

IN THE HIGH COURT OF JUDICATURE AT MADRAS**RESERVED ON : 19.12.2017****PRONOUNCED ON : 08.01.2018****CORAM****THE HONOURABLE MR. JUSTICE T.RAVINDRAN****S.A.No. 2024 of 2001**

Nagamuthu

..

Appellant

Vs.

Jayachandran

..

Respondent

Prayer: Second Appeal is filed under Section 100 of the Code of the Civil Procedure against the Judgment and decree dated 09.11.1999 made in A.S.No.176 of 1997 on the file of the Additional District Court, Villupuram District, Villupuram, (Sub Court, Villupuram A.S.No.139 of 1997) reversing the judgment and decree dated 29.07.1997 made in O.S.No.139/1996 on the file of the Additional District Munsif Court, Villupuram.

For Appellant : Mr.K.Krishnan
for Mr.A.Sivaji

For Respondent : Mr.R. Meenal

JUDGMENT

This Second Appeal is directed against the Judgment and decree dated 09.11.1999 passed in A.S.No.176 of 1997 on the file of the Additional District Court, Villupuram District, Villupuram, (Sub Court, Villupuram A.S.No.139 of 1997) reversing the judgment and decree dated 29.07.1997 passed in O.S.No.139/1996 on the file of the Additional District Munsif Court, Villupuram.

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

3. Suit for declaration and possession or in the alternative for partition.

4. The case of the plaintiff, in brief, is that the suit property is the joint family property of Venu Pillai and he left behind his two sons, Vedamuthu Pillai and Duraisamy and Vedamuthu Pillai died leaving his two sons Kannan and Perumal and daughter Thaiyalnayaki as his legal heirs. On the death of Venupillai, his legal heirs became entitled to "A" schedule property as above stated and the plaintiff purchased the share of the deceased Vedamuthu Pillai described as "B" Schedule property on 22.12.1989 from his legal heirs and while the plaintiff was away, the defendant illegally trespassed into "B" schedule property

and the plaintiff, subsequently, learnt that Duraisamy S/o.Venupillai had sold the entire "A" schedule property in favour of the defendant posing himself as the guardian of the minor children of Vedamuthu Pillai and since he is only a defacto guardian, he has no right to sell the minors' interest in the property to the defendant and hence, the sale deed executed by Duraisamy is not binding on the plaintiff and his vendors and hence, the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that he has purchased the "A" schedule property in its entirety from Duraisamy for a valid consideration and the same had been sold by Duraisamy to discharge the family debts and for the benefit of the minors and for such a sale transaction, the provisions of Section 8 of the Hindu Minority and Guardianship Act, is inapplicable and Duraisamy, an adult member of the joint Hindu family, has got all the right to sell the minors' interest also for legal necessity and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PW1 has been examined and Exs.A1 to A4 were marked. On the side of the defendant, DW1 to DW4 were examined and Ex.B1 was marked. Exs.X1 to X3 were marked.

7. 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 preliminary decree in favour of the plaintiff as prayed for. On appeal, the First Appellate Court set aside the Judgment and Decree of the trial Court and by way of allowing the appeal preferred by the defendant, dismissed the suit laid by the plaintiff. Assailing the same, the present Second Appeal has been laid.

8. At the time of admission of the Second Appeal, the following substantial questions of law were formulated for consideration:

1) Whether the lower appellate court is right in upholding the sale deed dated 20.11.1978 executed by D.W.2, as adult male member of the family of the minors, in favour of the defendant by applying (1998) 1 CTC 390 when the facts of the said reported judgment do not apply to the facts of this case?

2) Is the lower appellate court right in law in upholding the sale deed executed by D.W.2 in favour of the defendant by applying Section 12 of Hindu Minority and Guardianship Act, 1956?

3) Whether the lower appellate court is right in holding that the sale deed in favour of the defendant is valid and binding on the minors

when the said sale was not for legal necessity and for the interest of the minors?

4) Is not the Judgment and decree of the lower appellate court vitiated due to improper appreciation of the facts and the evidence and by not analysing whether the sale of the minors property is for their interest and for legal necessity or not?"

