

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 08.10.2018

Delivered on: 25.01.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.1539 of 2000

Minor.Murugavel

rep. By mother Anjalai Ammal

... Appellant/plaintiff

Vs.

Ramar Padayachi

... Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the Sub-Court, Panruti, dated 24.09.1999 in A.S.No.97 of 1996 confirming the judgment and decree of the District Munsif Court, Panruti dated 31.08.1995 in O.S.No.379 of 1991.

For Appellant : Mr.R. Sunil Kumar

For Respondent : M/s.R. Meenal

JUDGMENT

The second appeal has been filed by the plaintiff against the judgment and decree passed by the Sub-Judge, Panruti, in A.S.No.97 of 1996 dated 24.09.1999 confirming the judgment and decree passed by the District Munsif, Panruti in O.S.379 of 1991 dated 31.08.1995.

2. The appellant herein had filed a suit in O.S.No.379 of 1991 on the file of the District Munsif, Panruti, to declare that he is the absolute owner of the suit property and to direct the defendant to surrender possession of the suit property and for future mesne profits. The learned District Munsif by the judgment dated 31.08.1995 had dismissed the said suit without costs. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No.97 of 1996 on the file of the Sub-Judge, Panruti. He also filed two applications; one is in I.A.No.20 of 1997 to receive the additional grounds of appeal and another application in I.A.No.116 of 1999 seeking permission to adduce additional oral evidence. The learned Sub-Judge, Panruti, by the judgment and decree and orders dated 24.09.1999 had dismissed the said appeal with costs and also dismissed the I.A.Nos.90 of 1997 and 116 of 1999 with costs. Aggrieved by the same, the

plaintiff had filed the present second appeal. For the sake of convenience, the parties are referred to as described before the trial court.

3. The averments made in the plaint are, in brief, as follows:

The suit property is admeasuring 60 cents which is situated in the southern portion of 1.60 acres in S.No.39/3 which has a total extent of 5.71 acres. The plaintiff's father Palani Padayachi was entitled to 1.60 acres and he inherited the said property and other properties from his father. The plaintiff is the only son of Palani Padayachi. The said Palani Padayachi, out of love and affection, settled the entire 1.60 acres in favour of the plaintiff under a registered settlement deed dated 11.09.1985. The said gift settlement was accepted by the plaintiff's next friend-cum-mother Anjalai Ammal and took possession of the same. She has been in possession on behalf of the minor plaintiff. The plaintiff's father Palani Padayachi has not been of average intelligence and he has been spending all his time away from his house either living with his sister or goes to a distant places in the pretext of eking out his livelihood. Taking advantage of his mental disability, his sister prevailed upon him to sell their properties and they have appropriated the entire amount. With the result, the plaintiff was left only with the property mentioned in the settlement deed. The defendant is the native of the same village and he was fully aware of the settlement deed executed by the said Palani Padayachi in favour of the plaintiff. But he obtained sale deed for 60 cents by prevailing upon the said Palani Padayachi on 05.05.1987. The said sale deed will not bind upon the plaintiff. The said Palani Padayachi has no title to the suit property after execution of the settlement deed. Hence, the plaintiff, being the minor, has filed the above suit through his next friend/mother for declaration and permanent injunction to restrain the defendant from interfering with his peaceful possession and enjoyment of the suit property. During pendency of the suit, the defendant trespassed into the suit property and unlawfully occupied the same and hence, the plaintiff has amended the plaint for delivery of possession.

4. The averments made in written statement, are in brief, as follows:

The suit property covered under the settlement deed dated 11.09.1985 is a joint family property and hence, the said settlement deed is void ab initio. The defendant has purchased the suit property from Palani Padayachi who has sold the same for himself and on behalf of his minor son viz., the plaintiff herein and also from the sisters under a registered sale deed

dated 05.05.1997 for a valid consideration of Rs.10,500/-. The sale deed was executed by Palani Padayachi for family necessity and will bind the plaintiff. The defendant is in possession of the suit property from the date of sale. The plaintiff has filed the suit with an ulterior motive to prevent the defendant to enjoy the property which was purchased by him and therefore, he prayed to dismiss the suit.

5. Based on the aforesaid pleadings, the learned District Munsif Panruti, has framed necessary issues and tried the suit. During trial on the side of the plaintiff, the plaintiff's mother Tmt. Anjalai was examined as PW1 and one more witness was examined as PW2. The plaintiff has marked Ex.A1 to A5 as exhibits on his side. On behalf of the defendant, the defendant examined himself as DW1 and also marked Ex.B1 to Ex.B5 as exhibits.

