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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.03.2019

PRONOUNCED ON: 29.03.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.Nos.950 & 951 of 2006

Subramanian

... Appellant
in both in Second Appea

Vs.

Dharmalingam

... Respondent
in S.A.No.950 of 2006

1. Gunasekaran (Died)

2. Dharmalingam

3. G.Madhurambal

4. G.Velmurugan

5. G.Venkatesan

6. G.Suyambulingam

... Respondents
in S.A.No.951 of 2006

(RR3 to 6 brought on Record as Lrs of the deceased R1 vide order of court dt 11.02.2019 in MP.1/2014 in SA.951/2006)

Second Appeals filed under Section 100 of C.P.C., against the judgment and decree dated 29.12.2004 in A.S.Nos.22 & 10 of 2004 on the file of the Additional Subordinate court, Vriddhachalam, confirming the judgment and decree dated 30.06.2003 in O.S.Nos.46 & 48 of 1994 on the file of the II Additional District Munsif Court, Vriddhachalam.

For Appellant
in both appeals : Mr.V.Anand

For Respondents
in both appeals : Mr.L.Palanimuthu



J U D G M E N T

Challenge in the second appeals are made to the judgment and decree dated 29.12.2004 passed in A.S.Nos.22 & 10 of 2004 on the file of the Additional Subordinate court, Vriddhachalam, confirming the judgment and decree dated 30.06.2003 passed in O.S.Nos.46 & 48 of 1994 on the file of the II Additional District Munsif Court, Vriddhachalam.

2. The parties are referred to as per their rankings in the Trial Court, for the sake of convenience.

3. The second appeals have been admitted on the following substantial questions of law:

“(1) Whether the Courts below are correct in law in ignoring the admission of the plaintiffs in the plaint itself that the suit properties were kept jointly.

(2) Whether the 1st Appellate Court is correct in law in dismissing the appeal without testing the appreciation of evidence done by the Trial Court.

(3) Whether in law the plaintiff is entitled to a decree based on evidence let in by him against his own pleadings.”

4. Considering the scope of the issues involved between the parties in the second appeal as regards the subject matter lying in a narrow campus, it is unnecessary to dwell into the facts of the case in detail.

5. The suit in O.S.No.46 of 1994 has been laid by the plaintiff for the reliefs of declaration and permanent injunction or in the alternative for the recovery of possession in respect of the suit property described therein. The suit in O.S.No.48 of 1994 has been laid by the plaintiffs for the reliefs of declaration and permanent injunction or in the alternative for the recovery of possession in respect of the suit property described therein. The second plaintiff in O.S.No.48 of 1994 claims title to the property comprised in the abovesaid suit based on the sale deed dated 27.06.1995 executed in his favour by the first plaintiff Gunasekaran. The second plaintiff Dharmalingam claims title to the properties involved



in the abovesaid suits based on the sale deeds dated 15.06.1993 and 27.06.1995 marked as Exs.A3 and A8. Gunasekaran, the first plaintiff in O.S.No.48 of 1994, has acquired title to the property comprised in O.S.No.48 of 1994 by way of a sale deed dated 01.09.1993 marked as Ex.A6.

6. The defendant resisted the plaintiffs' suit contending that he also has the share in the suit properties and therefore, the plaintiffs are not entitled to seek or obtain the reliefs as prayed for in the suit.

7. As could be seen from the materials placed on record, particularly, the genealogy table marked as A1, it is found that Karuppan and Ramasamy are the sons of Alagan. Dharman and Thangavelu are the sons of Karuppan. Gunasekaran is the son of Dharman and he is the first plaintiff in O.S.No.48 of 1994, Subramanian is the son of Thangavelu, the defendant in both the suits. As could be seen from the case projected by the plaintiffs, the sons of Alagan namely Karuppan and Ramasamy had divided the properties belonging to them and also retained certain properties in common. Accordingly, it is found that the second plaintiff Dharmalingam based on the sale deeds marked as Exs.A3 and A8 under which he had acquired the suit properties from his vendors and putting forth the case that the defendant without any entitlement is attempting to interfere with his possession and enjoyment of the suit properties involved in the suits and accordingly, put forth the case that he has been necessitated to lay the suits against the defendant for appropriate reliefs.

8. The main defence projected by the defendant is that the suit properties and the other properties had been enjoyed in common by the defendant and Ramasamy and they had not been partitioned and accordingly, it is put forth that Ramasamy is not entitled to alienate the suit properties and accordingly, the suit properties being the joint family properties, the plaintiffs by way of the sale transactions cannot lay any exclusive title to the suit properties and also questioned the sale transaction projected by the plaintiffs, on the footing that the stamp papers for the same had not been acquired from Srivaikundam and obtained elsewhere and thereby contended that the abovesaid sale transactions had been forged and furthermore, put forth that there had been earlier litigation between the parties, whereunder the suit properties are admitted to be the joint family properties and hence, sought for the dismissal of the plaintiffs suit.

