

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.07.2018

PRONOUNCED ON: 02.08.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.2112 of 2004
and
C.M.P.Nos.18023 and 18024 of 2004

Gurusamy

... Appellant/Plaintiff

Vs.

1.Thulasiammal
2.C.Dakshinamoorthy
3.C.Arukkani
4.K.Easwaran

[RR2 to R4 impleaded as
party respondents vide order
of Court dated 13.03.2008
made in C.M.P.No.882 of 2007] ... Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of C.P.C.,
against the judgment and Decree dated 15.03.2004 passed in
A.S.No.20 of 2002 on the file of the Court of the I Additional
Subordinate Judge, Coimbatore confirming the judgment and decree
dated 27.03.2002 passed in O.S.No.659 of 2000 on the file of the
Court of the Principal District Munsif, Coimbatore.

For Appellant : Mr.R.Venkatachalapathy

For RR1 : Mrs.A.L.Gandhimathi

For RR2 to R4 : Mr.P.K.Rajagopal

J U D G M E N T

This second appeal is directed against the judgment and
decree dated 15.03.2004 passed in A.S.No.20 of 2002 on the file
of the I Additional Subordinate Court, Coimbatore confirming the
judgment and decree dated 27.03.2002 passed in O.S.No.659 of
2000 on the file of the Court of the Principal District Munsif,
Coimbatore.

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

"Whether the document Ex.A1 is void under section 23 of the Indian Contract Act and under section 6 of the Transfer of Property Act and the Courts below were correct in relying upon the said document?"

3. Considering the scope of the issues involved in the matter and arising between the parties lying in a narrow compass, it is not necessary to dwell into the facts of the case in detail.

4. The plaintiff is the son of Palaniappan. Admittedly, the defendant is the wife of Palaniappan. The plaintiff had been born to Palaniappan through his second wife. The materials placed on record go to show that inasmuch no issue had been born to Palaniappan and the defendant out of their wedlock, it appears that the settlement deed dated 23.08.1961 had come to be executed by Palaniappan in favour of the defendant in lieu of her maintenance and accordingly the suit property had come to be in possession of the defendant and in her enjoyment and more or less challenging the same, the present suit has come to be levied by the plaintiff. According to the plaintiff, in brief, the defendant had been given only life enjoyment under the abovesaid settlement deed by Palaniappan and the defendant had not given the power of alienation under the said document and the suit properties had been given to the defendant only towards her maintenance and as the abovesaid document stipulates that the plaintiff, the son of Palaniappan is entitled to succeed to the suit properties after the life time of the defendant and inasmuch as the defendant is attempting to alienate/encumber the suit properties as if, she is the owner of the same, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. Per contra, it is the case of the defendant that, though her marriage life with Palaniappan remained cordial, it is her case that, towards the maintenance, Palaniappan had executed the settlement deed dated 23.08.1961 in her favour in respect of the suit properties and accordingly based on the abovesaid position, the defendant had been enjoying the suit properties and thus it is contended by the defendant that the abovesaid right granted to her under the said document had ripened into full estate in her favour by virtue of the operation of Section 14 (1) of the Hindu Succession Act, 1956, and accordingly, her case is that the plaintiff cannot claim any right in respect of the suit properties and hence the suit laid by the plaintiff is not maintainable.

6. Therefore, the only point that arises for consideration in this matter is whether the limited right granted to the defendant under the settlement deed dated 23.08.1961 had blossomed into absolute right by virtue of section 14 (1) of Hindu Succession Act, 1956.

