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IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 24.06.2019
PRONOUNCED ON : 27.06.2019
CORAM
THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S.A.No.300 of 2016
and
CMP NO. 11826 OF 2018

S. Vasantha

...Appellant/Appellant/
Plaintiff

Vs.

1. R.Raju @ Raji
2. M. Mohammed Arabath
3. K. Mohammed Abdullah
4. Shyamala

..Respondents/Respondents/
Defendants

..4th Respondents/Respondent/
2nd Plaintiff

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.266 of 2014 dated 24.03.2015 by the XV Additional City Civil Court, Chennai, confirming the judgment and decree in O.S.No.7648 of 2011 dated 13.03.2014 on the file of VIII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.V.Subramanian

For Respondents: Mr.R.Munuswamy for R2 & R3
R1 - No appearance.

JUDGMENT

Challenge in this Second Appeal is made to the judgment and decree dated 24.03.2015 passed in A.S.No.266 of 2014 on the the XV Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 13.03.2014 passed in O.S.No.7648 of 2011 on the file of VIII 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. Suit for declaration that the sale deed executed by the first defendant in favour of the defendants 2 and 3 dated 01.07.2010 is null and void and for permanent injunction restraining the defendants 2 and 3 from demolishing, alienating and reconstructing the suit property.



4. The case of the plaintiffs, in brief, is that the suit property originally belonged to their grand father Karuppan Chettiar and grand mother Alamelu Ammal and they had three sons and three daughters and one of their sons Rajagopala Chettiar levied a suit for partition in respect of the suit property and as per the decree passed in the said suit, Rajagopala Chettiar obtained his 1/6 share in the suit property and Rajagopala Chettiar had six issues and without their consent and permission, the first defendant, who is the brother of the five females born to Rajagopala Chettiar, had executed the sale deed in favour of the defendants 2 and 3 in respect of the abovesaid property on 01.07.2010 and accordingly, the plaintiffs caused a legal notice to the first defendant with reference to the same and as there was no proper response to the same, the plaintiff also issued another notice and after the exchange of notices between the parties, according to the plaintiffs, they had been necessitated to levy the suit against the defendants for appropriate reliefs.

5. The defendants 2 and 3 resisted the plaintiffs' case contending that the superstructure together with the lease hold right in the land measuring 2400 sq. ft, bearing door No.19/49, 7th street, Narayana Naicken Garden, Old Washermanpet, Chennai 21, was purchased by Karuppan Chettiar benami in the name of his wife Alamelu Ammal by a deed of sale dated 20.11.1936 and the suit property is the 1/6th undivided share in the abovesaid property and Karuppan Chettiar and Alamelu Ammal had three sons, namely, Rajagopal Chettiar, Govindasamy Chettiar and Srinisan and three daughters, namely, Yasodhammal, Veerammal and Rukmaniammal. After the demise of Alamelu Ammal and Karuppan Chettiar, who died intestate, Yasodhammal filed the suit for partition in O.S.No.1723 of 1972 claiming the property abovestated as the sridhana property of her mother Alameluammal. In the decree dated 12.12.1973 passed in the abovesaid suit, all the three sons and three daughters of Karuppan Chettiar and Alamelu Ammal had been held to be entitled to 1/6 share in the abovesaid property and Yasodhammal preferred final decree applicatiion in I.A.No.13917 of 1982 and the first defendant purchased the 1/6 share of Yasodhammal by a deed of sale dated 30.11.1983 and also purchased the 1/6 share of Rukmaniammal by a deed of sale dated 03.12.1983 and further purchased 1/6 share of Veerammal by a deed of sale dated 13.02.1985 from one Susheela who had purchased it from Veerammal and the first defendant's father settled his 1/6 share in favour of the first defendant by a deed of settlement dated 21.01.1984 and thereby, the first defendant had become the absolute title holder of 4/6 share in the larger extent of the abovesaid property and enjoying the same and furthermore, Govindasamy Chettiar and Srinivasan had given up their claim over their 2/6 share in the abovesaid property and the first defendant's father executed a deed of settlement dated 06.04.1988 settling the 2/6 share of his



