

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.09.2019

PRONOUNCED ON : 15.10.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.Nos.2004 and 2005 of 2002

S.A.No.2004 of 2002

Jayaraman ... Appellant/Plaintiff

Vs.

1. Pushpa
2. Jayanthimala
3. Prabhavathi
4. Chitra
5. Geetha (minor)
6. Ilayarani (minor)
7. Sakthi(minor)

... Respondents/LRs of
the 1st Respondent

(Minors 5 to 7 are rep
by their next friend and
guardian mother 1st respondent)
SA.No.2005 of 2002

Jayaraman ... Appellant/Plaintiff

Vs.

Pitchaikaran

... Respondent/2nd Defendant

PRAYER in S.A.No.2004 of 2002 : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree of the Subordinate Judge's Court at Kallakurichi dated 31.01.2002 in A.S.No.410 of 1996 reversing the judgment and decree of the Principal District Munsif Court, Kallakurichi dated 30.09.1996 in O.S.No.970 of 1993.

PRAYER in S.A.No.2005 of 2002 : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree of the Subordinate Judge's Court at Kallakurichi dated 31.01.2002 in A.S.No.424 of 1996 reversing the judgment and decree of the Principal District Munsif Court, Kallakurichi dated 30.09.1996 in O.S.No.970 of 1993.

For Appellants : M/s.T.R.Gayathri
for M/s.Sarvabhauman Associates
(in both appeals)

For Respondents : M/s.N.Suresh
for R1, R3, R4, R5, R6 and R7
M/s.Subramaniam Balaji
for R2 (in SA.No.2004 of 2002)

: Respondent set ex-parte
(in SA.No.2005 of 2002)

COMMON JUDGMENT

S.A.No.2004 of 2002 has been filed by the plaintiff against the judgment and decree passed in A.S.No.410 of 1996 on the file of the Sub-Judge, Kallakurichi dated 31.01.2002 reversing the judgment and decree passed by the Principal District Munsif, Kallakurichi in O.S.No.970 of 1993 dated 30.09.1996.

2. S.A.No.2005 of 2002 has been filed by the plaintiff against the judgment and decree passed by the Sub-Judge, Kallakurichi in A.S.No.424 of 1996 dated 31.01.2002 reversing the judgment and decree passed by the Principal District Munsif, Kallakurichi in O. S.No.970 of 1993 dated 30.09.1996.

3. The appellant herein had filed a suit in O.S.No.970 of 1993 on the file of the Principal District Munsif, Kallakurichi, for the relief of declaration that the suit properties are the joint family properties of the plaintiff and for recovery of possession. The learned Principal District Munsif, Kallakurichi by the judgment dated 30.09.1996 had decreed the suit as prayed for with costs and directed the defendants to deliver possession of the suit properties within two months. Aggrieved by the same, the first defendant has filed an appeal in A.S.No.410 of 1996 and the second defendant had filed an appeal in A.S.No.424 of 1996 on the file of the Sub-Judge, Kallakurichi. The learned Sub-Judge, Kallakurichi by the common judgment dated 31.01.2002 had allowed both the appeals without costs and set aside the judgment and decree passed by the trial Court and dismissed the suit. Feeling aggrieved, the plaintiff has filed these second appeals.

4. For the sake of convenience, the parties are referred to as described before the trial Court.

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

(a) The plaintiff is the eldest son of Thoppai alias Thonthali of Sankapuram Village, Kallakurichi Taluk. The plaintiff has got three other brothers viz., Ashokan, Diravidamani and Paramasivam. The plaintiff, his father Thoppai alias Thonthali and his brothers constituted a Hindu undivided joint family. Suit properties are the ancestral joint family properties of the plaintiff's family having been got by the plaintiff's grand father Ayyankutti in a partition that took place between him and his brother Karuppan and Periyasami. Thus, the plaintiff's grand father Ayyankutti was owner of the suit properties and was in possession and enjoyment of the same till his death. Thereafter, the plaintiff's father Thoppai alias Thonthali had become entitled to the suit properties and was in possession and enjoyment of the same. The family of the plaintiff had been affluent and there was no need or necessity for effecting any alienation of the joint family properties. The plaintiff had also gone to Bombay and had made earnings to augment the income of the family. The family had never been in need of any money at any point of time and there has always been surplus income in the family. However, it appears that the plaintiff's father had unnecessarily and recklessly conducted himself in the conduct of the affairs of the family and the management thereof and appeared to have alienated the suit properties to the defendants in the year 1988 when the plaintiff was away at Bombay.

