

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :23.03.2018

PRONOUNCED ON :10.04.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.517 of 2004

Rukmani Ammal Appellant/2nd Defendant

Vs.

1.Govindaraj Respondent/Plaintiff

2.Parvathi Ammal

3.Arunachalam Padayachi

4.Vembayee

.... 2 to 4 Respondents/
Defendants 1,3 & 5

Boorasami Padayachi (Died)

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the Subordinate Judge's Court at Ariyalur dated 25.02.2003 made in AS.No.151/93, confirming the judgment and decree of the District Munsif Court at Jayankondam dated 09.03.1993 in O.S.No.10 of 1990.

For Appellant : Mrs.Mythili Suresh
for M/s.Saravabhauman Associates

For RR1 : Mr.R.N.Kothandaraman

For RR2 & R3 : No appearance

Set exparte

Vide Order dated 23.03.2018

RR4 : Died

J U D G M E N T

This second appeal is directed against the judgment and decree dated 25.02.2003 passed in A.S.No.151 of 1993 on the file of the Subordinate Court, Ariyalur confirming the judgment and decree dated 09.03.1993 passed in O.S.No.10 of 1990 on the file of the District Munsif Court, Jayangondam.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for declaration and permanent injunction.

4. The case of the plaintiff in brief is that the suit properties originally belonged to Samikkannu Padayachi, plaintiff's father and he married one Nasaya pillai and begotten two daughters namely Kalyani and Dhanakodi out of the said wedlock, later, only to get a male child, he proposed to marry the first defendant Parvathi and accordingly, as per the precondition for the said marriage, executed a registered settlement deed dated 07.07.1964 in respect of the suit property in favour of the first defendant on the premise that the abovesaid document should come into the effect after the marriage has been solemnized. As per the recitals contained in the said settlement deed, the properties comprised therein should be enjoyed by the first defendant till her lifetime without encumbrance or alienation and their legal heirs if any should take the properties absolutely after the demise of the first defendant and Samikannu and the first defendant got married in the same year and the settlement deed came into effect and the first defendant give birth to the plaintiff on 15.06.1969, Samikannu died in 1970 and thereafter the first defendant lived in the suit village for a short period and meanwhile developed illicit intimacy with several persons and gone astray, she quit the family and presently living with one Murugesan of Koppapadi village as his concubine. The first defendant had alienated many of the properties settled on her to meet the expenses for her illegal connections and the defendants 2 to 5 having knowledge about the settlement deed and also aware of the unscrupulous life of the first defendant, purchased some of the properties and the first defendant had no right to alienate the settled properties as she has been given only a life interest in the same and nothing else and therefore, any alienation made by the first defendant of the settled properties is invalid and not binding upon the plaintiff. The properties settled are shown in the plaint A schedule and the properties purchased by the defendants 2 to 5 are shown in the B schedule. The plaintiff is in possession and enjoyment of the items B, C and G of the 'A' schedule and as the first defendant is vested only with the life interest and not entitled to alienate the settled properties, the sale deeds effected by her are invalid and accordingly, the plaintiff has been necessitated to lay the suit for appropriate reliefs.

5. The case of the second defendant in brief is that the suit laid by the plaintiff is not maintainable either in law or on facts. It is correct to state that Samikkannu had two daughters through his first wife Nasaya pillai and they are also

necessary parties to the suit and it is false to state that Samikkannu executed the settlement deed dated 07.07.1964 as a precondition for marrying the first defendant. The suit is not laid within the time allowed by law and the plaintiff has not laid the suit within three years on attaining majority, the plaintiff has suppressed his age and the date of birth given in the plaint is incorrect and it is false to state that the first defendant lived in the suit village only for a short period after the death of Samikkannu and on the other hand, the first defendant is residing only in the suit village along with the plaintiff and only to deprive the second defendant from the properties purchased by him, the present suit has been laid by the plaintiff at the instance of the first defendant and it is false to state that the first defendant is living as the concubine of Murugesan and the first defendant for maintaining the plaintiff and also for meeting the family expenses and other needs, as the manager of the family, alienated the properties settled on her and the same is binding upon the plaintiff as well as the plaintiff's siblings and the first defendant is also entitled to alienate the properties as the legal heir of Samikkannu and though only life interest has been conferred on the first defendant, the first defendant acquired absolute right in the settled properties and accordingly entitled to alienate the properties settled and the second defendant purchased the properties from the first defendant for valid consideration and the first defendant has also prescribed title to the properties purchased by way of adverse possession and hence the suit is liable to be dismissed.

