

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.09.2018

PRONOUNCED ON : 09.11.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.488 of 2015

Muthukannan

...

Appellant

Vs.

1.Thulasi

2.Ramalingam(Deceased)

(Memo dated 16.08.2018 is recorded
RR1 & 3 are recorded as LRs of the
deceased R2 vide order of Court
dated 16.08.2018 made in S.A.
No.488/2015.)

3.Bhuvaneshwari

...

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 27.02.2013 passed in A.S.No.4 of 2012 on the file of the Subordinate Court, Kallakurichi, confirming the Judgment and Decree dated 18.10.2011 passed in O.S.No.818 of 2009 on the file of the District Munsif Court, Sankarapuram.

For Appellant

: Mr.G.Sumitha

for Mr.I.Abrar Mohammed Abdullah

Respondent No.1

: No appearance,
set exparte vide order
dated 14.09.2018

For Respondent
No.3

: Mr.G.Balamanikandan

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 27.02.2013 passed in A.S.No.4 of 2012 on the file of the Subordinate Court, Kallakurichi, confirming the Judgment and Decree dated 18.10.2011 passed in O.S.No.818 of 2009 on the file of the District Munsif Court, Sankarapuram.

2.The second appeal has been admitted on the following substantial question of law:

"Whether the lower appellate Court was right in holding that the sale was not for legal necessities after having accepted Ex.B7."

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 first respondent, the daughter of the deceased second respondent, has laid the suit for partition and other reliefs.

the ancestral properties of the deceased second respondent and accordingly, the first respondent being his daughter and her marriage function held on 29.05.1998, as rightly determined by the Courts below, considering the Tamil Nadu Hindu Succession (Amendment) Act, 1 of 1990, it is found that the first respondent would be entitled to seek half share in the suit properties as prayed for. The deceased second respondent resisted the claim of partition made by the first respondent on the footing that she had relinquished her right in respect of the suit properties by receiving cash of Rs.30,000/- and 30 sovereigns of jewels in a panchayat, after her marriage and therefore, she is not entitled to seek partition of half share in the suit properties as claimed. However, with reference to the abovesaid claim of the relinquishment of her right in respect of the suit properties on the part of the first respondent, the deceased second respondent has not placed any acceptable and reliable material to sustain his abovesaid defence and when with reference to the abovesaid defence, no panchayatar has been examined, no document seems to have been secured from the first respondent, with reference to the relinquishment of her right in the suit properties and in such view of the matter, the Courts below are justified in negating the defence projected by the deceased second respondent that the first respondent had relinquished her right in the suit properties as putforth by him. Thus, it is seen that the Courts below are justified in determining that the first respondent is entitled to claim half share in the suit properties and

accordingly, decreed the suit as prayed for.

6.The appellant, who is the third defendant in the suit, has taken the defence that the deceased second respondent for clearing the prior debt towards his medical expenses sold the 6th item of the suit properties to him for a sum of Rs.1,08,500/- by way of a sale deed dated 14.02.2001 and since then, it is only the appellant, who has been in the possession and enjoyment of the abovesaid item of the suit properties and also discharged the debts of the deceased second respondent and thereby, the first respondent is not entitled to question the abovesaid sale deed and furthermore, as he is bona fide purchaser of the 6th item of the suit properties, accordingly, prayed that the suit laid by the first respondent is liable to be dismissed, in so far as the 6th item of the suit properties is concerned and also putforth the claim that in the event of the Court holding that the first respondent is entitled to claim half share in the 6th item of the suit properties prayed that the same be allotted to the second respondent /first defendant by way of equity and accordingly, prayed for the dismissal of the suit laid by the first respondent.

