IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.12.2019

Date of Verdict: 18.12.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1831 of 1998

1. Rahamath Bi(deceased)
2. Sheik Mohideen
3.Dilsath
4.Parvim Begam
5.Abbas Ali(Minor)
6.Sadiq Basha(Minor)
7.Ansari(Minor)
8.Niwas (Minor)
9.Burkat Nisha(Minor) ...Appellants

(Appellants 4 to 9 represented by their father and natural guardian Dheik Mohideen.
Appellants 4 to 9 brought on record as LR's of the deceased first appellant vide order of court dated 18.12.2018 made in CMP.No.1116 of 2011 in SA.No.1831 of 1998)

Vs.

1.Jamilabivi(deceased)
2.Abdul Rahim(deceased)
(R2 brought on record as LR of the deceased sole respondent vide order of court dated 27.03.2000 made in CMP.No.13961 of 1999
3.Saburabee
4.Sheik Sameed
5.Sheik Ameed
6.Parveen
7.Sarbudin
8.Yusuff
9.Vanitha
10.Rahamathulla
11.Akbar
12.Thajudeen
13.Basheer Ahmaed ...Respondents
(RR3 to 13 brought on record as LR's of the deceased R2 vide order of court dated 18.12.2018 made in CMP.No.1117 to 1119 of 2011 in SA.No.1831 of 1998)

Prayer :- This Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree passed by the Subordinate Judge at Villupuram made in A.S.No.52 of 1994 dated 06.12.1994 reversing the judgment and decree in O.S.No.708 of 1985 dated 25.10.1990 on the file of the District Munsiff Court, Kallakurichi.

For Appellants : Mr.N.Manokaran

For Respondents
For R3,5,7, 8 to 13 : No Appearance

: R1 and R2 - Died

: R4&R6-not ready in notice

JUDGMENT

This second appeal is directed as against the judgment and decree dated 06.12.1994, passed in A.S.No.52 of 1994 on the file of the Subordinate Judge, Villupuram, reversing the judgment and decree dated 25.10.1990 in O.S.No.708 of 1985 on the file of the District Munsiff Court, Kallakurichi.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. The case of the plaintiff in brief is as follows :-

3.1. The plaintiff filed the suit for declaration and permanent injunction. The suit property was purchased by the plaintiff from one, Duraisamy Mudaliar for valid consideration by the sale deed dated 21.05.1981. Originally, the said property was purchased on revenue auction by the vendor held by the Special Deputy Tahsildar, Kallakurichi on 15.10.1974 for the loan arrears due from the lawful owner one, Kamaludeen. The said sale was also confirmed by the Revenue Divisional Officer by an order dated 22.03.1975. The plaintiff's vendor also took possession of the suit property and he was in possession and enjoyment of the suit property. Thereafter the said property was purchased by the plaintiff on 21.05.1981. Since the purchase of the suit property, the plaintiff is in possession and enjoyment of the property. Patta was also issued in favour of the plaintiff. While being so, the first defendant issued notice on 15.01.1981 to the plaintiff and her vendor claiming the share in the suit property. Since the suit property has been auctioned for loan arrears due to the Government, who has got a first charge over the property, the first defendant is not entitled to claim any share in the property. Further submitted that the first defendant also admitted in her notice dated 15.01.1981 that the vendor of the plaintiff was in possession and enjoyment of the suit property. Therefore, the plaintiff filed a suit for declaration and permanent injunction.

4. The defendants resisted the plaintiff's case by filing written statement wherein contending that the plaintiff was never in possession and enjoyment of the suit property and she is not entitled for any relief sought for by her. The revenue auction allegedly held on 15.10.1974, is not valid one and is not binding on the defendants. No notice of auction was sent to the persons entitled for property. No gazette publication and no consideration of the defendants' title was made while auctioning the property. Further the officer who conducted auction was not competent and no due or proper confirmation was made to the auction sale. The property was sold for a ridiculously low price and with abundant irregularities and illegalities. Therefore, the vendor of the plaintiff did not derive any title therein. Further stating that the first defendant has given a petition to the District Revenue Officer on 21.01.1981 seeking to set aside the sale. Therefore the plaintiff is not a bonafide purchaser and as such she is not entitled for any relief in the suit. The suit property and other properties belong to the first defendant, having been conveyed to her under gift deed dated 31.07.1974 and it was duly registered., and the first defendant also duly accepted the gift as such she has become the absolute owner of the suit property. Therefore, the plaintiff is not entitled to seek any relief as prayed for and sought for dismissal of the suit.

5. In support of the plaintiff's case, P.W.1 and P.W.2 were examined and seven documents were marked as Ex.A.1 to Ex.A.7. On the side of the defendant D.W.1 and D.W.2 were examined and Ex.B.1 to Ex.B.6 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit. Aggrieved over the judgment and decree of the trial Court, the plaintiff preferred an appeal suit in A.S.No.52 of 1994 before the Subordinate Judge at Villupuram. The first appellate Court on appreciating the materials placed on records, allowed the appeal by reversing the judgement and decree passed by the trial Court. Challenging the same, the defendants have come forward with the present second appeal.

