

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.12.2019

Pronounced on : 18.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.1161 of 2019
and CMP.No.25351 of 2019

1. Sudakar
2. Jothilakshmi
3. Jayanthi Appellants /Plaintiffs

Versus

1. Usha
2. Kalyani @ Sarathambal
3. Tamilarasan
4. Sugumar
5. Arikrishnan ... Respondents/Defendants 2 to 6

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 29.03.2019 made in A.S.No.54 of 2018 on the file of Principal Sub Judge, Puducherry, confirming the judgment and decree dated 27.11.2017 made in O.S.No.585 of 2006 on the file of the 1st Additional District Munsif, Pondicherry.

For Appellants : Mr.M.V.Venkataseshan

For Respondents: Mrs.Hema Sampath, S.C.
for M/s.M.Vaikunth

JUDGMENT

The plaintiffs are the appellants in this appeal. The prayer in O.S.No.585 of 2006 was for declaration of title and for permanent injunction.

2. According to the plaintiffs, the suit A schedule property was originally owned by one Sarangapani Gounder. During his lifetime, he executed a registered Will dated 09.12.1976, bequeathing his property granting life interest in favour of his wife Adilakshmi and thereafter to his daughter Kalyani @ Sarathammal and the vested remainder shall go to his grandsons, who are the first plaintiff and the defendants 4 and 5.

3. The plaintiffs would further state that on 24.08.1984, the testator Sarangapani Gounder died and his wife Adilakhsmi died on 28.02.2005. During the lifetime of Adilakhsmi, she along with her daughter Kalyani @ Sarathammal executed a release deed on 12.10.2001 releasing their right in favour of the first plaintiff and the fifth defendant. Subsequently, the first plaintiff executed a power of attorney in favour of one Kathavarayan on 15.10.2001 in respect of his 1/3 share in the A schedule property. The power agent entered into an agreement with the plaintiffs 2 and 3 on 03.10.2001 agreeing to sell his right over the property for a total consideration of Rs.1,36,000/- and sold the property by a registered sale deed, dated 29.10.2001. Since then, the plaintiffs 2 and 3 are in possession of the property. While so, the defendants attempted to interfere with the possession and enjoyment of the property from August 2004. Hence, the suit.

4. The suit was opposed by the defendants by filing written statement contending that after the death of the said Sarangapani Gounder, his wife Adilakhsmi was enjoying the suit property along with her daughter / third defendant, 4th defendant, the first plaintiff and the fifth defendant and they had jointly sold 1 kanni 28 kuzhies in favour of the second defendant and the remaining land in favour of the first defendant by registered sale deeds dated 21.12.1988. The first defendant is the mother-in-law of the second defendant. In pursuance of the sale, the defendants 1 and 2 have been in possession and enjoyment of the same. It is further contended that after selling the property on 21.12.1988, the said Adilakhsmi and the third defendant had no authority to execute the release deed on 12.10.2001. The plaintiffs had never been in possession of the property. Hence, prayed for dismissal of the suit.

5. Based on the above pleadings, the Trial Court framed necessary issues. On the side of the plaintiffs, PW1 was examined and Exs.A1 to A20 were marked and on the side of the defendants DW1 was examined and Exs.B1 to B10 were produced. Upon consideration of both oral and documentary evidence, the Trial Court dismissed the suit. Aggrieved over the judgment and decree, the plaintiffs preferred an appeal before the Principal Sub Court, Puducherry. The Appellate Judge confirmed the findings of the Trial Court. Hence, this appeal.