7. As rightly determined by the Courts below, on a reading of the recitals contained in the abovesaid settlement deed marked as Ex.A1 and even as per the admission of the plaintiff himself when Palaniappan had executed the settlement deed in favour of the defendant conferring her interest and right in respect of the suit properties towards her maintenance and when admittedly the defendant is the lawfully wedded wife of Palaniappan and as such when Palaniappan is bound to maintain her and it is found that accordingly, Palaniappan in lieu of maintenance, had chosen to confer her right in the suit properties by way of the abovesaid deed and in such view of the matter, in the light of the provisions contained in Section 14 of the Hindu Succession Act, 1956, it is found that the limited right granted to the defendant under Ex.A1 deed had ripened into full estate and in such view of the matter, the plaintiff cannot be allowed to claim any right in respect of the suit properties or seek any relief against the defendant to restrain her from alienating/encumbering the suit properties. When the settlement deed marked as Ex.A1 specifically postulates that the same had been executed in favour of the defendant only towards her maintenance and accordingly, when it is further noted that Palaniappan is duty bound to maintain the defendant, she being his lawfully wedded wife, it is seen that, as far as the disposition of the suit properties by way of Ex.A1 in favour of the defendant, though recites as conferring only life enjoyment, by virtue of Section 14 (1) of Hindu Succession Act, 1956, the said right gets blossomed into the absolute right get and accordingly it is seen that the plaintiff cannot be allowed to seek any right or title in respect of the suit properties. It is found that the defendant had not acquired any new right under Ex.A1 settlement deed and on the other hand, the right conferred upon her under Ex.A1 being only in recognition of her claim of maintenance from Palaniappan and accordingly recognizing her such right, Palaniappan had settled the suit properties in favour of the defendant under Ex.A1, accordingly, it is found that in respect of Ex.A1 deed, it is only Section 14 (1) of Hindu Succession Act 1956, which would apply and not Section 14 (2) of Hindu Succession Act 1956 and in this connection, a useful reference may be made to the decision relied upon by the defendant's counsel reported in 2016 (2) SCC 56 [Jupudy Pardha Sarathy Vs. Pentapati Rama Krishna and others] Similarly the counsel for the plaintiff's relied upon the decisions reported in

1. CDJ Law Journal 2013 SC218 [Shivdev Kaur (D) By Lrs * Others Vs. R.S.Grewal]
- 2.CDJ Law Journal 2017 MHC 220 [S.Balakrishnan Vs. V.Gokilnath & Another]
- 3.CDJ Law Journal 2017 SC 1394 [Ranvir Dewan Vs. Rashmi Khanna & Another]
- 4.CDJ Law Journal 2006 SC 742 [Sadhu Singh Vs. Gurdwara Sahib Narike & 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 present case. The defendants' counsel also placed reliance upon the decisions reported in

(i) AIR 1977 SC 1944 [Veddeboyina Tulasamma and others Vs. Vaddeboyina Sesha Reddi (dead) by Lrs]

(ii) 1979 (92) LW 84 [Venugopalapillai Vs. Thayyanayaki Ammal and others]

(iii) 1984 (97) LW 56 (DB) [Smt.Mahalihamman Temple and Sri Vigneswaran Koill and another Vs. Vijayammal]

(iv) 1985 (4) SCC 197 [Pratap Singh Vs. Union of India and others]

(v) 1996 (8) SCC 128 [Dr.Mahesh Chand Sharma Vs. Raj Kumari Sharma and others]

(vi)1998 (III)) CTC 61 [Mariappa Gounder and two others Vs. V.Kandasamy and two others]

(vii) 1999 (1) LW 325 [S.Ramamurthy Naidu Vs. Jayaraman and another]

(viii) 2011 (9) SCC 451 [Marabasappa (Dead) by Lrs and others Vs. Ningappa (Dead) by Lrs and others]

(ix)2013 (3) MWN (Civil) 747 [K.Karai Gounder (died) and others Vs. G.Siddan and others]

(x) 2014 (3) CTC 473 [Jayalakshmi ammal and Kaliaperumal]

Applying the principles of law enunciated therein to the case at hand, when it is found that the suit property had been given to the defendant in lieu of her pre-existing right of maintenance, the same gets transformed into the absolute right by operation of section 14 (1) of the Hindu Succession Act 1956 and when it is found that the claim of the wife to be maintained by her husband is not a mere formality but it is a valuable spiritual and moral right, and when it is found that the Section 14 (2) of the Hindu Succession Act 1956 has no application where the instrument in the nature of Ex.A1 merely seeks to confirm, endorse or declare or recognize pre-existing rights and in such a case, the restricted estate in favour of female would automatically enlarge into an absolute one by force

of Section 14 (1) of the Hindu Succession Act 1956. When it is noted that Section 14 (2) of the Hindu Succession Act 1956, would apply only to instruments, decrees, awards, gifts etc., which create independent and new title in favour of the female for the first time and Section 14 (2) being in the nature of a Proviso to Section 14 (1), thus it is found that the Proviso could not be considered in a manner so as to destroy the effect of the protection granted to the female under section 14 (1) of the Hindu Succession Act 1956.

