

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :28.01.2019
Pronounced on : 04.02.2019

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

S.A.No.1814 of 1997

1.Natesan
2.Govindarajulu

... Appellants/Plaintiffs

Vs

1.Pappammal
2.Chenniah Naidu (deceased)
3.Abdul Azeez Saheb (deceased)
4.P.Duraisamy (died)
5.Pattammal
6.D.Boopathy
7.D.Kamaraj
8.D.Kalyanasundaram
9.Sulochana
10.Zamruth
11.Javeed

..Respondents/Defendants

... Respondents

RR5 to 9 brought on record as LRs
of the deceased R4 vide order of
court dated 18.08.2011 made in
CMP.No.20073 of 2004 in
S.A.No.1814 of 1997

R10 & R11 brought on record as LRs
of the deceased R3 vide order of
court dated 13.10.2011 made in
CMP.No.997 to 999 of 2011 in
S.A.No.1814 of 1997.

PRAYER: The Second Appeal filed under Section 100 of CPC,
against the judgment and decree of the learned Additional
Special Judge, Krishnagiri, in A.S.No.49 of 1994 dated
26.07.1995 confirming the judgment and decree of the learned
District Munsif, Krishnagiri, in O.S.No.678 of 1981 dated
26.09.1991.

For Appellants : Mr.V.Nicholas

For RR5 to 9 : Mrs.Udhaya P.S.Menon

For D.Shivakumaran

For RR2 to 4 : Died

For R1, R10, R11 : No Appearance

JUDGMENT

The plaintiffs, in O.S.No.678 of 1981 on the file of the District Munsif Court, Krishnagiri, are the appellants herein.

2.O.S.No.678 of 1981 had been filed by two plaintiffs Natesan and Govindarajulu against four defendants namely, Pappammal, Cheeniah Naidu, Abdul Azeez Saheb and P.Duraisamy, seeking a judgment and decree to set aside the sale dated 28.11.1968 by the first defendant in favour of the third defendant of undivided $\frac{1}{2}$ share of the plaintiff in tiled house measuring 5 ankanams and East to West 60 feet, North to South 27 $\frac{1}{2}$ feet in Jagadevipalayam Village, Krishnagiri, and also for partition and separate possession of $\frac{1}{2}$ share of the suit property and also for a mandatory injunction to demolish a building said to have been constructed by the 4th defendant in a portion of the said property. By Judgment and decree dated 26.09.1991, the learned District Munsif, Krishnagiri, dismissed the suit.

3.Challenging that judgment, the plaintiffs then filed A.S.No.49 of 1994. By judgment and decree dated 27.07.1995, the learned Additional Special Judge, Krishnagiri, dismissed the appeal.

4.Challenging the judgment of the First Appellate Court, the plaintiffs filed the present Second Appeal. The Second Appeal had been admitted on 09.01.1998 on the following two substantial questions of law:

"1.Whether the school entries show the correct date of birth of the appellants/plaintiffs?

2.Whether the First Appellate Court is correct in rejecting the documents while deciding the question of limitation?"

O.S.No.678 of 1981 (District Munsif Court, Krishnagiri):-

5.The suit was filed by the first plaintiff Natesan and his younger brother Govindarajulu who was a minor at the time of

institution of the suit. They claimed that the suit property namely, tiled house measuring 5 akanams and East to West 60 feet, North to South 27 $\frac{1}{2}$ feet in Jagadevipalayam Village, Krishnagiri, originally belonged to one Ramana Naidu who had four sons Kuppusamy, Chenniah Naidu (second defendant), Perumal Naidu and Manickam. The first son Kuppusamy died. His son Ramamurthy was in joint possession with the other co-sharers. The plaintiffs are the sons of Perumal Naidu. The first defendant Pappammal was their mother. The plaintiff had purchased undivided $\frac{1}{2}$ share in the said property from Perumal Naidu and the other co-sharers by a registered sale deed dated 04.03.1965. Since they were minors, their mother represented them. They were in joint possession. Thereafter, the other co-sharers executed a release deed in favour of the second defendant Chenniah Naidu. Consequently, the plaintiffs and the second defendant became entitled to undivided $\frac{1}{2}$ share in the property. The first defendant, mother, who was expected to protect the interest of the plaintiffs who were minors, sold the undivided $\frac{1}{2}$ share which they had purchased on 04.03.1965 by a registered sale deed dated 28.11.1968 to the third defendant. She did not obtain permission from Court to sell the property. The fourth defendant subsequently purchased that share from the third defendant by registered sale deed dated 05.08.1970. The second defendant also sold his undivided $\frac{1}{2}$ share to the fourth defendant by registered sale deed dated 05.08.1970. The fourth defendant also constructed house in a portion of the house property. The first plaintiff claimed that he was born on 20.12.1960. He attained the age of majority on 21.12.1978. He had therefore filed, the present suit to set aside the sale deed in so far as their undivided $\frac{1}{2}$ share was concerned. The suit was also filed by his younger brother who joined with him as co-plaintiff. The plaintiffs therefore sought the reliefs claimed in the plaint.