6. At the time of admission of the second appeal, the following substantial questions of law were framed :-

> a) In any event when the trial court has disposed of the suit solely on the basis of Section 52 A having been declared

as ultra vires and that when the appeal was heard the aforesaid provision was upheld, the lower appellate court ought to have remanded the subject matter for fresh trial in accordance with law in as much as the suit having been contested by the appellant on merits also?

b) In any event whether or not the lower appellate court is justified in upholding the title of the respondents' predecessor in title to the suit property, when especially the suit property had already been settled in favour of the appellants by way of gift deed dated 13.07.1974 long before the date of the alleged public auction?

c) In any event whether or not the alleged public auction, if any held on 15.10.1974 is void ab initio as the notice of the same have not been served on all the necessary parties?

7. Mr.N.Manokaran, the learned counsel appearing for the defendants submitted that under the gift deed dated 31.07.1974, the suit property along with the other properties was duly conveyed in favour of the first defendant and it was duly accepted by her. Under the Muslim Law, for the validity of the gift deed, the basic necessities are fulfilled and as such the gift deed has become valid one and accordingly she is entitled for suit schedule property. In fact, the payments for the loan of Kamaluddin had been duly paid and unfortunately the payments were not credited properly. Therefore, there is no question of estoppel on the part of the defendants when not questioning the sale under the Revenue Recovery Act. Before conducting auction sale, no notice of auction was served to the owners of the property and no publication was effected to that effect. Therefore, the entire sale itself is illegal and invalid in the eye of law. As such, the vendor of the plaintiff has no title over the property and the entire sale by the plaintiff is not valid one. Further the settlement deed executed in favour of the first defendant is much prior to the auction sale, namely on 31.07.1974 whereas the auction sale was held on 15.10.1974. When the trial court dismissed the suit on the basis of Section 52-A of the Revenue Recovery Act and declared as ultra vires, the first appellate court failed to consider the same and allowed the appeal. Further the possession of the suit schedule property was never handed over to the plaintiff since the defendants are in possession and enjoyment of the suit schedule property. Therefore, under Section 126 of Transfer of Property Act, the sale itself has become invalid and she is

not entitled for any relief sought for in the suit.

8.The learned counsel for the defendants has relied upon the following two judgments to substantiate his submissions:

(i) State of T.N. Vs. G.N.Venkataswamy and Others reported in (1994) 5 SCC 314

(ii) Hafeeza Bibi and Others Vs. Shaikh Farid (dead) By LR's and others reported in (2011) 5 SCC 654

9. Heard, the learned counsel appearing for the defendants. Earlier Mr.R.Mohan had appeared before this court on behalf of respondents 3, 5, 7, and 8 to 13. However, today he has not appeared before this Court.

10. The plaintiff purchased the suit property from her vendor by registered sale deed dated 21.05.1981 for valid sale consideration. Her vendor originally purchased the suit property in revenue auction held by the Special Deputy Tahsildar, Kallakurichi on 15.10.1974. The said property was auctioned for the loan arrears due from its lawful owner one, Mr.Kamaludeen. Thereafter the auction sale was duly confirmed by the Revenue Divisional Officer, Virudhachalam by an order dated 22.03.1975. In fact, on the date of sale itself, the possession of the property was taken by the vendor of the plaintiff. Since the date of purchase, the plaintiff is in possession and enjoyment of the suit property. In fact, the patta was also issued in her favour for the suit schedule property. While being so, the first defendant issued notice on 15.01.1981, claiming a share in the suit property, and it was suitably replied by the plaintiff denying the claim of the first defendant.

10.1. The trial court dismissed the suit only on the ground that the auction sale in respect of the loan borrowed by the said Kamaludeen for the agricultural purpose is not valid for the reason that under Section 52-A of Revenue Recovery Act, the auction sale could not been conducted since it is a loan borrowed for agricultural purpose, and it is to be dealt with like a land tax and cited the above judgments. Therefore, the auction purchase by the vendor of the plaintiff is invalid and as such the plaintiff has no title over the suit.

10.2.In this regard, the learned counsel for the defendants cited the judgment and fairly submitted that the said position was changed by subsequent judgment in the case of State of T.N. Vs. G.N.Venkataswamy and Others reported in (1994) 5 SCC 314, wherein the Hon'ble Supreme Court of India has held as follows:

> 15. The Collector exercises powers under the Act which is an Act of the State

Legislature. He is invested with the power to decide the controversy between the State and the defaulter. There is in existence a lis between the State and the defaulter. There is assertion and denial. The dispute involves the rights and obligations of the parties which are decided by the Collector. The Collector has the power to sell movable and immovable property of the defaulter. He can even arrest and detain the person up to a period of two years. All these powers of the Collector are the judicial powers of the State. The only conclusion which can be drawn is that the Collector under the Act is a revenue court. Once it is held, as we have, that the Collector is a revenue court then there is no difficulty in holding that Section 52-A of the Act was enacted by the Tamil Nadu Legislature under Entry 11-A, List III, Schedule 7, Constitution of India.

