

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 14.12.2017
PRONOUNCED ON : 22.12.2017
CORAM
THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S. A.No.659 of 2002

1. Venkataraju
2. Sithappa
3. Muniammal
4. Gangammal

...Appellants/Defendants

Vs.

1. Kanthammal
2. Venkata Ramanappa
3. Petha Akkama
4. Thimmakka
5. Muniveeramma

...Respondents/Plaintiffs

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree made in O.S.No.42/75 dated 31.10.1994 by the District Munsif Court, Hosur and confirming the same in judgment and decree made in A.S.No.6/97 dated 12.09.2001 by the Subordinate Court, Hosur.

For Appellant : Mr.S. Saravana Kumar
for M/s.V.Krishnan

For Respondent : Ms.V.Srimathi

JUDGMENT

This second appeal is directed against the judgment and decree dated 12.09.2001 passed in A.S.No.6/97, on the file of the Subordinate Court, Hosur, confirming the judgment and decree dated 31.10.1994, passed in O.S.No.42/75, on the file of the District Munsif Court, Hosur.

2. Parties are referred to as per their rankings in the trial Court

3. Suit for declaration and possession or in the alternative for partition and mesne profits.

4. The case of the plaintiffs, in brief, is that the suit A schedule property was sold to the first plaintiff by the first defendant under registered sale deed dated 11.11.1959 and accordingly, the same is in possession and enjoyment of the first plaintiff. The first defendant has sold the above said property for family necessity and to discharge the family debts and accordingly, after the same, the first plaintiff had improved the property at huge costs and on seeing the same, the

first defendant wanted the first plaintiff to re-convey the property to him. However, the first plaintiff refused to do so. Resultantly, the defendant attempted to trespass into the suit property illegally and the parties had also exchanged notices and thereafter, the defendants illegally during the first week of July 1974, trespassed into the A schedule property and remaining in unlawful occupation of the same and hence, the plaintiff had been necessitated to lay the suit for appropriate reliefs including the alternative relief of partition.

5. The case of the defendants, in brief, is that it is not correct to state that first defendant had sold the A schedule property to the first plaintiff on 11.11.1959 for family necessity and for discharging the debts and it is not correct to state that the first plaintiff had improved the property and the first defendant requested to re-convey the property and the defendants thereafter attempted to interfere with the plaintiffs possession and enjoyment of the A schedule property and subsequently, they had trespassed into the property and been in illegal occupation of the same. The plaintiffs are also not entitled to the alternative relief of partition. The defendants 2 and 3 are not bound by the sale deed dated 11.11.59, executed by the first defendant, as the same is only a nominal transaction and the same had been executed by the first defendant without the consent of defendants 2 and 3 and not executed to discharge the debts or for family necessity. The first plaintiff has not paid any consideration for the said sale deed and the defendants themselves continued to be the owners of the A schedule property and been in possession and enjoyment of the same and the alleged trespass pleaded by the plaintiffs is false and the defendant have also prescribed title to the A schedule property on account of their long and continuous enjoyment by way of adverse possession and the plea as also been taken by the defendant that the brother of the first defendant had gifted away 1.18 cents of lands within the boundaries described in A schedule along with the other lands in favour of the second defendant and hence, the first defendant is not entitled to convey the said extent to the first plaintiff and the suit is liable to dismissed.

6. In the additional written statement the defendants have also taken a plea that the suit is bad for non-joinder of necessary parties and the sale deed dated 11.11.1959 is a forged document and created by the plaintiff.

7. In support of the plaintiff's case PWs 1 and 5 were examined and Exs. A1 to A4 were marked. On the side of the defendants DWs 1 and 2 were examined, Exs. B1 to B6 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties, the Courts below were pleased to accept the plaintiff's case and accordingly, granted the necessary reliefs in favour of the plaintiff. Challenging the

same, the second appeal has come to be laid.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

1. Whether the lower courts are right in holding that the sale deed Ex.A1 dated 11.11.1959, under which the first defendant alleged to have purchased the suit "A" schedule property from the first defendant is valid and duly executed by the first defendant especially when the first defendant had no right to sell the entire "A" schedule property as it is a joint family property and defendant 2 and 3 were minors at that time?

2. Whether the lower Courts are right in holding that Ex.B1 is not proved by the defendants, especially when the said document was executed even in the year 1957 and the said document is presumed to be proved as per Section 90 of the Indian Evidence Act?

10. The defendants 2 and 3 are the sons of the first defendant. The plaintiff claims title to the A schedule property by way of a registered sale deed dated 11.11.1959, marked as Ex.A1. The defendants as such have not disputed the execution of the above said sale deed in favour of the first plaintiff. However, they would only take the plea that the above said sale deed is a nominal transaction and the first plaintiff has not paid any consideration under the said document and the first plaintiff not been handed over the possession of the property comprised thereunder by the first defendant and hence, under the said document, the plaintiff cannot claim any right over the said property.