7.As regards the claim of the discharge of the prior debts of the deceased second respondent, reliance is placed upon the promissory notes marked as Exs.A8 & A9 said to have been executed by the deceased second respondent in favour of Mani and Maheswari

respectively. However, as rightly determined by the Courts below, when the alleged debts covered under the promissory notes are not established to be genuine debts and when with reference to the same, there is no acceptable and reliable material projected by the appellant as well as the deceased second respondent and the abovesaid alleged creditors had also not been examined to establish the genuineness of the alleged borrowals mentioned in the abovesaid promissory notes, accordingly, the Courts below rightly did not accept the case of the appellant that he had purchased the 6th item of the suit properties for the discharge of the abovesaid debts and other debts of the deceased second respondent. Furthermore, there is also no acceptable material placed to show that the appellant had discharged the abovesaid debts in the manner known to law and in such view of the matter, no interference is called for in the determination of the Courts below that the abovesaid debts are not established to be genuineness debts said to have been incurred by the deceased second respondent. Such being the position, when the reasons projected by the appellant for the alleged transfer of the 6th item of the suit properties in his favour are found to be false, as rightly determined by the Courts below, a serious suspicion arises as to whether at all the appellant would be a bona fide purchaser of the 6th item of the suit properties.

8. That apart, when as could be seen from the materials placed on

record, the sale had been effected under Ex.B6 sale transaction for a sum of Rs.1,08,500/- however, the deceased second respondent, during the course of his evidence, has admitted that he had spent more than Rs.2,50,000/- for putting up the house construction in the abovesaid item of the suit properties and considering the abovesaid value together adding value of the site, the case of the appellant as well as the deceased second respondent that the 6th item of the suit properties had been alienated for a paltry sum of Rs.1,08,500/- under Ex.B6 sale transaction, as such, cannot be readily accepted and the same also creates a strong doubt whether at all the appellant would be a bona fide purchaser as putforth by him. Furthermore, with reference to the debts incurred from the Society by the deceased second respondent, the first respondent is found to have discharged the same by way of the document marked as Ex.B7 and the same is found to be much after the sale transaction covered under Ex.B6. Therefore, by way of Ex.B7 alone, it cannot be safely concluded that the appellant is a bona fide purchaser of the 6th item of the suit properties as putforth by him. As regards the claim of the appellant that he had been sold the abovesaid item of the suit properties for meeting out the medical expenses of the deceased second respondent, as rightly pointed out by the trial Court, considering the medical documents projected in the matter, when the genuineness of the same had not been established, particularly, by examining the concerned Doctor or the author of the medical bills and furthermore, when the claim

of the deceased second respondent as to the quantum of expenses said to have been incurred by him towards the medical expenses not having been properly explained, in all, it is seen that the Courts below are justified in disbelieving the case of the deceased second respondent and the appellant that the 6th item of the suit properties had been alienated to the appellant by the deceased second respondent. In the light of the abovesaid factors, in all, as rightly determined by the Courts below, the appellant cannot be termed as a bona fide purchaser for value without notice of the 6th item of the suit properties as projected by him and when the reasons given for the abovesaid sale are found to be not true and also not established to be a true transaction and when there are material contradictions with reference to the abovesaid reasons as pointed out and determined by the Courts below with reference to which, no interference is called for, based on the factual matrix of the case, in my considered opinion, the appellant is not entitled to claim any equity for the allotment of the 6th item of the suit properties in favour of the deceased second respondent as put forth by him, and as rightly determined by the Courts below considering the value of the various properties involved in the matter and accordingly, the shares of the parties would be determined and allotted accordingly. In such view of the matter, when the appellant has failed to establish that he is a bona fide purchaser for value without notice as claimed by him, the Courts below are justified in holding that the sale transaction marked as Ex.B6 is not binding upon the first

respondent and even the alleged discharge of debts document Ex.B7 by itself would not ennure to the benefit of the appellant in entirety to hold that he is a bona fide purchaser for value without notice. Therefore, even assuming for the sake of arguments that Ex.B7 debts covered under Ex.B6 are secured for legal necessities, on that score alone, considering the other reasons given for Ex.B6 sale transaction, being not genuine and also not established to be true, in all, it is seen that the appellant is not entitled to seek any claim of equity as prayed for. The substantial questions of law formulated in the second appeal are accordingly, answered.

In conclusion, the second appeal fails and is, accordingly dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

09.11.2018

Index : Yes / No

Internet : Yes / No

sms

To

- 1.The Subordinate Court, Kallakurichi.
- 2.The District Munsif Court, Sankarapuram.

T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in S.A.No.488 of 2015**

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