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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.03.2019

PRONOUNCED ON : 02.04.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.1564 of 2005

1. Harikrishnan  
2.Veerarasu

...Appellants/Defendants  
Vs.

Kalian

...Respondent/Plaintiffs

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Principal District Judge, Villupuram made in A.S.No.52 of 2003 dated 07.07.2004 in reversing the well considered judgment and decree of the Principal District Munsif, Ulundurpet passed in O.S.No.149 of 2001 dated 07.02.2003.

For Appellants : Mr.T.Gandhi

For Respondent : Mr.A.Nilaphar  
for Ms.R.Meenal

#### JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 07.07.2004 passed in A.S.No.52 of 2003 on the file of the Principal District Court, Villupuram, reversing the judgment and decree dated 07.02.2003. passed in O.S.No.149 of 2001 on the file of the Principal District Munsif Court, Ulundurpet.

2. The second appeal has been admitted on the following substantial questions of law.

"1. Whether the respondent / plaintiff's vendor have any valid title or right over his father's property namely the suit "A" and 'B' schedule properties when he was adopted to one Poongavanam Ammal wife of Rathinakara Mudaliar through registered adoption deed and succeeded



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to his adoptive parents estate and enjoyed and dealt with estate and disposed some properties?

2. Whether the adoption child shall be deemed to be the child of his adoptive parents for all purposes with effect from the date of the adoption and from the date all the ties of the child in the family of his birth shall be deemed to be severed and replaced by those created by adoption in the adoptive family?

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

4. The Parties are referred to as per their rankings in the trial Court for the sake of convenience.

5. The suit has been laid by the plaintiff against the defendants for the reliefs of declaration and permanent injunction in respect of the plaint 'B' schedule property. In brief, according to the plaintiff, the plaint 'B' schedule property forms part of the plaint 'A' schedule property and it is stated that the plaint 'A' schedule property belonged to Dandapani Mudaliar, Son of Singaravelu ancestrally and he had alienated the same in favour of the plaintiff by way of the registered sale deed dated 04.06.1998 and since then it is only the plaintiff, who has been in the possession and enjoyment of the plaint 'A' schedule property by putting up a house and paying taxes, services charges, etc., and also prescribed title to the said property by way of the adverse possession and according to the plaintiff, the defendants acquired some property lying on the eastern side of the plaint 'A' schedule property from one Sathya Murthy and in the guise of the same, failing in their attempt to purchase of the plaint 'A' schedule property, attempted to encroach into the plaint 'A' schedule property unlawfully and without any authority and thereby, it is put forth that they attempted to interfere into a portion of the plaint 'A' schedule property shown as the plaint 'B' schedule and accordingly, it is stated that the plaintiff has been necessitated to lay the suit for appropriate reliefs.

6. The defendants resisted the said suit disputing the entitlement of the plaintiff to the plaint 'A' schedule property as put forth in the plaint and according to them, the plaintiff is not entitled to claim any right to the plaint 'A' schedule property by virtue of the sale transaction dated 04.06.1998 said to have been executed in his favour by Dandapani Mudaliar, son of Singaravelu and according to the plaintiff, Dandapani Mudaliar has no right to the plaint 'A' schedule property and it



is stated that Singaravelu had given Dandapani in adoption to Poongavanam Ammal, wife of Rathinakara Mudaliar by way of the registered adoption dated 12.03.1944 and thereafter, Dandapani is not entitled to claim any right in the property belonging to his natural father Singaravelu and furthermore, after adoption, Dandapani had alienated the properties belonging to his adoptive father Rathinakara Mudaliar by way of various sale transactions and in the abovesaid sale transactions as well as in the will executed by Singaravelu dated 29.04.1944 in favour of his wife Ammani Ammal, clear recitals are found that Dandapani Mudaliar had been given in adoption and by virtue of the will dated 29.04.1944, the properties belonging to Singaravelu comprised in the abovesaid will only belonged to Ammai Ammal and afterthat, her daughters had acquired title to the same and therefore, it is put forth that the plaintiff is not entitled to claim any title to the plaint 'A' schedule property, much less the plaint 'B' schedule property by virtue of the sale deed said to have been executed in his favour by Dandapani Mudaliar and further according to the defendants, the daughters of Singaravelu had executed a power deed in favour of one Sathya Murthy in respect of the properties belonging to them and further it is stated that the power holder Sathya Murthy, on the strength of the power deed, had conveyed the plaint 'A' schedule property and other properties lying on the eastern side in favour of the defendants for a valid consideration by way of the registered sale deed and therefore, it is contended that the plaintiff is not entitled to claim title to the suit properties based on an invalid sale deed executed by Dandapani Mudaliar and accordingly sought for the dismissal of the plaintiff's suit.

