

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.852 of 2019
and
C.M.P.No.17535 of 2019

1.G.Rajendran
G.Jeeva (Died)
2.G.Venkatesan
3.Kokila
4.Amutha
Kamala (Died)

..Appellants/Plaintiffs

Vs.

Ayyanar @ Velu Ayyanar

..Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the I Additional Sub-Judge, Villupuram made in A.S.No.22 of 2009 dated 31.10.2018 reversing the judgment and decree passed by the Principal District Munsif Court, Tirukoilur in O.S.No.177 of 2006 dated 16.12.2008.

For Appellants : Mr.K.Harikrishnan

J U D G M E N T

The plaintiffs in O.S.No.177 of 2006 are the appellants. The suit was filed seeking declaration of title of the plaintiffs and for recovery of possession.

2. According to the plaintiffs, the suit property originally belonged to Pulugammal W/o. Sanjeevi Chettiar, she having purchased the same on 07.05.1940. The said Pulugammal W/o. Sanjeevi Chettiar sold the property to one Puluvan Chettiar S/o. Chinnaiya Chettiar. The said Puluvan Chettiar settled the property along with other properties on his son Govindarajalu Chettiar on 12.12.1967.

3. As per the said settlement deed, Govindarajalu Chettiar was given a life estate and on his death the property was to go to his legal heirs and in the absence of any legal heirs to Govindarajalu Chettiar, the property was to revert back

to the heirs of the settlor viz., Puluva Chettiar. Govindarajalu Chettiar was enjoying the property. By a sale deed dated 09.09.1981, he sold the property to one Munusamy Gounder S/o. Thoppala Gounder. The said Munusamy Gounder and his other legal heirs had sold the property to the defendant, who is the daughter-in-law of Munusamy Gounder on 20.01.2000.

4. According to the plaintiffs, the sale by Govindarajalu Chettiar dated 09.09.1981 is invalid and will not bind their interest in the property. Govindarajalu Chettiar eventually died on 03.09.2005. The plaintiffs claiming that they would become the owners of the property on the death of Govindarajalu Chettiar had come forward with the above suit seeking declaration of title and recovery of possession.

5. The suit was resisted by the defendant contending that the suit as framed is not maintainable. It is also claimed that the sale was effected for the Education, Nourishment and medical expenses of the plaintiffs by the father Govindarajalu Chettiar and in order to discharge various loans borrowed by him. It is also claimed that the defendant has perfected title on adverse possession.

6. Upon consideration of the evidence on record, the learned trial Judge held that the sale deed dated 09.09.1981 will not bind the plaintiffs since Govindarajalu Chettiar had only a life estate in the property and he could not have conveyed the entire property. On the said finding, the learned trial Judge decreed the suit as prayed for. Aggrieved the defendant had filed an appeal in A.S.No.22 of 2009.

7. Before the lower appellate court, a question of law regarding maintainability of the suit in the absence of prayer seeking to set aside the sale deed dated 09.09.1981 was framed, since the said sale deed was executed by Govindarajalu Chettiar for himself and on behalf of the minor children. Considering the said legal issue, the learned Additional Sub Judge, Villupuram came to a conclusion that the suit as framed is not maintainable.

8. The learned Subordinate Judge found that the sale deed dated 09.09.1981 viz., Ex.B3 has been executed by Govindarajalu Chettiar for himself and on behalf of the minor children. The minor children being co-nominee parties to the sale deed are bound to seek to set aside the document in a manner known to law. The lower appellate court also took note of Section 8 of the Hindu Minority and Guardianship Act which declares that the sale of the property of the minor by the natural guardian without permission of the court is voidable at the instance of the minor and not void. On the aforesaid

conclusion, the learned subordinate Judge allowed the appeal and dismissed the suit. Aggrieved the plaintiffs are on appeal.

