

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :01.07.2019

PRONOUNCED ON:23.07.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN
S.A.No.238 of 2016
and
C.M.P.No.4757 of 2016

Prabakaran Appellant/2nd Defendant

Vs.

1. Vadivel

2.Thambusamy

3.Saminathan ... Respondents/Plaintiff 1 & 3
Defendants

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the Additional District Munsif cum Chief Judicial Magistrate Court at Ariyalur, dated 21.07.2015 in A.S.No.19 of 2014 confirming the judgment and decree of the Principal District Munsif Court at Ariyalur, dated 12.12.2012 in O.S.No.51 of 2011.

For Appellant : Mr.P.Valliappan

For RR1 : Mr.S.Kamadevan

For RR2 : Mr.M.Madhan Kumar

For RR3 : Mr.C.Prabhakaran

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 21.07.2015 passed in A.S.No.19 of 2014 on the file of the Additional District cum Chief Judicial Magistrate Court, Ariyalur confirming the judgment and decree dated 12.12.2012 passed in O.S.No.51 of 2011 on the file of the Principal District Munsif Court, Ariyalur.

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

3. Suit for declaration and permanent injunction.

4. The case of the plaintiff in brief is that the plaintiff and the third defendant are the sons of the first defendant and the second defendant is the son of the third defendant and the suit properties are the joint family properties and treated and enjoyed as such. As regards the joint family properties, there was an oral family arrangement in which the suit properties were given to the first defendant to be enjoyed during his lifetime without any power of alienation and after his demise, it should be divided amongst his two sons namely the plaintiff and the third defendant and the terms of the family arrangement were reduced into writing on 19.06.1991 in which all the parties thereto had signed and the first defendant colluded with the third defendant and attempted to create false and fictitious documents and therefore the plaintiff filed the suit in O.S.No.11 of 1997 against the first defendant on the file of the District Munsif Court, Ariyalur for declaration of his vested right and enjoyment and for restraining the first defendant from alienating or encumbering the suit properties and the suit has been decreed as prayed for and as per the family arrangement and as per the decree abovestated, the first defendant had got only the right of enjoyment of the suit properties and the decree passed in O.S.No.11 of 1997 is binding upon him and he has no right to alienate the suit properties and the decree passed in O.S.No.11 of 1997 would operate as resjudicata and as the defendants are endeavouring to create false and fictitious document with reference to the suit properties in the name of the second defendant and thereby alienate the same in favour of the third parties and also cutting the trees thereon, according to the plaintiff, he has been necessitated to institute the suit against the defendants for appropriate reliefs.

5. The defendants resisted the plaintiff's suit contending that the family arrangement pleaded by the plaintiff is not true and also stated that the case of the plaintiff that the first defendant had been allotted the suit properties in the family arrangement only for the enjoyment during his lifetime is false and admitted that in respect of the disputes which had arisen in the family, arrangement took place in the presence of Panchathars and as the first defendant had celebrated his daughters' marriage and the third defendant had incurred loss in the lorry business and as the family was in debt in a sum of Rs.5,00,000/- and with a view to prevent the alienation of the properties belonging to the third defendant to the third parties, it is putforth that the sale deed had come to be executed in favour of the plaintiff's wife and thereby the debt had been discharged and at that point of time, it has been

agreed that the first defendant is entitled to enjoy the properties allotted to his share and also dispose of the same and the same was also agreed to by the plaintiff and therefore the first defendant had settled the suit properties allotted to his share in favour of the second defendant by way of a deed of settlement on 13.01.1999 and the same is known to the plaintiff and not objected to by the plaintiff and the plaintiff is estopped from questioning the abovesaid settlement deed and furthermore, the defendants by way of long and continuous possession of the suit properties had prescribed title to the same by way of adverse possession and hence the suit laid by the plaintiff is liable to be dismissed.

6. In support of the plaintiff's case, P.W.1 was examined. Exs.A1 to A4 were marked. On the side of the defendants, D.Ws.1 and 2 were examined. No document has been marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to grant the reliefs in favour of the plaintiff as prayed for. Challenging the same, the present second appeal has been preferred.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

a) Whether the suit filed on 24.02.2011 seeking to set aside the registered settlement deed dated 13.01.1999 is barred by Article 58 of the Limitation Act, 1963?

b) Whether the right can be created by an oral family arrangement, which is in controvention of the provisions of Sections 17 & 49 of the Registration Act, 1908?

