

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :17.09.2018

PRONOUNCED ON:29.10.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No. 345 of 2015

and

M.P.No.1 of 2015

1.Dhanalakshmi

2.Minor.Manju

Represented by her mother

Natural guardian, next friend

.. Appellants/Plaintiff

Vs.

1.Janakiraman

..1st Respondent/2nd Defendant's

2.K.B.Subramani

3.Balu

..Respondents 2&3/Defendants 1&3

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 01.11.2014 made in A.S.No.26 of 2014 on the file of the Sub Court, Arakkonam in reversing the judgment and decree dated 05.02.2010 made in O.S.No.232 of 2008 on the file of the District Munsif Court, Sholinghur.

For Appellants : Mr.A.Gowthaman

For RR1 : Mr.R.Rajarajan

For RR2 and R3 : No appearance

Set exparte

Vide order dated 17.09.2018

J U D G M E N T

Challenge in this Second Appeal is made to the judgment and Decree dated 01.11.2014 passed in A.S.No.26 of 2014 on the file of the Subordinate Court, Arakkonam, reversing the judgment and

decree dated 05.02.2010 passed in O.S.No.232 of 2008 on the file of the District Munsif Court, Sholinghur.

2. The Second Appeal has been admitted on the following substantial questions of law:

(i) Whether the lower appellate court right in reversing the well considered judgment and decree of the trial court, when it is well settled position of law that as per the section 39 of the Transfer of Property Act, where a third person has a right to receive maintenance from the profits of immovable property and such property is transferred, the right of claiming charge over the property can be maintainable as against the transferee who has notice?

(ii) Whether the lower appellate court right in reversing the well considered judgment and decree of the trial court, when it is well settled position of law that the person who is entitled for maintenance can sue for the maintenance as well as charge over the property irrespective of the fact with regard to nature of property is self acquired or ancestral as against the person whom the maintenance is claimed?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. The plaintiffs/appellants have laid the suit against the defendants in particular, against the first defendant for maintenance and also for creating charge in respect of the plaint schedule properties for the claim of maintenance. The Courts below had granted the maintenance relief in favour of the plaintiffs as against the first defendant. As regards the said determination of the Courts below, no challenge is made in this Second Appeal. Materials placed on record go to show that the plaint schedule properties are the separate properties of the first defendant. The first defendant is the husband of the first plaintiff and the father of the second plaintiff. The first defendant has conveniently remained exparte in this matter. Now, according to the plaintiffs, the first defendant had neglected them a few years after the marriage between the first plaintiff and the first defendant and accordingly, it is stated that the first plaintiff along with their children had been living in her parents house at Bangalore about 17 years and as the first defendant is liable to provide maintenance to the plaintiffs accordingly, it is the case of the plaintiffs that they had been necessitated to lay the suit for claiming maintenance. It is also stated by the plaintiffs that barring the first item of the plaint schedule properties, the other

items of the plaint schedule properties had been alienated by the first defendant to the second defendant by way of a registered sale deed dated 27.04.1999 and according to them, the abovesaid sale transaction is not valid and binding upon them and the same had been executed to defeat the maintenance claim of the plaintiffs and the second defendant also knew about the same and despite the said position, he had endeavored to purchase the said properties from the first defendant and accordingly the plaintiffs had prayed for the relief of charge in respect of the plaint schedule properties in respect of the claim of the maintenance prayed for by them.

5. The trial court had accepted the plaintiffs' case in entirety and granting the reliefs as prayed for. The first appellate court on an appreciation of the materials placed on record was pleased to set aside the judgment and decree of the trial court in so far as creating the charge in respect of the items 2 to 4 of the plaint schedule properties as regards the maintenance claim of the plaintiffs. Challenging the same, the present Second Appeal has been preferred.

6. As abovenoted, from the materials placed on record, it is seen that the plaint schedule properties are the separate properties of the first defendant. It is also not in dispute that the first defendant had conveyed the items 2 to 4 of the plaint schedule properties in favour of the second defendant by way of a sale deed dated 27.04.1999. The present suit of the plaintiffs had been laid on 04.09.2008. Nearly 10 years after the execution of the sale deed dated 27.04.1999, the plaintiffs had chosen to lay the suit against the defendants for claiming maintenance and creating charge in respect of the plaint schedule properties. Even as per the case of the plaintiffs, the marriage life of the first plaintiff and the first defendant did not last for a long period and 5 years after the marriage which took place in 1982, misunderstanding arose between the first defendant and the plaintiffs and accordingly it is stated that unable to bear the ill treatment caused by the first defendant to the plaintiffs on account of his bad and evil habits, according to the plaintiffs, they had separated from the first defendant and living with the parents of the first plaintiff at Bangalore and thus it is seen that right from 1987/1988 onwards, the plaintiffs had been living separately away from the first defendant. However, it is seen that the plaintiffs had not chosen to lay any claim of maintenance from the first defendant, after his desertion of the plaintiffs right from 1987 onwards. Accordingly, it is seen that even the plaintiffs have admitted, they had gone to the house of the first plaintiff's parents at Bangalore about 17 years ago and living separately. Therefore, for the past 17 years as averred in the plaint, the plaintiffs have not chosen to lay any claim

