

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 10.08.2017

Judgment Pronounced on : 20.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.BASKARAN

S.A.No.327 of 2014

and

M.P.No.1 of 2014

and

C.M.P.No.4998 of 2017

1.Narayanasamy Naidu

2.K.Venugopal

... Appellants/Respondents/Defendants

Vs.

1.S.Kala

2.B.Chitra

... Respondents/Appellants/Plaintiffs

This second appeal has been filed under Section 100 of CPC, against the judgment and decree dated 03.01.2014 made in A.S.No.23 of 2013 passed by the learned II Additional Subordinate Judge, Cuddalore, reversing the Judgment and decree dated 31.08.2012 in O.S.No.104 of 2008 passed by the learned Additional District Munsif, Cuddalore.

For Appellants : Mr.K.A.Ravindran

For Respondents : Mr.N.Suresh for R1 and R2

JUDGMENT

This second appeal arises out of the Judgment and Decree dated 03.01.2014 made in A.S.No.23 of 2013 passed by the learned II Additional Subordinate Judge, Cuddalore, reversing the Judgment and decree dated 31.08.2012 in O.S.No.104 of 2008 passed by the learned Additional District Munsif, Cuddalore.

2. Brief facts of the case is as follows:-

The plaintiffs filed the suit for declaration and injunction. According to the plaintiffs, their maternal grand mother one Muthammal, died in the year,2003. The first

plaintiff's mother Kamala is the elder daughter and the second plaintiff's mother Sakunthala is the younger daughter of Muthammal and she had no male issue. The western portion of the suit property is owned by Muthammal. Her husband owned property in the village and after the death of her husband, Muthammal got similar extent on the south of the property by the registered Exchange Deed dated 17.07.1973 from Varadharajaulu Naidu. The said Muthammal had been in possession and enjoyment of the entire extent. Muthammal and her husband raised two tamarind trees and they had been enjoying the usufructs of the tamarind trees. Muthammal had been paying tree penalty. The plaintiffs' mother namely, Kamala and Sakunthala have entered into a partition on 13.07.2006, in which 'A' schedule property was allotted to Kamala and 'B' schedule property was allotted to Sakunthala. The said Kamala had executed a registered settlement deed in favour of the first plaintiff on 26.02.2008. The said Sakunthala has also executed a settlement deed in favour of her daughter, the second plaintiff herein on 15.11.2007. But, both the plaintiffs have enjoyed the property in common. The said Sakunthala Ammal had also executed another settlement deed on 26.02.2008 in favour of the second plaintiff. They have been in possession and enjoyment of the suit property. Now, the second defendant has obtained a sale deed from the first defendant in respect of the suit property and out of enmity in attempting to disturb the possession of the plaintiffs from 01.03.2008 onwards. The defendants have no right title and interest over the suit properties and the tamarind trees. Hence, the plaintiff has come forward the suit for declaration and injunction.

3. On the other hand, according to the defendants, the suit properties and other properties originally belonged to the joint family consisting of Narayanasamy Naidu, Gopal Naidu and Ramasamy Naidu. Narayanasamy Naidu left behind 3 sons, namely, Krishnasamy Naidu, Govindhasamy Naidu and Ramasamy Naidu. The said Gopal Naidu left behind one son by name Kothandapani, when Ramasamy Naidu left behind one son namely, Srinivasan. The said Krishnasamy Naidu, Kothandapani and Srinivasan amicably settled the properties including the suit Survey number through unregistered partition deed dated 30.11.1941. Krishnasamy Naidu Vakaiyara was allotted 'A' schedule property and Kothandapani was allotted 'B' schedule property. As per the recitals of the document, Krishnasamy Naidu Vakaiyara is entitled to the suit Survey No.104/1 including the tamarind trees. Krishnasamy Naidu got two sons namely, Ramanujam and Varatharajulu. When Govindhasamy got one son namely Jayaraman. The said Ramasamy Naidu married one Muthammal and they got two female children, namely, Kamala and Sakunthala. The said Ramanujam died intestate and left behind his only son Narayanasamy who is the first defendant. The first defendant purchased many properties

including the property in suit Survey No.104/1, when he was minor represented by his paternal uncle Varadharajulu Naidu from Jayaraman who is his junior paternal uncle through a registered sale deed dated 12.08.1971. The recitals of the sale deed clearly described the existence of tress in the suit property. Thus, the first defendant got title over the property in Survey No.68/2. The first defendant inherited 1/3rd share by way of succession and purchased another 1/3rd share from Jayaraman through sale deed. The first defendant's father Ramanujam purchased the property of Ramasamy Naidu from his wife Muthammal through a sale deed. So, the first defendant got full rights both in the property in Survey No.104/1 and the trees therein. The said Muthammal already sold one cent land to the defendants' father Ramanujam on 17.07.1973. As per the plaint averments, the said Muthammal got properties in Survey No.104/1 through an Exchange Deed dated 17.07.1973 from the junior paternal uncle of the first defendant by name Varadharajulu Naidu who was only guardian to the property purchased by the first defendant. The said Varadharajulu Naidu had no right over the property to execute exchange deed. Therefore, the said exchange deed will not confer any right or title to the said Muthammal. Hence, the daughters of Muthammal, namely, Kamala and Sakunthala have no right over the suit property and she has no right to settle and execute the settlement deed in favour of the plaintiffs. Thus the defendant sought for dismissal of the suit.