6.The first and second defendants remained exparte.

7.The third defendant filed written statement, stating that he was an unnecessary party to the suit, since, he had executed a sale deed for adequate consideration to the fourth defendant. It was stated that the plaintiffs who were minors did not have the monetary resources to purchase the property. They were merely name lenders. This was because the original owner Ramana Naidu was heavily indebted and the sale deed was created only to protect the property from the creditors. It was also stated that the first defendant/mother was the actual purchaser and consequently permission from the Court was not required. It was stated that the suit should be dismissed.

8.The fourth defendant filed a written statement, stating that he had purchased the property for adequate consideration from the third defendant and the second defendant by separate

registered sale deeds. He also claimed that the plaintiffs were mere name lenders and it was the first defendant who had purchased the property. He also stated that the original owner Ramana Naidu had existing debts and the sale deed was created in the names of the plaintiffs to protect the property from the creditors. It was also specifically denied that the first plaintiff was born on 20.12.1960 and that he had attained age of majority only on 21.12.1978. It was stated that the first plaintiff was actually born two or three years prior to 1960. It was stated that the suit was barred by limitation having been filed more than three years after the first plaintiff had attained the age of majority. It was stated that the suit should be dismissed. The fourth defendant filed an additional written statement claiming that he had also perfected title by adverse possession.

9. On the basis of the said pleadings, the learned District Munsif, Krishnagiri, framed necessary issues for trial. The primary issue was whether the suit was filed within the period of limitation namely, within three years from the date when the first plaintiff attained the age of majority.

10. During trial, the plaintiffs examined eight witnesses. The first plaintiff was examined as PW1. He also examined his father Perumal Naidu as PW3. He also examined the school Head Master, Natarajan to speak about his date of birth as PW7 and Seenan to speak about the date of birth of second plaintiff as PW8. The fourth defendant examined himself as DW1. He also examined the third defendant as DW2. He also examined another witness as DW3. During trial, the plaintiffs marked Exs.A1-A5. Ex.A1 was the sale deed dated 04.03.1965 in favour of the plaintiffs. Ex.A2 was the sale deed executed by the first defendant in favour of the third defendant dated 28.11.1968. Exs.A4 and A5 were the records from the Jagadevi Municipal Elementary School, relating to admission of the two plaintiffs. On the side of the defendants, Exs.B1-B5 were marked. Ex.B1 dated 04.03.1965 was the sale deed in favour of the second defendant. Ex.B2 dated 28.11.1968 was the sale deed in favour of the third defendant. Exs.B3 and B4 dated 05.08.1970 were the sale deeds in favour of the fourth defendant.

11. On the basis of the oral and documentary evidence, the learned District Munsif, Krishnagiri, by judgment dated 26.09.1991, held that the suit had been filed after the period of limitation, since, it was determined that the first plaintiff was born much prior to 20.12.1960. It was found that the date of birth given in the school certificates were written by PW7 and PW8 on their own presumptions and consequently, it was found

that the date of birth given in the said records cannot be believed. Holding as above, the learned District Munsif, dismissed the suit.

A.S.No.49 of 1994(Additional Special Court, Krishnagiri:-

12.Challenging that judgment, the plaintiff then filed A.S.No.49 of 1994. This appeal came up for consideration before the learned Additional Special Judge, Krishnagiri. By judgment dated 26.07.1995, the learned Additional Special Judge, framed points for consideration and reappraised the evidence. The learned Additional Special Judge, found that the first defendant had no right to sell the property to the third defendant, since she was not a guardian appointed by Court and also since she had not obtained permission from the Court to sell the share of the minor children. It was stated that the sale deed in favour of the third defendant was not binding on the plaintiff. It was specifically found that the third defendant did not get title to the property and consequently, he cannot convey title to the fourth defendant. The claim of the fourth defendant for title through adverse possession was also rejected. The claim of the fourth defendant for compensation for the cost of the building was also rejected. The mandatory injunction sought by the plaintiffs to demolish the building constructed by the fourth defendant was granted. It was found that the plaintiffs were entitled to undivided $\frac{1}{2}$ share in the suit property. However, it was found that the plaintiffs have not established their date of birth as claimed by them in the plaint. It was stated that the admission registers marked Exs.A4 and A5 cannot be the basis for determining the age of the two plaintiffs. It was found that the witnesses who spoke namely, PW7 and PW8 stated that they would write their date of birth as they thought was the age of the children who come for admission. It was found that the age of the two plaintiffs had not been established by them and consequently, on that one ground the appeal was dismissed.

