

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.12.2018

Delivered on: 26.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.375 of 2008

1.Smt.R.Devaki

2.Sri.R.Kesavaraman

3.Sri.N.R.Sivaraman

4.Sri.J.R.Shenbagaraman

5.S.R.N.R.Jayaraman

...Appellants 1 to 5
/Defendants 2,3,5,6 & 7

(Transposed the first appellant
as fourth respondent vide order
of the Court dated 18.01.2010
made in M.P.No.1 of 2009)

-Vs-

1.R.Venkataraman

..1st Respondent/Plaintiff

2.Smt.R.Karthiyayini

3.Smt.R.S.Lakshmi Devi

4.R.Meenakshi (Died)

सत्यमेव जयते

..Respondents 2 to 4/
Defendants 4 to 8

(Respondent 4 died. Appellants 2 to 5
and Respondent 1 already recorded as
legal representatives of the deceased
respondent 4 vide order of the Court
dated 08.03.2017).

PRAYER: Appeal suit is filed under Section 96 of the
Civil Procedure Code against the Judgement and Decree passed in
O.S.No.4248 of 2004 dated 19.07.2007 on the file of VI
Additional Judge, City Civil Court, Chennai.

For Appellants : Mr.S.V.Jayaraman
Senior Counsel
for Mr.S.Raghu

For Respondent 1 : Mr.R.Venkataraman
Party in Person

For Respondent 2 : Not Ready in Notice

For Respondent 3 : Mr.T.R.Daveson

For Respondent 4 : Died

ORDER

The defendants are the appellants before this Court challenging the Judgement and Decree in O.S.No.4248 of 2004 passed by the learned VI Additional City Civil Judge, Chennai.

2.Reliefs Claimed:

"a)For a partition and for a separate possession of his 1/9th share in the property mentioned in schedule hereunder;

b)For a declaration that the settlement deed dated 12.02.2004, Doc.No.535, SRO-Anna Nagar, executed by the 1st defendant in favour of the 3rd defendant is illegal, invalid, void, in-operative, and not binding on the plaintiff.

c)for an injunction restraining the 3rd defendant from alienating the suit property in any manner;

d)for an injunction restraining the 3rd defendant from interfering with the plaintiff's peaceful possession and enjoyment of the office room and the 1st floor of the suit property;

e)for mandatory injunction to direct the 3rd defendant to deposit the rent into the credit of the suit;"

3.The genealogy herein below is given in order to more fully appreciate the relationship between the parties:-



4.Plaintiff's Case:

4.1.The plaintiff who is the youngest son of K.N.Rathnavelu and the 1st defendant has filed the above suit for the reliefs

stated supra in respect of the property situate at Door No.7, 1st street, V.O.C. Nagar, Anna Nagar East, Chennai. The plaintiff would contend that in the year 1962 his father K.N.Rathnavelu had purchased the vacant site from out of his own funds and had originally put up small hall and a kitchen measuring an extent of 300 Sq.ft. and had rented it out. Thereafter, in the year 1967, two more rooms were constructed and in the year 1969 after his father's retirement a further extent of 600 Sq.ft. was constructed from out of the terminal benefits received by the father. Although the property was purchased by the father, the property tax in respect of the superstructure was assessed in the name of the 1st defendant and despite several request made by the father, K.N.Rathnavelu the name had not been transferred.

4.2.The plaintiff would contend that in the year 1984, the father as well as the 1st defendant, mother had mortgaged the property in favour of their eldest daughter Devaki, the 2nd defendant and in the mortgage deed there is a clear recital that the father was the absolute owner of the property and the mother, the superstructure.

4.3.The plaintiff's further case was that his father was working as cashier with the Madras State Co-operative Bank now known as Tamil Nadu State Co-operative Bank and also earned money by giving part time tuition, working as an Insurance agent and after his retirement he was also engaged in construction activities as building contractor and from out of his funds the father had constructed the entire house.

4.4.The plaintiff would plead that he had been taking care of his father during his last days. In the year 1986, the father had permitted the plaintiff to put up the office room in front of the main building and also put up the 1st floor after the plaintiff had got married. On 24.01.1998 the father died intestate. After his death the 1st defendant had executed a settlement deed dated 12.02.1984 in favour of the 3rd defendant. A reading of the recitals would imply that the mother had executed the sale deed in favour of the 3rd defendant and not a settlement. The plaintiff would submit that from the date of that his father permitting him to put up the office he has been in possession of the same since 1986. The 1st defendant was collecting the rent earlier and now it is the 3rd defendant who is collecting the rent in respect of the 1st floor and the rent is sum of Rs.2,000/- per month. Despite requesting the defendants to partition the property they were not coming forward to do so. The plaintiff was therefore constrained to move the suit.