9. It is not in dispute that the suit property is the joint family property of Venu Pillai and it is not in dispute that he had two sons viz., Vedamuthu Pillai and Duraisamy. It is also not in dispute that Vedamuthu Pillai died leaving behind his two sons and a daughter as his legal heirs. Thus, it is found that on the death of Vedamuthu Pillai, Duraisamy and the legal heirs of Vedamuthu Pillai became entitled to the suit property. Now, according to the plaintiff, he has purchased "B" schedule property, a part of "A" schedule property from the legal heirs of Vedamuthu Pillai on 22.12.1989 and thus, he claims title to the suit property. It is the further case of the plaintiff that during his absence, the defendant has illegally trespassed into "B" schedule property and hence, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

10. Per contra, it is the case of the defendant that Duraisamy, as the Manager of the Joint family, for family necessity and for discharging the antecedent debt, had sold the entire property in favour of the defendant and hence, the plaintiff cannot lay a valid claim in respect of the suit property by way of his purchase from the legal heirs of Vedamuthu Pillai and hence, the suit is liable to be dismissed.

11. From the materials placed on record, it is found that the suit property is the joint family property of Venu Pillai and it is further found that no partition had been effected in respect of the suit property either during the life time of Venu Pillai or after his demise amongst his two sons. It is thus found that the suit property had been inherited by the legal heirs of Venupillai and on his demise, Vedhamuthu Pillai, one of the sons of Venu Pillai, also died leaving behind his two sons and a daughter and it is further found that his wife had also died. Now, it is the specific case of the defendant that Duraisamy, who was the adult member of the joint family consisting of himself and his sons and also the minor children of his brother Vedamuthu Pillai and accordingly, for discharging the antecedent debts and for the benefit of the minors, in all, had sold the suit

property in entirety to the defendant. Per contra, the plaintiff's case is that he had purchased "B" schedule property, part of the "A" schedule property from the legal heirs of Vedamuthu Pillai and further, according to the plaintiff, Duraisamy is not competent to sell the share of minor children of Vedamuthu Pillai. It is his contention that no permission of the Court had been obtained by Duraisamy for selling the minors' share.

12. However, as rightly determined by the first appellate Court, when the minors' interest in the suit property is only common and undivided interest in the joint family property, it is found that there is no necessity on the part of the adult member to seek the permission of the Court under Section 8 of the Hindu Minority and Guardianship Act. The first appellate Court has rightly relied upon the decision of the Hon'ble Apex Court reported in **1996 (1) CTC 390 (Sri Narayan Bal & others Vs. Sri Sridhar Sutar & others)** for upholding the plea that an adult member of the joint family property is not required to seek the permission of the Court, while disposing of the joint family property for family necessity and accordingly, it is found that Duraisamy had validly alienated the suit property in favour of the defendant and his alienation is found to be

in accordance with Section 12 of the Hindu Minority and Guardianship Act. As determined by the Apex Court in the above said decision, since there need be no natural guardian for the minor's undivided interest in the joint family property, as provided under Sections 6 and 12 of the Hindu Minority and Guardianship Act, the previous permission of the Court under Section 8 of the Hindu Minority and Guardianship Act is not required and therefore, it is seen that Duraisamy is competent to alienate the entire suit property including the minor's interest in favour of the defendant.

13. However, it is contended by the plaintiff's counsel that Duraisamy has not alienated the suit property in favour of the defendant for the benefit of the minors or for discharging antecedent debts and hence, his alienation is invalid. On the other hand, a perusal of the recitals contained in the sale deed dated 20.11.1978 marked as Ex.A4 would go to show that only for discharging antecedent debts and for family necessity and for the minor's welfare, Duraisamy had alienated the property in favour of the defendant and this aspect has also been testified by Duraisamy, who has been examined as DW2. Despite cross-examination, nothing has been culled out to disbelieve his version as regards the validity of the alienation effected by him in

favour of the defendant by way of Ex.A4 sale transaction.

