

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.08.2019
PRONOUNCED ON: 05.09.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A. No. 259 of 2016

1. Tamilzharasi
2. Bagiyam
Chokkalingam (died)
3. Vaithiyalingam
4. Vijayakumari
5. Rajakumari
6. Sashikala
7. Virundhambal
8. Ezhilrani
9. Saravanan
10. Sivakumar

....Appellants/Respondents 1,24 to 11/
Plaintiff 2,3,5 to 9

Vs.

Elaiyaperumal ...Respondent/Appellant/1st Appellant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.21/2008 on the file of the 2nd Additional Sub Court, Villupuram dated 11.12.2015 in reversing the judgment and decree in O.S. 380/2002 on the file of the Principal District Munsif Court at Ulundurpet dated 22.09.2005.

For Appellants : Ms. V.Srimathi

For Respondent : No appearance set ex-parte
vide order dated 16.08.2019

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JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 11.12.2015, passed in A.S.No.21/2008, on the file of the 2nd Additional Subordinate Court, Villupuram reversing the judgment and decree dated 22.09.2005, passed in O.S. 380/2002, on the file of the Principal District Munsif Court, Ulundurpet.

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

"(a).Whether the lower Appellate Court is justified in reversing the judgment of the Trial Court by overlooking the fact that the period of limitation for institution of suit arises only after the demise of the last life estate holder and not from the date of sale by the life estate holder to the respondents herein?

(b).Whether the transaction made by a life estate holder could outlive the executants and whether the lower Appellate Court is justified in holding that Ex.B2 & B3 are unsalable in view of lapse of time?

(c).Whether the limited owner could convey a larger right than what he/she possesses?"

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

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

5. The plaintiffs have laid the suit against the defendants for the reliefs of declaration that the sale deeds dated 25.03.1997, executed by the plaintiffs' mother in favour of the defendants are invalid and directing the defendants to deliver the possession of the suit properties and also for mense profits.

6. Briefly stated, according to the plaintiffs, the suit properties are the joint family properties of the first plaintiff, his brother Duraikkanu and their parents namely, Chinnathambi and Kuppayeeammal and it is put forth that they had entered into a registered partition deed dated 01.07.1965, whereunder, the properties described in the A schedule to the abovesaid partition deed had been allotted to the plaintiffs' parents giving them life estate over the same and after their life time, the said properties have to be equally divided between the first plaintiff and his brother Duraikannu and according to the plaintiffs, Chinnathambi and Duraikannu had died long back and Kuppayeeammal died on 05.08.1997 and after the death of Kuppayeeammal, they came to know that the defendants had fraudulently obtained two sale deeds in their favour from Kuppayeeammal in respect of the suit properties,

however, Kuppayeeammal being only the life estate holder, the sale deeds executed by her in favour of the defendants are invalid in the eyes of law and accordingly, the plaintiffs repeatedly demanded the defendants to hand over the possession of the suit properties and as the defendants failed to accede to their demand, according to the plaintiffs, they had been necessitated to institute the suit against the defendants for appropriate reliefs.

7. The defendants have resisted the plaintiffs' suit contending that the suit properties are the separate properties of Kuppayeeammal and she had mortgaged the same on 24.12.1970, in favour of the first defendant with respect of the first item and subsequently had executed two sale deeds dated 25.03.1997 in respect of the suit properties in favour of the defendants and accordingly, it is only the defendants who are in the possession and enjoyment of the suit properties since then and furthermore, the defendants had also perfected title to the suit properties by way of adverse possession and accordingly, prayed for the dismissal of the plaintiff's suit.

8. In support of the plaintiffs' case PWs 1 and 2 were examined, Exs.A1 to A5 were marked. On the side of the defendants, DW1 was examined, Exs.B1 to B15 were marked.

9. On an appreciation of the materials placed on record and the submissions made, the trial Court was pleased to grant the reliefs in favour of the plaintiffs holding that they are entitled to the relief of declaration qua the sale deed dated 25.03.1997 in favour of the first defendant and accordingly, granted the relief of recovery of possession in respect of the first item of the suit properties in favour of the plaintiffs and directed the determination of the mesne profits by way of a separate petition and accordingly, disposed of the plaintiffs' suit. The first defendant preferred the first appeal challenging the judgment and decree of the trial Court and the first appellate Court, on an appreciation of the materials available on record and the submissions made was pleased to set aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the first defendant, resultantly, dismissed the plaintiffs' suit. Aggrieved over the same, the present second appeal has been preferred by the plaintiffs.