6.The case of the fourth defendant in brief is that the suit laid by the plaintiff is not maintainable either in law or on facts and all the children of the deceased Samikkannu are necessary parties to the suit and hence the suit is bad for their non-joinder and the first defendant acquired absolute title to the properties comprised in the deed dated 07.07.1964 and as the same was executed in lieu of her maintenance, the suit laid by the plaintiff's claim exclusive title to the properties covered under the deed dated 07.07.1964 is not maintainable. The plaintiff was born on 08.05.1967 and not on 15.06.1969. The suit has not been laid by the plaintiff within 21 years of his age and hence on that ground alone, the suit is liable to be dismissed. It is false to state that the first defendant is leading a wayward life after the death of Samikkannu and it is only the first defendant, who is managing the properties of Samikkannu after his death and accordingly for family expenses and other genuine needs, she had alienated the properties and the fourth defendant had purchased the properties for valid consideration on 26.02.1970 and enjoying the same and thereby prescribed title to the said properties by way of adverse possession. The description of the suit properties is

incorrect and hence the suit is liable to be dismissed.

7. In support of the plaintiff's case, P.Ws.1 to 3 were examined. Exs.A1 to A7 were marked. On the side of the defendants, D.Ws.1 to 4 were examined. Exs.B1 to B13 were marked. Exs.C1 to C4 were also marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to declare that the plaintiff is entitled to 8/16th share in the 'B' schedule properties after the life time of the first defendant and consequently, granted the relief of permanent injunction in favour of the plaintiff, restraining the defendants 2 to 5 from alienating 'B' schedule properties and accordingly disposed of the suit. The first appellate court also concurred with the judgment and decree of the trial court. Challenging the same, the present second appeal has been preferred.

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

(i) When the limited right conferred under Ex.A1 Settlement Deed gets enlarged into an absolute right and thereby the 2nd defendant is entitled to alienate the suit property, whether the courts below are correct in law in their interpretation of Section 14(1) of the Hindu Succession Act, 1956?

(ii) When the 1st respondent does not have any right over the suit properties even as per his own contention and only after the death of the 2nd respondent, the suit can be filed, whether the courts below are justified in law in decreeing the suit as prayed for?

(iii) When it is axiomatic in law that minor has to challenge the alienation, which he is aggrieved of, within three years after attaining majority, whether the 1st respondent is entitled to question the alienation especially when he has filed the suit, five years from attaining majority?

(iv) When the appellant has pleaded that proved adverse possession beyond any reasonable doubt, whether the Courts below are justified in law in not upholding the title and possession of the appellant over the suit

property?

10. Materials placed on record go to disclose that the properties involved in the suit belonged to Samikkannu, the plaintiff's father and the husband of the first defendant. It is found that Samikkannu married the first defendant as his second wife and it is further seen that Samikkannu had executed a settlement deed dated 07.07.1964 in favour of the first defendant in respect of the properties described in the plaint A schedule. The abovesaid settlement deed has been marked as Ex.A1. On a perusal of the recitals of the abovesaid settlement deed, it is found that Samikkannu had approached the parents of the first defendant with the proposal to marry the first defendant and as the parents of the first defendant insisted that, Samikkannu should settle certain properties in favour of the first defendant as a precondition for marrying her, accordingly, Samikkannu accepting the abovesaid condition laid by the first defendant's parents, it is found that he had settled the plaint 'A' schedule properties in favour of the first defendant by way of Ex.A1 settlement deed and further would go to show that, on the date of the settlement deed itself, he had handed over the possession of the properties to the first defendant conferring absolute life interest in respect of the properties settled on her and further the settlement deed also recites that the properties should be taken by the children born to Samikkannu and the first defendant absolutely after the life time of the first defendant and in case, no child is born, the properties should be taken absolutely by the children born to Samikkannu through his first wife. There is also a recital that the settlement deed shall take effect from the date of the marriage. It is thus found that, on a reading of the recitals of Ex.A1 settlement deed, the first defendant has not made any condition as such that she should be settled the properties of Samykananu as a precondition for the marriage and the same has been insisted only by her parents and Samikkannu had accepted the same and accordingly, it is found that out of love and affection towards the first defendant, chosen to settle the properties described in the 'A' schedule in favour of the first defendant and with that view, giving effect to the settlement deed immediately, it is found that he handed over the possession of the settled properties in favour of the first defendant giving her life interest to enjoy the properties settled wholly and giving absolute interest to their offsprings and in case of the failure of the same, conferring absolute title to the children born to him through his first wife. It is thus found that as far as Ex.A1 settlement deed is concerned, it is not seen to be a document executed for any consideration in favour of the first defendant as demanded by her. On the other hand, the condition is found to have been imposed only by the first defendant's parents that she should be settled some properties