11. In the light of the above said defence taken by the defendants with reference to Ex.A1, it is found that the onus is upon the defendants to establish that it is only a nominal transaction. However, as rightly found by the Courts below, the defendants have failed to establish that Ex.A1 sale transaction is a nominal transaction. On the other hand, a perusal of Ex.A1 would go to show that the first defendant had sold the property to the first plaintiff for discharging antecedent debts and for family necessity and accordingly, received the consideration recited therein and handed over the possession of the property in favour of the first plaintiff. To show that the A schedule property even after Ex.A1, continues to remain in the possession and enjoyment of the defendants as full owner thereof, no

acceptable and reliable document has been placed by the defendants with reference to the same. Such being the position, it is found that the defendants, for the sake of defeating the plaintiff's right to the A schedule property, has taken a plea that Ex.A1 sale transaction is a nominal transaction. However, in the light of the failure of the defendants to establish the said plea, it is found that the Courts below have rightly rejected the above version of the defendants. That apart, as rightly found by the Courts below, Ex.A1 sale transaction having taken place during 1959, a presumption could be taken that it is a valid document as per law and in any event, when it has not been established that even thereafter, the title in respect of the A schedule property continues with the defendants, it is seen that the plea of nominal transaction projected by the defendants cannot be accepted.

12. The plea has also been taken by the defendants that the first defendant's brother had gifted the portion of the A schedule property in favour of the second defendant and therefore, the first defendant would not be entitled to convey the entire A schedule property in favour of the first plaintiff. The above said gift deed has been marked as Ex.B1. However, a perusal of Ex.B1 would go to show that it is not a gift deed, on the other hand, the document recites as if, consideration had been passed on under the said document. Such being the position, as rightly found by the Courts below, Ex.B1 cannot at all be construed as a gift deed as projected by the defendants. That apart, the defendants have failed to establish as to the existence of any common properties belonging to the first defendant and his brother and further, the defendants have failed to plead and establish that the above said two brothers had effected partition and in the said partition, equal share had been allotted to the brothers in respect of the A schedule property. The plea projected by the defendants that the first defendant's brother had gifted the portion of the A schedule properties to the second defendant under Ex.B1 cannot be readily accepted. It is seen that Ex.B1 had been executed in favour of the minor and the above said factor has also not been properly explained by the defendants. Therefore, it is seen that as rightly argued by the plaintiff's counsel, inasmuch as the defendants are not very sure about the actual character of the document, marked as Ex.B1, it is seen that they are unable to place acceptable and reliable materials with reference to the truth, validity and binding nature of the document. The courts below have rightly discarded the said documents and accepted the defendants version.

13. The defendants have also taken the plea of adverse possession for claiming title to the A schedule property. However, as rightly argued, the plea of adverse possession taken by the defendants would automatically lead to the conclusion that they have indirectly accepted the plaintiff's title to the A schedule property. The plea of adverse possession being a

destructive plea, the defendants have to establish the same, on the premise of their accepting the plaintiff's title to the A schedule property. There is no valid material placed on behalf of the defendants to hold that they had been in continuous and uninterrupted possession and enjoyment of the A scheduled property to the knowledge of the plaintiff exhibiting hostile attitude beyond the statutory period and such being the position, the Courts below have rightly disbelieved the plea of adverse possession projected by the defendants.

14. The defendants are quite inconsistent in their pleas taken against Ex.A1 sale transaction, at the first instance they say it is a nominal transaction and has also taken a plea that Ex.A1 is a fraudulent document. However, it is found that the defendants inasmuch as they are not sure about their defence, had been taking inconsistent pleas which would go to show the falsity of their version. It is found that, at the time of the execution of Ex.A1 the defendants were living as one family and accordingly, when it has been noted that Ex.A1 sale transaction has been executed by the first plaintiff only for family necessity and for discharging antecedent debts and when it is not established that the first plaintiff had utilised the consideration received therein for immoral purposes, the sale transaction effected by him marked as Ex.A1 would be equally binding upon his sons, namely, the defendants 2 and 3. Therefore, the plea put forth by the defendants that the sale transaction Ex.A1 is not binding on the defendants 2 and 3 as such cannot be countenanced.

15. In the light of the above discussions, the Courts below have rightly found under Ex.A1 sale transaction, the first defendant has validly conveyed the A schedule property in favour of the first plaintiff and the same is binding upon the defendants 2 and 3. The Courts below have also found that Ex.B1 transaction cannot be believed at all in the face of the intrinsic defects attached to the document as discussed above and accordingly, rightly rejected the said document and the formulated substantial questions of law are accordingly answered against the defendants and in favour of the plaintiff.

16. In conclusion the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sli

To

1. The District Munsif, Hosur.
2. The Subordinate Judge, Hosur.

+lcc to Mr.V.Raghavachari, Advocate SR.no.91895/17

S. A.No.659 of 2002

SV(CO)
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