

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.02.2020
Date of Verdict : 27.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1232 of 2000

1. Balakrishnamurthy (Died)
2. Akilandam
3. Kumaresan
4. Prabhu
5. Veerapandian

(Appellants 2 to 5
brought on record as
legal heirs of the deceased
sole appellant vide order
of the Court dated 08.01.2019
made in C.M.P.Nos. 14996 to 14998
of 2016 in S.A.No.1232 of 2000) ...Appellants/Defendants

Vs.

1. Nataraja Padayachi (died)
2. Maruthamuthu
3. Marimuthammal
4. Valarmathi
5. Suganthi
6. Raja

(Respondents 4 to 6
brought on record as
legal heirs of the deceased
first respondent vide order
of the Court dated 08.01.2019
made in C.M.P.Nos. 503 of
2015 in S.A.No.1232 of 2000) ...Respondents/Plaintiff

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 31.07.1997 made in A.S.No.188 of 1990 on the file of the Subordinate Court, Ariyalur, reversing the judgment and decree dated 24.07.1990 made in O.S.No.138 of 1984 on the file of the District Munsif Court, Jayakondan.

For Appellants : Mr.S.V.Jayaraman, Senior Counsel
For Mr.R.Balasubramanian

For Respondents

R1 : Died

For R2 & R3 : Notice served

For R4 to R6 : Mr.S.Krishnasamy

JUDGMENT

This second appeal is directed as against the judgment and decree dated 31.07.1997 made in A.S.No.188 of 1990 on the file of the Subordinate Court, Ariyalur, reversing the judgment and decree dated 24.07.1990 made in O.S.No.138 of 1984 on the file of the District Munsif Court, Jayakondan.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The case of the plaintiff in brief is as follows :-

3.1. The suit is filed for declaration and injunction. The plaintiff and the second defendant are the sons of one Virudhachala Padayachi. When the plaintiff was minor, his father died and as such the third defendant, who is the mother of the plaintiff was managed and looked after the property belonged to their father. On 14.09.1980, the plaintiff married one Valarmathi. In fact, there was an oral family arrangement between the plaintiff and the second defendant and the property ad measuring 1.33 cents was allotted in favour of the second defendant. The land ad measuring 0.34 cents was allotted to the third defendant viz., his mother and father. The another property ad measuring 1.16 cents was allotted in favour of the plaintiff and his mother was appointed as guardian. The patta was also issued in patta No.887. The house in which the plaintiff is residing was also allotted to him instead of, the property ad measuring 0.34 cents which was allotted in favour of his parents will go to the second defendant.

3.2. After his marriage, there was misunderstanding between the plaintiff and the defendants 2 & 3. In fact, the oral family arrangement was known to common people. Thereafter, the second defendant sold out his share of 1.33 cents and 0.34 cents, in favour of one Panneer selvam and Subramaniam and also the first item of the suit property executed in favour of the first defendant by forgery. The first item of the suit property never belonged to the second and third defendants as such they had no title over the suit property to sell the same to the first defendant. The property is in possession and enjoyment of the plaintiff for the past 15 years and he also prescribed title by way of adverse possession in respect of the first item of the suit property. Therefore, the plaintiff caused notice to the

defendants on 22.05.1984 and on receipt of the same, the first and second defendants issued reply notice dated 27.05.1984 with false and frivolous avernments. Hence the suit.

4. Resisting the same, the first defendant filed written statement stating that the suit property was not belonged to Virudhachala Padayachi and also denied all the avernments as false and frivolous. Nothing was mentioned in the pre-suit notice and something added in the plaint, which was not stated in the notice. The plaintiff and the defendants 2 & 3 sold out the land ad measuring 1.33 cents and also 0.34 cents in favour of Panneerselvam and Subramaniam by the sale deed dated 27.05.1967 for the valid sale consideration of Rs.4,000/-. Therefore, the suit property was not allotted from their joint family arrangement. The second and third defendants sold out the property comprised in Survey No.265/12 ad measuring 0.77-1/3 cents out of 1.16 acres in favour of the first defendant for valid sale consideration of Rs.9,000/- by registered sale deed dated 17.05.1984. Thereafter, the first defendant was put in possession and enjoyment of the same.

4.1. In fact, the suit property was already mortgaged in favour of one Rajendiran and Murugaiyan and after entire payment, the property was handed over to the first defendant. Further he stated that after settling the entire amount to the said Rajendiran and Murugaiyan, the defendants 2 & 3 refused to register the sale deed in favour of the first defendant. Therefore he approached the Registrar for compulsory registration on 22.08.1984 and thereafter, registered in his favour. In the plaint, insofar as the second and third item of the suit properties are concerned, the plaintiff had already given up the prayer as such, the first defendant is not the necessary party to the suit. Therefore the suit itself is bad for joining unnecessary party to the suit proceedings and hence prayed for dismissal of the suit.

