale deed dated 17.06.1974 came into existence. Even otherwise, for the very same prayer, earlier, a suit was filed in O.S. No. 206 of 1986 before the Subordinate Judge, Tirupur but it was

abandoned without prosecuting it. Ultimately, the suit in O.S. No. 206 of 1986 was dismissed on 16.11.1989, which was also admitted by the plaintiffs in the plaint. Therefore, we are of the view that the trial Court is right in rejecting the plaint on the ground that there is no cause of action for filing the suit. We do not find any infirmity or error in the order passed by the Trial Court warranting interference.

6. In the result, we confirm the Order passed by the trial court and dismiss this Appeal. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

- 1.The II Additional District and Sessions Judge,
Tirupur.
- 2.The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr.C.S.Saravanan, Advocate, S.R.No.43289
+lcc to Mr.D.R.Arun Kumar, Advocate, S.R.No.43118

A.S.No.564 of 2016

KJI (CO)
CA(18/09/2017)

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