

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 22.10.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN
S.A.No.51 of 2014

G.Kuppusamy

..Appellant / Appellant /Plaintiff
Vs.

1.Kalappa Gowder
2.Vellingiri
3.Lingammal
4.Nanjammal

..Respondents/ Respondents/ defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 21.01.2013 made in A.S.No.99 of 2012 on the file of the Principal District Judge of Coimbatore as confirmed the judgment and decree dated 30.03.2012 made in O.S.No.1 of 2010 on the file of the IV Additional Subordinate Judge, (District Judge Trainee), Coimbatore.

For Appellant : Mr.Mukund
for M.P.Tamilavel
For Respondents: Mr.P.Valliappan for R2.
R1,R3&R4- No Appearance

J U D G M E N T

The plaintiff in O.S.No.1 of 2010 having failed in his attempt to secure a decree for partition and separate possession of his $\frac{1}{2}$ share in the suit properties before the courts below is on appeal.

2. The suit was laid by the plaintiff claiming that the suit properties originally belonged to one Dasappa Gowder who purchased the same under the sale deed dated 27.06.1928. Soon after the purchase, the said Dasappa Gowder died intestate leaving behind his two sons Govinda Gowder and Venkatrama Gowder. The plaintiff is the son of Govinda Gowder. Venkatrama Gowder died leaving behind three daughters Subbammal, Lingammal and Nanjammal. The defendants 1 and 2 are the husband and son of the first daughter Subbammal. The defendants 3 and 4 are the other two daughters viz., Lingammal and Nanjammal.

3. According to the plaintiff, since there was a drought in the year 1938, the brothers viz., Govinda Gowder and Venkatrama Gowder were in need of money and they wanted to borrow monies

from Ajjakkal, mother-in-law of Venkatrama Gowder. It is claimed that Ajjakkal insisted that the brothers viz., Govinda Gowder and Venkatrama Gowder should execute a sale deed for an extent of 2 acres 50 cents if she is to lend monies to them. Because of the insistence on the part of Ajjakkal, the brothers executed a sale deed on 22.04.1938, on receipt of small amount conveying the extent of 2 acres 50 cents in favour of Rangammal daughter of Ajjakkal wife of Venkatrama Gowder.

4. Soon after the sale, on 14.06.1940 Rangammal sold an extent of 1 acre 25 cents to Ajjakkal i.e., her mother. Subsequently, on 06.12.1947, Rangammal sold a further extent of 2 acres 50 cents to the 1st defendant Kalappa Gowder under a registered sale deed bearing No.1503 of 1947. It is the contention of the plaintiff that the sale on 06.12.1947 is fraudulent because the vendor viz., Rangammal was not entitled to 2 acre 50 cents on the date of the said instrument.

5. It is also the further claim of the plaintiff that Govinda Gowder had paid interest on the mortgage loan and the entire loan was discharged. Terming the subsequent documents executed by Rangammal in favour of Ajjakkal and the 1st defendant as fraudulent and also impugning the further alienation made by Rangammal on 17.08.1977, the plaintiff had issued a legal notice on 29.04.1993. A reply notice was sent by the defendants on 26.05.1993 and on 08.07.1993. The plaintiff would submit that he had convened several panchayats after the notice, but, the defendants did not agree for amicable partition and hence, he is forced to file a suit for partition and separate possession.

6. The suit was resisted by the defendants contending that the sale by Govinda Gowder and Venkatrama Gowder in the year 1938 was for consideration and it was not taken as a security for the borrowing made by Govinda Gowder and Venkatrama Gowder. It is the further contention of the defendants that though the sale deed referred to only 2.50 acres of land in the suit survey number, but the intention of the parties was to convey the entire extent of 3.77 acres and the same would be manifest by the fact that the vendor had in the said sale deed stated that

7. On the above contentions, the defendants would claim that Rangammal was entitled to entire extent of 3.77 acres in S.No.248/1 and that she had sold an extent of 1.25 acres on 14.06.1940 to Ajjakkal and the other extent of 2.50 acres on 06.12.1947 to the 1st defendant. It is claimed that Ajjakkal and the 1st defendant as purchasers from Rangammal are in possession of the property exclusively in their own right, therefore, the plaintiff has no right to seek partition.

8. It is also contended that the sale deeds are of the years 1938, 1940 and 1947, hence, the claim of the plaintiff is barred by limitation. It is the further contention that the plaintiff having issued notice in the year 1993 had chosen to file the suit in the year 2010. Therefore, the suit is barred under Article 110 of the Limitation Act.