10. According to the plaintiffs, the suit properties are the joint family properties of the first plaintiff, his brother Duraikkannu and their parents, namely, Chinnathambi and Kuppayeeammal. The abovesaid parties had effected partition in respect of their properties on 12.07.1965 and the certified copy of the abovesaid partition deed had been marked as Ex.A1. Ex.A1

is not in dispute. Accordingly, it is found that as per Ex.A1 partition deed, the A schedule properties described therein had been allotted to the share of Chinnathambi and Kuppayeeammal and they have been granted only life estate in respect of the said properties. The recitals are available in Ex.A1 partition deed that after the life time of Chinnathambi and Kuppayeeammal, the properties allotted to them should be equally divided amongst the first plaintiff and the his brother Duraikkannu and therefore, according to the plaintiffs, Chinnathambi and Duraikkannu having demised, Kuppayeeammal, being only the life estate holder and not having any power of alienation in respect of the properties described in the A schedule to Ex.A1 partition deed and on the other hand, Kuppayeeammal having chosen to convey the suit properties in favour of the defendants by way of the sale deeds dated 25.03.1997, marked as Exs.B2 and B3, hence their claim is that the abovesaid sale deeds are invalid and accordingly, seeking for appropriate reliefs, the plaintiffs have laid the suit against the defendants.

11. The defendants' resisted the plaintiffs' suit contending that the suit properties are the separate properties of Kuppayeeammal and that she had been enjoying the same by mortgaging the same and subsequently, alienated the same in favour of the defendants by way of the sale deeds dated 25.03.1997 and accordingly, contended that it is only the defendants who have title to the suit properties and enjoying the same and furthermore, the defendants would also claim adverse title in respect of the suit properties and thereby, prayed for the dismissal of the plaintiffs' suit.

12. As regards the case of the defendants that the suit properties are the separate properties of Kuppayeeammal, absolutely there is no proof on the part of the defendants to substantiate the same. On the other hand, on a perusal of Ex.A1 partition deed, which deed has not been controverted, it is found that inclusive of the suit properties, the properties described in the A schedule in the abovesaid partition deed, had been allotted in favour of Chinnathambi and Kuppayeeammal as life estate holders and after their life time, the same should be equally divided between the first plaintiff and his brother Duraikannu. Therefore, it is evident that as put forth by the plaintiffs, Kuppayeeammal would not be entitled to convey the suit properties in favour of the defendants. It is admitted that Kuppayeeammal had died on 05.08.1997 and her death certificate has been marked as Ex.A2. The suit has been laid by the plaintiffs against the defendants on 14.12.2000. As abovenoted, the defendants have failed to establish that Kuppayeeammal is the absolute owner of the suit properties. In such view of the matter, merely because Kuppayeeammal had mortgaged the suit properties by way of Ex.B1 Bogiyam deed, that

alone would not be sufficient to hold that she is the absolute owner of the suit properties. As abovenoted, Kuppayeeammal have been granted life estate in respect of the suit properties under Ex.A1 partition deed, on that footing, it is found that she had mortgaged the same by way of Ex.B1 Bogiyam deed. Subsequently, it is found that she has alienated the suit properties in favour of the defendants on 25.03.1997.

13. The defendants, apart from claiming title to the suit properties by way of Exs.B2 and B3 sale deeds, would also put forth that they also claim title to the suit properties by way of adverse possession and contended that the suit properties are in their possession and enjoyment from 1970 and thereby contended that the plaintiffs' suit laid on 14.12.2000 is barred by limitation.

14. As rightly put forth by the plaintiffs' counsel, the plaintiffs being the vested remainder in respect of the suit properties and their right would accrue only after the demise of the last life estate holder and not from the date of the sale of the suit properties by the life estate holder in favour of the defendants, according to her, Kuppayeeammal having died on 06.08.1987, the plaintiffs have laid the suit within a period of 12 years since then i.e., on 14.12.2000, in such view of the matter, according to her, the plaintiffs suit is not barred by limitation and furthermore contended that any transaction made by the life estate holder would not outlive the life of the life estate holder and therefore, the defendants cannot put forth any claim of title to the suit properties under Exs.B1 and B2 after the life time of Kuppayeeammal, as according to her, the limited owner cannot convey the larger right than what she had possessed and in such view of the matter, contended that the first appellate Court erred in holding that, in such view of the matter, the suit properties had been in the possession and enjoyment of the defendants since 1970 and that they had prescribed title to the same by way of adverse possession and thereby, the plaintiffs suit is barred by limitation.

