

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2017

Coram

The Hon'ble Mr. Justice R.SUBRAMANIAN

A.S.No.734 of 2008

Nachimuthu Gounder

.. Appellant/2nd Defendant

Vs

1.Sasikumar
2.Lakshmi
3.Gopalan

Respondents 1 & 2&Plaintiffs1 & 2
..R3/1st Defendant

(R1 was declared as major and R2 was discharged from the guardianship vide order dated 14.11.2016 made in C.M.P.Nos. 2968 and 2969 of 2016 in A.S.No.734 of 2008)

Appeal filed under section 96 order 4 rule of CPC preferred against the judgment and decree dated 30.04.2008 made in O.S.No.6 of 2007 on the file of the Additional District Court cum Fast Track Court No.4, Bhavani, Erode District.

For Appellant .. Mr.K.K.Ramakrishnan
for Ms.P.T.Ramadevi

For Respondents .. Mr.K.Govi Ganesan
for R1 & R2

JUDGMENT

The second defendant in O.S.No.6 of 2007 is the appellant. The said suit was filed by the plaintiffs, who are the minor son and wife of the first defendant. According to the plaintiffs, the suit properties were purchased by the first defendant on 09.06.1997 for a consideration of Rs.2,73,500/-. The first defendant had released his rights in the ancestral properties by the registered deed of release dated 11.02.1997 in favour of his father and brother. A sum of Rs.45,000/- was received by him as consideration on 11.02.1997. The plaintiffs would contend that the said sum of Rs.45,000/- constituted the ancestral nucleus

for purchase of the suit properties by the first defendant. The second plaintiff got married to the first defendant on 03.08.1993 and the first plaintiff was born on 18.05.1994 out of the said wedlock. The first defendant was addicted to liquor and was leading a wayward life. Utilising the said addiction of the first defendant, the second defendant managed to obtain a sale deed from the first defendant in respect of the suit properties on 13.09.2001 and 27.09.2001. The plaintiffs came to know about the said alienation only thereafter.

2.The present suit was filed seeking partition and separate possession of the first plaintiff's half share in the suit properties and for maintenance of the second plaintiff at the rate of Rs.1,500/- per month. The plaintiffs also sought for creation of a charge over the half share of the first defendant in the suit properties. According to the plaintiffs, the sale deeds dated 13.09.2001 and 27.09.2001 were not binding on the first plaintiff since they were not supported by legal necessities. The first defendant, as the Kartha of the family, cannot alienate the share of the first plaintiff except for legal necessities.

3.The suit was resisted by the second defendant contending that the suit properties are the self-acquisitions of the first defendant. The sum of Rs.45,000/- that was received by the first defendant by executing the release deed on 11.02.1997 was not utilised for the purchase of the suit properties. It was further contended that the suit itself is a collusive one brought about at the instance of the first defendant. The plaintiffs are actually residing with the first defendant only. The claim of the second plaintiff that she was subjected to cruelty and ill-treatment by the first defendant was also denied. The debts payable by the first defendant were legal and were not tainted with illegality or immorality. The sale consideration paid by the second defendant was utilised for repayment of antecedent debts and hence the sales are binding on the first plaintiff, who was a minor. On the above allegations, the second defendant sought for dismissal of the suit.

4.The first defendant remained exparte. On the above pleadings, the learned Trial Judge namely Additional District Judge (Fast Track Court No.4), Bhavani, framed the following issues:

- 1.Whether the first plaintiff is entitled to seek partition?
- 2.Whether the plaintiffs are entitled to maintenance from the first defendant?
- 3.Whether the alienations dated 13.09.2001 and 27.09.2001 are liable to be cancelled?

4.Whether the plaintiffs are entitled to mesne profits?

5.To what other reliefs are the plaintiffs entitled to?

5.The second plaintiff and her father were examined as P.Ws.1 and 2. One Duraisamy was examined as P.W.3. The second defendant, apart from examining himself as D.W.1, examined seven other witnesses as D.Ws.2 to 8. Exs.A1 to A14 were marked on the side of the plaintiffs and Exs.B1 to B27 were marked on the side of the defendants.

