



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A(MD)NO.1013 OF 2011

and

M.P(MD)No.1 of 2011

and

C.M.P(MD)No.11117 of 2017

Malarkodi :Appellant/Respondent/First Defendant

.vs.

1.K.Subramanian

son of Kalanjiyam @ M.A.Karuppiyah Thevar,
Kavathkudi Post,
Devakkottai Taluk,
Sivagangai District
through his Power Agent Raju

: Respondent/Appellant/Plaintiff

2.Meenakshisundaram

:Respondent/Respondent/Second Defendant

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.8 of 2011, dated 21.02.2011, on the file of Sub-Court, Devakkottai reversing the judgment and decree made in O.S.No.28 of 2005, dated 8.10.2010, on the file of the District Munsif Court, Devakkottai.

For Appellant

:Mr.V.R.Venkatesan

For Respondent-1

:Mr.T.Lajapathi Roy

For Respondent-2

:Dismissed
vide order of this Court,
dated 19.8.2015

JUDGMENT

Heard both sides.

2.The Second appeal has been filed against the judgment of the First Appellate Court made in A.S.No.8 of 2011, dated 21.02.2011, which has reversed the judgment made in O.S.No.28 of 2005, dated 8.10.2010, passed by the trial Court.



3.While admitting the Second Appeal, this Court framed the following substantial questions of law for consideration:

'1.Whether the alleged oral partition/family arrangement is true and valid?

2.Whether the appellant/first defendant's contention that the entire property in Survey No.306/2 was sold to third parties is correct or not?

3.Whether the suit for bare injunction without prayer for declaration is maintainable?'

4.For the sake of convenience, the parties are referred to herein, as per the rank before the trial Court

5.The brief facts leading to the filing of the present Second Appeal is as follows:

An extent of 2.88 acres was originally allotted to the plaintiff by way of partition and he was in enjoyment of the property. The Plaintiff and second defendant are the legal heirs of the Plaintiff's father. During the lifetime of the father, an extent of 22 cents was sold by the second defendant to the first defendant herein. It is the contention of the plaintiff that the suit properties after the death of the father of the plaintiff in the year 1999, are in enjoyment of the plaintiff and second defendant. The Plaintiff filed a suit as against the defendants for permanent injunction in respect of the entire extent of land measuring to an extent of 2.88 acres in S.No.306/2.

6.Denying the contention of the plaintiff, it is the contention of the first defendant that even while the father of the plaintiff and second defendant was alive, the plaintiff and second respondent partitioned the property orally and enjoyed their share separately and a portion of the property i.e., 22 cents of land was sold by the second defendant to the first defendant and it is the further contention that the first defendant has purchased the property bona-fidely. The allegation that the properties has not been partitioned is denied.

7.Based on the above pleadings, the trial Court has framed the following issues:

'1.Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

2.Whether the eastern 1 acre 44 cents in



S.No.306/2 was allotted to the share of P2 through partition?

3.Whether the eastern 22 cents belong to D1 by means of sale deed, dated 17..7.1997?

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4.To what other relief?''

8.On the side of the plaintiff, his power agent was examined as P.W.1 and P.W.2 was also examined. Ex.A1 to Ex.A12 were marked. On the side of the defendants D.W.1 and D.W.2 were examined and documents ExB1 to Ex.B4 were marked. Court Documents Ex.C1 and Ex.C2 were also marked.

9.Based of the evidence, both oral and documentary, the trial Court has found that the plaintiff is not entitled for injunction and dismissed the suit, whereas, the First Appellate Court has allowed the appeal and decreed the suit, mainly on the ground that since the suit property originally belonged to the father of the Plaintiff and second defendant, there is no partition effected and thus granted injunction.

10.The learned counsel for the appellant submitted that admittedly the entire suit property was sold by both the brothers. That itself would indicate that the plaintiff has no right over the suit property. Similarly, the second defendant has remained ex-parte before the Court below and that itself would indicate that the suit filed is a collusive in nature. Hence it is submitted that the First Appellate Court has not properly appreciated the evidence and without taking note of the fact as to whether the plaintiff is in possession of the property, has granted permanent injunction in respect of the entire property, which was already sold to several persons. Hence the appellant prayed for allowing the appeal.

11.Whereas, the learned counsel for the first defendant contended that the first defendant is claiming right based on the sale deed executed even during the lifetime of the father of the parties. At the relevant point of time, the second defendant had no title to the property. Father of the parties died only in the year 1999. After his death only, the plaintiff and second defendant are jointly entitled to the suit properties and hence it is submitted that purchaser cannot claim exclusive possession in the property. Therefore, it is submitted that the judgment of the First Appellate Court does not require any interference.

12.This Court perused the entire materials on record.

