

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.04.2018

PRONOUNCED ON : 20.04.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.605 of 2004

1. K.S.Senthilkumar,  
rep. by power of attorney  
the 2<sup>nd</sup> Appellant, Mr.K.S.Elaiyaraja

2.K.S.Elaiyaraja ... Appellants/Plaintiffs  
Vs.

1. A.Seeralan ...Ist Respondent/2nd Defendant  
2. K.Shanmugam (Deceased) ...2nd respondent/1st defendant  
3. Thamilarasi (Deceased)  
4. K.S.Saravanan ...3rd &4th Respondents/3rd &  
4th defendant

(1<sup>st</sup> and 2<sup>nd</sup> Appellant and R4 recorded  
as LR of the deceased R2 and R3  
vide order of Court dated 21.08.14  
made in memo presented before  
the Court dated 21.08.14)

(Cause title amended vide order  
of Court dated 09.02.15 made in  
C.M.P. No.137/15 )

Prayer: Second Appeal filed under Section 100 of Civil  
Procedure Code, against the judgment and decree of the  
Subordinate Judge of Sankari in A.S.No.19 of 2003 dated  
22.12.2003 against the reversal of the well considered decree  
and judgment of the District Munsif of Sankari in O.S. No.319 of  
1995 dated 14.02.2003.

For Appellants :Mr.S.Parthasarathy, Senior Counsel  
for M/s. P.Sivakumar

For Ist Respondent : Mr.G.K.Sekar

2nd & 3rd Respondents-Died  
4th respondent -No Appearance

JUDGMENT

This second appeal is directed against the judgment and  
decree dated 22.12.2003 passed in A.S.No.19/2003 on the file of  
the Sub ordinate Court, Sankari, reversing the judgment and  
decree dated 14.02.2003, passed in O.S. No.319/95, on the file  
of the District Munsif Court, Sankari.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for Partition.

4. The case of the plaintiff, in brief, is that the suit property is the ancestral property belonging to the joint hindu family consisting of the first defendant and his three sons, namely, the plaintiffs and the fourth defendant. The third defendant is the wife of the first defendant and the mother of the plaintiffs and the fourth defendant and thus, the plaintiffs are each entitled to  $\frac{1}{4}$  share in the suit property and the first defendant as well as the fourth defendant are each entitled to  $\frac{1}{4}$  share in the suit property. Now, the plaintiffs have come to understand that the suit property had been sold to the second defendant for a sum of Rs.15,700/- by way of a sale deed dated 13.09.91 by the defendants 1,3 and 4. However, the said sale deed is void and not binding upon the plaintiffs since the same is not effected for benefit of the plaintiffs who are minors at that point of time. The value of the suit property at that point of time is on the higher side, hence the consideration is also found to be meagre and not for the real value and the abovesaid sale transaction has been effected not for the benefit of the minor plaintiffs and in such circumstances, the said sale deed dated 13.09.91 is not binding upon the plaintiff and liable to be set-aside and the plaintiffs are entitled to suit for partition of their respective shares in the suit property. The suit is not barred by limitation, as the suit is levied by the plaintiffs before 21 years of age and the properties belonging to the joint family was acquired by the Government and accordingly, the suit property had come to be allotted to the first defendant and enjoyed as the joint family property and the first defendant has also effected a nominal settlement deed in respect of the suit property in favour of the third defendant, his wife. However, the said settlement deed is invalid and not binding upon the plaintiffs and by way of the sale deed dated 13.09.91, the second defendant has not derived any title, possession or interest in the suit property and the second defendant is not in possession of the house comprised in the suit property and hence, the plaintiffs had been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants 1 and 3, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts and the relationship between the parties is not in dispute and the second defendant insisted the first defendant to execute the sale deed in respect of the suit property and undertook to meet any legal action if required and accordingly, the first defendant executed a sale deed in favour of the second

defendant and the second defendant took the sale deed knowing fully well that the plaintiffs were minors at that point of time and only the second defendant would be answerable to the plaintiffs claim of share in the suit property. However, the second defendant was prepared to purchase the suit property and represented that he would face any litigation in future. Hence, the plaintiffs cannot claim any relief as against the defendants 1 and 3 and the suit is therefore liable to be dismissed.