7. Based on the materials placed on record, both oral and documentary, by the respective parties, the trial court was pleased to dismiss the plaintiff's suit. On appeal by the plaintiff, the first appellate court was pleased to set aside the judgment and decree of the trial court and decreed the suit in favour of the plaintiff as prayed for. Impugning the same, the present second appeal has been laid.

8. It is not in dispute that the plaint 'A' schedule property belonged to Singaravelu ancestrally. It is also not in dispute that Dandapani Mudaliar is the son of Singaravelu. Materials placed on record go to show that Dandapani Mudaliar had been given in adoption to Poongavanam Ammal, wife of Rathinakara Mudaliar by Singaravelu by way of the registered adoption deed dated 12.03.1944. Accordingly, it is put forth by the defendants that after the said adoption, Dandapani Mudaliar is not entitled to any property belonging to his natural father and therefore, the alienation made by him in respect of the plaint 'A' schedule property in favour of the plaintiff on 04.06.1998 marked as Ex.A1, would not confer any valid title to



the plaintiff in respect of the same and accordingly, it is pleaded that Ex.A1 sale deed is an invalid sale deed and no right would accrue to the plaintiff by virtue of the same and on the abovesaid ground alone, the plaintiff's suit should fail .

9. It is also further pleaded by the defendants that Singaravelu had conveyed his properties in favour of his wife by virtue of the will dated 29.04.1944 marked as Ex.X2 and after the demise of Ammani Ammal, wife of Singaravelu, her daughters had inherited the properties comprised in the will and their daughters had executed a power deed in favour of Sathya Murthy marked as Ex.X3 on 10.12.1979 and accordingly, it is pleaded by the defendants that Sathya Murthy had conveyed the plaintiff 'A' schedule property and other properties in their favour by virtue of the sale transaction dated 08.07.1993 marked as Ex.B1 and on that footing contended that the suit property is only in the possession of the defendants and hence the plaintiff is not entitled to obtain the reliefs prayed for.

10. The plaintiff has pleaded in the plaint that the defendants having failed to compete with him in the purchase of the plaintiff 'A' schedule property and after acquiring some properties on the eastern side of the plaintiff 'A' schedule property, in the guise of the same, are attempting to encroach into the portion of the plaintiff 'A' schedule property described as the plaintiff 'B' schedule property and hence according to the plaintiff, he has been necessitated to institute the suit for appropriate reliefs.

11. In the light of the abovesaid controversy between the parties, the only point that arises for consideration in this second appeal is, whether Dandapani Mudaliar had the legal competency to convey the plaintiff 'A' schedule property in favour of the plaintiff by virtue of the sale deed dated 04.06.1998 marked as Ex.A1. It is not in dispute that the plaintiff 'B' schedule property forms part of the plaintiff 'A' schedule property. From the materials placed on record it is found that the plaintiff 'A' schedule property is the ancestral property of Singaravelu, the natural father of Dandapani Mudaliar. No contra material has been projected by the defendants to hold that the plaintiff 'A' schedule property belonged to Singaravelu Mudaliar absolutely by way of the purchase or by way of the other modes. It is thus found that the plaintiff 'A' schedule property and the other properties belonged to Singaravelu Mudaliar ancestrally. The only point put forth by the defendants, for challenging the validity of Ex.A1 sale transaction, is that after adoption, Dandapani Mudaliar would not be entitled to alienate the properties belonging to Singaravelu Mudaliar, his natural father and therefore, the sale transaction dated 04.06.1998 is invalid. As regards the position that Dandapani Mudaliar had been given in adoption to Poongavanam Ammal, wife of Rathinakara Mudaliar, the materials



projected in the matter point to the same, particularly, the copy of the adoption deed marked as Ex.X1. Furthermore, the other documents projected in the matter also point to the abovesaid fact. However, when it is not in dispute that Dandapani Mudaliar is the son of Singaravelu and subsequently by way of Ex.X1 transaction he had been given in adoption to Poongavanam Ammal, wife of Rathinakara Mudaliar, it has to be seen whether, by way of the abovesaid adoption, Dandapani Mudaliar would cease to have any right in the properties ancestrally belonging to his natural father Singaravelu Mudaliar. In this connection, the plaintiff's counsel relied upon the effects of adoption as outlined in Section 12 of the Hindu Adoptions and Maintenance Act, 1956 and Section 12 of the abovesaid Act reads as follows:

12. Effects of adoption - An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family:

provided that -

(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth.

(b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;

(c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption.