6. Learned District Munsif, Panruti, after considering the materials placed before him found that the plaintiff failed to establish that Ex.A1 settlement deed was acted upon. He further found that the plaintiff failed to take steps to examine his father Palani Padayachi as witness. He also found that the plaintiff's father Palani Padayachi and his sisters after receiving sale consideration had executed Ex.B1 sale deed in favour of the defendant and delivered possession of the suit property and from that date onwards, the defendant is in possession and enjoyment of the suit property. Accordingly, he dismissed the suit without costs. Aggrieved by the same, the plaintiff has filed an appeal in A.S.No.97 of 1996 on the file of the Sub-Judge, Panruti. He also filed an application in I.A.No.20 of 1997 to receive additional grounds of appeal and also filed another application in I.A.No.116 of 1999 seeking permission of the court to adduce additional oral evidence. The learned Sub-Judge by the judgment and decree and order dated 24.09.1999 has dismissed the said second appeal and I.A.Nos.20 of 1997 and 116 of 1999 with costs by holding that the plaintiff being eo-nomine a party to the sale deed dated 05.05.1987, he ought to have filed a suit for cancelling the said sale deed and instead of seeking cancellation of the said sale deed, the filing of the suit for declaration of title alone, is not maintainable. Feeling aggrieved, the plaintiff has filed the present second appeal.

7. This court at the time of admitting the second appeal has formulated the following substantial questions of law:

“(a) Whether the findings of the courts below that the settlement deed executed by the father was invalid is untenable on account of the fact that the father being the only son to his father was the

absolute owner of the property to vest full title to the plaintiff by the settlement deed?

(b) Whether the courts below did not err in failing to note that even otherwise the succession of the property under Hindu Succession Act impressed the character of property as separate property and the plaintiff's father was entitled to make a valid settlement in favour of the plaintiff?

(c) Whether the institution of suit even during his minority did not itself constitute assailing the sale effected by the father and in such an eventuality an exercise prayer for setting aside the sale was non consequential?

(d) Whether the courts below did not err in failing to advert to the defendant's admission that he was not making any claim to the plaintiff property?"

8. Heard Mr.R.Sunil Kumar, learned counsel for the appellant and Ms.R.Meenal, learned counsel for the respondent.

9. Leaned counsel for the appellant/plaintiff has submitted that the courts below failed to consider that the plaintiff's father Palani Padayachi was the only son to his father Sathasiva Padayachi and after the death of the said Sathasiva Padayachi, his only son Palani Padayachi became the absolute owner of the suit property and as such, he is entitled to execute Ex.A1 settlement deed dated 11.09.1985 in favour of the plaintiff. He further submitted that after executing Ex.A1 settlement deed in favour of the minor plaintiff by showing his mother as guardian, the said Palani Padayachi had no right to sell the suit property in favour of the defendant for himself and also representing the minor plaintiff as guardian. He further submitted that the courts below failed to consider that on the date of execution of Ex.A1 settlement deed itself, possession of the suit property and other properties were given to the plaintiff and thereafter, the said Palani Padayachi could not have delivered possession to the defendant under Ex.A3 sale deed. He further submitted that since the said Palani Padayachi had lost the right of acting as guardian, the plaintiff need not filed a suit for cancelling the Ex.A3 sale deed. He further submitted that the courts below failed to consider that only during the pendency of the suit, the defendant had forcibly entered into the suit property and took possession of the same and therefore, he prayed to allow the second appeal and set aside the judgments and decrees passed by the courts below and decree the suit as prayed for.

10. Per contra, the learned counsel for the respondent/defendant has submitted that in Ex.A1 settlement deed itself, the plaintiff's father Palani Padayachi had clearly admitted that the properties originally belonged to his father Sathasiva Padayachi and only through him, he acquired the property and that being so, the said Palani Padayachi and his sisters got equal share in the said properties. She further submitted that since the sisters of Palani Padayachi also got shares in the said properties, the said Palani Padayachi cannot execute Ex.A1 settlement deed in favour of his minor son viz., plaintiff. She further submitted that since the plaintiff's father Palani Padayachi had executed the sale deed in favour of the defendant for himself and also on behalf of the minor plaintiff, without impleading the said Palani Padayachi, the suit filed by the plaintiff is not maintainable. She further submitted that the plaintiff failed to establish that his father Palani Padayachi is not living with him and he acted against his interest. She further submitted that in Ex.A3 sale deed, it is clearly stated that the possession of the suit property has been handed over to the defendant on the date of sale itself and as such, it has to be presumed that he has taken possession of the suit property on the date of Ex.A3 sale deed itself and the plaintiff failed to prove that only during pendency of the suit, he has taken possession of the suit property. She further submitted that in Ex.A3 sale deed, it is clearly stated that the said Palani Padayachi has represented as a guardian for his minor son viz., the plaintiff herein and it shows that the plaintiff is a eo-nomine a party to the said document and that being so, he should have filed a suit for cancellation of the said document, but he has not filed any suit for cancellation of the said sale deed and therefore the suit is not maintainable. In support of the said contentions, she relied upon the decision in Sankaranarayana Pillai and another Vs. Kandasamia Pillai AIR 1956 Madras 670.

