

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.975 of 2019 and
C.M.P.No.20846 of 2019

1. S.Subramanian
2. S.Nandakumar

..Appellants/Respondents/Plaintiffs

Vs.

1. S.Muthammal
2. S.Mohanasundaram
3. S.Govindaraj

..Respondents/Appellants/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the learned IV Additional City Civil Court, Chennai, dated 29.03.2019 in A.S.No.16 of 2015, reversing the judgment and decree of the learned IV Assistant City Civil Court, Chennai, dated 15.10.2014 in O.S.No.5791 of 2013.

For Appellants : Mr.M.Boopathy

For Respondents: Mr.A.E.Ravichandran,
for Caveator

J U D G M E N T

The plaintiffs in O.S.No.5791 of 2013 would succeeded in obtaining a decree for partition and separate possession of their 2/5th share in the suit property have come up with this second appeal, since the said judgment and decree were reversed by the lower appellate Court in A.S.No.16 of 2015.

2. The case of the plaintiffs as set out in the plaint is that the suit property was purchased by their father deceased Sundaram Vanniyar under a sale Deed dated 12.05.1978 in the name of his 2nd wife/1st defendant S.Muthammal. The said Muthammal had no separate income to have purchased the suit property. According to the plaintiffs, the said Muthammal was holding the property only as a trustee on behalf of Sundaram Vanniyar. Therefore, the plaintiffs claimed 1/5th share each in the suit property.

3. The suit was resisted by the defendants contending that the Sundaram Vanniyar was not in a position to purchase the property and Muthammal purchased the properties out of her own income. It was also claimed that the parents of said Muthammal died when she was aged of 10 years, leaving behind herself and her sister Parvathi as legal heirs. They were brought up and taken care by their paternal aunt namely Lakshmi. Lakshmi got her married to her son Sundaram vanniyar. It is also claimed that Sundaram Vanniyar leading the wavered life and he was not the bread winner of the family. According to the defendants, it was the 1st defendant who sold vegetables and worked as house maid in order to maintain the family, from and out of the income earned by her, she had purchased the property in the year 1978. She had also executed the settlement deed in favour of defendants 2 and 3 on 16.11.2011. Therefore, according to the defendants, the defendants 2 and 3 are the absolute owners of the property.

4. The trial Court on a consideration of the evidence on record, particularly two documents namely Ex.X1, and Ex.A12, a diary and a promissory note of the year 1982, concluded that Sundaram Vanniyar was in possession of funds to have contributed for the purchase of the property in the name of Muthammal. The trial Court above though referred to the provisions of the Prohibition of Benami Property Transactions Act, 1988 did not apply the law with regard to the purchase of the property in the name of wife and the presumption created under Section 2 (9) of the Prohibition of Benami Property Transactions Act, 1988 regarding the property purchased in the name of the wife and unmarried daughter, concluded that Muthammal was only a name lender and she held the property in trust for Sundaram Vanniyar.

5. Upon the said conclusion, the trial Court granted preliminary decree for partition. Aggrieved, the defendants preferred an appeal in A.S.No.16 of 2015. The lower appellate Court concluded that Exs.X1 and A12 are not genuine documents and the reliance placed upon them is erroneous. The lower appellate Court found that Ex.A12 promissory note of the year 1982 executed by third party in favour of Sundaram Vanniyar was produced by the plaintiffs before the Court at the time of evidence. The said document was not filed along with the plaint.

6. The lower appellate Court also came to the conclusion that the promissory note is a created document since there was no explanation for the promissory note being in the hands of the plaintiffs who claimed to be the children of the deceased Sundaram Vanniyar, nearly after 36 years of its execution. As regards Ex.X1, the lower appellate Court found that it is a diary of the year 1978 and certain notes therein have been taken to conclude that Sundaram Vanniyar possessed funds. The lower

appellate Court considered the entire documents and concluded that the documents have been prepared by the plaintiffs themselves. It is pertinent to point out that the diary was not produced along with the suit and the same was introduced at the time of evidence.

7. The lower appellate court after referring to the judgment of this Court in G.Mohandas and others Vs.G.Shanmugam and others reported in 2014 (6) MLJ 506 concluded that the property standing in the name of Muthammal is presumed to be absolute property and it is for the plaintiffs who claimed that the purchase was not intended for her benefit to prove the same beyond all reasonable doubts, in view of the statutory presumption under Section 2 (9) of the Prohibition of Benami Property Transactions Act, 1988.

8. The lower appellate Court found that the evidence available is not strong enough to rebut the presumption that the purchase was for the benefit of Muthammal namely the 1st defendant. The lower appellate Court also faulted the trial Court for placing the burden of proof on the defendants to show that Muthammal namely the 1st defendant had enough resource to purchase the property. On the said conclusion, the lower appellate Court allowed the appeal and dismissed the suit.

9. Aggrieved, the plaintiffs have come forward with the second appeal.

10. I have heard Mr.M.Boopathy, learned counsel for the appellants.

11. Mr.Boopathy, the learned counsel for the appellants would contend that there is enough and more evidence to show that the property was not purchased for the benefit of the wife namely Muthammal. He would also refer oral evidence of P.Ws 2, 3 and 4 who are the close relatives of Sundaram Vanniyar. He would have also point out that the defendants did not let in any other evidence except examining Muthammal as D.W.1. The lower appellate Court has discussed the evidence of P.Ws.2, 3 and 4 and had come to the conclusion that the evidence at best would show Sundaram Vanniyar was living in a joint family along with his brothers at the time when the property was purchased.

12. The lower appellate Court has concluded that there is nothing in the evidence of P.Ws. 2 to 4 to suggest that the property was purchased for the benefit of the Sundaram Vanniyar in the name of Muthammal. In other words, the requirement of Section 2 (9) of the Prohibition of Benami Property Transactions Act, 1988 has not been complied with. While it is permissible for the husband or father to purchase the property in the name

of his wife or unmarried daughter, such a purchase is presumed to be for the benefit of the wife or unmarried daughter. Of course, the presumption enacted is rebuttable presumption. Being a statutory presumption, strong evidence is required to dispel the same. The lower appellate Court as a final Court of fact has considered the entire evidence and has found that the evidence available on record is not sufficient to dispel the said presumption.

13. The lower appellate Court also found that Exs.A12 and X1 have been created in order to suit the case of the plaintiffs. The trial Court relied upon the two documents to show Sundaram Vanniyar had enough money to purchase the property in the year 1978. Once the two documents are held to be unreliable, the foundation of the conclusions of the trial Court is lost.

14. Therefore, I do not find any valid reason to interfere with the conclusions of the lower appellate Court, since they cannot be termed to be perverse. I do not find any question of law, much less a substantial question of law, to enable this court to entertain this Second Appeal. Hence, this Second Appeal is dismissed without being admitted. There will be no order as to costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

vum

To

1. The IV Additional City Civil Court,
Chennai.

2. The IV Assistant City Civil Court,
Chennai.

Copy To : The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.M.Boopathy, Advocate SR.No.87609

+1cc to Mr.A.E.Ravichandran, Advocate SR.No.82665

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C.M.P.No.20846 of 2019

RSK(CO)
GMY(20/12/2019)