9. The relationship between the parties is not in dispute. As could be seen from the case projected by the plaintiff, there had been a family arrangement between the plaintiff and the defendants 1 and 3 and by way of the same, it is noted that the suit properties had been allotted to the share of the first defendant for his enjoyment during his lifetime and thereafter the suit properties had been agreed to be divided equally amongst the two sons namely the plaintiff and the third defendant. According to the plaintiff, the terms of the family arrangement had been reduced into writing on 19.06.1991 which has come to be marked as Ex.A1. Inasmuch as the first defendant had endeavoured to alienate/encumber the suit properties allotted to his share by way of Ex.A1 family arrangement, it is found that the plaintiff with a view to declare his right in respect of the suit properties and to prevent the first

defendant from alienating/encumbering the suit properties, had laid the suit against the first defendant in O.S.No.11 of 1997 on the file of the District Munsif Court, Ariyalur and the suit Register Extract of the abovesaid suit has been marked as Ex.A2. It is found that the abovesaid suit ended in favour of the plaintiff. Therefore, it is seen that already the plaintiff's vested right in respect of the suit properties had been declared in O.S.No.11 of 1997 and the first defendant had also been restrained from alienating the suit properties as per the judgment and decree passed in the abovesaid suit. Now, according to the plaintiff, despite the above position, inasmuch as, the first defendant had further proceeded to alienate/encumber the suit properties and as the plaintiff came to know that the first defendant had settled the suit properties in favour of the second defendant by way of the deed of settlement on 13.01.1999, according to the plaintiff, he has been necessitated to lay the present suit for appropriate reliefs.

10. As could be seen from the written pleas projected by the defendants, they have not disputed the family arrangement marked as Ex.A1. According to the defendants, the parties namely the plaintiff and the defendants 1 and 3 had agreed to alienate the properties of the third defendant to the plaintiff's wife and accordingly also put forth that the debt of the family had been discharged and according to the defendants, at that point of time, the parties abovestated had agreed that the suit properties allotted to the first defendant by way of Ex.A1 family arrangement should be enjoyed by the first defendant absolutely and that he is entitled to alienate / encumber the same as he desires and it is stated that the plaintiff had not objected to the abovesaid arrangement. Therefore, it is seen that the defendants have pleaded another arrangement subsequent to Ex.A1 family arrangement whereby, according to the defendants, the first defendant had been allowed to enjoy the properties allotted to his share under Ex.A1 family arrangement absolutely and that the first defendant had been permitted to dispose of the suit properties as he desires and however, when the abovesaid plea of the defendants had been repudiated in toto by the plaintiff, despite the same, the defendants have not come forward as to when the subsequent arrangement had come to be entered into and by what mode the same had come to be entered into, whether oral or in writing and in what circumstances and in whose presence the same had come to be effected. Very very vaguely they have pleaded that at the time when the third defendant had endeavoured to create the sale deed in favour of the plaintiff's wife and the family debt had been discharged, the second arrangement had been entered into between the parties concerned. However, as abovestated, when with reference to the abovesaid case of the defendants, there is no proper plea as well as proper and reliable materials

pointing to the same, in such view of the matter, it is found that the subsequent arrangement putforth by the defendants is found to be a false theory and accordingly, they are unable to sustain the same with convincing and sound materials.

11. The defendants as such and as abovestated, have not disputed Ex.A1 family arrangement. In addition to that the first defendant examined as D.W.1 has clearly admitted about Ex.A1 family arrangement and the allotment of the suit properties towards his share for his enjoyment during his life time and that his sons namely the plaintiff and the third defendant should divide the same after his lifetime and furthermore, the first defendant had also admitted that the suit in O.S.No.11 of 1997 was against him by the plaintiff and admitted that he had contested the said suit and the said suit had ended in favour of the plaintiff and further admitted that he has not preferred any appeal against the same and despite the abovesaid position, his case is that he had settled the suit property in favour of the second defendant, his grandson, as such, cannot be accepted and therefore, it is seen that the defendants cannot be allowed to act in contravention of the family arrangement created between the parties and in such view of the matter, the plaintiff is found to be justified in seeking the appropriate reliefs with reference to the settlement deed said to have been executed by the first defendant in favour of the second defendant. Similarly, the third defendant examined as D.W.2 has also admitted the family arrangement Ex.A1 and the allotment of the suit properties to the first defendant for his enjoyment during his lifetime and admitted that after the demise of the first defendant, it is only the plaintiff and he who have to divide the suit properties and also admitted the institution of O.S.No.11 of 1997 by the plaintiff against the first defendant and the disposal of the said suit in favour of the plaintiff and despite the same, it is seen that the first defendant had chosen to execute the settlement deed in favour of the second defendant.