16. We may examine the question from another angle. Section 52-A of the Act specifically provides for the recovery of "all loans granted and all advances made to any person" by the Corporations covered under the Act. The proceedings initiated under the Act are only for recovery of loans granted to the respondents by various Corporations. Section 52-A of the Act, therefore, is a legislation on the subject "moneylending" and "moneylenders" under Entry 30 of the State List which is in the following terms: "Moneylending and moneylenders; relief of agricultural indebtedness."

17. Section 52-A of the Act is passed with the object of providing a speedier remedy to the State-owned Corporations to realise the loan advanced by them. While advancing loans the Corporations do not act as ordinary bankers with a view to earn interest. The loans are advanced as a financial assistance to establish an industry, develop agriculture or any other purpose which would advance the well being of the people. Ordinarily the amounts so advanced are repayable in easy instalments and carry comparatively lesser rate of interest as compared to the loans advanced by the banks. The loans are advanced out of the funds of the State which is a public money. Money has to be recovered expeditiously so that fresh advances

be made to others who have not yet received financial assistance from the State agencies. If the Corporations are left to a remedy of a suit the recovery is bound to be delayed considerably. It is with the object of avoiding the unusual delay which normally takes place in the civil courts the expeditious remedy by enacting Section 52-A has been provided. It is often seen that a person who has taken loan from a Corporation tries to delay the payment by taking shelter behind cumbersome procedure of the civil courts This Court in U.P. Financial Corpn. v. Gem Cap (India) Pvt. Ltd.5 observed as under: (SCC p. 306, para 10) "The above narration of facts shows that the respondents have no intention of repaying any part of the debt. They are merely putting forward one or other ploy to keep the Corporation at bay. Approaching the courts through successive writ petitions is but a part of this game. Another circumstance. These Corporations are not sitting on King Solomon's mines. They too borrow monies from Government or other Financial Corporations. They too have to pay interest thereon. The fairness required of it must be tempered nay, determined, in the light of all these circumstances."

18. In S.P. Chengalvaraya Naidu v. Jagannath6, this Court observed as under: (SCC p. 5, para 5) "We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal gains indefinitely."

19. There is no doubt that Section 52-A of the Act has been brought on the statute book with a view to expedite recovery of the loans advanced by the Corporations. The legislation is directly related to Entry 30 List 11. We, therefore, hold that Section 52-A of the Act is constitutionally valid and the Tamil Nadu Legislature had legislative competence to enact the same. We, therefore, allow the appeals, set aside the impugned judgment of the High Court and dismiss the writ petitions filed by the respondents before the High Court. The appellant shall be entitled to

> costs which we quantify as Rs 5000 to be paid by each of the respondent-petitioners in the writ petitions before the High Court.

And he submitted that the Hon'ble Supreme Court of India has held that Section 52-A of the Revenue Recovery Act has been brought on statute book only to expedite the recovery loans advanced by the Corporation. Therefore, Section 52-A of the Act is constitutionally valid and the Tamilnadu Legislature had legislative competence to enact the same. Therefore, the auction sale is valid one.

10.3. The learned counsel for the defendants also cited the judgment of the Hon'ble Supreme Court of India, in respect of execution of gift deed in her favour, in the case of Hafeeza Bibi and Others Vs. Shaikh Farid (dead) By LR's and others reported in (2011) 5 SCC 654, wherein the Hon'ble Supreme Court of India has held as follows:

> "24. The position is well settled, which has been stated and restated time and again, that the three essentials of a gift under Mohammadan Law are; (i) declaration of the gift by the donor; (2) acceptance of the gift by the donee and (3) delivery of possession. Though, the rules of Mohammadan Law do not make writing essential to the validity of a gift; an oral gift fulfilling all the three essentials make the gift complete and irrevocable. However, the donor may record the transaction of gift in writing."

10.4 There is no dispute about the gift deed executed in favour of the defendant by her father. But she failed to challenge the auction purchase by the vendor of the plaintiff as such the above judgment is not helpful to the case of the defendants.

10.5. As such, since the defendants failed to challenge the auction sale when the first defendant allegedly has share over the suit property by virtue of the gift deed dated 31.07.1974, and the notice issued by the first defendant dated 15.01.1981 marked as Ex.B.1, Ex.B.2, Ex.B.4 and Ex.B.5 show that the plaintiff is in possession and enjoyment of the suit property. It is clear that the defendants were never in possession and enjoyment of the suit property. Therefore, the first appellate court rightly reversed the findings of the trial court and allowed the suit filed by the plaintiff. As such this Court finds no valid reasons to interfere with the reasonings and findings rendered by the first appellate court for upholding the case of the plaintiff.

11.Be that as it may, this Court is of the considered view that no substantial question of law is involved in this appeal. In fine, the second appeal is dismissed with no costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Villupuram

2.The District Munsiff,
Kallakurichi.

Copy to:
The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.N.Manokaran, Advocate SR.105514

S.A.No.1831 of 1998

EV(CO)
CB(17/09/2020)