6. Mr.M.V.Venkataseshan, learned counsel for the appellants would urge that the Courts below failed to note that the parties have accepted the registered Will, Ex.A2 dated 09.12.1976 and the recitals in the document, which show that the first life interest holder is the testator's wife and after her death, the

third defendant acquires life interest. It is the submission of the learned counsel that the life interest holder can sell only her interest in the property. The said Adilakhsmi died only on 28.02.2005, hence, what was sold under Exs.B1 and B6 are only her life interest and nothing more. In this regard, a decision of the Apex Court in the case of Bhura and others vs. Kashi Ram reported in 1994 2 SCC 111 is relied upon. The relevant paragraph of the said decision reads as follows:

"7. The limited estate conferred upon Sarjabai by the will (W.P. 4) could not even be enlarged into an absolute estate under the Hindu Succession Act, 1956, even though she was possessed of that property at the time of the coming into force of the Hindu Succession Act, 1956. Section 14(2) of the Act mandates that nothing contained in Sub-section 1 of Section 14 of the Hindu Succession Act, 1956 shall apply to any property acquired by way of gift or under a will or by any other instrument prescribing a restricted right in such property. In view of our finding that the will (Ex.P4) itself prescribed a restricted right of life-estate in the property in favour of Sarjabai, that estate could not be enlarged into an absolute estate in view of the express provisions of the Hindu Succession Act, 1956."

7. It is further contended that both the life estate holders have violated the solemn covenants of the Will and hence, the first plaintiff has rightly sold his 1/3rd share in favour of the plaintiffs 2 and 3. So the suit filed for partition is valid in law and these vital aspects were not all considered by the Courts below. He would further add that Section 8 of the Hindu Minority and Guardianship Act, has no application to the facts of this case as the suit schedule property is not an ancestral property.

8. Per contra, Mrs.Hema Sampath, learned Senior Counsel appearing for Mr.M.Vaikunth, learned counsel for the respondents would submit that it is true that Sarangapani Gounder executed a Will on 09.12.1976 and he died on 24.08.1984. Thereafter, as per the Will, his wife Adilakhsmi was in possession and enjoyment of the property. Though the said Adilakhsmi and her daughter / third defendant, had life interest over the property, they accelerated their right and sold the suit property in favour of the defendants 1 and 2 under Exs.B1 and B6 and the vested remainders were also parties to the sale deeds.

9. It is the submission of the learned Senior Counsel that since in the sale deeds dated 21.12.1988, minors, viz., the first plaintiff and the fifth defendant were represented by their father as natural guardian, the sale is voidable and it

has to be challenged by the minors within a period of three years from attaining majority. But in the case on hand, the suit is not filed within the prescribed time, hence, the sale became valid. She further added that Adilakshmi and the third defendant had no right to execute the release deed since they had already divested their right in the year 1988 itself. In support of the above contentions, following decisions have been relied on by the learned Senior Counsel:-

i) In the case of Lakshmiammal vs. Nagammal reported in 2013 (1)

CTC 207, this Court has held as follows:

"15. The genuineness of the said document is not in dispute. On the other hand, a contention was made before the lower appellate Court that since Unnamulaiammal was a minor and the sale deed had been executed by Arunachala Thevar himself as guardian of Unnamulaiammal without obtaining prior permission from the Court, the same would not be a valid one and would not be binding on Unnamulaiammal. The said contention was accepted by the lower appellate Court and the lower appellate Court held that Ex.B35 was not a valid document; that under Ex.B35 no valid title as against Unnamulaiammal had been derived by Arunachala Thevar and that hence, the said document was ineffective in law and null and void against Unnamulaiammal. The said view expressed by the learned lower appellate Judge is not in consonance with the recognized principle of law. Any alienation by a natural guardian is not void but is only voidable at the option of the minor. The same position has been restated in Section 11 of the Hindu Minority and Guardianship Act, 1956. Section 11 provides an embargo on the power of the natural guardian to alienate the property of the minor without getting prior permission of the Court. Sub-section 2 makes it clear that any contravention of Clauses (a) and (b) of Section 1 will not be void, but shall be voidable at the option of the minor or anybody claiming through such minor. The same should have been avoided within the period of limitation. Limitation for filing a suit for cancellation of such a document is three years from the date of attainment of majority by such minor. In this case, though Ex.B35 sale deed came to be executed by Arunachala Thevar on behalf of Unnamulaiammal as her guardian, no steps were taken to cancel the sale within three years after the date of her attaining majority. Thereafter, the transfer effected under the sale deed became unassailable. A minor, on whose behalf a sale deed is executed, should take steps for the cancellation of the sale or for getting a declaration that the sale is not binding on such minor, within three years from the date of such minor attaining

majority. If it is not done, then the sale becomes thereafter unassailable.