11. The plaintiff is claiming right over the suit property through Ex.A1 settlement deed executed by his father Palani Padayachi dated 11.09.1985. In the said settlement deed, the said Palani Padayachi had stated that the properties originally, belonged to his father and after his death, he being a only son, had inherited the property as absolute owner. So, it is clear that the properties covered under Ex.A1 originally belonged to father of Palani Padayachi and as such, after the death of his father, the said Palani Padayachi and his sisters are equally entitled to get shares in the said properties. Hence, the said Palani Padayachi cannot execute A1 settlement deed claiming that he is the absolute owner of the properties.

12. It is to be pointed out that in the plaint, it is stated

that the Palani Padayachi has not been of average intelligence and he has been spending all his time away from the house either living with his sisters or goes to distant places in the pretext of eking out his livelihood. It is also stated that taking advantage of his mental disability, his sisters prevailed upon him to sell their properties and they have appropriated the entire amount. It is also stated that under the belief that 60 cents is still available, the defendant was able to prevail upon Palani Padayachi to take a sale deed from him as though Palani Padayachi is entitled to the same. In such a case, the plaintiff should have impleaded his father Palani Padayachi and sisters of his father as defendants in the suit. If they were added as parties, they would have stated before the court that how they are entitled to execute Ex.A3 sale deed in favour of the defendant. As already pointed out that the properties originally belonged to the father of Palani Padayachi, after his death, the said Palani Padayachi and his sisters are entitled to get share in the said properties and therefore, they are entitled to execute the Ex.A3 sale deed in favour of the defendant.

13. It is to be pointed out that in Ex.A3 sale deed itself, it is clearly stated that the possession of the suit property had been handed over to the defendant on the date of execution of the said document and hence it has to be presumed that the defendant took possession of the suit property only by virtue of Ex.A3 sale deed. The plaintiff has failed to establish that only during pendency of the suit, the defendant forcibly entered into the suit property and took possession.

14. In Sankaranarayana Pillai and another Vs. Kandasamia Pillai, (supra), a full bench of this court in paragraph No.23 has held as follows:

"Our answer to the first question is that if the minor is eo nomine a party to a sale-deed or other document of alienations, he must sue for the cancellation of the document under Section 7(iv-A) of the Court-fees Act and it is not enough if he applies for possession under Section 7(v) of the Act; and to the second question our answer is that there can be no distinction whether the father as guardian of the minor and not as the manager of the joint family executes the deed. Even in that case also the document has to be set aside. "

15. From the aforesaid decision, it is clear that if the minor is eo- nomine a party to the sale deed or other document of alienation, he must sue for the cancellation of the said document. It is also clear that there can be no distinction whether the father is a guardian of the minor and not as a

manager of the joint family executes the deed and even in that case also, the document has to be set aside. In this case admittedly in Ex.A3 sale deed, the plaintiff is eo nomine a party, but he has not asked any relief to set aside the said sale deed. So, in view of the aforesaid decision, without setting aside the said sale deed, the plaintiff cannot seek any relief.

16. It is also to be pointed out that if really Ex.A1 settlement deed was acted upon, by virtue of Ex.A3 sale deed, the defendant could not have entered into possession of the suit property. The evidence on record would show that the defendant is in possession of the suit property. Therefore, it has to be presumed that Ex.A1 settlement deed was not acted upon. Taking into consideration of all the aforesaid facts, the trial court has rightly dismissed the plaintiff's suit. The first appellate court also confirmed the findings of the trial court. This court is of the view that in the said concurrent factual findings, this court cannot interfere and therefore, the second appeal is liable to be dismissed. Accordingly, the substantial questions of law are answered against the appellant/plaintiff.

17. In the result, the second appeal is dismissed. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

gv

To

1.The Sub-Court,
Panruti.

2.The District Munsif Court,
Panruti

+1 cc to M/s.R.Subramanian, Advocate, S.R.No.6346

+1 cc to M/s.R.Sunilkumar, Advocate, S.R.No.6991

S.A.No.1539 of 2000

RR(CO)
SSM(04/07/2019)