15. Considering the position of law governing the issues involved between the parties, as rightly put forth by the plaintiffs' counsel, Kuppayeeammal being only the life estate holder in respect of the properties allotted to her by way of Ex.A1 partition deed, even assuming for the sake of arguments that she had conveyed the suit properties in favour of the defendants under Exs.B2 and B3 sale deeds, on that basis, the defendants cannot lay any valid claim of title to the suit properties beyond the life time of Kuppayeeammal. The plaintiffs being the vested remainder in respect of the suit properties and their right would accrue only on the death of Kuppayeeammal, the last life estate holder, in such view of the

matter, the claim of title to the suit properties would accrue to the plaintiffs only on the demise of Kuppayeeammal on 06.08.1987 and immediately, thereafter, when it is found that the plaintiffs have laid the suit claiming the appropriate reliefs challenging the alienations made by Kuppayeeammal etc., in such view of the matter, the first appellate Court is found to have committed a manifest error in determining that the plaintiff's suit is barred by limitation. The first appellate Court based its reasonings and conclusions on the footing that the suit properties are in the possession and enjoyment of the defendants right from 1970 onwards and in this connection, relied upon Exs.B1 and B2 sale deeds and the so called admission of PW1, the fourth plaintiff.

16. However, the enjoyment of the suit properties by the defendants by way of Ex.B1 Bogiyam deed and by way of the purchases under Exs.B1 to B3 would not outlive and continue after the death of Kuppayeeammal, the last life estate holder. In such view of the matter, the alleged enjoyment of the suit properties on the part of the defendants prior to the demise of Kuppayeeammal based on Exs.B1 to B3 deeds would not in any manner operate against the interest of the plaintiffs in respect of the suit properties, as the plaintiffs would be entitled to lay a claim of title to the suit properties only on the demise of Kuppayeeammal, the last life estate holder. In such view of the matter, when immediately after the demise of Kuppayeeammal, the plaintiffs having laid the suit in the year 2000 within a period of 12 years, resultantly, the defendants cannot be allowed to non suit the plaintiffs by putting forth the plea of adverse possession. When the right of claim of title to the suit properties had accrued to the plaintiffs only after the demise of Kuppayeeammal i.e. from 06.08.1987 onwards and within a period of 12 years since then, the plaintiffs having instituted the suit for appropriate reliefs, in such view of the matter, the earlier enjoyment of the suit properties on the part of the defendants prior to the demise of Kuppayeeammal would not operate against the interest of the plaintiffs in any manner and furthermore, when the documents of possession of the suit properties projected by the defendants only range from 1985 onwards and also not showing continuous possession and enjoyment, in such view of the matter, the abovesaid documents, on their own, would not be useful to sustain the plea of adverse possession as put forth by the defendants. Furthermore, as rightly contended by the plaintiffs' counsel, Kuppayeeammal, being only the limited owner of the suit properties, she would not be entitled to convey a better title in favour of the defendants under Exs.B1 to B3 and therefore, it is evident that the first appellate Court had failed to consider the position of law governing the issues involved between the parties and therefore, committed a serious miscarriage of justice by turning

down all the reasonings and conclusions of the trial Court for upholding the plaintiffs case. The plaintiffs' counsel, in support of her contentions, placed reliance upon the decisions reported in AIR 1956 ANDHRA 141 (N.Janikamma and another Vs. Mattareddi and others) and the decision of the Apex Court dated 07.10.2005 in Appeal (civil) 4426 of 1999 (Saroop Singh Vs. Banto & Ors.). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

17. On a similar issue, I had an occasion to consider the position of law with reference to the abovesaid aspects in the decision rendered by me reported in 2018-1-L.W.800 (A.Venkatesan Vs. Padmavathi & others) and the same had been discussed in the abovesaid decision as follows:

held: subsequent transfer of the property either by life estate holder or any one, who have no interest over the suit property, would not in any manner affect the interest of the unborn children, being the vested remainders of the property concerned

Transfer of life interest by G would survive only till his death - Right of the plaintiff as vested remainder would operate

plaintiff not even a eo nominee party no necessity for plaintiff to seek cancellation of document for claiming relief sought for in the suit

Claim of adverse possession cannot be accepted.

1... .