5.Defendant's case:

5.1.Written statement was filed by defendants 1, 2, 3, 5, 6

and 7. It is the case of the defendants that in the year 1962, it was the 1st defendant, mother who had purchased the property and put up construction from out of her Shreedhana funds. Subsequently, she had extended the construction and from 1966 the property been assessed in the name of the 1st defendant. The 1st defendant as absolute owner of the suit property has been in continuous and uninterrupted possession from 1962.

5.2. It is the further case of the defendants that the metro water connection stand in the name of the 1st defendant and electricity connection is also in her name since 1966. The defendants would contend that K.N.Rathnavelu was not the owner of the property and the plaintiff with ulterior motives had wrongly instructed his parents to mortgage the property in favour of the 2nd defendant for obtaining a loan of a meagre amount of Rs.5,000/-. This was latter cancelled by the parents when they suspected the bonafides of the plaintiff.

5.3. The defendants would further submit that the father had to sustain the family consisting of a wife and eight children and the money earned by him was just sufficient to feed the family and educate the children and therefore he did not have any surplus money to purchase the suit property. Therefore it is only the mother, namely the 1st defendant who had contributed for the purchase of the property. The plaintiff's contention that he had put up the 1st floor and the office room was denied by the defendants who would contend that the room was constructed by the father to accommodate guests.

5.4. After the death of the father it was the 3rd defendant, eldest son who was taking care of the entire family affair and the 1st defendant therefore bequeath the entire property upon the 3rd defendant. The defendants also came forward with a case that the plaintiff had left the suit property and the room was being used by the 3rd defendant and they therefore sought for the dismissal of the suit.

6. Trial Court:

6.1. The parties had gone to trial on seven issues framed by the learned VI Additional City Civil Judge, Chennai, which are as follows:

"1) Whether the suit property is the absolute property of the 1st defendant?

2) Whether the suit property was purchased by K.N.Ratnavelu, the father of the plaintiff in the year 1962?

3) Whether the mortgage in favour of R devaki by Ratnavelu and his wife Meenakshiniammal is true and valid?

4) Whether the settlement deed dated 12.02.2004 executed by 1st defendant in favour of the third defendant is true, valid and binding on the plaintiff?

5)Whether the plaintiff is entitled to separate possession of 1/9th share in the suit property?

6)Whether the plaintiff is entitled to declaration that the settlement deed dated 12.02.2004 executed by 1st, defendant in favour of 3rd defendant is invalid and void?

7)To what other relief the plaintiff is entitled to?"

6.2.The plaintiff had examined himself as P.W.1 and he had marked Ex.A.1 to Ex.A.13 to prove his contention. On the side of the defendants, the 1st defendant was examined as D.W.1 and the 3rd defendant as D.W.2. That apart, three independent witnesses namely D.W.3 to D.W.5 were examined by the defendants and Ex.B.1 to Ex.B.5 were marked. The learned VI Additional Judge had partly decreed the suit with reference to the relief of partition and declaration that the settlement deed Ex.A.2 executed by the 1st defendant in favour of the 3rd defendant is invalid and null and void. As regards reliefs of permanent injunction and mandatory injunction the same was rejected by the learned Judge.

6.3.Challenging the decree in favour of the plaintiff the defendants 1, 2, 3, 5, 6 and 7 have filed the above first appeal. The plaintiff has not challenged the disallowed portion of the relief in the form of cross appeal. The decree has not been challenged by the defendants 4 and 8 who have remained ex parte in the suit itself and they have been given up in the appeal.

7.Submissions:

7.1.Mr.S.V.Jayaraman, Senior counsel appearing on behalf of the appellants would contend that the records with reference to the property stand in the name of the 1st defendant and that apart the daughters had been paid a sum of Rs.3,00,000/- each by the 3rd defendant. The learned senior counsel would argue that if a recital in Ex.A.1, namely the ownership of the land was held to be that of the deceased father then the later recital with reference to the superstructure being put up by the mother should also be accepted. Once that is accepted, the settlement deed created in favour of the 3rd defendant should also be accepted.