4.After contest, the trial Court dismissed the suit. Aggrieved upon that the plaintiff preferred the first appeal before the lower appellate Court and after contest, the lower appellate Court reverse the findings of the trial Court and decreed the suit as prayed for. Now aggrieved upon that the defendants have come forward with this second appeal.

5.At the time of admission, the following substantial question of law was framed by this Court for consideration.

1)When the respondents/plaintiffs have failed to ascertain that the transferor had power to make a transfer under Ex.A1, whether the lower appellate Court is right in decreeing the suit under Section 41 of Transfer of Property Act?

2)When there is no recital that the Exchange Deed under Ex.A1 was executed on behalf of the minor and for the benefit of the minor, whether the lower appellate Court is right in decreeing the suit that Ex.A1 is valid?

3)When the plaintiffs/respondents failed to discharge their burden to prove Ex.A1 was executed by Sri.Varadarajulu Naidu for the

benefit of the minor and there is no pleading to this effect, whether the lower appellate Court is right in decreeing the suit under Section 41 of Transfer of property Act?

6.The learned counsel appearing for the appellants/defendants would submit that the Exchange Deed Ex.A1 executed by Varadharaju Naidu and the said deed did not confer any right on the parties. There is no recital in the said documents to show that the exchange was for the benefit of minor and the same was executed on behalf of the minor. The said Varadharaju Naidu has no legal right to execute the Exchange Deed. Further more, it is contended that the Exchange Deed was executed by the Varadharaju Naidu, when the first defendant was a minor and it was not executed for the benefit of the minor. Hence, there is no need or necessity for the first defendant to set aside the same, since the document itself is void document. In support of his argument, the learned counsel for the appellants relied on number of Rulings, but the first appellate Court without considering the legal aspects, simply reversed the well reasoned findings of the trial Court. It is against law. Hence, the appellants contended that interference of this Court is required by entertaining the appeal.

7.Per contra, the learned counsel appearing for the respondents/ plaintiffs would submit that after elaborate consideration and discussion of both oral and documentary evidences, the first appellate Court came to the correct conclusion and there is no need or scope for interference. The ruling relied on by the appellants/ defendants is not applicable to the facts of this case and no sufficient ground is made out to reverse the findings of the first appellate Court. There is no merit in the second appeal. Hence, the respondents sought for dismissal of the second appeal.

8.I have heard the rival submissions and also perused the materials available on record.

9.On perusal, the relationship of the parties and title of the suit properties before Ex.A1 was executed is not disputed by both parties. The only dispute is with regard to Ex.A1 Exchange Deed. The substantial question of law raised by the appellants also is with regard to Ex.A1 alone. Before going to the merits of the case, we have to analyse the ruling referred on both sides. The learned counsel for the appellant relied on a ruling reported in 2002 (3) CTC 607 in RAJESWARI Vs. D.MURUGAYYA KANDIAR, wherein it is held as follows:-

"13.it is seen from section 8(3) of the Act that any disposal of immovable property by a natural guardian, in contravention of sub-

section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him. Section 8(2) also discloses that the natural guardian shall not, without the previous permission of the Court, mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor. There is absolutely no evidence to show that there was any necessity for the mother to enter into an agreement of sale under Ex.B2. It is the admitted case of the parties that the father of the plaintiff was the Zamindhar of Pappanadu and he was not in dire necessity of any money to convey the property. The evidence adduced in the case clearly stated that the father was hale and health and both the father and mother were living under one and same roof along with the plaintiff and the father had also no adverse interest against the minor or the family and under the circumstances, the mother is not competent to act as a natural guardian of the minor. Hence, I am of the view that Ex.B2 is only a void document and it can be ignored by the plaintiff."