19. The above said two decisions, as rightly determined by the first appellate Court, clearly applies to the facts and circumstances of the case at hand. It is thus found that the executors of Exs.A2/B12 have no right to convey any absolute title in favour of the Aravamudha Iyengar, resultantly it is also found that Aravamudha Iyengar cannot also derive any valid right over the suit property by virtue of the said document. It is found that Exs.A2/B12 will not defeat the vested remainder right of the plaintiff to the suit property, which she is entitled

to obtain, on the death of Govindaraj Iyengar. The mere fact that the plaintiff was not born at that point would not be a deciding factor for determining the validity of Exs.A1/B10 against the plaintiff. On the other hand, when it is admitted that Exs.A1/B10 had been made by Renganayaki only conferring life estate on Govindaraj Iyengar and when it is rightly appreciated and determined by the first appellate Court that the said document had been accepted and acted upon by the settlee, Govindaraj Iyengar and Govindaraj Iyengar, thereafter also dealt with the property, as held by the first appellate Court, therefore, the limited life estate holder namely, Govindaraj Iyengar or any other person cannot as per law, divest or deprive the right of the property by executing the transfer deed in favour of the third parties, in respect of the suit property. The birth and death of the son, Govindaraj Iyengar, prior to Exs.A1/B10, would not alter the legal position as such and as contended by the plaintiff's counsel, the plaintiff having been given the vested remainder right under Exs.A1/B10, the moment she is born, she gets the vested interest in the suit property and on the death of Govindaraj Iyengar, she gets the vested remainder right in the suit property and the same cannot be interdicted in any manner by executing Exs.A2/B12.

20. It is contended by the first defendant's counsel that pursuant to Exs.A2/B12, several transactions have been effected by various parties, as exhibited in the suit and as Aravamudha Iyengar also made improvement in the suit property and after his death, his son, who had acquired the title, had also made improvement to the suit property by spending a huge amount and therefore, the plaintiff, at a belated stage after several years, cannot make claim to the suit property and hence, even if the plaintiff has any right to lay the claim under Exs.A1/B10, through the lapse of time, her right gets extinguished and the suit laid by the plaintiff is barred by limitation. In other words, it is contended that the first

defendant and his predecessors in interest have acquired title by way of adverse possession, on account of long and continuous and uninterrupted enjoyment as absolute owner thereof and therefore, the plaintiff cannot lay any claim over the suit property.

21. However, the above contention does not merit acceptance. As put forth by the plaintiff's counsel, as seen from the decisions of the Andhra Pradesh Court referred to earlier and the decision of the Kerala High Court reported in AIR 1973 Kerala 65 (V 60 C 23) Full Bench (Narayana Menon and others Vs. Kochuvareed and others) and also the decision reported in AIR 1979 SCC 1298 (N.Krishnammal Vs.R.Ekamabaram and others), it is found that the plaintiff as the vested remainder holder would be entitled to lay a claim over the suit property, only on the death of Govindaraj Iyengar and therefore, when it is noted that Govindaraj Iyenagar admittedly having died only in the year 1987, it is found that only thereafter, the plaintiff would be entitled to, as per law, to make any claim over the suit property. Therefore, as rightly argued, the transfer of life interest by Govindaraj Iyengar would survive only till his death and then, the right of the plaintiff as vested remainder would operate and it is contended that only thereafter the plaintiff acquired the right to make a claim to the suit property. It is thus stated that the suit laid by the plaintiff well before the time prescribed by law is not hit by the law of limitation.

22. The above argument of the plaintiff's counsel seems acceptable. It is found that the suit has been laid by the plaintiff by way of O.P.No.1/97. It is thus found that even before the expiry of 12 years period, from the date of death of Govindaraj Iyengar, the plaintiff has asserted her right to the claim of title to the suit property and it is further found that prior to the institution of the suit, the plaintiff sent a notice and the claim of the plaintiff had been repudiated by the first defendant by sending a reply claiming title up on himself.

It is therefore seen that the plaintiff had been necessitated to lay the suit for appropriate reliefs. Therefore, when the plaintiff had instituted the suit well before the time prescribed by law, she had a right to claim title to suit property, it is seen that the claim of the first defendant and the third defendant that they had perfected title to the suit property by adverse possession, as such, cannot be accepted. Therefore, the period of enjoyment of the suit property, till the death of Govindaraj Iyengar, would not constitute adverse possession to the claim of the title of the plaintiff to the suit property, when the plaintiff claims right to the suit property as the vested remainder, on the death of Govindaraj Iyengar and it is thus found that when the plaintiff has instituted the present lis in time, the claim of the defendants 1 and 3 that they had perfected the title to the suit property by way of adverse possession cannot be countenanced in any manner. It is thus found that the first appellate Court has rightly negatived the above plea of the first defendant and the third defendant following the correct position of law in this aspect.