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brothers in favour of the first defendant on the ground that he was in possessory title and the first defendant sold an extent of 662 of sq. ft., in favour of one T. Shanmugam, by a deed of sale dated 13.04.1994 and the final decree was passed in the abovesaid suit on 12.12.1997 and Rukmani and Amudha preferred E.P.No.153 of 2003 in respect of the share of the Govindasamy Chettiar and Srinivasan and as per the memo of compromise entered into between them and the first defendant, 700 sq. ft., was allotted to them and thus according to the defendants, the first defendant was the absolute owner and in the possession and enjoyment of the remaining extent of 697 sq. ft of land under the lease hold right together with the superstructure measuring 733 sq. ft., and conveyed the same to the defendants 2 and 3 for valid consideration by a deed of sale dated 01.07.2010 and thereby, the defendants 2 and 3 have become the absolute owners of the abovesaid property and enjoying the same. To the pre-suit notice dated 27.01.2011 issued by the plaintiffs, suitable reply has been send on 29.01.2011 and despite the receipt of the same, the plaintiffs had been continuing to issue false and vexatious notices with a view to extract amount from the defendants 2 and 3. The plaintiffs have not challenged the settlement deed dated 21.01.1984 and the sale deed dated 13.04.1994 abovestated though they are pretty well aware of the same through the reply notice and therefore, the plaintiffs' suit is not sustainable in the eyes of law and the suit is bad for non joinder of the other legal heirs of Rajagopala Chettiar and it is false to state that Rajagopala Chettiar has filed the suit before the Civil Court for obtaining his 1/6 share in the ancestral property and the consent of the plaintiff does not arise for the sale of the property by the first defendant in favour of the defendant 2 and 3 as they have no right over the property conveyed and hence the plaintiffs have no cause of action to institute the suit and the suit laid by the plaintiffs is liable to be dismissed.

6. In support of the plaintiffs' case P.Ws.1 to 3 were examined and Exs.A1 to A11 were marked. On the side of the defendants, D.W.1 was examined and Exs.B1 and B2 were marked.

7. Considering the materials placed on record and the submissions made, both the courts were pleased to dismiss the suit laid by the plaintiffs. Impugning the same, the present second appeal has been preferred.

8. As could be seen from the materials placed on record, the suit property originally belonged to Karuppan Chettiar, the plaintiffs' grand father. It is also noted that the suit in O.S. No.1723 of 1972 has been laid only by Yasodhammal, the daughter of Karuppan Chettiar and not by the plaintiffs' father Rajagopala Chettiar for partition and it is seen that the



abovesaid suit was decreed on 12.12.1973 allotting 1/6 share each to the three sons and the three daughters of the deceased Karuppan Chettiar. As rightly found by the courts below, the plaintiffs are not able to give any particulars about the institution of the abovesaid suit, the date of decree and the other particulars with reference to the said suit and on the abovesaid factor alone, it is found that the plaintiffs are not aware of the trace of title of the suit property.

9. The admitted fact is that the father of the plaintiffs acquired 1/6 share in the suit property. Though the plaintiffs have levied the suit claiming as if they have right in the suit property and the alienation made by the first defendant with reference to the same in favour of the defendants 2 and 3 is not valid and binding upon them as such, the plaintiffs have not claimed any share in the suit property and only impugned the alienation made by the first defendant with reference to the same in favour of the defendants 2 and 3. Now according to the contesting defendants, the plaintiffs' father Rajagopala Chettiar had settled his 1/6 share in favour of the first defendant by a deed of settlement dated 21.01.1984. It is found that by virtue of the abovesaid settlement deed, the plaintiffs are not entitled to claim any right or title in the suit property. The certified copy of the abovesaid settlement deed has been marked as Ex.A2. There is no plea put forth by the plaintiffs qua the abovesaid settlement deed. The plaintiffs have not challenged the abovesaid settlement deed made by Rajagopala Chettiar in favour of the first defendant. In such view of the matter, as rightly determined by the courts below, the plaintiffs, without challenging the settlement deed dated 21.01.1984, cannot be allowed to legally maintain the suit levied for challenging the alienation made by the first defendant in favour of the defendants 2 and 3 dated 01.07.2010.

10. The plaintiffs would put forth the case as if they had come to know about the execution of the settlement deed and the purchase of 1/6 share belonging to Yasodhammal, Rukmaniammal and Veerammal by the first defendant only after the disposal of the suit. However, it is found that everything has been adverted to in the reply notice sent by the defendants marked as Ex.A6 and in Ex.A6, it has been clearly averred that Rajagopala Chettiar had settled his share in favour of the first defendant vide settlement deed dated 21.01.1984 and therefore, when the suit had come to be laid by the plaintiffs only after the exchange of notices between the parties, as rightly determined by the courts below, the plaintiffs are very well aware of the settlement deed dated 21.01.1984 even prior to the filing of the suit. Therefore, the claim of the plaintiff that they became aware of the abovesaid settlement deed after the disposal of the suit, has been rightly rejected by the first appellate court.



