

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2017

CORAM :

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.725 of 2017
and
C.M.P.No.18335 of 2017

1. Vimala
2. Shanmugam
3. Sathish ... Appellants/Plaintiffs

versus

1. Muniraj
2. Rathnamma
3. K.L. Venugopal ... Respondents/Defendants

Second appeal filed under Section 100 of C.P.C. against the Judgment and Decree of the learned Additional District Judge of Hosur, dated 25.10.2016 in A.S.No.31 of 2015 confirming the judgment and decree of the learned Subordinate Judge of Hosur, dated 02.07.2013 in O.S.No.59 of 2005.

For Appellants : Mr.V.Nicholas

J U D G M E N T

The unsuccessful plaintiffs before the Courts below have preferred the above second appeal, challenging dismissal of the suit for partition and separate possession.

2. The plaintiffs are the children of defendants 1 and 2 and the third defendant is the paternal grand mother of the plaintiffs. The fourth defendant is the purchaser from defendants 1 and 2. It is stated by the plaintiffs that in an earlier suit filed by the third defendant, there was a decree for partition of her 1/4th share. Now, the claim of the plaintiffs is that in the sale deed dated 05.08.1996 executed by the defendants 1 and 2 in favour of the fourth defendant the share of the plaintiffs also has been included. Hence, the suit has been filed.

3. Excepting the fourth defendant, rest of the defendants remained ex-parte. The fourth defendant has subsequently pleaded that the sale was for the benefit of minors and legal necessities. The sale has been executed by the first defendant, when the plaintiffs were minor and were made eo-nominel party.

4. The Courts below on appreciation of the oral and documentary evidence, had concurrently dismissed the suit filed by the plaintiffs. Aggrieved by the same, the above appeal is preferred.

5. The first and foremost contention of the plaintiffs is that the suit properties are joint family properties and therefore, the sale made by the defendants 1 and 2 in favour of the fourth defendant is void. However, before the courts below, there was no evidence produced to show that the suit properties were joint family properties. It is settled principle that when the plaintiffs alleges that the suit property is a joint family property, the burden is on them to prove the same. However, in this case, the plaintiffs have not proved that the suit properties are joint family properties.

6. Secondly, the sale made by the defendants 1 and 2 in favour of the fourth defendant is on 05.08.1996. The plaintiffs attained majority in the year 1998, 1999 and 2000 respectively. Therefore, on attaining majority, within three years, they ought to have filed the suit questioning the alienation of the so-called joint family property by the defendants 1 and 2. However, the suit was filed only on 22.07.2005. Therefore, the suit is barred by Limitation.

7. Thirdly, in the plaint the plaintiffs have not sought for any relief to set aside the sale deed dated 05.08.1996 executed by the defendants 1 and 2 in favour of the fourth defendant, but they have filed the suit only for the relief of partition. When it is the specific case of the plaintiffs that the suit property was not sold for any legal necessity or for the welfare and well being of the plaintiffs, when they were minors, they ought to have included the prayer for declaring the sale deed dated 05.08.1996 as null and void by paying appropriate court fee thereof. However, as mentioned above, the suit was filed only for the relief of partition. Therefore, I do not find any reason to interfere with the concurrent findings rendered by the Courts below. There is no question of law much less substantial question of law involved in this appeal warranting interference by this Court.

8. Accordingly, the second appeal is dismissed by confirming the judgment and decree dated 25.10.2016 passed in A.S. No. 31 of 2015 confirming the decree and judgment dated 02.07.2013 passed in O.S. No. 59 of 2005. No Costs. Consequently, connected miscellaneous petitions is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

rsi

To

1. The Additional District Judge,
Hosur.
2. The Subordinate Judge,
Hosur.
3. The Section Officer, V.R. Section, High Court, Madras.

+1cc to Mr.V.NICHOLAS, Advocate, S.R.No. 84185

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and C.M.P.No.18335 of 2017

NMI (CO)
TR(08/01/2018)

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