IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 09.07.2019]

[PRONOUNCED ON : 25.11.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.174 of 2003

1. S.Swaminathan
2. S.Balasubramaniam ... Appellants/Plaintiffs

.. Vs ..

1. R.Jayalakshmi (Deceased)
2. Ramachandran
3. R.Jayanth Kumar
4. R.Premkumar
5. R.Ravi ... Respondents/Defendants

[R-2 recorded as L.R. of the deceased R-1/RR-3 to 5 brought on record as L.Rs. of the deceased R-1 vide order of Court dated 07.08.2018 made in C.M.P.No.1844/2009 in S.A.No.174 of 2003.]

Prayer : Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 21.02.2000 made in A.S.No.4 of 1998 on the file of the learned VI Additional City Civil Judge, Chennai, confirming the judgment and decree dated 12.03.1996 made in O.S.No.9879 of 1990 on the file of the learned VI Assistant City Civil Judge, Chennai.

For Appellants : Mr.N.Balasubramanian for Mr.P.Veeraraghavan

For R-1 : Died

For RR-2, 3 & 5 : Mr.S.Subbiah, Senior Counsel for Ms.D.Sathyasri

For R-4 : No Appearance

JUDGMENT

The unsuccessful plaintiffs are the appellants herein.

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

[i]. The plaintiffs have filed a suit in O.S.No.9879/1990 before the learned VI th Assistant Judge, City Civil Court, Chennai, seeking to set aside or cancel the sale of their undivided 2/3 rd share in the 'A' schedule property conveyed under the Sale Deed/Ex.A.4, dated 19.07.1974 in favour of the defendants by name R.Jayalakshmi and her son R.Ramachandran, not valid and enforceable and binding on the plaintiffs and directing for partition of the 'A' schedule property and recovery of possession of the same. Further, the plaintiffs have prayed for mandatory injunction directing the defendants to remove the construction put up on the 'A' schedule land. Alternatively, the plaintiffs have prayed for a decree directing the defendants to pay a sum of Rs.32,800/- with interest at 15% per annum from the date of the suit till the date of payment, in default, directing the sale of the plaint schedule property.

[ii] The plaintiffs along with their father B.Selvasekaran constituted joint family of which their father was the Kartha. In the family partition entered between the plaintiffs' father and others on 17.06.1970 under Ex.A.3, the 'A' schedule property was allotted to the father of the plaintiffs along with another property at No.15, Giri Street, Madras- 33.

[iii] The 1st plaintiff was born on 30.05.1969 and the 2nd plaintiff was born on 08.05.1974 and they became entitled to 1/3 rd share each in the 'A' schedule property. When the plaintiffs were minors, their father along with his mother Alamelu Ammal sold the 'A' schedule building site and another site belonging to Alamelu Ammal in favour of defendants by Sale Deed under Ex.A.4, dated 19.07.1974. In the Sale Deed, the sale price was mentioned as Rs.45,000/-, out of which, a sum of Rs.25,000/- was received by the Vendors to discharge the prior mortgage liability of Rs.25,000/- due to one Sri.V.Krishnan and for carrying out repairs to the taxi owned by the father of the plaintiffs. The father of the plaintiffs has received an advance amount of Rs.5,000/-. Regarding the balance payment of the price, a simple mortgage was executed on the same date by the defendants under Ex.A.5). The Mortgage Deed has been executed in favour of the plaintiffs represented by their father and natural guardian. At that time, the 1st plaintiff was aged about 5 years and the 2nd plaintiff was aged about 3 years. Under the said Mortgage Deed, the defendants have mortgaged the 'A' Schedule property as well as the 'B' schedule property. Further, it has been agreed that the defendants/mortgagors are able to get the sum of Rs.15,000/- and the same would be invested by the mortgagors in a bank to the best return and half the amount

should be invested for the benefit of each of the two minors with their father as guardian and allowing the guardian to receive the interest.

[iv] The defendants as mortgagors have also agreed to pay the principle sum of Rs.15,000/- to the plaintiffs as mortgagees within 3 years from the date of mortgage i.e. from 19.07.1974 with interest at 15% per annum to the father of the plaintiffs. Added to this, it has been agreed that on realizing the sum of Rs.15,000/-, Rs.7,500/- will be invested in the name of each of the plaintiffs represented by their father in a bank or in suitable manner to yield the best income. On attaining majority, each of the plaintiffs has to receive their share.