8. In the light of the abovesaid position of law, it is found that the rights conferred on the defendant by Palaniappan under Ex.A1 sale deed would affect only section 14 (1) of Hindu Succession Act 1956, as contended by the defendant's counsel, and not section 14 (2) of Hindu Succession Act 1956 as put forth by the plaintiff's counsel.

9. Though the plaintiff's counsel would contend that the settlement deed Ex.A1 is void under Section 23 of the Indian Contract Act and under section 6 of the Transfer of Property Act, however, unable to explain as to how the abovesaid provisions of law would apply to Ex.A1 deed. Thus it is found that without any basis the plaintiff seeks to brand Ex.A1 as a void document by invoking Section 23 of the Indian Contract Act and Section 6 of the Transfer of property Act. On the other hand, it is found that the limited right conferred upon the defendant under Ex.A1 deed gets enlarged into absolute right on the strength of the provisions contained in Section 14 (1) of the Hindu Succession Act 1956 and in such view of the matter, it is found that it is only the defendant, who is the absolute holder of the suit properties. Accordingly, it is found that the Courts below are justified in rejecting the reliefs sought for by the plaintiff. In consequence, the substantial question of law formulated in the Second Appeal is answered against plaintiff and in favour of the defendant.

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

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The I Additional Subordinate Judge,
I Additional Subordinate Court,
Coimbatore.

2.The Principal District Munsif,
Principal District Munsif Court,
Coimbatore.

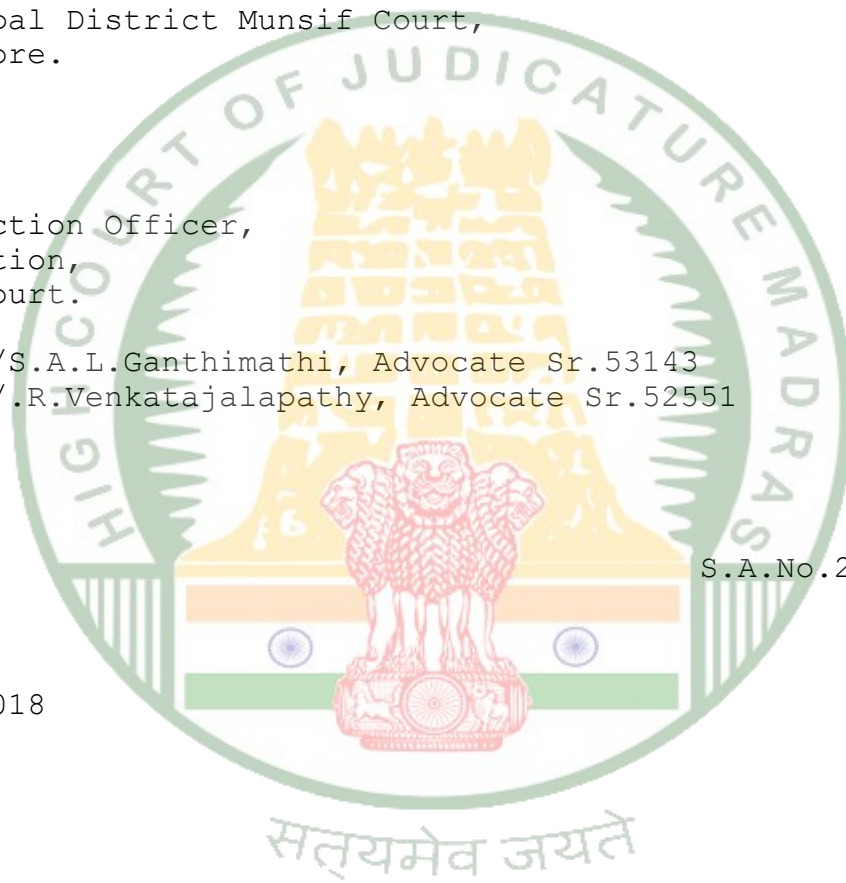
Copy to

The Section Officer,
VR Section,
High Court.

+1cc to M/S.A.L.Ganthimathi, Advocate Sr.53143
+1cc to M/.R.Venkatajalapathy, Advocate Sr.52551

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