for the marriage and accordingly accepting the same, it is found that out of love and affection towards the first defendant, Samikkannu had desired to settle the properties described in the plaint 'A' schedule in favour of the first defendant.

11.As per the definition of the gift contemplated u/s.122 of the Transfer of Property Act, it is seen that the gift is the transfer of certain existing movable or immovable property made voluntarily and without consideration by one person called the donor to another called donee and accepted by or on behalf of donee and such acceptance must be made during the life time of the donor and while he is still capable of giving and if the donee dies before acceptance, the gift becomes void. Considering the abovesaid definition, when it is found that in the light of the recitals found in Ex.A1 settlement deed, no condition had been emanated from the first defendant for effecting the said settlement deed as a precondition for marrying her and on the other hand, the said condition had flown only from her parents to Samikkannu and Samikkannu had agreed to the same, resultantly, it is found that, he had chosen to execute the said settlement deed voluntarily, in favour of the first defendant, out of love and affection and without any consideration to her in specific, accordingly, settled the plaint 'A' schedule properties in her favour to be enjoyed by her during her life time and accordingly, it is found that the first defendant had accepted the same and it is thus found that Ex.A1 settlement deed satisfies all the criteria of the definition of the "gift" as contemplated u/s.122 of the Transfer of Property Act.

12.However, it is contended by the defendants' counsel that Ex.A1 settlement deed having been effected in consideration of the marriage, it is only an alienation for valuable consideration and not a gift deed and therefore the Courts below had erred in holding that Ex.A1 document is a gift deed. In this connection, reliance is placed upon the decision reported in 82 Law weekly P.411 [Srinivasa Padayachi Vs. Parvathiammal] In so far as the case covered under said decision, it is found that in view of the insistence of a settlement of properties by the settlee, when the settlor asked the settlee to marry him, it is found that the settlement deed covered in that case having come to be executed by the settlor and accordingly on that premise, in the abovesaid decision, it has been held that the said settlement deed had been executed in consideration of marriage as the demand for settlement had emanated from the settlee and in that view of the matter, the Court in the above said decision proceeded to hold that the settlement deed covered in that case, did not satisfy the definition of the settlement as contemplated u/s.122 of the Transfer of Property Act. However, in so far as the present case is concerned as

abovenoted, no insistence was made by the first defendant to Samikkannu for settling her the properties in her favour for contracting the marriage with her as a precondition, on the other hand, the said condition was only imposed by the first defendant's parents and accordingly Samikkannu having agreed to the abovesaid condition imposed by the first defendant's parents, consequent thereupon, out of love and affection towards the first defendant, chosen to settle the properties described in the 'A' schedule in favour of the first defendant conferring her life interest in respect of the same with the other directions. It is thus found that the first defendant having not imposed any precondition on Samikkannu for marrying her particularly, not insisted Samikkannu to settle the properties as a precondition for the marriage and on the other hand, the said condition had emanated only from the first defendant's parents and the same having been accepted by Samikkannu and thereby the first defendant's parents being satisfied, the said transaction which had taken place between Samikkannu and the first defendant's parents cannot be taken as the consideration for the settlement deed in question covered in this case and when there is no material placed or available in Ex.A1 to show that the first defendant had insisted Samikkannu to settle the properties as a precondition for marrying her, as such it is found that on facts, the abovesaid decision relied upon by the plaintiff's counsel would not be applicable to the case at hand and accordingly, it is found that the Ex.A1 settlement deed cannot be treated as a document effected in consideration of marriage as such as insisted by settlee i.e. the first defendant and when it is found that the settlement deed has come to be given effect on the date of the execution of the document by handing over the possession of the properties settled in favour of the first defendant, it is found that Ex.A1 settlement deed satisfies all the ingredients of the definition of the settlement as provided u/s.122 of the Transfer of Property Act and therefore, it is found that, as per Ex.A1 settlement deed, the first defendant has been given only the life time enjoyment of the properties settled and it is found that she has not been empowered to alienate the properties settled on her by way of Ex.A1.