16. In the present case, admittedly no steps were taken either by Unnamulaiammal within three years on her attaining majority or anybody on her behalf during her minority. No one claiming through Unnamulaiammal had taken steps to avoid the sale within three years after her attaining majority. As such, the transfer of title effected under Ex.B35 became unassailable even by Unnamulaiammal after the lapse of three years from the date of her attaining majority. It should also be noted that the other two daughters of Arunachala Thevar, namely Kuppayammal and Lakshmiammal were majors on the date of Ex.B35 and they signed the document as parties. The plaintiff is the daughter's son of Kuppayammal. Therefore, the alienation made under Ex.B35 cannot be challenged by the plaintiff and the same shall be binding upon him."

ii) In the case of *Amirtham Kundumbah vs. Sarnam Kdumbah* reported

in AIR 1991 SC 1256, the Supreme Court has held as follows:

"14. In the instant case, on the facts found, the transfer of the property made by the guardian was a voidable transaction and it was, therefore, open to the minor to challenge it and seek recovery of possession. Such a right of the minor is a right or interest in property which he himself or "any person claiming under him" may enforce by instituting a suit [Section 8(3) of the Guardianship Act]. "Any person claiming under him" must necessarily include a purchaser.

15. Section 8(3) confers a right of suit in the special circumstances postulated in that provision. The object of the Act being the protection of the minor, the legislature has thought it fit to confer a right of suit in certain circumstances not only on the minor, but also on a person to whom the minor has transferred his rights. The right transferred is an interest in property which is capable of enforcement at the instance of the transferee as it was at the instance of the ex-minor prior to the transfer. Such a provision, indeed specially for the protection of the interests of the minor, must be read in harmony and consistently with the general provisions contained in section 6 of the T.P. Act. [See *The J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. The State of Uttar Pradesh* [1961] 3 S.C.R. 185 and *Ashoka Marketing Ltd. v. Punjab National Bank*, 1990 (2) RCR(Rent) 297 (SC) : 1990 (3) JT SC 417].

16. The transfer made by the father during his son's minority was voidable at the instance of his son who was the real owner, and any person purchasing such property from the natural guardian obtained only a defeasible title. The minor retained a right in the property to defeat existing adverse claims, and such right is an assignable right. We are in complete agreement with what has been stated on the point in Palaniappa Goundan v. Nallappa Goundan, AIR 1951 Madras 817 and in P. Kamaraju v. C. Gunnayya, AIR 1924 Madras 322. We do not agree with the contrary view expressed on the point in Jhaverbhai Hathibhai v. Kabhai Bechar, AIR 1933 Born. 42; Mon Mohan Battacharjee v. Bidhu Bhushan Dutta, AIR 1939 Cal. 460 and Palani Goundan & Anr. v. Vanjiakkal, I.L.R. 1956 Mad. 1062."

iii) In the case of Sankaranarayana Pillai vs. Kandasamia Pillai

reported in 1956 AIR (Madras) 670, this Court has held as follows:

"There is no doubt whatever that a transaction entered into by a guardian relating to the minor's properties is not void and if the minor does not sue to set it aside within three years of his attaining majority it becomes valid under Article 44 of the Limitation Act. In such a case the minor is deemed to be a party to the transaction. But where the document is executed by a manager of the family and it is not binding on the family, the minor or any other member can ignore the transaction and recover possession of the property. To such a case Section 7(v) of the Court-fees Act will apply.

We are here not concerned with decrees to which the minor is eo nomine a party. Our answer to the first question is that if the minor is eo nomine a party to a sale-deed or other document of alienations, he must sue for the cancellation of the document under Section 7(iv-A) of the Court-fees Act and it is not enough if he applies for possession under Section 7(v) of the Act; and to the second question our answer is that there can be no distinction whether the father as guardian of the minor and not as the manager of the joint family executes the deed. Even in that case also the document has to be set aside.