9. The materials placed on record would go to show that as per the partition deed dated 28.02.1994 marked as Ex.A2 Ramasamy had been allotted some specific shares of the properties



comprised in the 'B' schedule of the partition deed and it is also noted that some properties had been left in common between Ramasamy and his brother Karuppan. Therefore, when under the abovesaid partition deed, Ramasamy had been allotted certain properties towards his share, accordingly, in respect of the said allotted properties Ramasamy has absolute right and entitlement to alienate the same and accordingly, it is found that he had executed Ex.A3 sale deed in favour of the plaintiff in respect of the properties comprised therein. It is noted that Ex.A3 sale deed had been jointly executed by Ramasamy, Dharman and Gunasekaran. On that footing, the defendant contended that inasmuch as the said properties comprised in Ex.A3 sale deed had not been divided and allotted to Ramasamy exclusively, as Dharman and Gunasekaran has joined in the abovesaid sale transaction, the plaintiff is not entitled to claim title to the properties comprised in the same. On the other hand, when according to the plaintiffs, he had obtained the sale deed Ex.A3 from all the abovesaid three persons as a precautionary measure and out of abundant caution and when the materials placed on record would go to show that Ramasamy was in the care and maintenance of Dharman and Gunasekaran at the relevant point of time and when under Ex.A2 partition deed, Ramasamy had been allotted separate properties, in such view of the matter, merely because Ramasamy had executed Ex.A3 sale transaction along with his brother's son and grand son that would not in any manner be a factor for treating the property comprised therein as the joint family property, as sought to be made out by the defendant. The abovesaid defence projected by the defendant has been rightly assessed by the Courts below and rejected the same. No interference is called for with reference to the same.

10. The argument has been put forth by the defendant that inasmuch as the stamp papers for the abovesaid sale transaction has been secured elsewhere and not at Srivaikundam, the sale transaction lacks genuineness and thereby contended that the abovesaid sale transaction is a fabricated one. However, as rightly determined by the Courts below, there is no legal bar to utilize a stamp paper purchased elsewhere for the sale transaction pertaining to Ex.A3 and hence, the abovesaid contention of the defendant for disputing the plaintiffs' claim of title to the suit properties has been rightly rejected by the Courts below.

11. It is found that in the proceedings in O.S.No.530 of 1984, Dharman, one of the vendors of the plaintiffs had admitted that the properties are the joint family properties and therefore, on that footing the defendant contended that the plaintiffs cannot lay any exclusive title to the suit properties. As rightly found by the Courts below neither Ramasamy nor the plaintiffs are the parties to the abovesaid



suit proceedings. Furthermore, the suit properties involved in the present suits are not concerned in O.S.No.530 of 1984. In such view of the matter, merely because Dharman has made a statement in the abovesaid suit that the properties involved in the present suit are the joint family properties, that by itself would not affect the plaintiffs' case. As rightly determined by the Courts below, the admission made by a party can be used only against the maker of the same and not against the others. In such view of the matter, when Dharman who is said to have made certain admissions in O.S.No.530 of 1984 is not a party to the lis under consideration and when he has also not been endeavoured to be examined by the defendant, to explain as to under what context he had made the so-called admission in O.S.No.530 of 1984, in such view of the matter, the so-called admission of Dharman in O.S.No.530 of 1984 would not in any manner militate against the claim of title to the suit properties projected by the plaintiffs.

12. The defendant has also put forth the case that he has sent a legal notice, at the earliest, contending that the suit properties are the joint family properties and despite the same, according to him, the suit has been laid by the plaintiffs for declaration of title without seeking for partition. Ex.B1 is stated to be the notice said to have been sent by the defendant through his lawyer. However, there is no material placed on the part of the defendant to evidence that the same had been received by the recipients and when the defendant has not placed any material, to establish that he has title or interest in the suit properties, the above contention does not merit acceptance and rightly rejected by the Courts below.

13. The arguments has been put forth by the defendant that the judgment passed in O.S.No.530 of 1984 and O.S.No.129 of 1985 marked as Ex.B2 would operate as res judicata to the plaintiffs' suit. But as rightly determined by the Courts below, when the plaintiffs are not parties to the abovesaid proceedings and that apart when the properties involved in the abovesaid suits are not related to the suit properties involved in the present lis, the plea of res judicata projectd for resisting the plaintiffs' suit has been rightly not accepted by the Courts below.

14. In the light of the above discussions, when the plaintiff Dharmalingam has made out a clear case that he has purchased the suit properties from the lawful owners by way of Exs.A3 and A8 sale transactions and when his vendors are shown to be entitled to convey the same in his favour, as could be seen from the oral evidence adduced and from the documents projected by the plaintiffs and when the plaintiffs had also placed materials tracing the title to the suit properties from



the original owner namely Ramasamy by way of Ex.A2 partition deed, in such view of the matter, the Courts below are found to have rightly accepted the plaintiffs' case based on the proper appreciation of the materials placed on record and found to have rightly granted the reliefs in favour of the plaintiffs as prayed for. I do not find any valid reason to interfere with the abovesaid determination of the Courts below.

15. For the reasons aforesaid, in my considered opinion, no substantial question of law is found to be involved in the second appeals. Be that as it may, the substantial questions of law formulated in the second appeal are accordingly answered against the defendant and in favour of the plaintiffs.

In conclusion, both the second appeals fail and are accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nsd/sms

To

1. The Additional Subordinate Judge,
Vriddhachalam.
2. The II Additional District Munsif Judge,
Vriddhachalam.

Copy to:

The Record Keeper,
VR Section, High Court, Madras-104.

+2cc to Mrs.A.L.Ganthimathi, Advocate, S.R.No.30814, 30815

S.A.Nos.950 & 951 of 2006

RGN(CO)
CB(13/08/2021)