6.On a consideration of the oral and documentary evidence, the learned Trial Judge accepted the case of the plaintiffs and concluded that the sales made by the first defendant are not binding on the first plaintiff. He also found that the suit properties are ancestral properties that have been purchased from and out of the ancestral nucleus that was available with the first defendant. The plea of the second defendant that the plaintiffs are always residing with the first defendant and the theory that the plaintiffs were chased away by the first defendant has been cooked up for the purposes of the suit was disbelieved by the learned Trial Judge. The learned Trial Judge also found that the second defendant, being the purchaser of the joint family property, has not proved that the sales were made for legal necessities. Upon the above findings, the learned Trial Judge decreed the suit as prayed for. Aggrieved by the same, the second defendant has come forward with this appeal.

7.I have heard Mr.K.K.Ramakrishnan, learned counsel appearing for Ms.P.T.Ramadevi, learned counsel for the appellant and Mr.K.Govi Ganesan, learned counsel appearing for respondents 1 and 2. The third respondent viz., the first defendant, though served, has not entered appearance through counsel.

8.The first respondent has attained majority during the pendency of the appeal and has been declared as major by an order of Court dated 14.11.2016.

9.The following points arise for determination in this appeal:

1.Whether the plaintiffs have established that the suit properties are purchased out of the ancestral nucleus that was available with the first defendant?

2.Whether the sales made by the first defendant in favour of the second defendant on 13.09.2001 and 27.09.2001 are not binding on the plaintiffs?

3. Whether the sale deeds could be said to have been executed for legal necessities?

Since all the three points are interconnected, they are taken up together for disposal.

10. The fact that the first defendant had released his rights over the family properties on 11.02.1997 is a matter of admission. The release deed is marked as Ex.A2. Under the said document, the first defendant had received a sum of Rs.45,000/- towards his share. The first defendant had purchased the suit properties on 09.06.1997 under Ex.A3 - sale deed for a total consideration of Rs.2,73,500/-. The case of the plaintiffs regarding the source of consideration for the purchase under Ex.A3 - sale deed varies at every point of time. In the plaint, it is stated that the first defendant had purchased the suit properties out of the ancestral nucleus. No other source of income has been shown in the plaint. However, in the evidence, the second plaintiff as P.W.1 would depose that the first defendant got Rs.45,000/- from his father and brother through release deed, her parents gave Rs.1,50,000/- and the remaining amount was through the income from the ancestral properties and from sale of her jewels. It should be immediately pointed out that there was no plea in support of the said evidence. P.W.1, in her chief examination, would depose as under:

"மேற்படி விடுதலை பத்திரத்தின் மூலம் 1ம் பிரதிவாதி பெற்ற ரூ.45,000/- எனப் பெற்றோர் கொடுத்த ரூ.1,50,000/- ம், பூர்விக் சொத்திலிருந்து வந்திருந்த வருமானம், என மீதி நகையை விற்று பணத்தை கொண்டு, தாவா சொத்துக்கள், 1ம் பிரதிவாதியின் பெயரில் 09.06.1997 ம் தேதியிட்ட இரண்டு கிரய பத்திரங்கள் மூலம் ஒரு சுப்பிரமணியம் மற்றும் அவர் மைனர் மகன் நந்தகோபால் ஆகியோரிடமிருந்து ரூ.2,73,500/- க்கு வாங்கப்பட்டது."