of maintenance against the first defendant. On the other hand, it is found that the first defendant had alienated the items 2 to 4 of the plaint schedule properties in favour of the second defendant for the benefit of his children on 27.04.1999 and nearly 10 years after the said alienation, the present suit has come to be laid. If really, the plaintiffs had been deserted by the first defendant and accordingly the plaintiffs had been living separately away from the first defendant for a considerable period of time as above pointed out and the plaintiffs are unable to maintain themselves independently, endeavors would have been made by them to seek maintenance from the first defendant at the earliest point of time. On the other hand, it is seen that nearly 20 years after the first defendant had deserted them, they had chosen to lay the claim of maintenance against the first defendant and thereby also sought for creating charge in respect of the plaint schedule properties. In this connection, the first plaintiff examined as P.W.1, during the course of cross examination has admitted that they had been living separately away from the first defendant for the past 10 years and during the past 10 years she had not claimed any maintenance from the first defendant by issuing notice, further, she would also state that she had come to know that the first defendant had alienated the suit properties and therefore she had chosen to lay the suit. Thus, it is seen that only on coming to know about the alienation effected by the first defendant, the plaintiffs have chosen to lay the suit claiming maintenance as well as for creating charge in respect of the alienated properties. This itself would go to expose the malafide intention of the plaintiffs in seeking the maintenance claim from the first defendant as well as the claim of creating charge in respect of the properties alienated by the first defendant in favour of the second defendant. A reading of the evidence of the first plaintiff as abovenoted would go to show that, if the first defendant has not alienated the properties, it is seen that the plaintiffs would have not endeavored to claim maintenance from him. Resultantly, it is seen that inasmuch as the plaintiffs are independently possessed of sufficient means and able to maintain themselves, accordingly, it is found that the plaintiffs over a period of time as above discussed, did not endeavor to put forth any claim of maintenance from the first defendant. That apart, as could be seen from the evidence of P.W.1, it is found that her father in law had settled the properties in favour of the first plaintiff and the said properties had been alienated by the plaintiffs by way of Ex.B7 sale transaction for a sum of Rs.1,45,000/-. A reading of Ex.B7 would go to show that the properties had been alienated by the plaintiffs inter alia for purchasing the other properties at Bangalore. Therefore, it is seen that inasmuch as the plaintiffs are well placed and able to maintain themselves and possessed of adequate properties, accordingly had not chosen

to lay any separate claim of maintenance from the first defendant over a long period of time and only on coming to know that the first defendant had alienated the properties in favour of the second defendant with a view to defeat the said alienation, it is seen that the plaintiffs had chosen to lay the present litigation against the defendants, particularly, for creating the charge in respect of the plaint schedule properties. Furthermore, the mother of the first plaintiff examined as P.W.2 also would state, during the course of evidence, that her daughter is residing with her for the past 17 years and for the past 17 years her daughter had not put forth any claim of maintenance from the first defendant and on coming to know that the first defendant had alienated the properties about one year ago, according to her, the maintenance claim had been preferred and further according to her, if the properties had not been alienated, the maintenance claim would not have been preferred and so from the evidence of P.W.2, the mother of the first plaintiff, it is evident that only with a view to avoid and defeat the sale transaction effected by the first defendant in favour of the second defendant as regards the items 2 to 4 of the plaint schedule properties, it is seen that the present litigation itself has come to be laid by the plaintiffs.

7. The first appellate court on an appreciation of the materials placed on record noting that the second defendant is a bonafide purchaser for value without knowledge of the maintenance claim of the plaintiffs had purchased the items 2 to 4 of the plaint schedule properties and accordingly held that the plaintiffs are not entitled to seek and create charge in respect of the abovesaid properties for their maintenance claim and further held that for the maintenance claim of the plaintiffs, the first item of the plaint schedule properties would be sufficient and thereby set aside the judgment and decree of the trial court creating charge in respect of the items 2 to 4 of the plaint schedule properties.