7.2.The defendant would therefore argue that if the plaintiff is unable to prove his case then he must be non suited. They would further fortify their arguments by submitting that the property tax receipts, electricity connection and the metro water and storage connection all stands in the name of the 1st defendant, mother. The learned senior counsel would further argue that since all the records stands in the name of the 1st defendant it must be presumed that she is the absolute owner of the property. The learned senior counsel

would further argue that the plaintiff was only in constructive possession of the property and not in his own right. The learned senior counsel would insist upon the recital in Ex.A.1 to show that the 1st defendant is the owner in respect of the suit schedule property.

7.3.Per contra, the plaintiff who had been impleaded as 1st respondent, argued the matter as a party in person. He would argue that the 1st defendant has very clearly given answers to the questions that have been put forth to the 1st defendant during the examination, namely question Nos.13, 8 and 7. He would further argue that adverse inference should be drawn for the non production of the agreement of sale which the 1st defendant claims is in her possession in answer to the question in the cross examination.

7.4.The plaintiff would further argue that neither he nor the 8th defendant had received any amounts of the money which is mentioned in the settlement deed. He would draw the attention of the Court to question Nos.35 and 36 and the answers therein given by D.W.1 and also the statement of the 1st defendant that she has no objection to the plaintiff being granted a 1/9th share in the suit property. He would further point out that in the Ex.A.1 there has been a categoric recital that the father is the absolute owner of the property and this document Ex.A.1 has been jointly signed by the mother namely the 1st defendant and her husband.

7.5.The plaintiff has further argued that despite coming forward with a case that the sale deed stood in the name of the 1st defendant and the 1st defendant having not denied that the document is in her possession, the failure to produce the same clearly creates a cloud and the Trial Court has rightly observed that the adverse inference has been drawn for its non production. He therefore submitted that the Judgement and Decree of the learned Trial Judge ought to be confirmed.

8.Points for consideration:

From the above submissions the following points for consideration arises in this first appeal:

a)Whether the suit property belongs to the 1st defendant or to her husband the deceased K.N.Ratnavelu?

b)Whether both parties have proved the title/ownership to the suit property?

c)Whether the settlement deed executed by the 1st defendant in favour of the 3rd defendant dated 12.02.2004 (Ex.A.2) is a valid document? and whether the 1st defendant was aware that she had executed a settlement deed?

d)Whether the plaintiff is entitled to the partition as claimed for ?

9. Discussion:

9.1. On a perusal of the pleadings, documents and the arguments of the counsel on either side, it is clear that the dispute in question relates to the facts as to who had purchased the suit property. Whether the suit property was purchased by late K.N. Ratnavelu or by his wife Meenakshiammal? The plaintiff had come forward with a case that the property was purchased by K.N. Ratnavelu from out of his own earnings, whereas the defendants would contend that the property has been purchased from out of the Shreedhana that the 1st defendant had received at the time of her marriage.

9.2. The documents under which the said property has been purchased has not been produced by either side. Despite the plaintiff issuing a notice to the defendants asking them to produce the document the same has not been complied with. This assumes significance since the 1st defendant as D.W.1 would categorically admit that the document in question is with her and therefore its non production has to be viewed seriously. The defendants have kept the best evidence from out of the consideration of the Court. Once the document under which the property has been purchased is not available before the Court, the Court has to then look into other evidence and the surrounding circumstances to draw its conclusion.

9.3. Ex.A.1 mortgage deed is a deed which has been jointly executed by the 1st defendant and her deceased husband K.N. Ratnavelu in favour of their daughter 2nd defendant. In the said deed it has been clearly stated that K.N. Ratnavelu is the absolute owner of the land which was being mortgaged and the 1st defendant is the owner of the superstructure. However the 2nd defendant who was the mortgagee has not entered the witness box or cross examined the plaintiff. Ex.A.1 is a registered document which has been acknowledged by the defendants and the 1st defendant is also a party to the said document. This document should be read along with evidence of D.W.1. The 1st defendant in answer to the question as to who had purchased the property, has clearly stated that it was her husband who had purchased and she has elaborated on that statement by stating that the money received as gift for her daughters function was used to purchase the suit property. This clearly proves that the contention of the defendants that the Shreedhana amount of the 1st defendant was used for the purchase is totally false.