Likewise another ruling reported in 2010 (2) CTC 198 in NATARAJAN Vs. PARAMASIVAM is relied upon, wherein it is held as follows:-

"13.....But, in the present case, without the knowledge of the minor brothers, Ex.A1 came into existence and as per law, the brother Thirunavukkarasu is neither the natural guardian, nor the de-jure guardian or the guardian appointed by Court of law. Further more, the property is not a joint family property and the property has been acquired only through the maternal side and so, it is separate property of four brothers. So, the eldest brother Thirunavukkarasu has no right to alienate the share of the other two minor brothers. Hence, Ex.A1 sale deed is void and not voidable document. Void document need not be set aside. Voidable document alone has to be set aside, as per the decisions reported in Ranganayankamma v. K.S.Prakash, 2008(15) SCC 673 and Madhegowda v. Ankegowda, 2002(4) CTC 51 : 2002 (1) MLJ 169(SC)"

In another ruling relied on by the appellants reported in 2007

(2) CTC 116 in INBAMATHI Vs. RAMAR AND TWO OTHERS, it is held as follows:-

"15.....Thus, it is crystal clear that necessary pleadings setting out the above said requirements are necessary before making a claim that the vendor of the appellant was the ostensible owner of the property with the consent of the beneficiaries of the trust created under Ex.B1 Will. When there is total lack of pleadings in this regard the contention put forth by the learned counsel for the appellant cannot be countenanced."

10.Per contra, on the side of the respondents/plaintiffs, the learned counsel relied upon a ruling reported in 2017 (4) CTC 22 in DHANALAKSHMI AMMAL(Deceased) AND OTHERS Vs. VARADARAJAN AND OTHERS, wherein it is held as follows:-

"21.It is nobody's case that the mother has acted against the interest of the minor boy, nor the case of the minor that his mother has alienated the property, without any right to do so. The peculiar facts and circumstances of the case makes the Sale Deed Ex.A2 a valid document."

11.Likewise, another ruling reported in 2013 (4) CTC 586 in THE CHAIRMAN & MANAGING TRUSTEE, KRISHNASWAMY EDUCATIONAL TRUST, CHENNAI-600 034 Vs. C.V.RAJESWARI AMMAL (DECEASED), C.V.SIVARAMAN AND OTHERS, is also relied upon.

12.From the above said referred citations, we have to analyse whether Ex.A1 Exchange Deed is valid and binding upon the first defendant. The lower appellate Court accepted Ex.A1 Exchange Deed and decreed the suit as prayed for. The main contention of the appellants/defendants is that Ex.A1 is a void document. To strengthen his argument, the learned counsel appearing for the defendants relied upon a ruling reported in 2010 (2) CTC 198 (cited supra). In the above said citation, it is stated that in the said case without knowledge of the minor brothers, the elder brother Thirunavukkarasu executed sale deed . The said Thirunavukkarasu was neither the natural guardian, nor the de-jure guardian or the guardian appointed by Court of law and the properties was also separate property of four brothers. So, the elder brother Thirunavukkarasu has no right to alienate the share of other two minor brothers. Hence, it was held by the Apex Court in that case that Ex.A1 sale deed is void and not voidable document. It is settled principle that Void document need not be set aside, but voidable document alone set aside. As per the Apex Court verdict in another ruling reported in 2002 (3) CTC 607(cited supra), it is held that as per Section 8(2) of Hindu Minority and Guardianship Act, 1956, the natural guardian shall not, without the previous permission

of the Court, mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor. The father and mother were living under one and the same roof along with the plaintiff and the father had also no adverse interest against the mother or family and under the circumstances, the mother is not competent to act as a natural guardian of the minor. Hence, in the said case, it was held that Ex.B2 agreement to sell is a void document.

13.Contrary to that citation, on the side of the respondents/plaintiffs, the learned counsel has relied on the latest verdict of this Court which is reported in 2017 (4) CTC 22(cited supra) in which it is held that as there is no evidence to show that the mother has acted against the interest of the minor boy, the sale deed executed by mother which is marked as Ex.A2 is a valid document. In the above said case, the mother executed conveyance on behalf of the minor. In the earlier judgment, when the mother executed a sale deed while she was living with the father of the minor, there was no need or necessity for the mother to convey the document. Therefore, it was held that it is void document. In the latest ruling, it is held that there is no evidence to show that mother acted against the interest of minor and therefore sale deed is held to be not valid. When comparing both citations with the case on hand, the facts are different. In the case on hand, the Exchange Deed Ex.A1 was executed not by natural guardian or by mother, it was executed by junior paternal uncle, namely, Varadharajulu Naidu. Admittedly, he is not the natural guardian. In such situation, the Apex Court verdict, which was reported in 2010 (2) CTC 198 (cited supra), wherein it is held that when the property is the separate property of the minor, eldest brother has no right to alienate the share of the other two minor brothers. In the above said case, even than the sale deed was executed by one of the shareholder, the Apex Court held that even then it is void. In the above said citation, it was further held that it is the duty of the purchaser before he purchase the property to verify the title to the property and so, the principles of "caveat emptor" and the legal maxim "qui ignorare non debuit quod jus alienum emit" which means "let a purchaser beware; who ought not to be ignorant that he is purchasing the rights of another" apply. Therefore, the above arguments does not hold hood, because Ex.A1 is a void document and the said document need not be set aside as the same is not enforceable one.