6. 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 and the suit property was allotted to the first defendant in lieu of the acquisition of his property for the Salem Steel Plant and the first defendant has given the property to his wife, the third defendant by way of a settlement deed and the second defendant, accordingly purchased the suit property from the defendants 1,3 and 4 by way of a sale deed dated 13.09.91 for a valid consideration and the said sale deed had been executed by the first defendant also on behalf of his minor children i.e., the plaintiffs 1 and 2 as their natural guardian and the sale has been effected to meet the family domestic expenses and also for the construction of a new house at Salem, in which, the plaintiffs and the defendants 1 and 3 are residing in the same house, the first plaintiff is also running a flour mill in his own name and it is false to state that the sale deed dated 13.09.91 has not been effected for legal necessity and not binding upon the plaintiffs and on the other hand, the said sale deed is valid and binding upon the plaintiffs in all aspects. It is false to state that the second defendant is not in possession and enjoyment of the suit property. The defendants 1,3 and 4 have joined together and set up the plaintiffs to institute the false suit in order to make unlawful gains and the second defendant permitted Pappal @ Deivanai to stay free of costs in the thatched house on humanitarian grounds and the plaintiffs have no cause of action to institute the suit and the suit is liable to be dismissed.

7. In the reply statement, the plaintiffs have disputed the allegations contained in the written statement of the second defendant and further reiterated that the sale deed effected in favour of the second defendant dated 13.09.91 by the other defendants is invalid and not binding upon the plaintiffs and also denied that Pappal @ Deivanai is in the permissive possession of the second defendant in the thatched house comprised in the suit property and accordingly, prayed for decreeing of the suit laid by them for partition.

8. In support of the plaintiffs' case, PW1 was examined, Exs.A1 to A6 were marked. On the side of the defendants, DWS 1 and 2 were examined, Exs.B1 to B30 were marked.

9. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to grant the preliminary decree in favour of the plaintiffs as prayed for. On appeal by the second defendant, the first appellate Court on an appreciation of the materials placed on record, set-aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the second defendant, dismissed the suit laid by the plaintiffs. Challenging the same, the present second appeal has been preferred.

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

(i) In the absence of proof of necessity for the benefit of the minors, whether the sale executed by the first defendant in his capacity as a karta of the joint family can be made binding on them?

(ii) When the minors are shown to be residing separately with their aunt and when the minors are shown to be persons having a share in the property, would not a prior permission under Section 8 of the Hindu Minority and Guardianship Act from the proper court, a legal requirement to confer valid title on the buyer?

11. The plaintiffs and the fourth defendant are the sons of the defendants 1 and 3. Materials placed on record go to show that the suit property is the joint family property belonging to the defendants 1 and 4 and the plaintiffs. Though a claim has been made by the second defendant that the suit property is the separate or the self acquired property of the first defendant, however, it has been admitted by him during the course of evidence that the suit property is only the joint family property of the abovesaid parties. Now, it is found that the suit property has come to be alienated in favour of the second defendant by the defendants 1, 3 and 4 as well as the plaintiffs. The plaintiffs being the minors at that point of time, they were represented by their natural guardian, their father i.e. the first defendant and accordingly, it is found that the suit property had come to be alienated in favour of the second defendant by way of the sale deed dated 13.9.91, the certified copy of which document has come to be marked as Ex.A2. On a perusal of Ex.A2, it is found that the document purports that the sale deed has been executed by the abovesaid persons in favour of the second defendant for meeting the family expenses as well as for putting up a new house construction and

now, the plaintiffs have thrown a challenge to the abovesaid sale transaction contending that the same had been effected by the defendants 1,3 and 4 without any legal necessity as such and therefore, the said sale deed is not binding upon the plaintiffs and liable to be set-aside and inasmuch as the plaintiffs are each entitled to obtain  $\frac{1}{4}$  share each in the suit property, have claimed that they had been necessitated to lay the suit for appropriate reliefs.

