

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.10.2019
CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A. No.806 of 2008

1. Kogila
2. Munusamy
3. Sekar

... Appellants

Vs

1. Murugan
2. Natarajan

... Respondents

Second Appeal filed under Section 100 of the Code of Civil Procedure as against the Judgment and decree of the learned Additional District Judge (Fast Track Court No.4, Bhavani) Erode District in A.S. No.74 of 2006, dated 19.01.2007 confirming the Judgment and Decree of the Principal District Munsif of Bhavani in O.S. No.562 of 2004, dated 01.11.2004.

For Appellant :Ms.Prithivi
for Mr.Kaithaimalai Kumaran

For Respondents :Mr.T.Murugamanickam for R1
R2- Given up

JUDGMENT

This Second Appeal has been filed challenging the concurrent findings of the Courts below :-

2. The appellants are the defendants 2 to 4, the first respondent is the plaintiff and the second respondent is the first defendant in the suit O.S. No.562 of 2004 on the file of the Principal District Munsif Court, Bhavani, Erode District.

3. This Court issued notice to the respondents in this Second Appeal and after receipt of notice, they are now represented by a learned counsel and the Second Appeal is taken up for final disposal.

4. The appellants have raised the following substantial questions of law :-

a. Are the courts below justified in holding that purchase under Ex.A-1 sale was made by Palanisamy, father of plaintiff overlooking that D.W.1, grand father of Plaintiff had deposed that the sale consideration for Ex.A-1 went out of joint family funds and father of plaintiff, Palanisamy did not enter the witness box to deny the same?

b. When the sale under Ex.A-2 was for the benefit of the minor, can he avoid the same without recourse to Section 35 and Section 41 of Transfer of property Act.

5. For the purpose of convenience, the parties herein are referred to as per the ranking in the Trial Court.

6. The plaintiff filed a suit against the defendants for partition of plaintiff's 1/3rd share in the suit schedule property and for separate possession. According to the plaintiff, he is the absolute owner of the 1/3rd undivided share in the suit schedule property. By virtue of the sale deed, dated 11.12.1991 executed in favour of 1) plaintiff, 2) Natarajan, first defendant and 3) Arathanari. It is the case of the plaintiff that the suit schedule property was purchased from the income derived from ancestral properties. It is further the case of the plaintiff that the 2nd to 4th defendants are the legal heirs of Arathanari, who died after the purchase of the suit schedule property and they are entitled to 1/3rd share in the suit schedule property along with the plaintiff and the 1st defendant in the suit.

7. It is the case of the plaintiff that he was a Minor, when the suit schedule property was purchased through sale deed dated 11.12.1991. It is his case that the first defendant has acted illegally on behalf of the plaintiff and sold the plaintiff's 1/3rd share in the suit schedule property to the 3rd and 4th defendants by a sale deed, dated 20.10.1997. The plaintiff has therefore filed the suit for partition seeking 1/3rd share in the suit schedule property and has also sought for separate possession.

8. The 3rd defendant has filed his written statement, which has been adopted by the second and fourth defendants. As per the written statement, Palanisamy, father of plaintiff and the first defendant was a Vagabond and therefore, Sembagounder, the grandfather of the plaintiff purchased the suit property in favour of 1) plaintiff, Minor represented by his brother Natarajan 2) Natarajan and 3) Arathanari, Sembagounder's another son. According to the defendants even though shares were not mentioned, it was purchased by Sembagounder with the intention, the plaintiff and the first defendant would jointly be entitled for half share and Arathanari will be entitled for other half share. It is the case of the 2 to 4th defendants that the suit schedule property was purchased from joint family income and it was not obtained from self acquired income. It is also their case that the sale deed, dated 20.10.1997 was executed for the welfare of the plaintiff and therefore, the plaintiff is not entitled for any share in the suit schedule property.

9. The Trial Court after considering the evidence and material available on record came to the conclusion that the plaintiff is having 1/3rd share in the suit schedule property and held that the sale deed dated 20.10.1997 executed by the first defendant in favour of the 3rd and 4th defendants is not valid, as Court permission was not obtained and it was not executed by the Natural Guardian of the plaintiff. The lower Appellate Court confirmed the findings of the Trial Court and dismissed the appeal in A.S. No.74 of 2006. Aggrieved by the same, this Second Appeal has been filed by the defendants 2 to 4 in the suit.

10. Heard Ms.Prithvi, learned counsel for the Appellant and Mr.T.Murugamaniakkam, learned counsel for the 1st respondent.

11. The Trial Court while dismissing the suit has taken into account the admission by D.W.1(Sembagounder), the plaintiff's grandfather that he and Sellappan, his other Son do not have any right in the suit schedule properties. None of the defendants have also been examined as witnesses in the suit. It is the categorical stand of the plaintiff that the suit schedule property was purchased in the names of the 1) plaintiff, 2) Natarajan and 3) Arthanari only from the income derived from ancestral properties to be enjoyed by each of the purchasers absolutely. Ex. B3 partition deed, dated 06.12.1995 amongst the sons of Sembagounder also does not include the suit properties. Therefore, it is absolutely clear that the suit schedule properties are not joint family properties and has to

be treated only as properties belonging to the 1) plaintiff, 2) Natarajan and 3) Arthanari. Infact, the sale deed 20.10.1997 (Ex.A2) executed by the first defendant in favour of the 3rd and 4th defendants does not reveal that the suit schedule properties are joint family properties.

12. It is not in dispute that the plaintiff was a Minor both at the time when the suit schedule properties were purchased on 11.12.1991 and sold on 20.10.1997. The Sale deed, dated 20.10.1997 (Ex.A2) in respect of the plaintiff share in the suit schedule properties has been executed by the 1st defendant, who is his step brother. A brother is not a natural guardian of a Minor. The father of the plaintiff Palanisamy was very much alive at the time of execution of sale deed 20.10.1997 (Ex.A2) and he is the natural guardian for the plaintiff. Though it is stated by the defendants that he was a Vagabond and was incapacitated, no evidence to that effect has been let in by the defendants in the suit. Further, no Court permission has been obtained for sale of the plaintiff's share, who was a Minor from the date of execution of sale deed dated 20.10.1997 (Ex.A2). A sale of Minor share, even by a natural guardian without Court permission is voidable at the instance of the Minor once he attains Majority. In the case on hand, the plaintiff, who was a Minor when the sale deed dated 20.10.1997 (Ex.A2) was executed has chosen to invalidate the sale deed and hence the sale deed dated 20.10.1997 has become void.

13. It has been the consistent stand of the plaintiff that he is entitled for 1/3rd undivided share in the suit schedule properties by virtue of the sale deed dated 11.12.1991 (Ex.A1). Since there are three purchasers including the plaintiff under the sale deed dated 11.12.1991 (Ex.A1), the Trial Court as well as the lower Appellate Court has rightly held that the plaintiff is entitled to 1/3rd undivided share as no contra evidence has been produced by the defendants in the suit.

14. The Trial Court and the lower appellate Court have rightly considered the pleadings and evidence available on record and only thereafter held that the plaintiff is entitled to the reliefs sought for in the plaint.

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15. This Court does not find any perversity in the findings of the Courts below and there is no substantial question of law involved in this Second Appeal. Accordingly, the Second Appeal is dismissed by confirming the judgment and decree of the Courts below. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Additional District Judge,
Fast Track Court No.4,
Bhavani,
Erode District.

2. The Principal District Munsif,
Bhavani.

Copy to

The Section Officer

VR Section High Court, Madras

+1 cc to Mr.A.K.Kumarasamy Advocate sr88010

+1 cc to Mr.V.Rajesh Advocate sr87967

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