14. The plaintiff's counsel further contended that inasmuch as Duraisamy is neither a natural guardian nor a de jure guardian and only a defacto guardian, he had no right to dispose of the minor's interest in the joint family property. However, when it is found that the property belonging to Venupillai had not been partitioned amongst the legal heirs and when it is further found that it is only Duraisamy, who as the eldest adult member was managing the joint family and accordingly, it is seen that he has alienated the suit property inclusive of the minor's interest therein for legal necessity as above discussed and in such view of the matter, merely because, Duraisamy is the adult member of the family, it cannot be stated that he had no competency to alienate the minor's interest in the joint family property. On the other hand, as per Section 12 of the Act, when the joint family property is under the management of adult member of the family, there is no need for appointment of any guardian for the interest of the minors in respect of such undivided interest and therefore, the position of law read in conjunction with Sections 6 and 12 would go to show that in the light of the aforesaid Apex Court decision, Duraisamy is all competent to alienate the suit property in

entirety inclusive of the minor's interest in favour of the defendant and hence, the subsequent claim of purchase of the suit property by the plaintiff from the legal heirs of Vedamuthu as regards the "B" schedule property, as such, has been rightly negated by the first appellate Court. In support of his contention, the plaintiff's counsel relied upon the decision reported in **1980 2 MLJ 296 (Pattayi Padayachi (died) and others Vs. Subbaraya Padayachi and others)**. In so far as the said decision is concerned, the issue was whether the mother, being the female member is competent to dispose of the minor's interest in the joint family property, accordingly, it is held in the said decision, the mother is incompetent to dispose of undivided interest of the minors and it has been further held in the said decision that it is difficult to assume that an adult member of the family contemplated under Section 12 of the Act would include the mother in the absence of the father. In such view of the matter, as rightly put forth by the defendant's counsel, the above said authority is not applicable to the case at hand. However, the principles of law outlined in the above decision are taken into consideration.

15. In the light of the above discussions, it is found that the first appellate Court is right in upholding the sale deed dated 20.11.1978 in favour of the defendant by Duraisamy, the adult member of the family consisting of the minors, in the light of the decision of the Apex Court reported in **1996 (1) CTC 390 (Sri Narayan Bal & others Vs. Sri Sridhar Sutar & others)** and the said decision and the principles outlined in the said decision squarely apply to the case at hand and the first appellate Court is right in invoking Section 12 of the Hindu Minority and Guardianship Act, 1956 to the facts of the present case and also right in upholding that the sale deed in favour of the defendant is valid and binding on the minors. When it is noted that the sale deed had been effected for legal necessity and for the interest of the minors and the first appellate Court has appreciated the materials placed on record, both oral and documentary in the correct perspective and accordingly, it is found that the plaintiff is not entitled to obtain the reliefs claimed in the plaint. The substantial questions of law formulated in the Second Appeal are answered against the plaintiff and in favour of the defendant.

In conclusion, the Second Appeal fails and accordingly, is

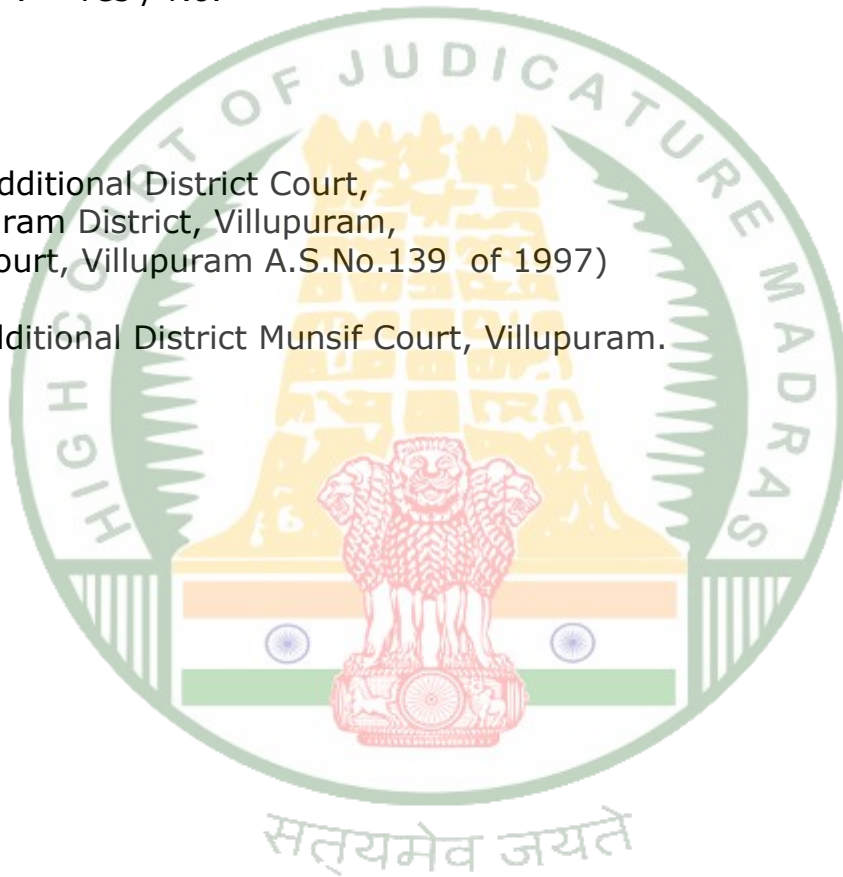
dismissed with costs. Consequently, connected miscellaneous petition,
if any, is closed.