12. The main contesting party i.e., the second defendant inter alia contended that the sale deed Ex.A2 has been executed in his favour only for legal necessity as recited thereunder and in such view of the matter, the plaintiffs cannot challenge the same on the ground of lack of legal necessity and further, it is contended that the plaintiffs have come forward with the present suit only at the instigation of the other defendants to make unlawful gains and hence, the suit is liable to be dismissed.

13. In the trial Court, a challenge has been made as regards the sale transaction marked as Ex.A2 on the footing that the same has come to be effected without obtaining the permission of the Court despite the minors' interest involved thereunder. However, as rightly determined by the first appellate Court, considering the nature of the suit property being the joint family property in which the plaintiffs have only undivided interest,, accordingly, it is found that considering the decision reported in (2017) 1 MLJ 759 (Chinna Palanisamy Gounder Vs. Latha and others), wherein the point of law on the abovesaid issue has been discussed as follows:-

16. In this connection, strong reliance is placed upon the decisions reported in Sri Narayan Bal and others Vs. Sridhar Sutar and others, AIR 1996 SC 2371: (1996) 8 SCC 54 : LNIND 1996 SC 2, Manibhai and others Vs. Hemraj and others (1990) 3 SCC 68 : LNIND 1990 SC 172 and Pandiarajan and four others Vs. Korangi Thyagarajan and seventeen others, 2005-1-L.W.628 : LNIND 2004 MAD 1521. All the above said decisions were also placed before the courts below. A perusal of the decision reported in Sri Narayan Bal and others Vs. Sridhar Sutar and others (supra) would go to show that Section 8 of the Hindu Minority and Guardianship Act, 1956, in view of the express terms of Sections 6 & 12 of the above said Act, would not be applicable where a joint Hindu family property is sold /disposed of by the Kartha involving an undivided interest of the minor in the said joint Hindu family property.

It is thus found that Section 8 of the Hindu Minority and Guardianship Act, 1956, in view of the express terms of Section 6 & 12 of the above said Act would not be applicable where a joint hindu family property is sold/disposed of by the Kartha involving an undivided interest of the minor in the said joint hindu family property and accordingly, it is found that the above said contention has been rightly negated by the first appellate Court and the position of law being found as laid above, the counsel for the appellant in the second appeal did not place any submission on the above said point during the course of arguments and accordingly, it is found that there is no need for obtaining permission of the Court for alienating the suit property being the joint family property and accordingly, the second substantial question of law formulated is answered against the plaintiffs and in favour of the second defendant.

14. The relationship between the plaintiffs and the defendants 1,3 and 4 is not in dispute. It is not the case of the plaintiff that, in any manner, the first defendant had been acting against the interest of the joint family members, particularly acting against the interest of the minor plaintiffs during the relevant point of time. It is also not their case that during the relevant period of time i.e., at the time of the sale transaction marked as Ex.A2, the members constituting the hindu joint family were living separately and not seeing eye to eye and in such view of the matter, it is found that the defendants 1 and 4 and the plaintiffs constituting the members of the joint family were found united at the relevant point of time and accordingly it is found that the first defendant being the Kartha of the joint family, was managing the family as such. In the light of the above position, even assuming for the sake of arguments that the suit property had been alienated for the personal benefits of the first defendant without any legal necessity and particularly when the plaintiffs have not pleaded that the sale transaction covered under Ex.A2 had been made for meeting the immoral and illegal needs of the first defendant and further when the plaintiffs had also not pleaded that the first defendant is a man of evil nature and indulging in vice activities and not caring for the family, in the light of the decision reported in LNIND 1990 SC 172 (Manibhai and others Vs. Hemraj and others), it could be seen that Ex.A2 sale transaction would be binding upon the plaintiffs and it could be further seen that alienation of Joint family property by father to satisfy debts contracted even for his personal benefit and without any legal necessity is binding on his sons on the basis of doctrine of pious obligation if the alienation is not avyavharik or tainted with immorality or illegality and the debts were antecedent in fact as well as in time to the alienation. In the decision relied upon by the second defendant's counsel reported in 2013 (5) CTC 49 (Mariammal & another Vs. Subbuthai & others) also, it has been outlined that

