

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.12.2017

PRONOUNCED ON:12.01.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No.2071 of 2001
and
C.M.P.No.21592 of 2001

Kumari Ammal Appellant/Ist Defendant

Vs.

1.Kokilambal (Died) 1st respondent/Plaintiff

2.Mrs.Nalini ... 2nd Respondent

[Second respondent impleaded
as legal representative of the
deceased first respondent
vide order of the Court dated
07.12.2006 in C.M.P.No.6424 of
2006]

.... Respondents

Prayer: Second Appeal filed under Section 100 of C.P.C.,
against the judgment and Decree dated on 31.07.2001 passed in
A.S.No.59 of 2000 by the learned Principal District Judge,
Chengalpattu, reversing the decree and judgment passed on
07.01.2000 in O.S.No.33 of 1988 by the learned Subordinate
Judge, Kancheepuram.

For Appellant : Mr.S.Balasubramanian

For Respondents: Mrs.A.L.Ganthimathi

J U D G M E N T

This second appeal is directed against the judgment and
decree dated 31.07.2001 passed in A.S.No.59 of 2000 on the file
of the Principal District Court, Chengalpattu reversing the
judgment and decree dated 07.01.2000 passed in O.S.No.33 of 1988
on the file of the Subordinate Court, Kancheepuram.

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

3. Suit for declaration, possession and permanent injunction.

4. The case of the plaintiff in brief is that the items 1 and 2 of the plaint schedule property originally belonged to her father Ramasami Mudaliar and been in exclusive possession and enjoyment till his death and Ramasami Mudaliar had no male issues and died intestate leaving behind the plaintiff, his daughter, through his first wife and his second wife Kodiambal to succeed to his estate and he died before 1930 and his first wife pre-deceased him, leaving the plaintiff and Govindammal, her two daughters and the plaintiff's sister Govindammal died in 1925 and thus the plaintiff and the second wife Kodiambal are equally entitled to the suit property. The sale effected by Kodiambal during the minority of the plaintiff is not binding on the plaintiff and similarly the family arrangements effected by Kanniammal and the subsequent transactions made by Munusamy Chettiar and the settlement effected by Munusamy Chettiar's wife Janakiammal in favour of the first defendant are all not binding of the plaintiff's share in the suit property. Those transactions are invalid and not binding on the plaintiff and the suit has been laid by the plaintiff within twelve years from the date of death of Kodiambal on 25.07.1970 and taking advantage of the plaintiff's absence from the suit village, the first defendant permitted the second defendant to be in possession and enjoyment of the suit property and as the first defendant's claim to be in possession of the suit property is only on behalf of the other co-sharer namely Kodiambal, at the most, the first defendant can only have half share in the suit property to which Kodimabal would be entitled to and hence the plaintiff has been necessitated to lay the suit for appropriate reliefs as regards the suit property.

5. The case of the defendants in brief is that it is incorrect to state that the plaintiff is the legal heir of Ramasamy Mudaliar entitled to succeed to the suit property, no doubt, the suit property originally belonged to Ramasami Mudaliar. On his death, the second wife Kodiambal sold the suit property to one Kanniammal as per sale deed dated 09.05.1931 and accordingly Kanniammal after the discharge of the mortgage debt etc., and amounting to Rs.1080/- and paid the balance sale consideration of a sum of Rs.200/- to Kanniammal for her maintenance and medical expenses and had been in possession and enjoyment of the suit property and by way of family arrangement gave the property to her son Munusamy, who was keeping the same in his exclusive possession and enjoyment and thereafter gave the same to his wife Janakiammal and Janakiammal subsequently,

after exercising full ownership, settled the property in favour of the first defendant as per the settlement deed dated 25.12.1959 and from the date of settlement above stated, it is only the first defendant who has been in possession and enjoyment of the suit property by leasing out the same to the second defendant on a monthly rent and thus the defendants and their predecessors in interest had been in possession and enjoyment of the suit property continuously and openly and have prescribed title to the same and hence the suit laid by the plaintiff is barred by limitation and the suit laid by the plaintiff is barred by U/s.11 Cpc and hence the suit is liable to be dismissed.

6.In support of the plaintiff's case, P.W.1 has been examined. Exs.A1 to A5 were marked. On the side of the defendants, D.W1 has been examined. Exs.B1 to B37 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 dismiss the suit laid by the plaintiff. On appeal, the first appellate Court, on an appreciation of the materials placed, set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the plaintiff, decreed the suit as prayed for. Impugning the same, the present second appeal has come to be laid.

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

(1)Whether the judgment and decree of the first appellate court is legally sustainable inasmuch as it come to the conclusion that the respondent is entitled to the suit property as Reversioner on the death of her step mother Kodiyambal on 25-07-1970 when especially the said Kodiyambal has sold the property as early as on 09-05-1931 to Kanniammal?

