

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2018

CORAM :

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.660 of 2018

Mr.V.Venkatramana

...Appellant/Appellant/Defendant

Vs

1.Mrs.Padmavathy

2.Mrs.Rajalakshmi

3.Mr.Murali

4.Mrs.Mohana

5.Mr.Sridhar

...Respondents/1& 2 Respondents/
Plaintiffs1&2/ Defendants 3to 5

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree passed in A.S.No.92 of 2012 on the file of the Sub-Judge, Kancheepuram dated 13.06.2018 modifying the Judgment and Decree made in O.S.No.86 of 2006 on the file of the District Munsif-Cum-Judicial Magistrate, Uthiramerur, dated 20.09.2012.

For Appellant : Mr.Kumar Rajan N

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O R D E R

The 4th defendant pendente Lite purchaser is the appellant in the above Second Appeal which arises against the Judgment and Decree in A.S.No.92 of 2012 of the learned Subordinate Judge, Kancheepuram modifying the Judgment and Decree passed by the learned District Munsif-Cum-Judicial Magistrate, Uthiramerur in a suit O.S.No.86 of 2006 filed by the plaintiffs/respondents 1 and 2 herein for a partition and separate possession of their 2/3rd share in the suit property and for a consequential injunction.

Plaintiff's Case:

2.The suit properties originally belonged to one Balakrishna Reddiar who had two sons - Ramadoss who died issueless on 22.01.1996 and his wife Sunderammal pre-deceased him in the year 1994 itself and the other son Munusamy who is the husband of the 1st plaintiff and father of the 2nd plaintiff and 1st defendant.

3.The plaint would proceed on the basis that after the death of Balakrishna Reddiar his sons had orally partitioned the properties under which the A-Schedule properties were allotted to Munusamy and the B-Schedule properties to the Ramadoss. After the death of the said Munusamy on 01.04.1993 and Ramadoss on 22.01.1996, the properties devolved equally on the plaintiff and the 1st defendant. The 1st defendant did not deem it fit to take care of his mother and in the 1st week of the September 2006 when the plaintiff had requested for partition, the 1st defendant refused to accede to the said request but however hastened to execute a Power of Attorney in favour of the 2nd defendant. On 14.09.2006 they attempted to sell the property and hence the suit. Pending the suit the suit property has been sold to defendants 3 and 4 who have thereafter been impleaded as parties to the suit.

Case of the 2nd Defendant:

4.Plaintiff and 1st defendant had a good understanding and on 11.09.2006 all of them approached the 2nd defendant to execute a Power in respect of four items of the suit property in favour of the 2nd defendant. The 1st defendant executed the Power on 11.09.2006 and the 2nd defendant sold the four items of the property on 22.02.2007 in favour of the 4th defendant. The plaintiff who were also present at the Sub-Registrars Office had received the sale consideration.

Case of 3rd Defendant:

5.On 19.09.2006 the 1st defendant had executed a sale deed in favour of the 3rd defendant after receiving valuable consideration and this defendant alone is in possession and enjoyment of the property. This defendant is a bonafide purchaser for value.

Case of 4th Defendant:

6.He more or less adopts the written statement of the 2nd defendant.

Trial Court:

7.The 1st plaintiff had examined herself as P.W.1 and marked EX.A.1 to EX.A.9. On the side of the defendants; defendants 1 and 3 besides two witnesses had been examined as D.W.1 to D.W.4 and EX.B.1 to EX.B.4 were marked. Two documents have been

marked as Court documents C.1 and C.2 which are the summons suit to the 1st defendant and his acknowledgement. The Trial Court had returned a finding that the suit properties are the joint family properties and therefore the power of attorney and sale deeds executed to the exclusion of the plaintiff would not bind their shares. However the Trial Court not only granted a decree for partition but declared that the sale in favour of defendants 3 and 4 would not bind the plaintiff and granted a decree for injunction as well.

8.This Judgment and Decree has been challenged only by the 4th defendant in A.S.No.92 of 2012 and the 2nd defendant in A.S.No.93 of 2012.

9.The learned Subordinate Judge after hearing the parties decreed the appeal in part and passed the following decree:

"1.That the appeal be and the same is hereby decreed in part.

2.That the decree and judgment passed O.S.No.86/2006 dated 20.09.2012 on the file of the District Munsif-Cum-Judicial Magistrate Court, Uthiramerur be and are hereby set aside.

3.That the plaintiffs be and are hereby entitled to 1/6th share each in Item Nos.1, 2, 3 of A Schedule and Sy.No.171/10 measuring an extent of 9 cents in Item No.6 of A Schedule.

4.That the 1st defendant be and is hereby entitled to 4/6th share in Item Nos.1, 2, 3 of A schedule and Sy.No.170/10 measuring an extent of 9 cents in item No.6 of A Schedule.

5.That the 2nd plaintiff and the 1st defendant be and are each entitled to ½ share in the Item No.1 of B Schedule.

6.That the plaintiffs and the 1st defendant be and are hereby not entitled any share in Item No.4, 5 of A Schedule and Sy.No.171/8, Sy.No.179/9 in 6th item of A schedule and 2nd item of B Schedule.

7.That the plaintiff be and are entitled to the relief of permanent injunction with respect to Item Nos.1, 2, 3 of A Schedule and Sy.No.171/10 measuring an extent of 9 cents in item No.6 of A Schedule and Item No.1 of B Schedule."

Second Appeal:

10.Challenging this Judgment and Decree the 4th defendant has filed this Second Appeal. Mr.Kumar Rajan N, learned counsel for the appellant would argue that the plaintiffs had accepted the sale consideration and therefore estopped from questioning the sale. The learned counsel also argued that the suit is a collusive one and therefore the decree sought to be set aside in so favour as it relates to the property sold to this defendant.

11. Heard the counsel and perused the papers both Courts have concurrently held that the properties are the ancestral properties of the plaintiffs and 1st defendant and that the plaintiffs have not joined either in the execution of the Power of Attorney in favour of the 2nd defendant or the sale in favour of defendants 3 and 4. There is no explanation as to why the plaintiffs have not been added as Vendor or their signatures obtained at least as witnesses in the sale deeds so as to plead estoppel. The plea of collusion will not lie since the sale in favour of defendants 2, 3 and 4 are pending the suit.

I find no question of law much less a Substantial Question of law. The Second Appeal is thus dismissed. There shall be no order as to costs.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Sub-Judge,
Kancheepuram

2. The District Munsif-Cum-Judicial Magistrate,
Uthiramerur.

3. The Section Officer
V.R. Section,
High Court, Madras.

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+1cc to Mr.N. Kumar Rajan, Advocate, S.R.No.79613

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KAK(26/12/2018)

S.A.No.660 of 2018

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