S.A.No.1814 of 1997:-

13. For the sake of convenience, the parties would be referred as plaintiffs and defendants.

14.As stated above, the plaintiffs have filed the present Second Appeal. It is pertinent to point out that the fourth defendant had not preferred any cross objection against the specific findings of the First Appellate Court that the sale by the first defendant in favour of the third defendant was not a valid transaction and was not binding on the plaintiffs and that the third defendant had no title over the property and consequently could not have conveyed title to the fourth defendant. The fourth defendant had also not challenged the

findings that his claim for adverse possession had been rejected and his claim for compensation for the cost of building was also rejected. He also did not file any cross objection, challenging the specific finding of grant of mandatory injunction to demolish the building. He had also not filed any cross objection, challenging the finding that the plaintiffs are entitled to ½ share in the suit property.

15.The Second Appeal had been admitted on 09.01.1998 on the following two substantial questions of law:

"1.Whether the school entries show the correct date of birth of the appellants/plaintiffs?

2.Whether the First Appellate Court is correct in rejecting the documents while deciding the question of limitation?"

16.Both the substantial questions of law surround the entries in Exs.A4 and A5. PW4, Ramasamy, Head Master of Jagadevi Municipal Elementary School, stated that he had signed Ex.A1 which was the Transfer Certificate which reflected that the first plaintiff Natesan was born on 20.12.1960. PW7, Natarajan was the Head Master from 1961 till 15.07.1966. He had made the entry in Ex.A4, which was the admission register for Jagadevi Municipal Elementary School for the period June 1961 to 1975. In the said register in page no.23 in S.L.No.454, Natesan S/o Perumal Naidu was admitted as a student on 13.06.1966. The date of birth was given as 20.12.1960. The said document was marked as Ex.A4. PW8, Seenan was also the Head Master in the same school and he stated that he admitted the second plaintiff Govindarajulu S/o Perumal Naidu in Ex.A5, register and the date of birth was given as 25.12.1963. Both the positive evidences were rejected by the First Appellate Court only on the ground that the said dates were provided by the witnesses themselves. I hold that was a finding based on presumptions. It is to be noted that the witnesses were being examined nearly after 30 years from the date of the entries in the said exhibits. It would not be possible for them to state that in respect of the present plaintiffs specifically the date of birth was given by themselves and not based on any record. It was a general statement given by the two witnesses. I hold that the First Appellate Court was wrong in rejecting the evidence of the three witnesses namely, PW4 Ramasamy, PW7 Natarajan and PW8 Seenan, particularly in the absence of motive attributed to them. They spoke from the records. The records are clear and have not been manipulated. They are original records. They date back to a period more than 30 years back. They give the specific dates of birth of the two plaintiffs. Unless specific and special reasons are given the said documents cannot be rejected. Once the

documents are declared admissible in evidence, being original records and proved in manner known to law by examining PW7 and PW8 who had made the entries, then, the Court has to uphold the dates of birth of the plaintiffs as given in Exs.A4 and A5. The suit had been filed within the period of limitation, namely within three years from the date on which the first plaintiff attained the age of majority.

17.In view of the above reasoning, with respect to the first and second substantial questions of law, I hold that the First Appellate Court was wrong in rejecting the documents Ex.A4 and A5 while deciding the issue of limitation. I further hold that the school entries show the correct date of birth of the plaintiffs. When this findings is reached, naturally other findings not being challenged, the judgments and decree of the First Appellate Court and also the Trial Court have to be set aside.

18.In view of the above discussion, the Second Appeal is allowed with costs. The judgment and decree of the learned District Munsif in O.S.No.678 of 1991 dated 26.09.1991 is set aside. The judgment and decree of the learned Additional Special Judge in A.S.No.49 of 1994 dated 26.07.1995 is also set aside.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

- 1.The Additional Special Judge, Krishnagiri.
- 2.The District Munsif, Krishnagiri.
- 3.The Section officer
VR Section, Madras High Court

+2 Ccs to Mr.V.Nicholas, Advocate sr 9260 & 10185.
+2 Ccs to Mr.D.Shivakumaran, Advocate sr 9646.

S.A.No.1814 of 1997

RJI(CO)
SP(02/04/2019)