the transfer effected by the Kartha need not be for legal necessity and the manager of the hindu joint family being entitled to alienate the joint family property, the transaction effected by him would be binding upon all the members of the family. Resultantly it is found that the alienation of the Joint family property by the father, the first defendant to satisfy debts contracted even for his personal benefit and without any legal necessity is binding on his sons on the basis of doctrine of pious obligation if the alienation is not avyavharik or tainted with immorality or illegality and in such view of the matter, it is found that the above said sale transaction marked as Ex.A2 would be binding upon the plaintiffs.

15. Further more, as above seen and also not disputed by the plaintiffs that the sale transaction dated 13.09.91 marked as Ex.A2 has been effected by the defendants 1,3 and 4 and also by the plaintiffs, represented by their father and natural guardian, the first defendant and this fact has not been disputed by the plaintiffs. As above seen, at the relevant point of time the defendants 1 and 4 and the plaintiffs constituted the members of the joint family and living together along with D3 and accordingly, it is found that the first defendant on his behalf and also as the father and the natural guardian of the plaintiffs had also conveyed the suit property in favour of the second defendant along with the defendants 3 and 4 and it is found that the plaintiffs are eo nomine parties in so far as Ex.A2 sale transaction is concerned. The plaintiffs have also knowledge of the sale transaction and accordingly, it is seen that they have also preferred the suit, challenging the same by claiming partition of their respective shares in the suit property. Accordingly, as rightly put forth, when it is found that the plaintiffs are eo nomine parties to the sale transaction Ex.A2, the same being a voidable transaction as far as the plaintiffs are concerned, unless and until the said sale transaction is set-aside in the manner known to law by the plaintiff, it is found that the plaintiffs would not be entitled to seek the relief of partition, as such, straightaway claiming their respective shares in the suit property. In this connection, as per the decision reported in (2017) 1 MLJ 153 LNIND 2016 MAD 2927 M.Panneerselvam Vs. Susseela and others, it could be seen that where the minors are eo nomine parties to the sale deed or other document executed by the father, the suit for cancellation of such document should be sought for and the suit should be valued under Section 40 of the Court fees Act and the abovesaid view had been taken by the Division Bench in the decision reported in (1996) 1 CTC 661 (P.B.Ramjee and two others Vs.P.B.Lakshmanaswamy Naidu and ten others) following the Full Bench decision of the High Court, Madras reported in (1956) 2 MLJ 1411 (Sankaranarayana Pillai Vs. Kandasamipillai) and further, it is seen that the Division Bench has also extracted the points adjudicated by the Full Bench in

the abovesaid decision, which is extracted below:

"18. On the other hand, the subsequent Full Bench judgment in Sankaranarayana Pillai Vs. Kandasamipillai, 1956 (2) M.L.J.1411: AIR 1956 Mad. 670, has placed the matter beyond doubt by answering two questions referred to them in the following manner.

"Our answer to the first question is that if the minor is eo nomine a party to a sale deed or other document of alienations, he must sue for the cancellation of the document under Section 7(iv-A) of the Court-Fess Act and it is not enough if he applies for possession under Section 7(v) of the Act; and to the second question our answer is that there can be no distinction whether the father as guardian of the minor and not as the manager of the joint family executes the deed. Even in that case also the document has to be set aside."