<https://hcservices.ecourts.gov.in/hcservices/> 13.The suit has been filed for permanent injunction in



respect of S.No.306/2, measuring an extent of 1.16.5 hectares namely, 2.88 acres. The extent and survey number is not in dispute. It is also not in dispute that originally the suit property was assigned to the father of the plaintiff and second defendant. The father of the plaintiff and second defendant died in the year 1999. As claimed, the first defendant has purchased a portion of the property on 17.7.1997 under Ex.B1. The main contention of the plaintiff is that since there was no partition between the two brothers and the father of the parties died only in the year 1999, the sale deed executed in favour of the first defendant is not valid and as the partition is not completed, his purchase is not valid. Whereas, the main contention of the first defendant is that even during the lifetime of the father of the parties, there was a partition and accordingly, the second defendant has sold 22 cents of land under Ex.B1. The suit is filed for permanent injunction for entire extent of properties and the plaintiff admittedly has not entered into the Box. It is only the power agent who was examined as P.W.1. The entire reading of the trial Court judgment would make it very clear that the entire extent of S.No.306/2 has been already sold by both the plaintiff and second defendant. P.W.1 evidence is indicative of the fact that some of the properties were sold jointly to third parties and third parties are in possession of the said properties. No doubt, in a joint property, a stranger purchaser cannot seek exclusive possession and his remedy is only to seek partition from the share of the vendor. But whereas in the instant case, perusal of the records will clearly reveal that the entire property has been sold by the plaintiff and second defendant. Therefore the question of granting injunction in favour of the plaintiff in respect of the entire extent of property in S.No.306/2 does not arise at all. The evidence of P.W.1 is indicative of the fact that there are other third parties connected with this matter based on their purchase. Such being the position, the claim made by the plaintiff is not believable merely on the basis of the revenue records which were obtained subsequent to the death of their father, in the year 2001 and the same is not sufficient to prove the possession.

14.As far as the contention of the Plaintiff that the first defendant has purchased the portion of the property from the second defendant during the lifetime of the father of the plaintiff and second defendant, did not derive any title to the property as the father of the parties alone had title. When the above contention is analyzed, the case in hand squarely falls within the ambit of Section 43 of the Transfer of Property Act.

15.Section 43 of the Transfer of Property Act, reads as follows:



43. Transfer by un-authorised person who subsequently acquires interest in property transferred:--Where a person (fraudulently or) erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.'

16. Section 43 is an equitable doctrine which falls within the ambit of Rule of Estoppel. Rule is if a man who has no title whatever to the property grants it by conveyance which in form carries the legal estate, and has subsequently acquired the interest is sufficient to satisfy the grant, the estate instantly passes. In this case, though under Ex.B1, the first defendant had purchased the property measuring to an extent of 22 cents during the lifetime of father in whose name assignments stood at the relevant point of time, the fact remains that the father of the plaintiff and second defendant died on 3.6.1999 as per Ex.A12. After death of father of the plaintiff, the entire property devolved equally on the plaintiff and second defendant, whereas, the second defendant had sold only 22 cents which is much lesser than his share in the entire property. Such being the case, since the property devolved upon the plaintiff and second defendant as per Section 43, title passes on to the second defendant. Further the second defendant has also conveniently remained absent in the suit. This fact clearly indicative of the collusive nature between the plaintiff and second defendant. In any event, when the title to the entire extent is already divested and the plaintiff had no title, the decree of injunction granted by the First Appellate Court is against the settled position of law. If at all, the second defendant sold a larger share than his entitlement, plaintiff has the only remedy for partition of his share. Further, the possession has also not been established. The Plaintiff has also not come into the box to withstand the cross-examination.

17. Accordingly, the judgment of the First Appellate Court is nothing but perverse and the same is liable to be set aside. Accordingly, all the questions of law are answered in favour of the appellant and the Second Appeal stands allowed and the judgment of the First Appellate Court made in A.S.No.8 of 2011, dated 21.02.2013 is set aside and the judgment of the trial Court



in O.S.No.28 of 2005, dated 8.10.2010 is restored. No costs. Consequently, connected connected Miscellaneous Petitions are closed.

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// True Copy //

Sd/-

Assistant Registrar (CS-III)

Sub Assistant Registrar (CS)

vsn

To

- 1.The Sub-Judge,
Devakkottai.
- 2.The District Munsif,
Devakkottai.
- 3.The Record Keeper,-2 COPIES
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.V.R.VENKATESAN, Advocate (SR-103521[F] dated 05/12/2019)

+1 CC to M/s.T.LAJAPATI ROY, Advocate (SR-103945[F] dated 06/12/2019)

JUDGMENT MADE IN
S.A(MD)NO.1013 OF 2011
and
M.P(MD)No.1 of 2011
and
C.M.P(MD)No.11117 of 2017
04.12.2019

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