[v] After coming to know about the transaction during May 1987, the 1st plaintiff filed the suit along with the 2^{nd} plaintiff, who was minor at that time. The father of the plaintiffs died on 27.07.1978. The plaintiffs have filed the suit as their $2/3^{rd}$ share has been sold for a very low price and as there was no family necessity or legal necessity or justifying cause for the plaintiffs' father to sell their undivided share. The value of the $2/3^{rd}$ share of the plaintiffs was not paid as the defendants purchasers did not have funds to pay the same as clearly admitted in Ex.A.5-Mortgage Deed.

[vi] The prior mortgage liability of Rs.25,000/- incurred by the plaintiffs' father and the taxi expenses of Rs.5,000/- paid out of the sale consideration represents the entire value of the land in respect of father's $1/3^{rd}$ share in the 'A' schedule site and the land in 'B' schedule belongs to the grandmother of the plaintiffs. Hence, the sale of plaintiffs $2/3^{rd}$ undivided share is not a valid one.

[vii] As the defendants have not acted according to the terms of the Mortgage Deed-Ex.A.5, as their $2/3^{rd}$ share in the 'A' schedule property has been sold without any legal necessity and without any benefit to the plaintiffs and so, the sale under Ex.A.4 is not legally enforceable against the plaintiffs.

[viii] Alternatively, the plaintiffs have prayed for recovery of the principle sum of Rs.15,000/- due under the mortgage and Rs.17,000/- being the loss of income, totaling to a sum of Rs.32,000/- with interest at 15% per annum from the date of the suit till the date of payment.

3. The defendants have filed written statement denying the allegation of lack of legal necessity and anterior debt inter alia contending that the plaintiffs have amended the plaint for

the relief of mandatory injunction as constructions were made on the 'A' schedule site, pending suit. The defendants, in their written statement, have stated that the Sale Deed is binding on the plaintiffs as the father of the plaintiffs was the kartha and they have stated further that the sale was for legal necessity and the sale is binding on the plaintiffs and further, the plaintiffs, as mortgagees, can claim the mortgage amount and they have got no right in the suit property. The defendants have also stated that they have paid the interest then and there and also made payments towards part of the principle.

4. During the trial, on behalf of the plaintiffs, the 1st plaintiff examined himself as P.W.1 and marked documents Exs.A.1 to A.13 and on behalf of the defendants, the 2nd defendant examined himself as D.W.1 and marked documents Exs.B.1 to B.6.

5. The trial Court, after analyzing both oral and documentary evidence adduced on either side, came to the conclusion that the Sale Deed-Ex.A.4 is binding on the plaintiffs and the plaintiffs are entitled to the mortgage amount of Rs.10,000/- together with interest at 15% per annum from 01.01.1989 as Rs.5,000/- has been paid towards mortgage amount. The trail Court, relying on Ex.B.6, credited Rs.5,000/- towards the principle amount and granted a decree for Rs.10,000/- with interest. Regarding Rs.17,000/-, the loss of income, it has rejected the claim. The first appeal in A.S.No.4 of 1998 preferred by the plaintiffs was also dismissed by the learned VI Additional Judge, City Civil Court, Chennai, confirming the judgment and decree passed by the trial Court.

6. On the rejection of main relief by both the Courts below, the plaintiffs have preferred the above Second Appeal before this Court. The second appeal was admitted by this Court on 07.02.2003 by framing the following substantial questions of law:-

> "1) Whether the Courts below were right in upholding the transfer of the undivided two third share owned by the appellants in the plaint 'A' schedule property during the period of their minority under the Sale Deed-Ex.A.4, dated 19.07.1974 executed by their father in favour of the respondents, who without paying the value of the appellants' share executed the mortgage deed Ex.A.5, dated 19.07.1974 as valid enforceable and binding on the appellants?
>
> 2) While granting the alternative relief of money decree in respect of the mortgage covered by Ex.A.5, whether the Courts below were right in law in fixing the principal amount at Rs.10,000/- instead of

Rs.15,000/- as set out in the mortgage deed Ex.A.5 dated 19.07.1974 executed by the respondents in favour of the appellants in contravention of the definite terms in Ex.A.5 that the principal amount of Rs.15,000/- was to be paid to the appellants on attaining majority?"