The abovesaid Division Bench further noted as follows:-

There is no doubt whatever that the Full Bench has decided against the propositions now contended for by learned counsel for the appellant on the strength of the judgment in V.Nataraja Iyer & others V. Arunachalam & others, 1976 (2) M.L.J. 326.

19. A Division Bench of this Court, in which one of us was aparty, had recently an occasion to consider the question in Sridharan & others V.Arumugham & others, 1993 (2) M.L.J.428 and it has held that in so far as the documents in which the minor children are made parties, they are bound in law to pray for setting aside the same and without such prayer, the suit is not sustainable in relation to those documents:

20. Hence, the view taken by the trial judge that the suit is not maintainable in the absence of a prayer to set aside the alienations, is correct."

It could therefore be seen that the relief of partition sought for by the plaintiffs could not be putforth by them without seeking the cancellation of the sale deed dated 13.09.91 and in such view of the matter, it is found that the present

suit laid by the plaintiffs straightaway seeking partition of their shares in the suit property is not maintainable and liable to be rejected.

16. The counsel for the plaintiffs contended that the second defendant has failed to establish that the sale transaction Ex.A2 has been effected for legal necessity and on the other hand, he has deposed that he has not taken any legal advice before involving into the abovesaid sale transaction and such being the evidence adduced by the second defendant, as regards the legal necessity, the Court should hold that the second defendant has miserably failed to establish the legal necessity for venturing into the sale transaction covered under Ex.A2 and hence the abovesaid transaction is not binding upon the plaintiffs as far as the plaintiffs shares conveyed thereunder. No doubt, the second defendant has not placed any acceptable material to hold that the sale transaction has been effected for legal necessity, as such, other than pointing out the recitals contained in Ex.A2. In this connection, arguments had been putforth that it is only the purchaser who has to establish the existence of legal necessity for the sale transaction and when he has failed to satisfy himself as to the existence of such necessity, the sale would not bind the minors' shares in the property conveyed and with reference to the abovesaid contentions reliance is placed upon the decisions reported in (2011) 12 SCC 220 (Rangammal Vs.Kuppuswami and another), 2013 (4) CTC 539 (Rohit Chauhan Vs. Surinder Singh & others) and 2008 (56) CivilCC (Bombay) (Shrikrishna and Anr. vs. Angad and ors.)

17. Considering the principles of law outlined in the above said decisions, it is found that other than the recitals contained in Ex.A2, there is no acceptable material forthcoming on the part of the second defendant to hold that there had been a legal necessity as such for effecting the said sale transaction. Be that as it may, as above noted, when the sale transaction Ex.A2 is not shown to be tainted with immorality or illegality, on the doctrine of pious obligation, the sale deed effected by the Kartha is clearly binding on the plaintiffs.

18. The counsel for the second defendant in support of his contentions, placed reliance upon the decisions reported in (2015) 16 SCC 631 (Rajni Sanghi Vs. Western Indian State Motors Limited and others), 2008 (2) CTC 654 (Sundaramoni Venkatesan Vs. T.Karthikeyan and others), 2011 (4) CTC 769 (Rangammal Vs. Kuppuswami & another) and 2013 (5) CTC 49 (Mariammal & another Vs. Subbuthai & others).

19. Accordingly, it is seen that merely on the footing that the second defendant is unable to establish the requirements of the legal necessity for the sale transaction Ex.A2, that by itself would not entitle the plaintiffs for the reliefs sought

for. The facts and circumstances to the case at hand read in conjunction with the concept of the nature of the property involved i.e., the suit property being the hindu joint family property as well as the parties involved in the matter being the members of the joint hindu family at the relevant point of time and that the first defendant is the Kartha of the joint hindu family, in addition to that, as above noted, the first defendant is not shown to be indulging in any evil acts and for such needs he had effected the sale transaction and also the above not being the case of the plaintiffs, as such, it is found that when the first defendant, in the capacity of the Kartha of the joint hindu family is entitled to alienate the property of the joint hindu family and when it is further seen that the sale transaction effected by him would be binding upon all the members of the joint family, particularly, the plaintiffs, on the doctrine of pious obligation, merely on the footing that legal necessity has not been established by the second defendant, that by itself would not automatically result in the entitlement of the plaintiffs to obtain their shares in the suit property.