11. P.W.1, in her cross-examination would depose that her parents belong to an ordinary family and they are not very well off. The following portion of her evidence would demonstrate the financial status of her parents:

"எனப் பெற்றோர்கள் சாதாரண குடும்பத்தை சேர்ந்தவர்கள். வசதிவாய்ப்பு, இல்லை என்றால் சரி"

12. In the light of the above evidence, it could be seen that the case of the plaintiffs regarding the source of consideration for the sale deed dated 09.06.1997 is not consistent. There is no other evidence to show that the father of the second plaintiff has contributed for the purchase made under the sale deed dated 09.06.1997. It is also not established by the plaintiffs that the first defendant had any other ancestral nucleus except the sum of Rs.45,000/-, which was received by him by execution of the release deed, on the date of the sale deed i.e. on 09.06.1997, which would have formed the source for the sale consideration of Rs.2,73,500/- paid by him for purchase of

the properties on 09.06.1997. Admittedly, the first defendant was the Manager of the properties and the sale deed has been executed by him for himself and on behalf of the first plaintiff, who was then a minor. The sale deeds in favour of the second defendant viz., Exs.B8 and B9 are preceded by sale agreements and the first defendant has received a major portion of the consideration pursuant to the sale agreements. Ex.B9 refers to a mortgage debt due by the first defendant to the Kuppandampalayam Primary Agricultural Co-operative Bank Limited for a sum of Rs.26,960/- and a debt due to one A.Dharmalingam on a promissory note dated 17.03.2000 for a sum of Rs.40,000/-. The said discharged promissory note has been produced by the second defendant as Ex.B13. Therefore, the sales by the first defendant were made for discharge of antecedent debts. Even though the plaintiffs have not established the fact that the sale consideration for the sale deed dated 09.06.1997 flew from the joint family funds or out of the ancestral nucleus since the first plaintiff has been made a party to the sale deeds dated 13.09.2001 and 27.09.2001 executed in favour of the second defendant, it is for the second defendant to show that he made enquiries regarding the legal necessities that prevailed on the date of the sales. It could be seen from the very recitals in the sale deeds that there were certain debts payable by the first defendant to the Agricultural Co-operative Bank and one Dharmalingam. It is not in dispute that those debts had been discharged from and out of the sale consideration received by the first defendant.

13.The evidence produced by the second defendant in the form of school certificates and deposit receipts would show that the very foundation of the case of the plaintiffs that they have been driven out of the matrimonial home by the first defendant is false to their knowledge. It could be seen that the alienations by the first defendant were on 13.09.2001 and 27.09.2001. It is claimed by the plaintiffs that they were forcefully driven out of the house on 12.05.2001 and they took shelter with the father of the second plaintiff. Ex.B15 is the record sheet of the first plaintiff issued by the R.C. Primary School, Nagalur. the same has been issued on 05.06.2002 and the first defendant has received the same from the said school. Ex.B16 is the application seeking admission for the first plaintiff in R.C. Primary School, Nagalur. The same has been signed by the first defendant on 05.06.2002 and the name of the first defendant has been entered in the column relating to the name of the father. Ex.B17 is the Register maintained by the Panchayat Union Middle School, Karattur showing the admission and withdrawal of students from the said school. It covers the academic year 2002-2003. It is seen from the said document that the first plaintiff Sasikumar has been admitted in the school on 06.06.2005 during the pendency of the suit. His guardian's name is shown as Gopalan i.e. the first defendant. Ex.B18 is the

record sheet of the first plaintiff issued on 05.06.2002. The same has been received by the first defendant. Ex.B19 is the application for making cash fixed deposit with the Kuppandampalayam Primary Agricultural Co-operative Bank. It is dated 12.03.2002. The deposit of a sum of Rs.1 lakh has been made by the second plaintiff. Ex.B20 is another application for making the fixed deposit dated 12.03.2002 for a sum of Rs.50,000/- by the second plaintiff. Exs.B21 and B22 are the respective fixed deposit receipts. In all these four documents, the second plaintiff has described herself as wife of the first defendant. Ex.B23 is the nomination form, wherein the second plaintiff has nominated the first defendant for receiving the proceeds of the fixed deposit in the event of her death. The truth and validity of the above documentary evidence has not been impeached by the plaintiffs successfully. It is also seen from Ex.B24 that the second plaintiff has withdrawn the entire amount of Rs.1,56,681/- deposited by her on 16.11.2002 claiming that those amounts were given by her father. It should be pointed out at this juncture that the suit was filed as indigent person on 21.01.2002 and when the application on the indigency was pending, these withdrawals have been made by the second plaintiff claiming that these amounts belong to her father. The above documentary evidence would falsify the case of the plaintiffs that they were chased out by the first defendant on 12.05.2001 and they were residing with the father of the second plaintiff thereafter. There is no explanation for nomination of the first defendant as the beneficiary in the fixed deposits made by the second plaintiff even during the time when she claims to have demanded a share from her husband and he has refused to heed to her request. The cumulative effect of the above evidence would clearly show that the present suit is nothing but an attempt made by the plaintiffs in collusion with the first defendant to coerce the purchaser viz., the second defendant to part with more money or to get the transaction nullified by resorting to a suit, taking advantage of the fact that the first plaintiff has also been joined as a party to the sale deeds in favour of the second defendant.