11. In addition to that, though the plaintiffs in the pre-suit notice had claimed share in the suit property, however, in the plaint, no relief of partition has been prayed for by them. In the light of the abovesaid factors, when the plaintiffs are aware of the settlement deed executed by their father in favour of the first defendant and having suppressed the same and after the property had been alienated by the first defendant in favour of the defendants 2 and 3, the conduct of the plaintiffs in preferring the suit challenging only the abovesaid alienation, in such view of the matter, it is seen that the plaintiffs are not entitled to seek and obtain the reliefs prayed for without challenging the settlement deed dated 21.01.1984 and the courts below had rightly found that the plaintiffs' suit is not sustainable in the eyes of law.

12. According to the defendants, when the first defendant had acquired the share of Yasodhammal, Rukmaniammal and Veerammal vide various sale deeds as put forth in the written statement and had also obtained the share belonging to the other two sons of Karuppan Chettiar, namely, Govindasamy Chettiar and Srinivasan, by way of the deed of settlement dated 06.04.1988 and furthermore, when the first defendant had further sold an extent of 662 sq. ft in favour of T.Shanmugam by the deed of sale dated 13.04.1994, the plaintiffs without throwing any challenge to the settlement deed dated 21.01.1984 and the sale deed dated 13.04.1994, despite having knowledge about the same, and the conduct of the plaintiffs in only throwing the challenge to the sale deed executed in favour of the defendants 2 and 3 by the first defendant dated 01.07.2010 would expose the falsity of the plaintiffs' case and as rightly found and determined by the courts below, only with a view to extract money from the defendants 2 and 3, the plaintiffs had come forward with the abovesaid suit without any basis and entitlement to the suit property as such and in such view of the matter, the courts below are found to be totally justified in rejecting the plaintiffs' suit and I do not find any valid reason to interfere with the concurrent judgment and decree of the courts below.

13. The second appeal has been not admitted and only the notice of motion has been ordered and the defendants 2 and 3 had entered appearance through their counsel and vehemently challenged the second appeal preferred by the first plaintiff. Considering the reasons aforesaid, when it is seen that the courts below had properly assessed and analysed the materials placed on record in the right perspective, both factualwise as well as legalwise and determined that the plaintiffs have no cause of action and not entitled to obtain the reliefs prayed for, in such view of the matter, the second appeal is found to be devoid of merits and accordingly inasmuch as no substantial question of law is involved in the second appeal, resultantly,



the second appeal is dismissed.

14. After the institution of the second appeal, very belatedly, the first plaintiff/ appellant has come forward with an application in CMP No.11826/18 to amend the plaint for seeking the relief of declaration that the settlement deed dated 21.01.1984 executed by Rajagopala Chettiar in favour of the first defendant is null and void and not binding on the first defendant. As above noted, when the second appeal itself has not been admitted and dismissed as devoid of any substantial questions of law and in such view of the matter, the abovesaid application is found to be legally not sustainable. Furthermore, the amendment had been sought for by the first plaintiff / appellant on the footing that she had become aware of the same when the second appeal came up for the final hearing and hence she had failed to seek the abovesaid relief of declaration due to inadvertence and ignorance and hence she had been necessitated to come forward with the relief of amendment of the plaint. However, considering the abovesaid discussions, when it is seen that the settlement deed dated 21.01.1984 is very much known to the first plaintiff / appellant as well as the second plaintiff much prior to the institution of the suit, their claim that they had become aware of the same only when the second appeal came for hearing as such cannot be accepted. Despite having knowledge, the plaintiffs as such having failed to seek any relief of declaration and having suffered the decree in the courts below, their present claim that they are entitled to seek the amendment nearly 23 years after the execution of the settlement deed is found to be totally barred by limitation and furthermore, when the plaintiffs having not claimed the abovesaid relief at the time of institution of the suit despite knowledge, in all, it is found that the abovesaid application for amendment, does not deserve acceptance and liable to be dismissed.

15. In conclusion, the second appeal fails and is accordingly dismissed with costs. CMP No.11826 of 2018 is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

-s/d-

Assistant Registrar(CSV)

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Sub-Assistant Registrar

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Copy to

1. XV Additional Judge, City Civil Court, Chennai,
2. VIII Assistant Judge, City Civil Court, Chennai.
3. Section Officer,
V.R.Section, High Court of Madras.

+1 cc to Mr.V.Subramaniam Advocate sr 53606

+1 cc to R.Munusamy Advocate sr53291

S.A.No.300 of 2016

aa18/11/2019