7. Mr.N.Balasubramanian, learned counsel for the appellants made submissions in support of the contention of the substantial questions of law.

8. Mr.S.Subbiah, learned Senior Counsel appearing on behalf of the respondents 2, 3 and 5 made submissions in support of the judgment of both the Courts below.

9. After hearing the rival submissions made by both the parties, it is seen that the nature of the relief prayed for by the appellants/plaintiffs is only for setting aside the Sale Deed dated 19.07.1974 [Ex.A.4] and for partition of the allotted 2/3 share in the suit property or in the alternate, a preliminary decree for directing the defendants to pay a sum of Rs.32,000/- with interest at 15% per annum.

10. The trial Court has held that the sale by the father as a Kartha of the family is for legal necessity and for anterior debt and hence, negatived the main relief of setting aside the Sale Deed executed by the father of the plaintiffs and however, in respect of the alternate relief, the trial Court has held that out of Rs.15,000/-, as a balance of the amount, the mother has accepted Rs.5,000/- in discharge of Ex.A.5-Mortgage Deed and hence, decreed only in respect of the principal amount of Rs.10,000/- with payment of interest from January 1989 and the same was confirmed by the Lower Appellate Court.

11. The entire case centered around Ex.A.4-Sale Deed executed by Selvasekaran for himself and on behalf of the then minors [present plaintiffs] and along with his mother in favour of the respondents-Sale Deed dated 19.07.1974. The next document that is being the point of controversy is the Mortgage Deed executed by the respondents in favour of the plaintiffs represented by the natural guardian and father under Ex.A.5.

12. To resolve the dispute between the parties, the necessary recitals in the said Ex.A.4 and Ex.A.5, which are required to settle the issues, are as under:-

[i] Ex.A.4-Sale Deed was executed by the father on behalf of the minor plaintiffs and Alamelu Ammal, the grandmother of the plaintiffs herein whereas, the vendors 1 to 3 offered to sell their 2 grounds 1104 sq. ft. of vacant land fully described in

schedule 'A' herein and the fourth vendor 1 ground 1296 sq. ft. out of her land and fully described in schedule 'B' herein, both totaling four grounds in net and described in the schedule hereunder written, on the representation that the aforesaid property is not subject to any mortgage, charge, lien, claim, attachment, legal proceedings or encumbrances, except the mortgage for Rs.25,000/- in favour of V.Krishnan dated 18.01.1972.

[ii] A sum of Rs.25,000/- paid by the purchasers through Draft No.D/3, 314035 (Nos.17/209), drawn by Indian Overseas Bank, Mylapore, on Indian Overseas Bank, Esplanade, dated 17.07.1974 to V.Krishnan at the request and on behalf of the vendors in discharge of the mortgage, dated 18.01.1972 and the sum of Rs.14,999/- by the purchasers executing a deed of simple mortgage in favour of the second and third vendors, represented by their father and guardian first vendor, repayable in three years with interest at fifteen percent per annum and the interest being pay-redemption for the balance of the price due under this Sale Deed.

[iii] The vendors agreed that the mortgage amount of Rs.14,999/- shall on the redemption of the mortgage, for the benefit of minor vendors in consultation with the first vendor be deposited into a Bank in the minor's names (viz., the second and third vendors, one half in the name of the second vendor and the other half in the name of the third vendor with the first vendor as guardian and with directions to pay the interest to the first vendor and payment of the principal sum of each of the second and third vendors attained age of majority.

13. The necessary recitals under Ex.A.5-Mortgage Deed are that the mortgagors agreed to pay the mortgagees the principal sum of Rs.15,000/- within three years and the interest on the said principal or so much of it as remains due to the father and guardian of the mortgagees at the rate of rupee one and paise twenty five only per cent per mensum, i.e., at 15% per annum till the entire principal is repaid in full.