08.01.2018

Index : Yes / No.
Internet : Yes / No.
sms

To

1. The Additional District Court,
Villupuram District, Villupuram,
(Sub Court, Villupuram A.S.No.139 of 1997)
- 2.The Additional District Munsif Court, Villupuram.



WEB COPY

T.RAVINDRAN., J.

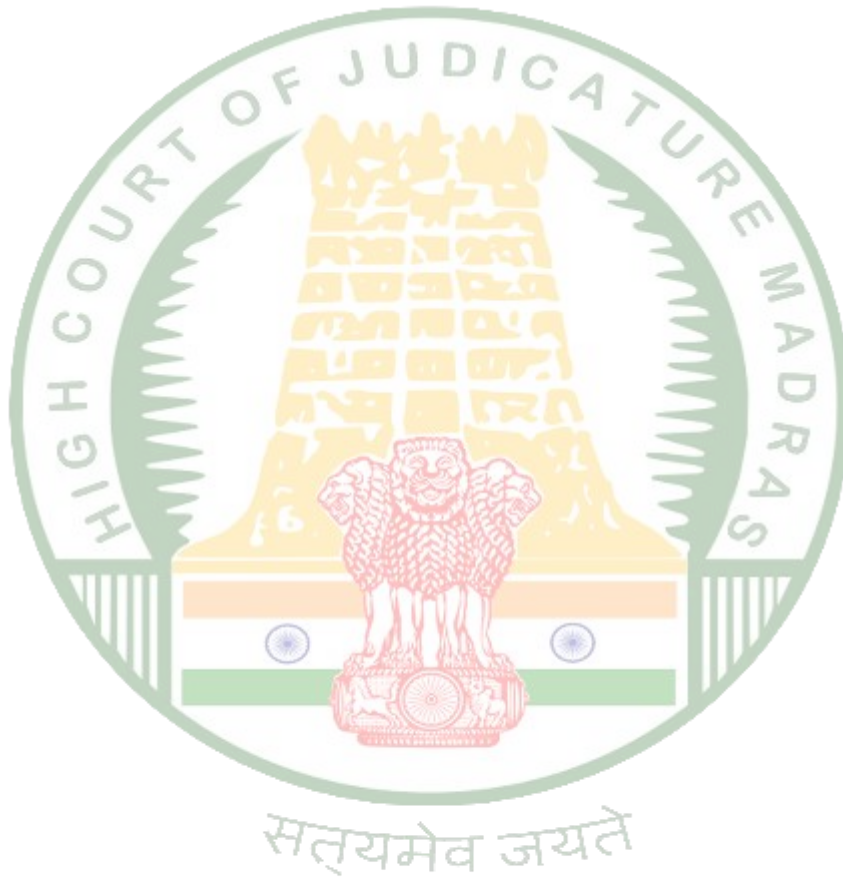
sms



Pre Delivery Judgment made in
S.A.No. 2024 of 2001

08.01.2018

WEB COPY



WEB COPY