2.Whether the judgment and decree of the first appellate Court is legally sustainable inasmuch as it has failed to see that possession was not with Kodiyambal or with the respondent so as to apply Section 14(1) of the Hindu Succession Act?

9.It is not in dispute that the suit property originally belonged to Ramasami Mudaliar. It is also not in dispute that

the plaintiff is the daughter of the said Ramasami Mudaliar born through his first wife. It is also not in dispute that Ramasami Mudaliar married Kodiambal as second wife after the death of his first wife and further it is seen that inasmuch as the Ramasami Mudaliar had died during 1930, his legal representatives would only be his daughter namely the plaintiff and his second wife namely Kodiambal. It is seen that as per the law then existing, Kodiambal inherited the limited estate on the death of her husband in respect of the suit property. It is found that Kodiambal, at the most, would be entitled to convey her limited estate and it is accordingly noted that she had sold the suit property to one Kanniammal under Ex.B4 sale deed and subsequently further transactions had been carried out in respect of the suit property by Kanniammal's son by way of Ex.B5 to B8 and further Munusamy's wife Janakiammal had subsequently settled the suit property on her daughter, namely the first defendant as per Ex.B1 deed. Thus, it is found that several transactions had taken place in respect of the suit property following the sale of the same by Kodiambal in favour of Kanniammal and it is pertinent to know that as afore stated, Kodiambal had inherited the limited estate in respect of the suit property.

10. Accordingly, it is found that as per the law then in force, Kodiambal having only limited estate and when it is noted that both the plaintiff and Kodiambal are the legal heirs of the deceased Ramasami Mudaliar, it is found that as per the decision reported in AIR 1974 Supreme Court 665 [Daya Singh and another Vs. Dhan Kaur] the widow succeeding to husband's estate who had died after coming into force of Hindu Succession Act 1956, succession to the estate would be governed by Section 8 of the above said Act and accordingly, it is seen that the plaintiff also, being one of the legal heirs of the deceased Ramasami Mudaliar, the succession to the estate would devolve upon the plaintiff only on the death of the limited owner and therefore it is seen that the succession to the suit property on the death of the limited owner Kodiambal will have to be decided on the basis that the last full owner namely Ramasami Mudaliar died on that date and so seen it is found that the plaintiff would also to be entitled to inherit the estate of Ramasami Mudaliar as one of his legal heirs.

11. The above position of law is not disputed by the defendants. The only point that is canvassed in the second appeal is that the limited estate inherited by Kodiambal could be alienated by her for necessity and when Kodiambal had sold the suit property in favour of Kanniammal only for discharging the antecedent debts, it is contended that the said sale transaction is binding upon by the plaintiff and hence the plaintiff cannot claim any title to the suit property on the death of Kodiambal, in the light of the decision of the Apex Court above stated.

12. In this connection, it is found that for upholding the alienation made by the limited owner, it should be shown that there was legal necessity for the limited owner to convey the suit property. This position of law could also be seen from the decisions relied upon by the defendants' counsel reported in AIR 1954 Supreme Court 505 [Kalishanker Das and another Vs. Dhirendra Nath and others], 1996 (9) SCC 53 [Gangadharan Vs. Janardhana Mallan and others] and AIR 1971 Supreme Court 1028 [Smt. Rani and another Vs. Smt. Santa Bala Debnath and others]

In such view of the matter, it has to be seen whether Kodiambal had sold the suit property to Kanniammal only for legal necessity.

13. Now according to the defendants only for discharging the antecedent debt Kodiambal had sold the property to Kanniammal. No doubt, there is a recital found in Ex.B4 document that the same had been conveyed for discharging the mortgage debt. With reference to the above position, it is contended by the plaintiff's counsel that legal necessity could be gathered for which alienation had been made, if it is established that the same had been done for discharging the debt, which debt if not discharged, would have resulted in a forcible sale of the property. As to whether such a contingency had existed for enabling Kodiambal to sell the suit property to Kanniammal, as to the same, other than mentioning that sale is effected for discharge the mortgage debt in Ex.B4, there is no material placed to hold that in the event of the failure of the discharge of the said debt, the property would have been brought for sale so as to deprive the same from the clutches of the family. In this connection, there is no material placed to hold that the suit property had been brought for sale or endeavoured to be brought for sale by the creditor on account to the failure of the discharge of the mortgage debt at the relevant point of time. Such being the position, it is seen that merely from the recital found in Ex.B4 sale deed that the same had been effected for discharging the debt, that by itself, would not satisfy the criteria that the said sale had been done only for legal necessity. That apart, it is found that the entire sale consideration had not been expended for discharging the debt, on the other hand, it is found that the remaining sale consideration was taken by the vendor namely Kodiambal. As to how the said amount had been spent and whether there is any need for sale of the property for the said purpose, there is no material forthcoming on the side of the defendants. It is thus found that when there is no material placed by the defendant that the sale had been effected by Kodiambal in favour of Kanniammal only for legal necessity, merely from the recital found in Ex.B4 sale deed, it cannot be inferred that the same