12. When from the pleas and the evidence of P.Ws.1 and 2 and D.Ws.1 and 2 and the recitals contained in Ex.A1 family arrangement, it is found that the parties had decided to divide the properties belonging to them and accordingly they had agreed that the suit properties should be allotted to the first defendant for his enjoyment during his lifetime and that the same should be divided between the plaintiff and the third defendant after his demise and the abovesaid terms of agreement had consequently come to be recorded by way of Ex.A1 family arrangement and in particular, when the same has not been repudiated by the defendants and when following the same, the right of the plaintiff over the suit properties had been declared in O.S.No.11 of 1997, in such view

of the matter, as rightly determined by the Courts below, the defendants are not entitled to repudiate the terms of the family arrangement Ex.A1 and the first defendant in particular, is not entitled to alienate / encumber the suit properties in contravention of the terms of the family arrangement Ex.A1.

13. Once the defendants have admitted the family arrangement Ex.A1 and only by way of Ex.A1, the first defendant derives title to the suit properties and Ex.A1 is found to be the record of past events and when the right of the plaintiff over the suit properties had been declared in O.S.No.11 of 1997 as above pointed out, in such view of the matter, the contention putforth by the plaintiff's counsel that Ex.A1 family arrangement cannot be relied upon as creating rights and the same would be in contravention to the provisions of Section 17 and 49 of the Registration Act 1908, as such, cannot be countenanced. When the defendants themselves relied upon Ex.A1 family arrangement and had only pleaded the subsequent arrangement for seeking absolute right in respect of the suit properties on the part of the first defendant and his entitlement to alienate/encumber the same and with reference to the subsequent family arrangement, no material has been projected by them to buttress the same, in such view of the matter, when the first defendant had already been restrained from alienating/encumbering the suit properties in O.S.No.11 of 1997 and when the same is found to be binding upon the first defendant in toto and in addition to that, the plaintiff's right over the suit properties had also come to be declared in the abovesaid suit, in such view of the matter, the defendants cannot be allowed to ignore Ex.A1 family arrangement and in particular, the first defendant would not be entitled to settle the suit properties in favour of the second defendant and in such view of the matter, it is found that the plaintiff is entitled to seek the relief of declaration that the deed of settlement dated 13.01.1999 is null and void and not binding upon him. Equally it is found that the plaintiff is also entitled to restrain the defendants from alienating / encumbering the suit properties and from committing the acts of waste with reference to the same as prayed for.

14. The defendants' counsel contended that the plaintiff has not laid the suit within three years from the date of the execution of the deed of settlement dated 13.01.1999. However, when it is the specific case of the plaintiff that he had come to know about the deed of settlement dated 09.12.2010 and accordingly when it is seen that within three years from then, the plaintiff has levelled the suit, it is clear that the plaintiff's suit is not barred by Article 58 or 59 of the Limitation Act as sought to be putforth by the defendants. Therefore the Courts below are found to be justified in granting

the relief of declaration sought for by the plaintiff and the same is found to be not barred under Articles 58 or 59 of the Limitation Act.

15. The defendants have raised the plea of adverse title in the written statement and by way of the same, it is found that the defendants have admitted the plaintiff's right in respect of the suit properties under Ex.A1 family arrangement and qua the relief of adverse possession putforth by them, absolutely there is no material on the part of the defendants to sustain the same. Furthermore, the plea of adverse possession taken by the defendants would in all aspects militate against their defence. On that ground also the defendants' version is liable to be rejected.

16. In the light of the abovesaid position, the decisions relied upon by the plaintiff's counsel reported in

1. AIR 2014 Supreme Court 937 [Union of India Vs. Vasavi Co-op Housing Society Ltd and others]

2. AIR 2013 Bombay 127 [Vimal Builders Vs. Nand Kumar Anant Vaity and other]

3. 2011 (3) MWN (Civil) 149 [Jaganathan Vs. Ramachandran]

4. 2018 (3) CTC 441 [Sita Ram Bhama Vs. Ramvatar Bhama]

5. 2017 (3) CTC 163 [A.Raja Bhoopathi (died) 1. R.Jansirani and three others vs. A.Vivekanandan]

6. 2017 (1) CTC 198 [S.Thirumalai Vs. S.Govindarajan (died) 2. Subbulakshmi and five others]

7. AIR 2013 Supreme Court 2389 [Thomson Press (India) Ltd Vs. Nanak Builders and Investors P. Ltd and others] are found to be not applicable to the facts and circumstances of the present case.

17. For the reasons aforesated, the substantial questions of law formulated in the second appeal are accordingly answered against the defendants and in favour of the plaintiff.

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

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The Additional District Munsif cum Chief Judicial Magistrate,
Additional District Munsif cum Chief Judicial Magistrate
Court, Ariyalur.
- 2.The Principal District Munsif,
Principal District Munsif Court,
Ariyalur.
3. The Section Officer,
VR Section,
High Court,
Chennai.

+1cc to Mr.S.Kamadevan, Advocate SR.No.63680

+1cc to Mr.P.Valliappan, Advocate SR.No.63121

S.A.No.238 of 2016
and
C.M.P.No.4757 of 2016

KK (CO)
GMY (23/01/2020)



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