5. The third defendant filed separate written statement and stated that when the plaintiff was a minor, the suit property was allotted to him in which the third defendant is a guardian. In fact, the property which was allotted in favour of the third defendant was also sold out by the second defendant. The first defendant is the owner of toddy shop. The second defendant is a drunkard and he had no issue. In fact, his wife already left him from the matrimonial home. Therefore, the second and third defendants never executed any sale deed in favour of the first defendant and supported the case of the plaintiff.

6. On the side of the plaintiff, he examined P.W.1 & P.W.2 and were marked Ex.A.1 to Ex.A.10. On the side of the

defendants, they examined D.W.1 to D.W.4 and were marked Ex.B.1 to Ex.B.7. On perusal of the material produced on record and on considering both the oral and documentary evidence adduced by the respective parties and also the submissions made, the trial Court dismissed the suit filed by the plaintiff. Aggrieved by the same, the plaintiff preferred an appeal suit in A.S.No. 188 of 1990 and the first appellate Court allowed the appeal and decreed the suit filed by the plaintiff. Aggrieved by the same, the first defendant preferred this present second appeal.

7. At the time of admission of this second appeal on 25.08.2000, the following substantial questions of law were formulated for consideration:-

"i) Whether or not the lower Appellate Court is justified in rejecting the claim of the Appellate that the suit properties as the exclusive property of 3rd defendant Marimuthammal since the same devolved on her from her father Duraisamy as his sold legal heir?

ii) Whether or not the Lower Appellate Court is justified in accepting the family arrangement presuming to have been made in 1969 when especially the properties in S.A.No.281 of 2015 in S.No.311-4 and extend of 0.35 cent and Ac.1.13 respectively have been already sold by plaintiff, the 2nd defendant and the 3rd defendant jointly by sale deed (Ex.B.1) in the year 1987 itself?"

8. The learned Senior Counsel appearing for the first defendant submitted that suit itself is not maintainable without challenging the sale deed executed in favour of the first defendant by the second and third defendants. The first appellate Court without even framing points for consideration, mechanically reversed the judgment and decree passed by the trial Court. In fact, the sale deed executed by the second and third defendants in favour of the first defendant. While being so, the third defendant did not challenge the sale deed. The plaintiff alone filed the suit that too adding the defendants 2 & 3 as parties to the suit proceedings. The second and third defendants except supporting the case of the plaintiff, they did not even challenge the sale deed executed in favour of the first defendant at any point of time. The suit property absolutely belonged to the third defendant as such, the plaintiff has no semblance of right or title over the suit property, since the plaintiff never proved that the suit property was allotted to him by the family arrangements. He also relied upon the following judgments to support of his contention:-

- i) AIR 1976 SC 807 - Kale and others Vs. Deputy Director of consolidation and others
- ii) 2001(1) CTC 112 - A.C.Lakshmipathy and anr Vs. A.M.Chakrapani Reddiar and five ors
- iii) AIR 2014 SC 937 - Union of India and ors Vs. Vasavi Co.-
op Housing Society Ltd., and ors.

9. Per contra, the learned counsel appearing for the plaintiff submitted that even 15 years before, during the family arrangement, the first item of the suit property ad measuring 1.16 acres was allotted in favour of the plaintiff. Thereafter the first defendant with the help of the second defendant obtained signature from the third defendant and created the sale deed as if the first item of the suit property sold out to the first defendant. In fact, the third defendant refused to register any document in favour of the first defendant, thereafter only on compulsory registration, the sale deed was registered in favour of the first defendant. He further submitted that the suit property is in possession and enjoyment of the plaintiff and as such he prescribed title over the property by adverse possession. Therefore, the first appellate Court rightly allowed the suit and prayed for dismissal of the second appeal.

10. Heard, Mr.S.V.Jayaraman, learned Senior Counsel appearing for the appellants/legal heirs of the first defendant and Mr.S.Krishnasamy, learned counsel appearing for the respondents 4 to 6/legal heirs of the plaintiff.

11. The suit is filed for declaration and injunction. Insofar as the second and third items of the suit property are already given up by the plaintiff and the plaintiff is only concerned in respect of the first item of the suit property. The only point for consideration is that whether the suit property is exclusively belonged to the third defendant, since it was devolved on her from her father Duraisamy, as his sole legal heir.