14. In Radhakrishnadas vs Kaluram (AIR 1967 SC 574), the Honourable Supreme Court had observed as follows: "It is well established by the decision of the Courts in India and the Privy Council that what the alienee is required to establish is legal necessity for the transaction and that it is not necessary for him to show that every bit of the consideration which he advanced was actually applied for meeting family necessity." As we had already adverted to the fact that the first defendant had incurred certain debts and they were discharged by the sale proceeds obtained by him by the sale of the properties from the second defendant. The existence of legal necessity has been established. Again in Gangadharan v. Janardhana Mallan (AIR 1996 SC 2127), the Honourable Supreme Court has held that once

the existence of antecedent debts had been proved, the purchaser should be deemed to have discharged his duty of making enquiries as to the existence of the debts or otherwise.

15.Mr.K.K.Ramakrishnan, learned counsel appearing for the appellant would contend that in the absence of strong evidence to show that the entire consideration for the purchase on 09.06.1997 made by the first defendant flew from the joint family resource, it cannot be presumed that the purchase made by the first defendant was for the benefit of the family. The fact that the first plaintiff was included as a party to the sale deed cannot be considered as an action that confers right on the first plaintiff to challenge the alienation. Learned counsel would rely upon the decision in Marabasappa (D) by LR. v. Ningappa (D) by LR (2011 9 SCC 451), wherein the Honourable Supreme Court has held that there could be no presumption that the properties are joint family properties in the absence of strong evidence in favour of the same. As we have already adverted to, except a sum of Rs.45,000/- obtained by the first defendant by executing the release deed, there is no other material to show that the consideration of Rs.2,73,500/- flew from the joint family nucleus. In the absence of such evidence, I am afraid that the mere fact that the first plaintiff was included as a party to the sale deed would alone entitle him to challenge the alienation.

16.The learned counsel would also rely upon the judgment of the Division Bench of this Court in Santhana Venugopala Krishnan Vs. K.V.Venugopal (1976 (2) MLJ 134) wherein this Court has held that the absence of legal necessity has to be proved by the minors challenging the transaction. The Division Bench of this Court has observed as follows: "The challenge made by the minor in the matter of alienation or nomination made by the elders including their father cannot lightly to be accepted by the Courts unless the facts of each of the cases do satisfy the norms laid down by various decisions".

17.In the light of the above legal position, if we are to examine the case on hand, the following position would emerge:

1.There is no evidence to show that the entire consideration for the sale deed dated 09.06.1997 flew from the joint family nucleus.

2.The sale deeds in favour of the second defendant viz., Exs.B8 and B9 show the existence of antecedent debts in the family.

3.The claim of the plaintiffs that they were chased away by the first defendant on 12.05.2001 is itself not reliable.

4. There are documents to show that the plaintiffs and the first defendant continue to enjoy harmonious relationship even during the period just prior to the filing of the suit and after the filing of the suit.

Therefore, I am of the considered opinion that the present suit itself is one brought about by the first defendant in collusion with the plaintiffs to defeat the rights of the second defendant, who is a bonafide purchaser.