14.In the case on hand also Vardharajulu Naidu was not the natural guardian for the first defendant minor and he has executed Exchange Deed to Muthammal without permission of the Court. Hence, Ex.A1 is a void document and therefore the first defendant need not set aside the same after attaining majority within a period of three years. As such, the argument put forth

by the appellant is acceptable one. Since Ex.A1 Exchange Deed executed by Varadharaju Naidu in favour of Muthammal is void document and on the basis of the said void document, the said Muthammal executed a settlement deed in favour of her daughters Kamala and Sakunthala. In turn, the said sisters executed a settlement deeds in favour of the plaintiffs. On the strength of that document, the plaintiffs are claiming title to the suit property and injunction. When Ex.A1 itself become void, subsequent document executed on the basis of Ex.A1 also is void and unenforceable document. Therefore, on the basis of invalid and void documents, the plaintiffs cannot seek declaratory relief. The substantial question of law raised by the appellants/defendants is answered in favour of the defendants. Thus, it is apparent that the lower appellate Court without considering the settled position of the law has arrived at the findings of the first appellate Court is not sustainable.

15.For the above said reasons, the substantial question of law is answered in favour of the appellant and the second appeal is to be allowed and necessarily the judgment and decree of the lower appellate Court has to be set aside.

16.In the result, the second appeal is allowed. The Judgment and decree dated 03.01.2014 made in A.S.No.23 of 2013 passed by the learned II Additional Subordinate Judge, Cuddalore is hereby set aside and the judgment and decree dated 31.08.2012 in O.S.No.104 of 2008 passed by the learned Additional District Munsif, Cuddalore dismissing the suit is restored. Considering the relationship of the parties, there is no order as to costs. Consequently, connected M.Ps. are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The II Additional Subordinate Judge,
Cuddalore

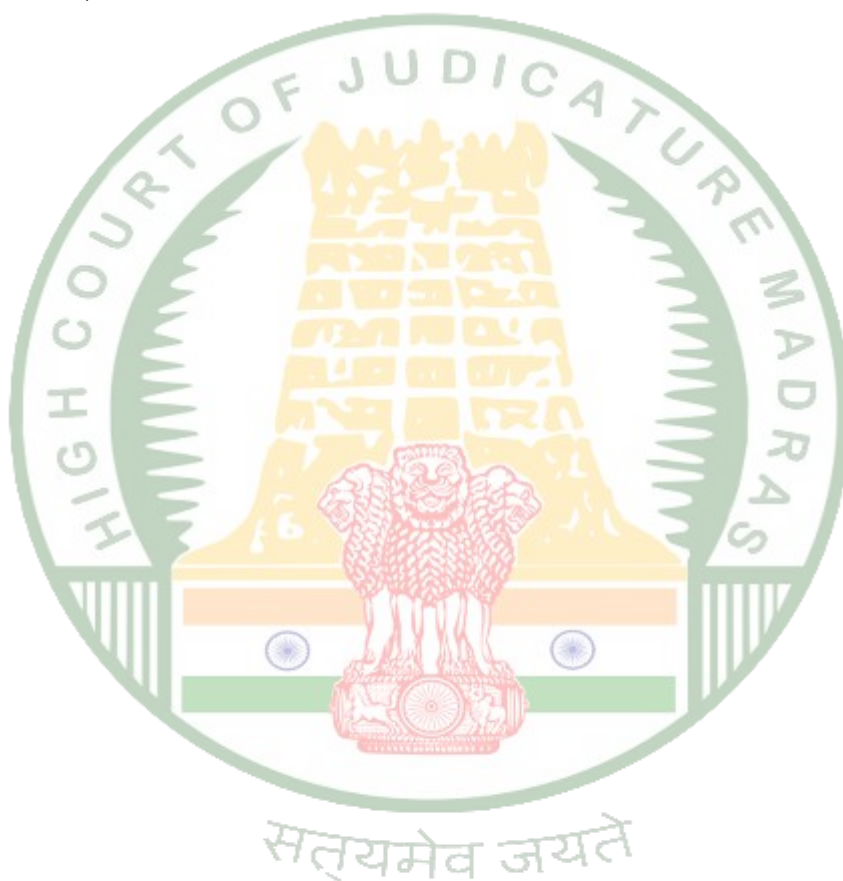
2.The Additional District Munsif, Cuddalore

3.The Section Officer,
VR Section, High Court,
Madras-600 104

+1cc to Mr.N.Suresh, Advocate, S.R.No.65745

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