20. That apart, as above noted, when the plaintiffs are admittedly eo nomine parties to the said sale transaction, the plaintiffs without setting aside the same in the manner known to law, as adumbrated in the decisions as abovestated, it is found that in such view of the matter, the suit laid by the plaintiffs for partition for their respective shares in the suit property cannot be entertained and on that score alone, the plaintiffs suit should fail.

21. For the reasons aforestated, despite the absence of proof of necessity, and though the second defendant is unable to establish the legal necessity for effecting the sale transaction covered under Ex.A2, when it is found that the said sale transaction had been executed by the first defendant in his capacity as the Kartha of the joint family, the same is binding upon the members of the joint family including the plaintiffs on the doctrine of pious obligation and further, the plaintiffs being the eo nomine parties to the same, having not taken any steps to set-aside the same in the manner known to law, as abovediscussed, the abovesaid transaction, shall be binding upon the plaintiffs and the first substantial question of law formulated in the second appeal is accordingly answered against the plaintiffs and in favour of the second defendant.

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

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Sub Judge,  
The Sub ordinate Court, Sankari  
2.The District Munsif  
The District Munsif Court,  
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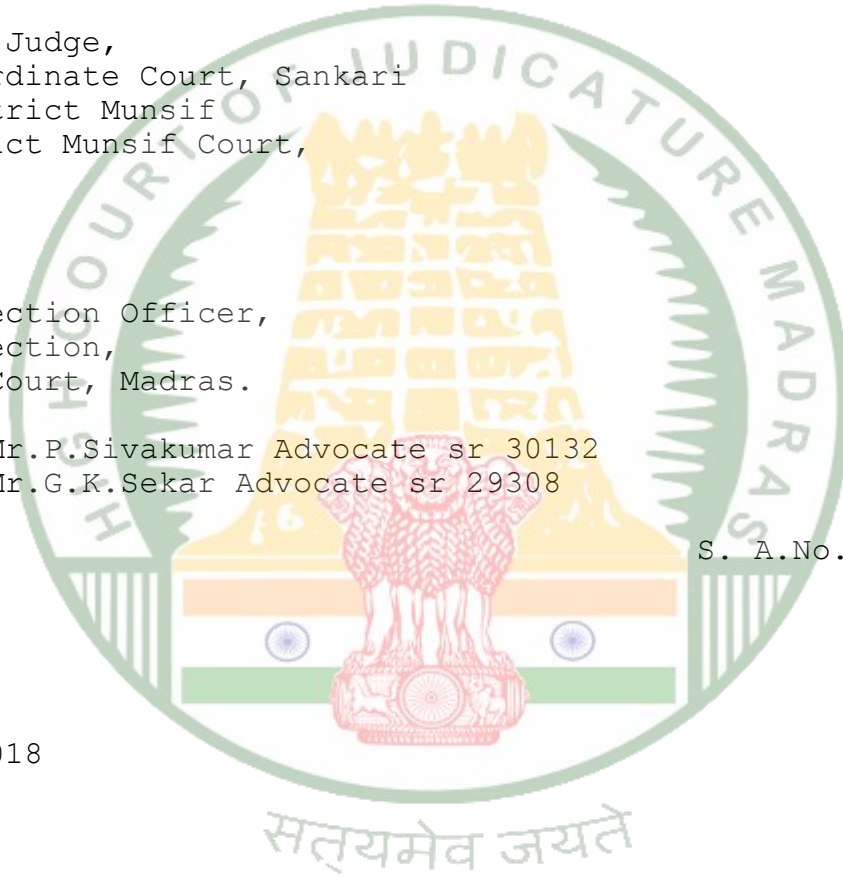
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