14. Thus, it could be seen that on the date of the Sale Deed under Ex.A.4, which was executed by the father for himself and on behalf of the appellants [then minors] along with the grandmother Alamelu Ammal as Vendor No.4, the Alamelu Ammal has sold the entire extent of her holding and the father has sold his 1/3 share and on behalf of the minors, the entire share of 2/3 were also found sold and the respective payment schedule with respect to respect share are as extracted above. Furthermore, there is a clear recital set out in the Sale Deed-Ex.A.4 and the mortgage Deed-Ex.A.5, which clearly demonstrate

that there is a "legal and binding necessity" for the father Kartha of the family viz., the first vendor in the family. In order to discharge the earlier mortgage with one Mr.V.Krishnan for whom the respondent purchaser has paid Rs.25,000/- by way of Demand Draft directly to the said V.Krishnan at the request on behalf of the vendor in discharge of the mortgage deed as noted therein also supports the case of the respondents herein that there was a "anterior debt" in the form of mortgage was in existence at the time of the execution of the sale deed. In respect of the sale consideration for the share of the father and the separate property of the grandmother Alamelu Ammal, payments have been separately paid by way of demand drafts. In respect of share representing the minor, a Mortgage Deed was executed as could be seen from the recital in Ex.A.4 as extracted supra.

15. From the recitals in Ex.A.5-Mortgage Deed, it is clear that the same is only with regard to the share of the minors, the amount has been paid and Ex.B.6 with regard to receipt of the interest and principal amount under Ex.A.4 also assumes significance.

16. In the decision reported in 2007 (3) TNLJ (Civil) 301 [Sheik Dawood and another Vs. Rengan Ambalam and others], this Court has held that even it would not be necessary that there should be a necessity for a father to alienate the properties belonging to the Joint Hindu Family, also on behalf of his minor sons. It is further held that unless and until the debt is for illegal and immoral purposes, borrowed by the father, all the debts are binding upon the minor sons and as such, such a sale deed would be valid. The finding arrived at by this Court in 2007 (3) TNLJ (Civil) 301 [cited supra], has been confirmed by the Hon'ble Supreme Court in the decision reported in (2019) 6 SCC 399 [Rengan Ambalam and another Vs. Sheik Dawood and others], wherein, the Supreme Court has held that when there is a recital in the Sale Deed to "clear and pay the antecedent debt and for legal necessity of the family members", the claim of the vendee has to be accepted and the minors are bound by the Sale Deed executed by their father during their minority.

17. It is to be stated that "Antecedent debt" means antecedent in fact as well as in time, that is to say, that the debt must be truly independent of an and not part of the transaction impeached. The debt may be a debt incurred in connection with a trade started by the father. The father alone can alienate the sons' share in the case of a joint family. The privilege of alienating the whole of the joint family property for payment of an antecedent debt is the privilege only of the father, grandfather and great-grandfather qua the son or grandson only. No other person has any such privilege.

18. In the decision reported in (1976) 1 MLJ-134 (SANTANAVENUGOPALAKRISHNAN AND OTHERS Vs. K.V.VENUGOPAL AND OTHERS), the Division Bench of this Court has held as follows:-

> "Antecedent debts have special significance. It is therefore, essential that in such connection where alienations are made to pay antecedent debts recited in a registered and old document as existing debts of the family, the minor should be in a position to bring home to the Court that there was no occasion for the father-manager or any other manager of the joint family to involve himself in such entrepreneurship. The Division Bench of this Court has further held that it would be a practical impossibility for the alienees who are brought to the threshold of the Court on the facts adverted to by the minor challenging co-parcener to prove that the consideration which passed under one or other alienation made by the father- manager was rightfully or properly utilised by their vendors. It would be unreasonable to expect such meticulous proof of appropriation and treatment of such consideration nearly 15 or 20 years after the date of such alienation."

19. In the decision reported in 2006 (3) MLJ - 121 (S.C.) [HERO VINOTH (MINOR) Vs. SESHAMMAL], the Hon'ble Supreme Court has held as follows:-

> "It is now well settled that an inference of fact from a document is a question of fact. But the legal effect of the terms or a term of a document is a question of law. Construction of a document involving the application of principle of law is a question of law. Therefore, when there is a misconstruction of a document or wrong application of a principle of law while interpreting a document, it is open to interference under Section 100 C.P.C."

