

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.08.2019
PRONOUNCED ON : 19.08.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.796 of 2019
and
CMP No.15997 of 2019

1. B. Sivakami
2. B. Saravanan

...Appellants/Plaintiffs
Vs.

1. T.M. Ramaswami
2. R.Padmavathi
3. R.Sujatha
4. R. Narayanasamy (given up)

...Respondents/Defendants

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.152 of 2018 on the file of the XVIII Additional Judge, City Civil Court at Chennai dated 03.11.2018 confirming the judgment and decree passed in O.S.No.1832 of 2014 dated 30.11.2017 on the file of the II Assistant Judge, City Civil Court at Chennai.

For Appellants : Mr.V.V.Ravichandran
For Respondents : Mr. R.Kannan, Caveator Counsel
1 to 3

JUDGMENT

Challenge in this Second Appeal is made to the judgment and decree dated 03.11.2018 passed in A.S.No.152 of 2018 on the file of the XVIII Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 30.11.2017 passed in O.S.No.1832 of 2014 on the file of the II Assistant Judge, City Civil Court, Chennai.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. The plaintiffs have laid the suit seeking for the reliefs of declaration and permanent injunction. The relief of declaration sought for by the plaintiff is that the settlement executed by the second defendant in favour of the third

defendant on 09.05.2013 is null and void and the relief of permanent injunction is prayed for to restrain the defendants from encumbering the suit property to the third parties.

4. Considering the issues involved between the parties in toto, it is found that the plaintiffs are claiming the share in the suit property said to have been settled by the second defendant in favour of the third defendant and the plaintiffs are also claiming their right in the disputed property only through their grand parents, namely, the defendants 1 and 2. As could be seen from the materials available on record, the great grandfather, namely, T.D.Muthuswamy had two sons and two daughters namely T.M.Ramaswami, i.e., the first defendant, T.M. Balasubramania, T.M.Kamala and T.M.Vijayalakshmi. Padmavathi is the wife of the first defendant T.M.Ramaswami. It is also found that the defendants 1 and 2 had one son and two daughters, namely R.Sujatha, who is the third defendant and another daughter B.Sivagami, who is the mother of the plaintiffs and their son Srinivasan had died at a young age. It is not in dispute between the parties that their great grandfather T.D.Muthuswamy had purchased the property at T.Nagar and after his demise intestate, his legal heirs had sold the portion of the property measuring 3000 sq.ft. in favour of M.K.Srinivasan by way of the sale deed dated 12.01.1961 and retained an extent of 4440 sq. ft of land and building and the same is found to be in the possession of his wife Mangayarkarasi Ammal till her life time.

5. According to the plaintiffs, the legal heirs of T.D.Muthuswamy had entered into a joint venture agreement in respect of the construction of flats and had appointed a power of attorney agent to sell the flats and in the said course of action, it is put forth that the first defendant had secured one flat in the ground floor of the suit property and got the same registered in the name of his wife (the second defendant) and further it is stated that the second defendant has no independent means to purchase the said property and thereafter put forth the case that the second defendant had settled the property in favour of the third defendant and according to the plaintiffs inasmuch as the said property forms part of the property belonging to their forefathers as above pointed out, without providing their share in the property, the first defendant's alleged purchase of the suit property in the name of the second defendant and the subsequent settlement of the said property by the second defendant in favour of the third defendant is not valid and not binding upon the plaintiffs and accordingly seeking appropriate reliefs, the plaintiff has come forward with the suit.

6. Per contra, according to the second defendant, in particular, she had purchased the property out of her own means by way of the sale deed marked as Ex.A2 and the same is her self acquired property and accordingly, she is entitled to settle the same in favour of her daughter, namely, the third defendant and the plaintiffs are not entitled to question the same on the footing that it is their ancestral property and thereby sought for the dismissal of the plaintiffs' suit.

7. From the materials placed on record, it is found that the second defendant is owning other properties and deriving income therefrom and also having savings and with the abovesaid aid and assistance, it is found that she had acquired the suit property by way Ex.A2 sale deed and the same had been assessed and determined by the courts below by taking into consideration the materials projected by the second defendant. It is found that the second defendant had acquired the property in dispute by way of the sale deed marked as Ex.A2 and Ex.A2 is dated 30.03.1995 and settlement deed effected by the second defendant in favour of the third defendant on 09.05.2013 is marked as Ex.A5.

8. It is found that the plaintiffs are claiming right over the suit property based on the Hindu Succession Amendment Act, 2005 and as found by the courts below, the abovesaid amendment is prospective in nature and when the available materials go to disclose that the notional partition amongst the plaintiffs' ancestors had taken place in the year 1961 itself and the parties who had derived the respective shares had also disposed of the same and accordingly the second defendant having found to have acquired the suit property in the year 1995 and when the amendment Act had come into force in the year 2005, in such view of the matter, as rightly held by the courts below, there is no question of any property available for partition to be divided with the plaintiffs. In addition to that, P.W.1, has clearly admitted that her grandfather had given power of attorney in favour of one Navarathinalal Jain with reference to the construction of the flats and that her grandfather and his brothers had already divided the properties and further admitted that Navarathinalal Jai, pursuant to the same, had put up the flats and sold the same to the third parties and in that process admitted that her grandmother, namely, the second defendant had also purchased one flat. Therefore, when the ancestral property in the hands of the plaintiffs' forefather had already been divided and when subsequent to the same had also been disposed of by the legal heirs one way or the other and in the course of the same, the second defendant, out of her own means, is found to have purchased the property in dispute, in such view of the matter, as determined by the courts below, the property acquired by the second defendant could only be determined as her

independent and separate property and such being the position, the second defendant is found to be entitled to settle the same in favour of the third defendant and in such view of the matter, the courts below are correct in holding that the plaintiffs are not entitled to challenge the abovesaid acquisition of the property by the second defendant as well as the disposition of the property by the second defendant and rightly held that the suit is misconceived and consequently dismissed the same.

9. Considering the abovesaid factual matrix and the nature of the right projected by the plaintiffs for claiming share in the suit property and when it is seen that the suit property is the separate property of the second defendant and she is entitled to settle the same in favour of the third defendant and when the plaintiffs have failed to establish any semblance of right over the same and the courts below being found to have assessed and analysed the materials on record in the right perspective and also applying the correct principles of law governing the issues involved between the parties, in all, rightly non suited the plaintiffs and the reasonings and conclusions adduced by the courts below with reference to the same not suffering from any irrationality or perversity in any manner, the second appeal is found to be devoid of merits.

10. For the reasons abovestated, no substantial question of law is found to be involved in this second appeal. Resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

bga

To

1.XVIII Additional Judge, City Civil Court at Chennai

2.II Assistant Judge, City Civil Court at Chennai.

+1 CC to Mr.V.V.Ravichandran, Advocate sr 69951.

S.A.No.796 of 2019

VD(CO)

SP(12/02/2020)