(This case coming on for hearing after expression of the above opinion of the Full Bench, the Court, Panchapakesa Ayyar, J. delivered the following JUDGMENT:)

24. The Full Bench has held that Court-fee has to be paid in this case under Section 7(iv-A) of the Court-Fees

Act. Therefore this Civil Revision Petition must be allowed, and it is allowed with half costs both here and before the Full Bench. Advocate's fee Rs.35 here, and Rs.50 before the Full Bench. It is not known whether the valuation under Section 7(iv-A) will come to over Rs.5,000. The learned District Munsif will assess the valuation after hearing both sides. If it exceeds his jurisdiction he will return the plaint for presentation to the proper Court."

10. In the decisions referred supra, it has been consistently held that alienation of minor's property by the guardians is not void and the sale should have been assailed within a period of three years from the date of attainment of majority of the minor. It is pertinent to note that as per the Will, Ex.A2, after the demise of the testator, the property will go to Adilakhsmi as the first life estate holder and after her lifetime, the testator's daughter / the third defendant would enjoy the property as life estate holder and thereafter, the vested remainder would go to his grand sons. However, after the testator passed away on 24.08.1984, the life estate holders and the vested remainders have executed sale deeds under Exs.B1 and B6, thereby they sold the entire suit property in favour of the defendants 1 and 2. It is the submission of the learned counsel for the appellants that as per the intention of the testator, only after the life time of the life estate holders, the grand children of the testator would get the vested interest and hence, the sale made by the life estate holders in the year 1988 is only the life interest and the entire title will not be transferred in favour of the defendants 1 and 2.

11. It is not disputed that the said Adilakhsmi died on 28.02.2005 and the third defendant is still alive and the first plaintiff claims right over the property on the basis of the release deed executed by her grand mother Adilakhsmi and the third defendant. So if the contention of the learned counsel for the appellants is accepted, the release deed dated 12.10.2001 under which, the 1st plaintiff claims right is not valid. If the deed dated 12.10.2001 is held to be valid, it shall be deemed that the life estate holders released their right on 21.12.1988 when they sold the property to the defendants. The appellants are not entitled to blow hot and cold in the same breath. Hence, I find no substance in the contention of the appellants.

12. From perusal of the records, it is seen that the suit has been instituted on the basis of the release deed, Ex.A5, dated 12.10.2001, and the sale deed Ex.A8, dated 29.10.2001. In the decisions relied on by the learned Senior Counsel for the

respondents, this Court has taken a consistent view that if the property of a minor is sold by a natural guardian and if they are eo nomine parties, the sale is voidable and the minor has to challenge the sale within a period of three years from the date of attaining majority. It is further held that any person claiming under the minor also has to file the suit within the prescribed period of limitation. But admittedly, the suit was not filed within the period of limitation.

13. In the decision cited by the learned counsel for the appellants, the life estate holder had sold the property. The Hon'ble Apex Court in that context held that the life estate holder can sell her life interest only. However, in the case on hand, the vested remainders also have joined for execution of the sale deed. So, the decision does not support the case of the appellants.

14. In view of the above, this Court is of the considered opinion that both the Courts below on proper appreciation of evidence came to the right conclusion that the plaintiffs are not entitled for relief in the suit. Hence, I find no ground warranting interference in the concurrent findings of the Courts below. In such view of the matter, the second appeal fails and the same is dismissed. No costs. Consequently, connected application is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pvs
To

1. The Principal Subordinate Judge,
Puducherry.
2. The I Additional District Munsif,
Pondicherry.
3. The Section Officer,
VR Section, High Court, Madras-104.

+1cc to Mr.M.V.Venkataseshan, Advocate Sr.105155
+1cc to Mr.M.Vaikunth, Advocate Sr.105118

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srg 22/07/2020