20. In the decision reported in AIR 1982 SUPREME COURT - 84 [PRASAD AND OTHERS Vs. V.GOVINDASWAMI MUDALIAR AND OTHERS], the Hon'ble Supreme Court has held as follows:-

> "The father in a joint Hindu family may sell or mortgage the joint family property including the sons' interest therein to discharge a debt contracted by him for his own personal benefit and such alienation binds the sons provided

> a. the debt was antecedent to the alienation and
>
> b. It was not incurred for an immoral purpose.
>
> The validity of an alienation made to discharge an antecedent debt rests upon the pious duty of the son to discharge his father's debt not tainted with immorality."

21. In the decision reported in 2002 (3) MLJ - 43 [MINOR S. VIJAYAKUMAR (DIED) AND OTHERS Vs. SUBBARAYAN, S/O.C.M.RAMASAMY GOUNDER, TRICHY DISTRICT], the Division Bench of this Court has held as follows:-

> "It is settled law that minors' impugning alienations by joint family Manager/father should allege and prove that they were for immoral or illegal purposes. The onus is on them to show that the recitals in the deeds are false and that the vendor did not receive consideration or that the consideration was for immoral or illegal purposes."

22. Thus, on applying the ratio laid down by this Court and the Hon'ble Supreme Court as extracted supra, it is seen that the father, in a joint Hindu family, may sell the joint family property including the share of the sons' interest therein to discharge the debt contracted by him for his own personal benefit and such alienation binds upon the proceedings subject to the conditions that

(a) the debt was antecedent to the alienation and

(b) It was not incurred for an immoral purpose.

The validity of an alienation made to discharge an antecedent debt rests upon the pious obligation of the son to discharge his father's debt being not tainted with immorality.

23. On the factual background of this case, it is seen that the extent of the antecedent debt has been clearly mentioned in the recital Ex.A.4 as extracted supra and in favour whom the defendants purchaser has made payment by demand draft. In respect of the second condition viz., the debt was incurred for an immoral purpose, it is to be stated that the burden of proof of such thing is upon the plaintiffs, who averse so.

24. However, in the instant case, no such plea of immoral expenses has been pleaded except to say that there is an exhalation of price between the period of his price accepted by the father and at the time of filing of the suit, this Court is unable to accept and uphold the said contention for more than

one reason. It is not the case of the plaintiffs/appellants herein that their father had an immoral life and tainted with immorality and in order to discharge the same, created Exs.A.4 and A.5. The only averment rests in the plaint is that the price amount was bit low. Whether transfer for inadequate consideration by the father or Manager - Kartha of the family invalidate the Sale Deed, though there may be a legal necessity and it has been considered by the Division Bench of this Court in the decision reported in 1997 Law Weekly 37 - 217 [Sampoorna Ammal Vs. Asokan and others], wherein, the said plea has been negatived and hence, viewing from any angle, this Court is of the considered view that the finding rendered by both the Courts below with regard to the legal necessity and existence of anterior debt and in order to discharge the anterior debt, the sale has been effected by the father of the minor, is well considered and well merited and the same does not warrant any interference at this appellate stage. With regard to money decree viz., the grant of alternate relief to a limited extent, the trial Court has taken note of the document Ex.B.6 with regard to the payment made by the defendants which was executed by none other than the mother of the minor and in the absence of any plea or evidence denying such payment, the finding rendered by both the Courts below that a principal amount of Rs.5,000/- has already been paid and in respect of balance of principal amount being fixed at Rs.10,000/- along with interest, a decree has been granted and it does not suffer from any irregularity or infirmity and the same is hereby confirmed.

25. Accordingly, the alternate relief granted by the Trial Court as confirmed by the Lower Appellate Court is hereby confirmed. Both the substantial questions of law are answered in negative against the appellants/plaintiffs and the Second Appeal is devoid of merits and the same is liable to be dismissed.

26. In the result, the Second Appeal is dismissed and the judgment and decree dated 21.02.2000 passed by the learned VI Additional Judge, City Civil Court, Chennai, in A.S.No.4 of 1998, confirming the judgment and decree dated 12.03.1996 passed by the learned VI Assistant Judge, City Civil Court, Chennai, in O.S.No.9879 of 1990, is confirmed. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Jrl

To

1. The VI Additional Judge,
   City Civil Court, Chennai.

2. The VI Assistant Judge,
   City Civil Court, Chennai.

3. The Section Officer,
   V.R. Section, High Court,
   Madras.

S.A.No.174 of 2003

SAI(CO)
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