had been done only for legal necessity particularly in the absence of any material to hold that in the event of the failure of the discharge of the debt, the suit property would have been brought for sale. It is found that the above said essential ingredient for satisfying the legal necessity has not been proved by the first defendant and when the defendant has not satisfied that his predecessors in interest had made a bonafide and proper inquiry for satisfying themselves as to the existence of such a legal necessity and when there is no material pointing out to the same, it is found that, as rightly contended by the plaintiff's counsel, sans legal necessity, the sale transaction effected by Kodiambal under Ex.B4 in favour of Kanniammal would not bind the plaintiff's share in the suit property. As rightly found even in the decisions relied upon by the defendants' counsel, it has been held that the recitals in the document of legal necessity by themselves would not prove the said factor and the legal necessity in support of the sale should be established by the purchaser and when the onus of proving the same had not been discharged by the first defendant, with acceptable and convincing material, it is found that the sale effected by Kodiambal under Ex.B4 in favour of Kanniammal has to be declared as having been made not for legal necessity. In such view of the matter, It is found that as rightly determined by the first appellate court, the above said sale transaction is not binding on the plaintiff's share in respect of the suit property.

14. As regards the point of limitation raised by the defendants in the written statement, the said question has not been pressed by the defendants' counsel during the course of the second appeal. Similarly the first defendant has also not placed any acceptable material to show that he and his predecessors' in interest had perfected their title to the suit property by way of adverse possession. In addition to that when it is found that the suit had been laid by the plaintiff within 12 years from the date of death of Kodiambal on 25.07.1970, it is found that the suit laid by the plaintiff is not barred by time and equally it has to be held that the defendants cannot claim title to the suit property by way of adverse possession.

15. In the light of the above position, it is found that the first appellate court has rightly held that the plaintiff is entitled to the suit property as the reversioner on the death of Kodiambal as the sale effected by Kodiambal in favour of Kanniammal is not established to be for any legal necessity. The substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiff and against the defendants.

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

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1.The Principal District Judge, Chengalpattu.

2.The Subordinate Judge, Kancheepuram.

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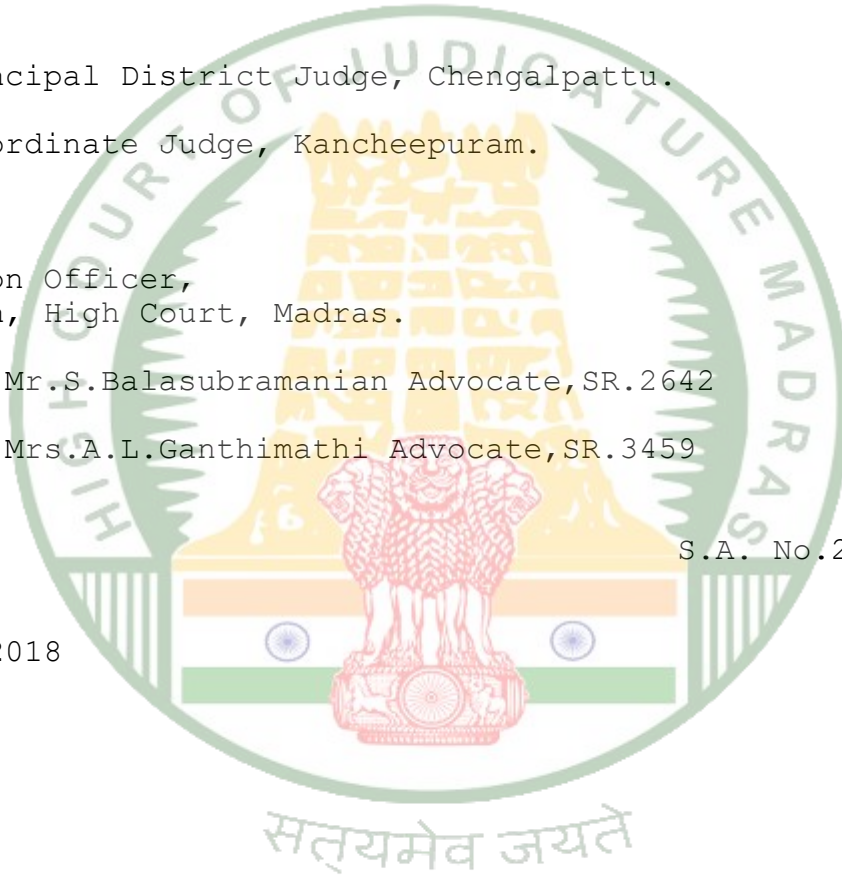
The Section Officer,
VR Section, High Court, Madras.

+ 1 cc to Mr.S.Balasubramanian Advocate,SR.2642

+ 1 cc to Mrs.A.L.Ganthimathi Advocate,SR.3459

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