13.As far as the properties settled by way of Ex.A1, the Courts below had rightly determined that the said properties are only the self acquired properties of Samikkannu particularly, on noting that no material has been placed by the defendants to hold that they constitute the ancestral properties or acquired with the aid of the ancestral properties as such. As regards the above said determination of the Courts below, I do not find any reason to interfere.

14.The argument has been put forth by the defendants'

counsel that Ex.A1 settlement deed had been executed in favour of the first defendant conferring her life interest on the properties settled in lieu of maintenance and therefore the rights acquired by the first defendant by way of the said document had blossomed into absolute right by virtue of section 14 of the Hindu Succession Act, 1956 and therefore, it is contended that the first defendant is entitled to alienate the properties comprised under Ex.A1 and the same cannot be challenged by the plaintiff as such. However, as rightly determined by the first appellate court, considering the import of section 14(1) and 14(2) of the Hindu Succession Act, 1956 when it is found that the first defendant has been given only a life interest by way of Ex.A1 document, the said right would not stand crystallized into absolute ownership as interpreting the abovesaid provisions to the fact that she would acquire absolute ownership/title into the property by virtue of the provisions of section 14(1) of the 1956 Act, the provisions of section 14(2) and 30 of the 1956 Act would become otiose and accordingly Section 14(2) of the above said Act carving out an exception to the rule provided in subsection (1) thereof, which clearly provides that, if the property has been acquired by a Hindu female by a Will or Gift, giving her only life time interest, it would remain the same even after the commencement of the 1956 Act and such a Hindu female cannot acquire absolute title and this position of law could be gathered from the decision of the Apex court reported in 2013 (4)SCC 636 [Shivdev Kaur (dead) by Lrs and others Vs. R.S.Grewal]

15. In the light of the above said authority and the determination of the Apex Court, it is found that the limited right acquired by the first defendant by way of Ex.A1 would not ripen into absolute estate as contended by the defendants' counsel and therefore the above said contention is found to have been rightly rejected by the first appellate court and in my considered opinion, the same do not warrant any interference. Following Ex.A1 settlement deed, the marriage took place between Samikkannu and the first defendant and accordingly, it is found that Ex.A1 having come into effect as recited therein, it is found that by virtue of Ex.A1 settlement deed, the first defendant acquired only the life interest on the properties settled and, as such, not entitled to alienate the properties as the properties settled should be taken only by the children born to her and Samikkannu.

16. Admittedly, it is found that the plaintiff is born to them and it is also found that a female child namely Rajakumari was also born to them however, it is seen that the female child had died later. It is found that as per the recitals contained in Ex.A1 settlement deed, only the children born to Samikkannu and the first defendant would be entitled to take the properties

comprised therein absolutely after the life time of the first defendant. In such view of the matter, the first defendant not having been given any absolute right in respect of the properties settled and only given life enjoyment of the same, any alienation made by her contrary to the recitals found therein would not have the sanction of law and accordingly it is seen that the alienation made by the first defendant in favour of the other defendants in respect of the properties settled would not, as rightly determined by the Courts below be binding the plaintiff as well as the female child born to them.