23. It is further found that as rightly argued by the plaintiff's counsel, the plaintiff being not a party to Exs.A2/B12, not even a eo nomine party to the same, it is seen that there is no necessity for the plaintiff to seek the cancellation of the document for claiming the relief sought for in the suit and in this connection, the decisions, reported in 2000 (1) MLJ 601 (Mariasironmani and others Vs. Pappammal alias Savariammal and others), 1991 (1) MLJ 592 (Venkatesa Mudaliar and others Vs. N.Krishnaswamy Mudaliar Trust, Vellore represented by its Managing Trustee) are relied upon. A perusal of the above said decisions would go to show that the plaintiff is not necessitated to seek the claim to cancel Exs.A2/B12 within three years on the attainment of her majority, when her right to claim to the suit property emanates only on the death of Govindaraj Iyengar and when she has laid the suit within 12 years

from her father's death, it is seen that her suit is not barred by limitation and this position could also be seen from the decision reported in AIR 1997 SCC 381 (Parwatabi Vs. Sonabai and others).

18. Considering the abovesaid position of law, inasmuch as the plaintiffs being the vested remainder, their right to claim of title to the suit properties having accrued only on the demise of Kuppayeeammal, in such view of the matter, the plaintiffs having laid the suit within a period of 12 years and when the plaintiffs are not parties to the impugned sale transactions effected by Kuppayeeammal and in such view of the matter and furthermore, as above pointed out, when the defendants have failed to establish their adverse claim of title to the suit properties as against the plaintiffs after the demise of Kuppayeeammal, in all, it is found that the judgment and decree of the first appellate Court setting aside the well considered judgment and decree of the trial Court cannot be upheld.

19. For the reasons aforesaid, the substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiffs and against the defendants.

20. Resultantly, the judgment and decree dated 11.12.2015, passed in A.S.No.21/2008, on the file of the 2nd Additional Subordinate Court, Villupuram are set aside and the judgment and decree dated 22.09.2005, passed in O.S. 380/2002, on the file of the Principal District Munsif Court, Ulundurpet are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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1. The 2nd Additional Subordinate Court,
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2. The Principal District Munsif Court,
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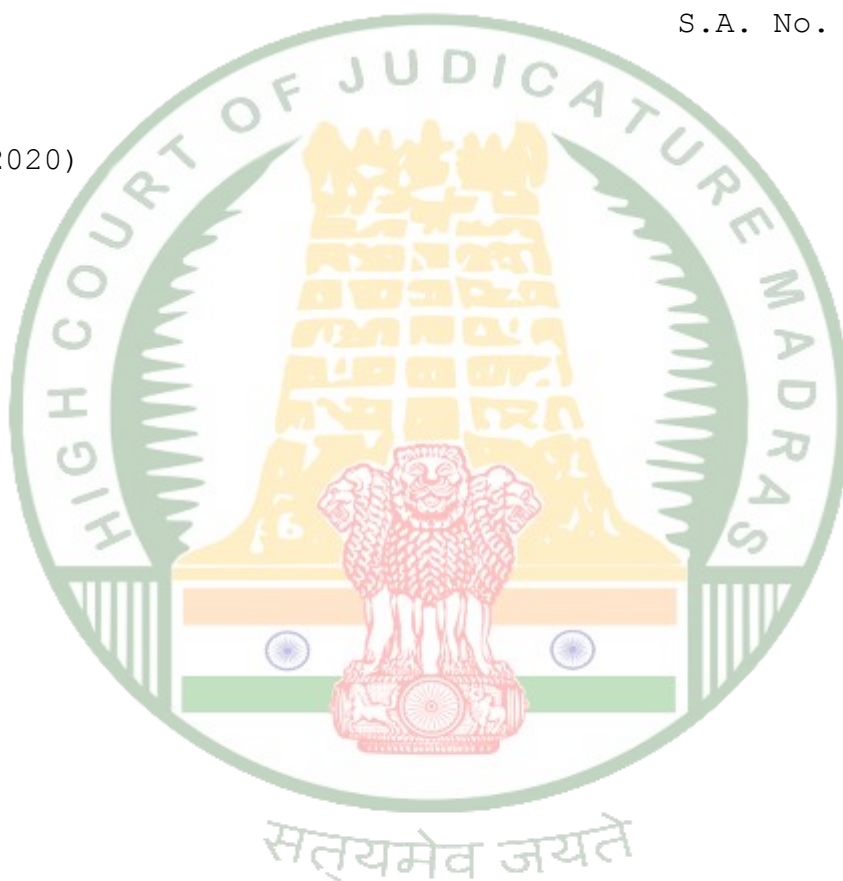
The Section Officer,
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High Court, Madras.

+1 CC to Mr.V. Srimathi, Advocate sr 76706.

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S.A. No. 259 of 2016

VSNI (CO)
SP (24/08/2020)



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