9. The courts below, upon examination of evidence on record, concluded that the plea of mistake projected by the defendants is true. This conclusion was arrived at by the courts below, on the basis of the recitals in the sale deed dated 22.04.1938, a copy of which has been marked as Ex.A2. The courts below took note of the fact that the vendors have specifically stated that they did not have any other land in the suit survey number to buttress their conclusion that the sale deed dated 22.04.1938 executed by Govinda Gowder and his brother Venkatrama Gowder was for the entire extent of 3.77 acres in S.No.248/1.

10. On the said conclusion, the courts below found that subsequent documents executed by Rangammal on 14.06.1940 in favour of Ajjakkal and 06.12.1947 in favour of the 1st defendant are valid and hence, the plaintiff will not have any right over the suit properties. On the aforesaid findings, the courts below dismissed the suit. Aggrieved the plaintiff is on appeal.

11. The following questions of law were framed at the time of admission:

1. Are the courts below justified in dismissing the suit for partition with respect to the entire extent overlooking a primary fact that 2.50 acres were sold under Ex.B2 and B3 and remaining 1.27 acres is remaining undivided and is available for partition?
2. Are the courts below justified in misinterpreting the evidence and coming to the conclusion that the entire 3.77 acres were sold overlooking the availability of documentary evidence with respect to Ex.B2 and Ex.B3?

12. I have heard Mr.Mukund, learned counsel appearing for the appellant and Ms.Anjani Vasan, learned counsel appearing for Mr.P.Valliappan, learned counsel for the respondents.

13. Mr.Mukund, learned counsel appearing for the appellant, elaborating on the questions of law, would contend that the courts below were not justified in dismissing the suit in its entirety, when the sale deed dated 22.04.1938 purports to transfer only an extent of 2.50 acres in favour of Rangammal daughter of Ajjakkal. He would also contend that without a

prayer for rectification of document under Section 26 of the specific Relief Act, the defendants cannot project the case of mistake. He would also further point out that the evidence available on record was misinterpreted and misread by the courts below, when they reached a conclusion that the sale deed dated 22.04.1938 relates to the entire property of 3 acres 77 cents.

14. Contending contra Ms.Anjani Vasan for Mr.P.Valliappan, learned counsel appearing for the respondents would point out that the courts below have reached the factual conclusion based on the recitals in Ex.A2 sale deed dated 22.04.1938. She would draw my attention to the recitals in the sale deed to the effect that the vendors have not been left with any land in the survey number after the execution of the sale deed and contend that this would prove that the sale deed was executed for entire extent of 3 acres 77 cents.

15. The sale deed was executed as early as on 22.04.1938. The vendors are no more now. The plaintiff has waited for almost 70 years after alienation for suing for partition. The courts below have considered the evidence on record and also the conduct of the parties in coming to the conclusion that the sale deed dated 22.04.1938 was for the entirety of the property and it was not for 2.50 acres and the recital to that effect is a mistake.

16. This factual conclusion has been reached by the courts below, on the basis of the evidence available and I do not find any perversity or misreading or misinterpretation of the evidence on record by the courts below, as suggested by the counsel for the appellant. No doubt true, the sale deed recites the extent of the property sold as only 2.50 acres, but the recitals extracted above to the effect that the vendors did not have any land in the survey number after execution of the sale deed puts the transaction beyond pale of doubt and the interpretation made by the courts below is a plausible interpretation.

17. I do not think, I can interfere with the said interpretation, unless it is shown to be perverse. As regards the claim of the counsel that the defendants have not sought for rectification of document under Section 26 of the Specific Relief Act, I am unable to accept the said contention, inasmuch as the document emanated about 72 years prior to the filing of the suit and parties to the documents are dead and gone. The conduct of the parties, particularly purchasers, in dealing with the property of the entire extent within 10 or 11 years of the execution of the sale deed would definitely prove that a mistake had crept in while describing the extent of property in the said sale deed. It is open to the parties to prove that there was

mistake in the sale deed even under Section 92 of the Evidence Act. In view of the same, I am unable to agree with the counsel for the appellant on both the questions of law. Hence, both the questions of law are answered against the appellant.

18. Therefore, the appeal is dismissed. However, in the circumstances there will be no order as to costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Coimbatore.
2. The IV Additional Subordinate Judge,
Coimbatore.
3. The Section Officer, V.R. Section,
High Court of Madras, Chennai 600 104.

+1cc to Mr.P.Tamilavel , Advocate SR.No. 88411
+1cc to Mr.P.Valliappan , Advocate SR.No. 88813

A.SK(03/03/2020)

S.A.No.51 of 2014

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