12. According to the plaintiff, the plaintiff and the second defendant are brothers and they were born to one Virudhachala Padayachi. The third defendant is their mother. By the oral family arrangement, the suit property was allotted to the plaintiff through his guardian viz., the third defendant herein. The property ad measuring 1.33 cents was allotted to the second defendant and the property ad measuring 0.34 cents was allotted in favour of the third defendant and their father. As far as the share of the second defendant is concerned, he sold out the same in favour of one Paneerselvam and Subramaniam. Thereafter without any title over the first item in the suit

property, the second and third defendant executed sale deed in favour of the first defendant. Even till today, the plaintiff is in possession and enjoyment of the suit property and as such he also prescribed title by adverse possession.

13. Ex.A.1 to Ex.A.3 are the Kist receipts for the Fasali year 1385, 1386, 1393 for the land comprised in patta No.887. Though the plaintiff stated about the knowledge of family arrangement to so many persons, the plaintiff did not even whisper about them in the pre-suit notice, which is marked as Ex.A.5. After receipt of the reply notice, which was marked as Ex.A.6, the name of the persons were shown in the plaint. The witness who was examined on the side of the plaintiff also were not helpful to the case of the plaintiff to prove the oral family arrangement between his family members. Further, the plaintiff also admitted in his deposition that the third defendant's father Duraisamy hold the property and thereafter, the third defendant being his only legal heir of the said Durisamy, she inherited the property owned by the said Durisamy. Therefore, the suit property is not an ancestral property, through his father and it is an individual property belonged to the third defendant. Though the plaintiff stated that in the family arrangement, the property ad measuring 1.33 cents was allotted in favour of the second defendant and the property ad measuring 0.34 cents was allotted in favour of the third defendant and while the third defendant was very much alive, the second defendant sold out the property including the property which was allotted in favour of the third defendant. It was not questioned by the third defendant. Further, though the third defendant filed separate written statement, except supporting the case of the plaintiff, she did not whisper about the other allegations. After filing the written statement, she was set exparte. When the plaintiff took a specific stand that the suit property was allotted in his favour and the third defendant was appointed as guardian, he ought to have been examined the third defendant to prove his contention.

14. On perusal of Ex.B.1, the sale deed which was executed by the plaintiff, the second and third defendant, in favour of Pannerselvam and Subramanian dated 27.05.1967, in respect of the property comprised in survey No.281/5 ad measuring 0.35 cents, and the land comprised in survey No.311/4 ad measuring 1.13 acres. Ex.B.2 the sale deed executed in favour of the first defendant by the second and third defendants and on perusal of recital, the plaintiff failed to prove his case that the suit property was allotted in his favour by the oral family arrangement.

15. The plaintiff has knowledge about the sale deed executed in favour of the first defendant by the second and third defendants by the sale deed dated 17.05.1984, which was marked as Ex.B.2. Even then the plaintiff failed to challenge the said sale deed and as such without challenging the said sale deed, the suit itself is not maintainable for declaration and injunction. Further the second and third defendants did not challenge the sale deed executed by them in favour of the first defendant, though the third defendant supported the case of the plaintiff. Therefore, the trial Court rightly dismissed the suit filed by the plaintiff. Unfortunately, the first appellate Court reversed the findings of the trial Court only on the deposition of the plaintiff and concluded that he proved his case.

16. In this regard, the learned Senior Counsel appearing for the appellants/third defendant cited the judgment reported in AIR 1976 SC 807 in the case of Kale and others Vs. Deputy Director of consolidation and others, which reads as follows :-

".....The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property 'It which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same....."

17. He also relied upon the judgment reported in 2001(1) CTC 112 in the case of A.C.Lakshmipathy and anr Vs. A.M.Chakrapani Reddiar and five ors, as follows :-

"17. Even disputes based upon ignorance of the parties as to their rights were sufficient to sustain the family arrangement Pullaiah v. Narasimhan, AIR 1966 SC 1836.

To sum up: To effect a family arrangement all that is necessary is that the parties must be related to one another in some way and have a claim or a possible claim to the property or even a semblance of a claim or spes successionis or even on some other ground as, say, affection or ignorance of the parties of their rights and with the purpose or object

of maintaining peace and harmony in the family.

.....

29. The next question is how a family arrangement can be effected and what are the aspects to be considered or noted in testing the validity and binding nature of a family arrangement.

The family arrangement can even be made orally and in which obviously the question of registration does not arise. What is required to be seen is whether the family settlement is a bona fide one so as to resolve family disputes and rival claims at a fair and equitable decision or allotment of properties between the various members of the family. Similarly, the family arrangement should not be result of any fraud or undue influence etc. played on the member/members of the family. In other words such a family arrangement must be voluntary and entered into by the parties on their own accord and free will.