18. The learned Trial Judge has not adverted to the evidence available on record. He has gone by the mere fact that the first defendant had included the first plaintiff as a party to the sale deeds in favour of the second defendant and that by itself would, according to the learned Trial Judge, show that the properties are ancestral properties. It is common knowledge that the purchasers seek to include the male children of the Hindu Family by way of abundant caution in the sale transaction. The said act by itself would not invest the colour of joint family property in the properties that are conveyed. The learned Trial Judge has also not adverted to the documents in question and the varying stand taken by the plaintiffs in their pleadings and in their evidence regarding the source of consideration for the purchase dated 09.06.1997. Yet another fact which has been lost sight of by the learned Trial Judge is that the first defendant has taken an active part in the transfer of the first plaintiff from one school to another and again got him retransferred to the same school between the years 2002 and 2005. The nomination of the first defendant by the second plaintiff as a beneficiary in the fixed deposits made by her in the year 2002 has also not been taken a very serious note of by the learned Trial Judge. Non-consideration of the above material evidence has led to the learned Trial Judge erring and granting a decree for partition as prayed for. In the light of the above, I am constrained to interfere with the findings of the learned Trial Judge.

19. In fine, the appeal is allowed. The judgment and decree of the Trial Court are set aside. The suit in O.S.No.6 of 2007 shall stand dismissed. However, in the circumstances of the case, I direct the parties to bear their own costs.

-s/d-

Assistant Registrar (CS-VI)

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Sub-Assistant Registrar

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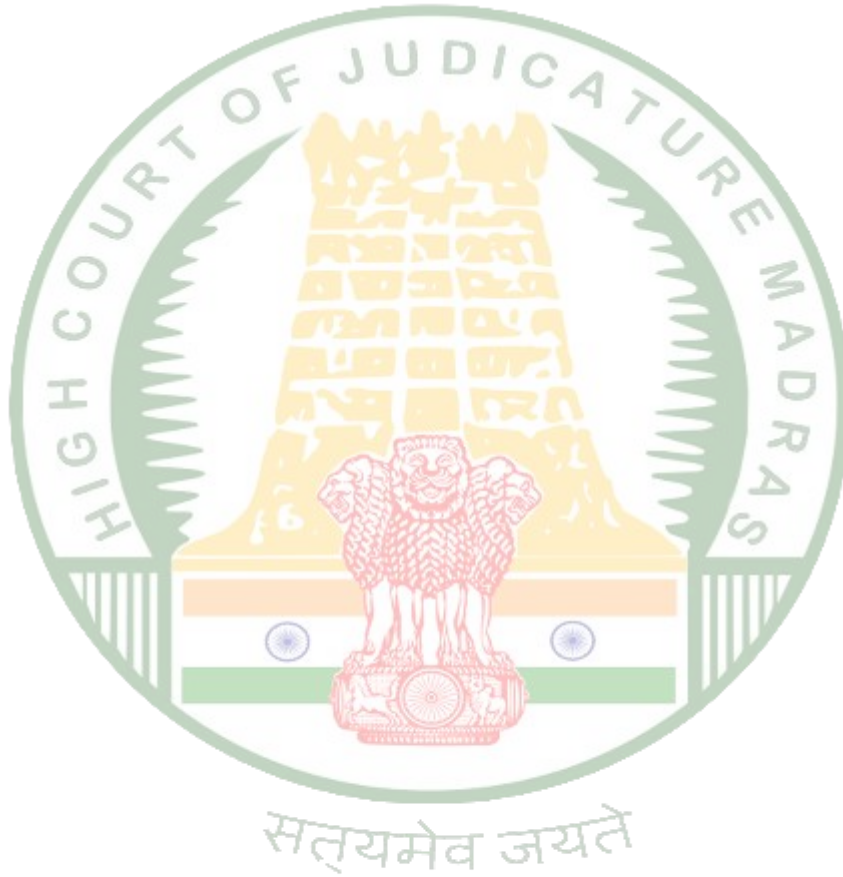
1. The Additional District Judge
(Fast Track Court No.IV),
Bhavani, Erode.

+1 CC to Mrs. K.T. Ramadevi, Advocate sr 13221

+1 CC to Mr. K. Goviganesan, Advocate sr 12738

A.S.No.734 of 2008

EV (CO)
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