9.4. The mother has clearly deposed that she did not have any inheritance from her parents and further that she did not have parents it was her brother who had taken care of her and had given her in marriage. Therefore on a conjoint reading of the evidence it can be safely presumed that the property had been

purchased only by the deceased K.N.Ratnavelu and not by the 1st defendant. Therefore the 1st and 2nd point for consideration has been answered in favour of the plaintiff.

9.5.The next points for consideration is whether the plaintiff is entitled to decree for partition? Whether the settlement deed executed by the 1st defendant in favour of the 3rd defendant is valid document and the 1st defendant was aware that she was executing a settlement deed? It is seen that the 1st defendant was not aware of the document that she had executed in favour of the 3rd defendant. In response to the query as to the nature of the document that she had executed in favour of the 3rd defendant she would contend that it was power of attorney that she had executed in favour of the 3rd defendant. She has further stated that the plaintiff is entitled to a 1/9th share in the property therefore it is clear that the 1st defendant had not executed Ex.A.2 knowing the nature of the document and therefore there is an absence of consensus ad item and the Trial Court has rightly held the settlement deed to be null and void. Once the settlement deed is held to be null and void then intestate succession sets in and each of the legal heirs are entitled to a 1/9th share. Considering the fact that the mother the 1st defendant is no more her share also devolves on all the legal heirs, she having died intestate. Therefore the share of the plaintiff and defendants increase to a 1/8th share. The points No.3 and 4 are also answered against the appellants and answered in favour of the plaintiff.

In the result the first appeal is dismissed and the Judgement and Decree passed by the learned VI Additional City Civil Judge, Chennai in O.S.No.4248 of 2004 is confirmed. There

Superintendent
kan

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

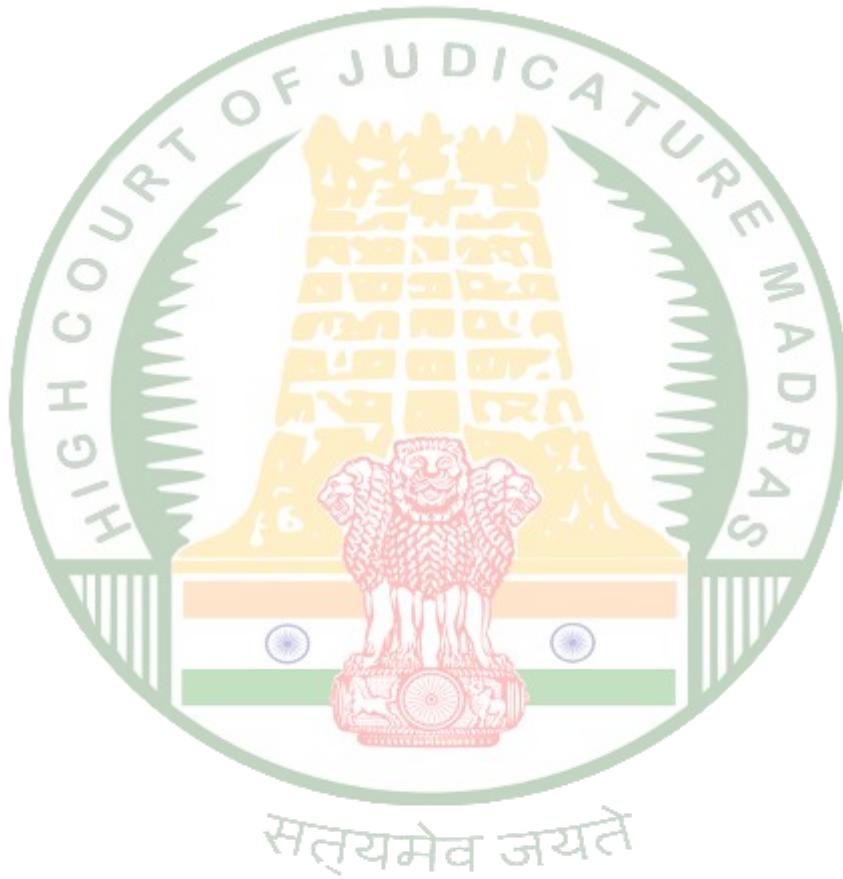
To,

The VI Additional Judge,
City Civil Court,
Chennai.

+lcc to Mr.T.Dhanasekaran, Advocate, SR.No.28983
+lcc to Mr.T.R.Daveson, Advocate, SR.No.28277

A.S.No.375 of 2008

Kak (16/07/2019)



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