It is only when the family arrangement reduced into writing with the purpose of using that writing as proof of what they had arranged and where the arrangement is brought about by the document as such, that the document requires registration, then it would amount to a document of title declaring for future what rights and what properties the parties to possess."

The Hon'ble Supreme Court of India held that it is absolutely clear that the word "Family" cannot be construed in a narrow sense so as to be confined only to persons who have a legal title to the property.

18. In the case on hand, admittedly the property derived by the third defendant from her father as being his only legal heir as such, the plaintiff has no semblance of right over the suit property. He failed to establish that the property was allotted to him by family arrangement and also the suit property belonged to the joint family. The first appellate Court reversed the findings of the trial Court only on the evidence of the first

defendant. In this regard, the learned Senior Counsel relied upon the judgment reported in AIR 2014 SC 937 in the case of Union of India and ors Vs. Vasavi Co-op Housing Society Ltd., and ors, which reads as follows :-

"15. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited."

The Hon'ble Supreme Court of India held that when the plaintiff filed the suit for declaration of title, he has to prove his case by adducing sufficient evidence. In the case on hand, the plaintiff failed to prove his case by adducing evidence to discharge the onus on it and as such the plaintiff must be non-suited.

19. In view of the above discussion, the findings of the first appellate Court are erroneous and against the evidence on record. Therefore, this Court is constrained to interfere with the findings of the first appellate Court. Accordingly all the substantial questions of law formulated by this Court are answered in favour of the first defendant and as against the plaintiff.

20. In fine, the second appeal is allowed and the judgment and decree dated 31.07.1997 passed in A.S.No.188 of 1990 by the learned Subordinate Judge, Ariyalur, are hereby set aside and resultantly, the judgment and decree dated 24.07.1990 made in O.S.No.138 of 1984 by the learned District Munsif, Jayakondan, are restored. Consequently, connected miscellaneous petition is closed. There is no order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

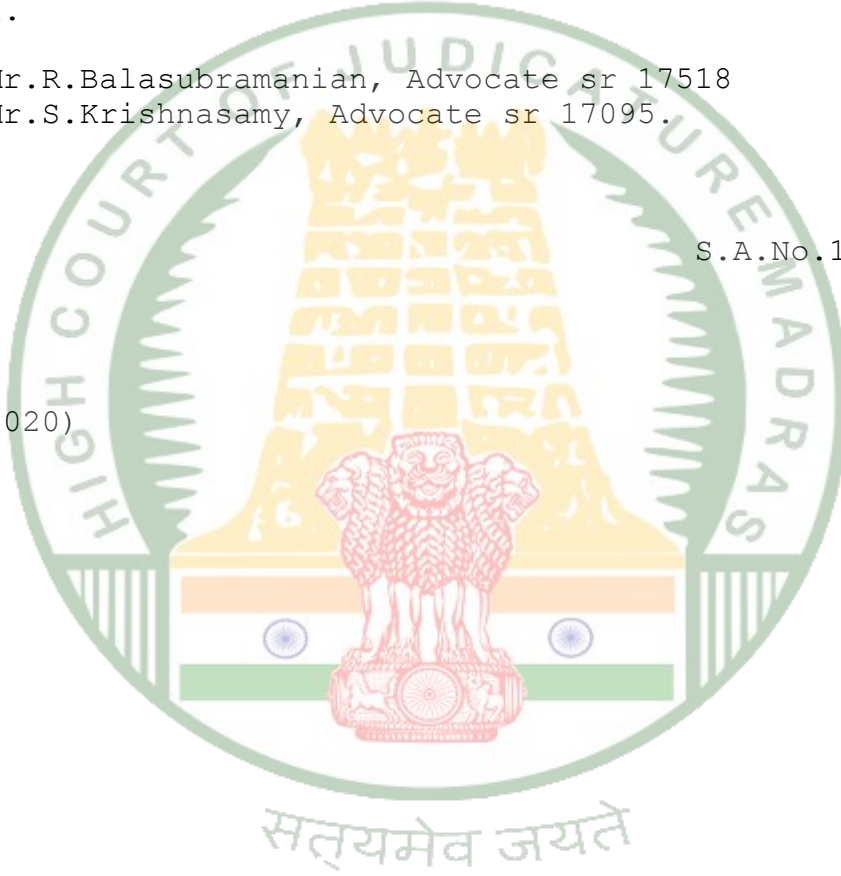
To

1. The Subordinate Judge,
Ariyalur.
2. The District Munsif,
Jayakondan.
3. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1 CC to Mr.R.Balasubramanian, Advocate sr 17518
+1 CC to Mr.S.Krishnasamy, Advocate sr 17095.

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