8. Considering the factual matrix of the lis and the evidence adduced by the parties as abovenoted, when it is seen that the claim of maintenance put forth by the plaintiffs is only to defeat the sale transaction effected in favour of the second defendant by the first defendant, it is found that the plaintiffs had chosen to lay the present suit against the defendants. But, for the abovesaid alienation, as admitted by the plaintiffs, they would not have preferred any maintenance claim against the first defendant. Furthermore, when for more than 17 years, the plaintiffs had not chosen to seek the claim of maintenance, in such view of the matter, the argument made by the plaintiffs that the second defendant is aware of the maintenance claim of the plaintiffs and he had purchased the properties from the first defendant only to defeat their

maintenance claim as such cannot be countenanced in any manner. As rightly put forth by the counsel appearing for the second defendant, when for the past several years, as above discussed, the plaintiffs, had not raised their little finger in seeking maintenance from the first defendant and furthermore, when it is seen that the plaintiffs, accordingly, are possessed of sufficient properties and thereby not endeavored to project any claim of maintenance, the factual scenario is as above, to contend that the second defendant had purchased the properties from the first defendant with a view to defeat the maintenance claim of the plaintiffs cannot at all be accepted in any manner and accordingly it is found that the second defendant having purchased the items 2 to 4 of the plaint schedule properties for a valid consideration from the first defendant and when the alienation had been made for the benefit of the children of the first defendant, in all, it is seen that the first appellate court is wholly justified in vacating the charge created over the items 2 to 4 of the plaint schedule properties in respect of the maintenance claim of the plaintiffs by the trial court. It is not the case of the plaintiffs that the consideration passed for the sale transaction dated 27.04.1999 is inadequate or inappropriate. Furthermore, it is also not projected by plaintiffs by acceptable materials that the first defendant was addicted to evil habits and living separately without caring for the plaintiffs for the past several years. In such view of the matter, as rightly put forth by the second defendant's counsel, when it is noted that the second defendant is a transferee for consideration and without notice of the right of the maintenance claim of the plaintiffs and a bonafide purchaser as abovenoted, and considering the fact that the plaintiffs have not put forth any claim of maintenance against the first defendant for more than 17 years and also had come forward with the present litigation only after the alienation had been made in favour of the second defendant and also had accepted that they would have not come forward with the maintenance claim if the alienation had not been made, in all, it is seen that the very basis of the maintenance claim projected by the plaintiffs is found to be not fair, genuine and valid and it is seen that aim of the present litigation is only to defeat the alienation made in favour of the second defendant in respect of the items 2 to 4 of the plaint schedule properties and thus it is seen that, as rightly put forth by the second defendant's counsel, the plaintiffs and the first defendant had, in collusion, brought forth the present litigation to defeat the alienation in favour of the second defendant. In the light of the above discussions, the first appellate court is justified and right in reversing the judgment and decree of the trial court and particularly when it is noted that the second defendant is a transferee for a valid consideration and without notice of the maintenance claim of the plaintiffs and furthermore, when it is noted that the very

basis of the maintenance claim projected by the plaintiffs is not bonafide, genuine and valid for the reasons aforesaid. The substantial questions of law formulated in the Second Appeal are accordingly answered.

9. Counsel for the plaintiffs in support of his contentions, placed reliance upon the decisions reported in

1. 2012 (1) Law Weekly 161 [A.K.Vijayakumar Vs. Manimekalai]
2. AIR 1979 MADRAS 200 [Raghavan and another Vs. Nagammal and another]
3. AIR Karnataka 24 [Siddegowda Vs. V.Kakkamma and others]
4. AIR 1957 Andhra Pradesh 710 (V 44 C 227 Oct.) (1) [Banda Manikyam vs. Banda Venkayamma and others]
5. AIR 1958 Andhra Pradesh 396 (Vol 45, C.116) (1) [Chandramma Vs. Maniam Venkatareddi and others]
6. AIR 1960 MADRAS 42 (V 47 C 11) (1) [Smt.Vellayammal Vs. Srikumara Pillai]
7. AIR 1967 MADRAS 457 (V 54 C 148) [Ramaswamy Gounder and another Vs. Baghyammal and others]

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

10. In conclusion, the Second Appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mfa

To

1. The Subordinate Judge,
Sub Court, Arakkonam.

2. The District Munsif,
District Munsif Court, Sholinghur.

Copy to: The Section Officer,
VR Section, High Court, Chennai.

+ 1 cc to Mr.C. Rajan, Advocate Sr.74078

+ 1 cc to Mr. A. Gowthaman, Advocate Sr.74159

S.A.No. 345 of 2015
and

M.P.No.1 of 2015

RSI (CO)

EU(07/12/2018)