17. The Courts below accordingly noting that a female child also had been born to Samikkannu and the first defendant, who though died later, also entitled to the plaint A schedule properties, invoking section 43 of the Transfer of Property Act, embodying the "rule of feeding the estoppel", determining that the first defendant as well as the other legal heirs of Samikkannu would be entitled to inherit the share the female daughter Rajakumari would be entitled to, accordingly and also rightly proceeded to determine that, in the light of Section 15 of the Hindu Succession Act, 1956, the plaintiff is entitled to 9/16th share, the first defendant is entitled to 5/16th share and the daughters Kalyani and Dhanakodi born to Samikkannu through his first wife would be entitled to each 1/16th share and accordingly, it is found that considering the nature of the sale transaction effected in favour of the defendants 2 and 4 and further also determining that the defendants 2 to 5 are well aware of the limited right conferred on the first defendant under the settlement deed and despite the same, they having opted to purchase the properties from the first defendant with closed eyes ignoring the right of the plaintiff and the others in respect of the properties purchased, proceeded to hold that the sale transactions effected by the first defendant in favour of the other defendants are not valid and binding upon the plaintiff and the other sharers and the sale covered under Ex.B8 transaction in respect of the survey No.276/3 comprising 34 cents would be valid only in so far as the 5/16th share of the first defendant and accordingly, on that footing, determined that the plaintiff being entitled to 8/16th share in the B schedule properties, 1/16th share derived by him as the legal heir of the deceased female daughter Rajakumari, determined that the plaintiff is entitled to 8/16th share in the B schedule properties after the life time of the first defendant and as the defendants 2 to 5 are not entitled to the properties purchased as above pointed out, restrained them from alienating the same and accordingly, disposed of the suit in the above lines in favour of the plaintiff. No valid materials is placed to deviate from the abovesaid correct findings of the Courts below.

18. As regards the plea of the adverse possession raised by

the defendants in respect of the properties purchased by them, as rightly determined by the Courts below, there is no valid material placed by the plaintiff to uphold their said case and accordingly, the defendants are found not entitled to claim right to the properties purchased by way of adverse possession.

19. It is contended by the defendants' counsel that the suit laid by the plaintiff is premature as the first defendant is still alive and hence on that score, the suit is liable to be dismissed. The relief of declaration sought for by the plaintiff has been prayed for only after the life time of the first defendant and in such view of the matter, it is found that the suit laid by the plaintiff cannot be termed as a premature suit and the same has been rightly determined by the Courts below in favour of the plaintiff.

20. The argument has also been put forth that the plaintiff has not taken steps to set aside the sale deed on his attainment of majority and hence the plaintiff is not entitled to obtain the reliefs and also the suit is barred by limitation. However, when the plaintiff is entitled to obtain the right to the properties only after the life time of the first defendant, accordingly, the plaintiff having come forward with the suit challenging the alienation made by the first defendant contrary to the recitals found in the settlement deed, it is found that the plaintiff being entitled to obtain the absolute right in the suit properties only after the life time of the first defendant, as rightly determined by the Courts below, there is no need for the plaintiff at this stage of the matter to seek for any setting aside of the sale deeds effected by the first defendant and in any event it is found that the sale transactions effected by the first defendant being invalid ab initio as the first defendant is not empowered to alienate the same and accordingly, it is seen that the above said contentions put forth by the defendants' counsel had been rightly discountenanced by the Courts below and no interference is called for in respect of the same. The suit laid by the plaintiff cannot be stated to be barred by limitation, when it is noted that the plaintiff would get the right in respect of the suit properties only after the life time of the first defendant and the present suit having been laid by the plaintiff only to safeguard his interest as such, it is found that accordingly, he has chosen to lay the suit for seeking specific reliefs as to his entitlement to the properties concerned after the life time of the first defendant.

21. In the light of the above said reasonings and conclusions, the substantial questions of law formulated in the second appeal are accordingly answered against the defendants and in favour of the plaintiff.

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

Sd/-
Assistant Registrar (CS-iv)

//True Copy//

Sub Assistant Registrar

mfa
To

- 1.The Subordinate Judge,
Subordinate Court,
Ariyalur
- 2.The District Munsif,
District Munsif Court
Jayankondam .
- 3.The Section Officer,
VR Section,
High Court.(2 copies)

+1cc to Mr.SARVABHAUMAN ASSO. Advocate, S.R.No.26366
+1cc to Mr.R.N.KOTHANDARAMAN, Advocate, S.R.No. 26236

Judgment made in
S.A.No.517 of 2004

vgi (CO)
TR(23/04/2018)

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