9. I have heard Mr.K.Harikrishnan, learned counsel appearing for the appellants.

10. Mr.K.Harikrishnan, learned counsel appearing for the appellants would vehemently contend that the lower appellate court was not right in concluding that the suit itself is not maintainable in the absence of prayer for setting aside the sale deed dated 09.09.1981. According to him, Govindarajalu Chettiar had only life estate and the plaintiffs are the reversioners. Since Govindarajalu Chettiar was alive, the plaintiffs did not get right over the property. Therefore, the fact that the plaintiffs are included as co-nominee parties to the sale deed dated 09.09.1981 will not affect their claim for possession or declaration of title after the death of the life estate holder. He would submit that the lower appellate court was not right in dismissing the suit on the ground that the plaintiffs have not sought for the relief of setting aside the sale deed dated 09.09.1981.

11. I have considered the submissions of the counsel. Admittedly, by the settlement deed dated 12.12.1967 Govindarajalu Chettiar had life estate and after him, the property was to devolve on his legal heirs in the absence of any legal heirs to Govindarajalu Chettiar, the property will devolve on the male heirs of Puluvar Chettiar. The second contingency does not arise since the plaintiffs are the legal heirs of Govindarajalu Chettiar.

12. A perusal of the sale deed dated 09.09.1981 shows that Govindarajalu Chettiar dealt with the property for himself and on behalf of the minors. Whatever right, title and interest the minors had on the date of sale i.e., 09.09.1981 had been alienated by Govindarajalu Chettiar as the guardian of the minor children. Of course the said sale has been made without permission of the court. It is the settled law that the transfer by natural guardian of the Hindu minor property is not per se invalid. Section 8 of the Hindu Minority and Guardianship Act reads as follows:-

8. Powers of natural guardian.-

(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realisation, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a

personal covenant.

(2) The natural guardian shall not, without the previous permission of the court,—

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or by any person claiming under him.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in the case of necessity or for an evident advantage to the minor.

(5) The Guardians and Wards Act, 1890 (8 of 1890), shall apply to and in respect of an application for obtaining permission of the court under sub-section (2) in all respects as if it were an application for obtaining the permission of the court under section 29 of that Act, and in particular—

(a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof;

(b) the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act; and

(c) an appeal shall lie from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section to the court to which appeals ordinarily lie from the decisions of that court.

(6) In this section "court" means the city civil court or a district court or a court empowered under section 4A of the Guardian and Wards Act, 1890 (8 of 1890), within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court,

means the court within the local limits of whose jurisdiction any portion of the property is situate. State Amendments Assam: For modified application of section 8 of the Hindu Minority and Guardianship Act, 1956, see Assam Act 7 of 1977, sec. 8 (w.e.f. 15-6-1978). Punjab: For modified application of section 8 of the Hindu Minority and Guardianship Act, 1956, see Punjab Act 5 of 1979, sec. 22 (w.e.f. 18-6-1979). West Bengal: For the purposes of West Bengal Agricultural Credit Operations Act, 1973 (34 of 1973) any reference to court in section 8 of the Hindu Minority and Guardianship Act, 1956, shall be construed as reference to the collector and the appeal against the order of the collector shall lie to the Commissioner. [Vide West Bengal Act 34 of 1973, sec. 8 (w.e.f. 15-11-1973).]

13. A perusal of Section 8(3) makes it clear that the sale by a guardian of the interest of the minor is not per se invalid or void ab initio. It is made voidable at the option of the minor. The Hon'ble Supreme Court in Nagappan Vs. Ammasi Gounder reported in 2004 (13) SCC 480 has held that the minors who impugnes the alienation by the guardian on the ground that it is in violation of the Section 8 of Hindu Minority and Guardianship Act should seek to set aside the sale deed.

14. Therefore, it is clear that the suit by a erstwhile minor seeking declaration of title without seeking to set aside alienation made by the father is not maintainable. Thus, it could be seen that the lower appellate court was perfectly in order in dismissing the suit on the ground of want of prayer for setting aside the alienation made by the father.

15. I therefore, do not find any question of law much less a substantial question of law in order to enable me to entertain this appeal. This Second Appeal is therefore dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

dsa

To

1.The learned I Additional Sub-Judge,
Villupuram.

2.The learned Principal District Munsif Court,
Tirukoilur.

Copy To : The Section Officer, VR Section,
High Court, Madras-104

+1cc to Mr.K.Harikrishnan, Advocate SR.No.83804

S.A.No.852 of 2019

CA (CO)
GMY (27/12/2019)



WEB COPY