(b) The alienation made by the plaintiff's father in favour of the defendants are not valid and will not bind on the plaintiff or other members of the family. In the said circumstances, the plaintiff as the eldest male son is entitled to sue for recovery of the properties of the family on behalf of all the members of the family under Hindu Law. The possession of the defendants of the suit properties is invalid and alienation made by the plaintiff's father is illegal and unjust. Hence, the plaintiff demanded the defendants to deliver possession of the suit properties but they evaded the same and hence, the plaintiff was constrained to file the suit for declaration and for recovery of possession of the suit properties.

6. The averments made in the written statement filed by the defendants 1 and 2 are, in brief, as follows:

(a) The allegations that the plaintiff's family had been affluent and there was no need or necessity to alienate the joint family properties are all false. In the year 1988, the plaintiff's family was having only the suit properties and no other properties. Suit item 1 is a punja land measuring 0.84 cents without any irrigation facility. Item No.2 is only a

house site. As such there was practically no income for the family from the suit properties. For sending the plaintiff to foreign country plaintiff's father Thoppai had incurred debts to Rangasamy and Kulandai Pillai and discharged the said debts. The plaintiff's father had sold Item No.2 of the properties to the first defendant for valuable consideration of Rs.8,830/- under a registered sale deed dated 20.06.1988. Since the said property was sold for discharging the antecedent debts, the said sale deed will bind upon the plaintiff.

(b) Further, the plaintiff's father Thoppai had borrowed a sum of Rs.4,200/- from the second defendant for family expenses and for going to Bombay in the year 1986. To discharge that debt, the plaintiff's father had sold first item to the second defendant under the registered sale deed dated 23.06.1988. So, the said sale deed also will bind upon the plaintiff. Since, the value of the land has increased, the plaintiff has filed the above suit to extract money from the defendants. The suit as framed is not maintainable. The suit is bad for non-joinder of necessary parties namely plaintiff's brother and father. Therefore, the defendants prayed to dismiss the suit.

7. Based on the aforesaid pleadings, the learned Principal District Munsif, Kallakurichi had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff's wife was examined as P.W.1 and one more witness was examined as P.W.2. The plaintiff had marked one document as Ex.A.1. On the side of the defendants, the defendants 1 and 2 examined themselves as DWs 1 and 2 and they also examined two more witnesses as DW3 and DW4. They have marked Exs.B.1 and B.2 as exhibits.

8. The learned Principal District Munsif, Kallakurichi, after considering the materials placed before him found that the suit properties are the ancestral properties in which, the plaintiff has also got a share. He further found that the evidence on record would show that the plaintiff's family had affluent income and there was no necessity for selling the suit properties. He further found that the father had no right to execute the sale deed on behalf of the entire family members. Accordingly, he decreed the suit as prayed for and directed the defendants to deliver possession of the suit properties to the plaintiff within two months. Aggrieved by the same, the first defendant had filed an appeal in A.S.No.410 of 1996 and the second defendant had filed an appeal in A.S.No.424 of 1996 on the file of the Sub-Judge, Kallakurichi. The learned Sub-Judge, Kallakurichi, by the common judgment dated 31.01.2002 had allowed the said appeals and set aside the judgment and decree passed by the trial Court and dismissed the suit. Feeling aggrieved, the plaintiff has filed the present Second Appeals.

9. This Court, at the time of admitting the second appeals has formulated the following substantial questions of law in both the Second Appeals:-

"1. Whether the lower Appellate Court is correct in law in holding that the appellant who is a coparcener is not entitled to recover possession of the suit properties from the respondents who are the alienees under a void document?

2. Whether the lower Appellate Court is justified in law in holding that the suit is bad for non-joinder of the brothers and father of the appellant?

3. Whether the lower Appellate Court is correct in law in upholding Exs.B1 and B2 sale deeds as binding upon the appellants?

4. Whether the lower Appellate Court is correct in law in denying the relief of possession to the appellant?"

10. Heard, Mrs.T.R.Gayathri for M/s. Sarbhauman Associates the learned counsel for the appellants, Mr.N.Suresh, the learned counsel for the respondents 1, 3 to 7 and Mr.Subramaniam Balaji, the learned counsel for the second respondent in S.A.No.2004 of 2002.