On a perusal of the abovesaid provisions contained in the abovesaid Section, particularly, provision (b), it is seen that an adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of adoption. However, as per proviso (b), it is found that any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth. Accordingly, as rightly contended by the plaintiff's counsel, in the light of the proviso (b) to Section 12 of the abovesaid Act, it is found that the adopted child would not cease to have any right already vested with him before the adoption and so viewed, when it is found that the properties owned by Singaravelu are only the ancestral properties and by



birth, his son Dandapani Mudaliar would acquire right over the same as per law, in such view of the matter, even after the adoption under Ex.X1, Dandapani Mudaliar would be entitled to the rights in the properties which had already vested with him as the son of his natural father Sigaravelu and accordingly when the suit property as well as the other properties belonged to Singaravelu ancestrally and Danadapani Mudaliar having derived the right over the same on birth and the said right having vested on him before the adoption, in such view of the matter, as rightly contended, Dandapani Mudaliar would not cease to have the right over the plaint 'A' schedule property belonging to him ancestrally and accordingly would have entitlement to convey the same in favour of the plaintiff by way of Ex.A1 sale transaction. The above position of law could also be gathered from the decision relied upon by the plaintiff's counsel reported in AIR 1981 Andhra Pradesh 19 (Yarlagadda Nayudamma etc vs. The Government of Andhra Pradesh and others) whereunder, it has been held that even after the member of a coparcenary had been given in adoption, his undivided interest in the coparcenary property would continue to vest in him even after the adoption by reason of the proviso (b) to Section 12 of the Hindu Adoptions and Maintenance Act, 1956 as the said property vest on him by birth and hence he would get vested right in that property by virtue of inheritance and the abovesaid position of law has been outlined in the said decision as follows:

Hindu Adoptions and Maintenance Act (78 of 1956),  
S.12 Proviso(b) - Interpretation - Coparcenary governed by Mitakshara School - Coparcener given in adoption - still he has vested right in undivided property of his natural family.

When a member of a coparcenary governed by Mitakshara School is given in adoption, his undivided interest in the coparcenary property would continue to vest in him even after adoption by reason of the proviso (b) to S.12 of the Hindu Adoptions and Maintenance Act, 1956. The property vests in a coparcener by birth and hence he gets a vested right in that property by virtue of inheritance.

12. It is thus noted that notwithstanding the adoption, the adopted son would get the vested interest in the undivided property of his natural family as per the proviso (b) to Section 12 of the abovesaid Act and accordingly, it is found that the sale transaction effected by Dandapani Mudaliar in favour of the plaintiff by way of Ex.A1 is a valid sale transaction. The abovesaid position of law has also been outlined in the decision of the Andhrapradesh High Court dated 02.06.2004 passed in A.S. No.2123 of 1993 (Madala Yathirajulu (died) by his legal heirs vs. Madala China Ananthaiah (died) and ors) and for arriving at the said conclusion, the Andhra Pradesh High Court also has followed



the decision of the Madras High Court reported in ILR Vol.39 Madras 437 (1905) and accordingly held that by way of the adoption, the adopted son would not get divested of his right in the property vested on him by birth as regards the properties of his natural family.

13. In the light of the above discussions, the plaintiff's vendor having been shown to be validly entitled to convey the plaint 'A' schedule property in favour of the plaintiff by way of Ex.A1 sale transaction and when following the same, it is found that it is only the plaintiff who has been in the possession and enjoyment of the plaint 'A' schedule property, in such view of the matter, the claim of the defendants that they had acquired title to the property in dispute by virtue of the sale effected in their favour by the daughters of Singaravelu under Ex.B1 sale transaction, as such, cannot be countenanced and the same had been rightly discountenanced by the first appellate court.

14. The first appellate court has considered the materials placed on record and held that it is only the plaintiff who has been in the possession and enjoyment of the plaint 'B' schedule property which forms part of the plaint 'A' schedule property and the defendants have failed to prove their claim of title, possession and enjoyment with reference to the plaint 'B' schedule property and on that determination, rightly found that the plaintiff is entitled to obtain the reliefs prayed for. The abovesaid facts determined by the first appellate court, based on the factual matrix, on the correct appreciation of the materials placed on record by the respective parties, do not warrant any interference as such. For the reasons aforesaid, the substantial questions of law formulated in this second appeal are accordingly answered against the defendants and in favour of the plaintiff.

15. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any is closed.

Sd/-  
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

bga



To

1. Principal District Court, Villupuram

2. District Munsif Court, Ulundurpet

Copy to

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

+1cc to Mr.T.Gandhi, Advocate SR.No.31394

+1cc to Mr.R.Subramanian, Advocate SR.No.31873

S.A.No.1564 of 2005

KS (CO)  
GMY (18/09/2019)