11. Substantial Questions of law in both S.As.:

The learned counsel for the appellant has submitted that the first Appellate Court erred in reversing the well considered judgment and decree of the trial Court. She further submitted that admittedly the suit properties are the ancestral properties and that being so, the plaintiff is also having a share in the suit properties but without his signature, his father had executed Exs.B1 and B2 sale deeds in favour of the defendants 1 and 2 and as such, the said sale deeds are invalid documents. She further submitted that the oral evidence of PW1 and PW2 would clearly establish that the plaintiff's family had sufficient income and there was no necessity to sell the suit properties. She further submitted that the oral evidence of PW1 and PW2 also would show that the plaintiff's father acted against the interest of the minors and hence, the sale deeds executed by him viz., Exs.B1 and B2 will not bind upon the

plaintiff and his brothers, the possession of the defendants is illegal and they are bound to deliver possession to the plaintiff. Therefore, she prayed to allow the Second Appeals and set aside the judgment and decree passed by the first Appellate Court and restore the judgment and decree passed by the trial Court.

12. Per contra, the learned counsel for the respondents has submitted that when the plaintiff made allegation against his father, he should have impleaded his father as a defendant, but he has not impleaded his father as defendant. He further submitted that the plaintiff's brothers were minors at the time of executing Exs.B1 and B2 sale deeds and they have been shown as eo nominee parties and they were represented by their natural guardian/father and in such a case, if the minors want to set aside the sale deeds, they should have filed a suit to set aside the said deeds, but they have not filed any suit challenging the validity of Exs.B1 and B2. He further submitted that the plaintiff cannot file a suit on behalf of his brothers.

13. He further submitted that since the plaintiff's brothers were eo nominee parties in the sale deeds, they also should have been added as parties. He further submitted that in the sale deeds it is clearly mentioned that the suit properties were sold to discharge the antecedent debts and therefore, the plaintiff cannot question the said sale deeds. He further submitted that the plaintiff did not enter into the witness box and hence, an adverse inference has to be drawn against him. He further submitted that the trial Court without taking into consideration of the aforesaid facts had mechanically decreed the suit but, the first Appellate Court after taking into consideration of the aforesaid facts and evidence in a proper perspective had rightly allowed the appeals filed by the defendants and set aside the judgment and decree passed by the trial Court and in the said factual findings, this Court cannot interfere and therefore, he prayed to dismiss the Second Appeals.

14. In Exs.B1 and B2 it is stated that the suit properties are ancestral properties. As such, the plaintiff is also entitled to a share in the suit properties. But, in Exs.B1 and B2 plaintiff was not a party. Further, though the plaintiff's father had executed the said sale deeds in favour of the defendants for himself and on behalf of his minor sons, he had not stated that he sold the properties in the capacity of manager of the joint family. Therefore, the aforesaid sale deeds will not bind upon the plaintiff. But admittedly, in pursuance to Exs.B1 and B2, the defendants took possession of the suit properties and they are in possession and enjoyment of

the suit properties. In such a case, the plaintiff should have filed a suit for partition of his share. Instead of that he cannot file this kind of suit on behalf of all the family members for declaration that the suit properties are their joint family properties and for recovery of possession.

15. It is also to be pointed that eventhough the plaintiff has stated in his plaint that there was no necessity for his father to sell the suit properties and his father had unnecessarily and recklessly conducted himself in the conduct of the affairs of the family and sold the suit properties to the defendants, he has not impleaded his father as one of the defendants. If his father had been impleaded as a party, he would have given explanations as to under what circumstances, he sold the properties. Further, the plaintiff's brothers are also not added as parties. The plaintiff's brothers have not filed any suit challenging Exs.B1 and B2.

16. It is also to be pointed out that eventhough the plaintiff has pleaded in his plaint i.e., the family had been affluent and there was no need or necessity for effecting any alienation of the joint family properties, to substantiate the said plea, he has not examined himself as witness and subjected himself for cross examination. Therefore, an adverse inference has to be drawn against him.

17. The trial Court without taking into consideration of the aforesaid facts had mechanically decreed the suit but, the first Appellate Court had rightly reversed the judgment and decree passed by the trial Court and dismissed the suit. In the said factual findings, this Court cannot interfere. Accordingly, the substantial questions of law are answered against the appellant/plaintiff.

18. In the result, both the Second Appeals are dismissed. The judgments and decrees passed by the first Appellate Court are confirmed. Considering the facts and circumstances of the case, the parties are directed to bear their costs. It is open to the plaintiff to file a suit for partition, if so, advised.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

dna
To

- 1.The Subordinate Judge, Subordinate Court,Kallakurichi
- 2.The Principal District Munsif Court,
Kallakurichi.

Copy to:

The Section Officer, VR Section, High Court,Madras.

+1cc to M/s.Sarvabhauman Associates, Advocate SR.No. 86287

+1cc to Mr.N.Suresh,Advocate SR.No. 86364

S.A.Nos. 2004 and 2005 of 2002

A.SK(22/09/2020)



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