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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1221 of 2001

1.V.Selvi
2.V.Raja
3.V.Saravanan
4.V.Manikandan
5.V.Balamurugan(minor)
6.V.Devi(minor)
5th and 6th appellants are rep. by
mother and natural guardian Pushpa Ammal ...Appellants/Plaintiffs

Vs.

1.Varadharaja Pillai
2.K.Vadivelu Pillai
3.Mani ...Respondents/Defendants

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 14.03.2001, in A.S.No.43 of 1998 on the file of the Additional Subordinate Judge, Cuddalore confirming the decree and judgment dated 13.08.1998 in O.S.No.149 of 1996 on the file of the Additional District Munsif Court, Cuddalore.

For Appellants : M/s.A.Nilapher
for M/s.R.Meenal
For Respondents
For R1 : Mr.S.K.Rakhunathan

: R2 & R3 - exparte -
court order dated 04.11.2019

JUDGMENT

The second appeal is directed as against the judgment and decree dated 14.03.2001, in A.S.No.43 of 1998 on the file of the Additional Subordinate Judge, Cuddalore confirming the decree and judgment dated 13.08.1998 in O.S.No.149 of 1996 on the file of the Additional District Munsif Court, Cuddalore.

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



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

3.1 The plaintiffs filed the suit for partition claiming 6/7 share in the suit schedule property. The suit property along with other properties originally belonged to the grand grandfather of the plaintiffs, namely one, Munusamy Pillai. The said Munusamy Pillai had four sons, namely Srinivasan Pillai, Vaidhilingam Pillai, Renganathan Pillai and Samikannu Pillai, and all were living as joint family. By the partition deed dated 09.02.1984, they partitioned the entire family property. The suit schedule 'A' property was allotted to the grand father of the plaintiffs, namely one Vaidhilingam Pillai. The first defendant is the only son to the said Vaidhilingam. Therefore, after demise of the said Vaidhilingam, the first defendant derived the title over the property. The plaintiffs are the sons and daughters of the first defendant. In fact, when the said Vaidhilingam was alive, the property which was allotted in favour of the first defendant was sold out in the year 1983 itself. The first defendant being a drunkard, borrowed Rs.2,000/- from the second defendant and as such he filed suit in O.S.No.407 of 1983 and attached the property allotted to the first defendant. In the said suit, the property was brought for auction and thereafter the second defendant also filed suit in O.S.No.205 of 1989 on the file of the District Munsif Court, Cuddalore and obtained possession of the said property on 10.11.1990. In fact, the first defendant did not borrow any amount for the welfare of the family members. Therefore, the decree passed in O.S.No.407 of 1983 is not binding on the plaintiffs. In pursuant to the said decree, auction is also not valid one. Therefore, the plaintiffs claim 6/7 share in the suit schedule property.

3.2 The plaintiffs further averred that the third defendant purchased part of the suit property on 07.11.1989 for the sale consideration of Rs.10,300/- from the first defendant and claiming the said portion of the property is false. The first defendant had no necessity to sell the said property and as such the sale itself is not valid one and without any title or interest over the part of the suit property. The third defendant is in possession and enjoyment of the property. In fact, the second defendant also obtained the second item of the suit schedule property through court auction. Therefore, the plaintiffs are claiming 6/7 shares in the suit schedule property.

4. Resisting the same, the second defendant alone filed written statement stating that the first defendant and the plaintiffs have no permanent income. Therefore, to maintain their family, the first defendant as well as his father Vaidhilingam Pillai sold out their family properties to various



persons. While being so, the first defendant borrowed a sum of Rs.6,000/- on executing a pronote. The said loan was borrowed to meet out the family expenditures. The first defendant failed to repay the amount as such the second defendant filed suit for recovery of money in O.S.No.487 of 1983 on the file of the District Munsif Court, Cuddalore and the same was decreed in his favour. On execution of the said decree, through court auction the said property was purchased by him on 20.07.1987. Thereafter he also filed suit in O.S.No.205 of 1989 for partition and the same was decreed on 24.07.1989. In the final decree application in I.A.No.2573 of 1989, final decree was passed and in pursuant to the same, from 10.11.1990, the second defendant is in possession and enjoyment of the suit property. Therefore the plaintiffs have no locus to question the court auction by the present suit.

4.1 Further averred that the first defendant as well as the third defendant colluded each other and the third defendant filed suit for declaration in respect of the some extent of the property in O.S.No.854 of 1990 and the same was dismissed. Aggrieved by the same, the third defendant preferred an appeal suit and the same was also dismissed in AS.No.200 of 1992. Therefore the plaintiffs are not entitled for 6/7 share in the suit property and sought for dismissal of the suit.

5. In support of the plaintiffs' case, P.W.1 was examined and two documents were marked as Ex.A.1 and Ex.A.2. On the side of the second defendant, D.W.1 was examined and Ex.B.1 to Ex.B.15 were marked. The first and third defendants did not appear before the trial court and they were set exparte by the trial court. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed the suit insofar $\frac{1}{2}$ portion of the suit schedule property except $\frac{1}{2}$ portion which was purchased through court auction by the second defendant. Aggrieved over the judgment and decree of the trial Court, the plaintiffs filed appeal suit in AS.No.43 of 1998. The first appellate Court on appreciating the materials placed on records, dismissed the appeal by confirming the judgement and decree passed by the trial Court. Aggrieved by the same, the plaintiffs have filed the second appeal.

6. At the time of admission of the second appeal, the following substantial questions of law were framed:-

a) Whether in law the Courts below were right in finding that the debt incurred by the first respondent and the subsequent decree and court sale were binding on the appellants who were not parties to the proceedings?



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b) Whether in law the Courts below were right in failing to see that the borrowings not being for family necessities, the debt would not bind the appellants' share in the properties?

c) Whether in law the Courts below were right in failing to see that there was no pious obligation to satisfy the debts incurred for immoral purposes?

7. The learned counsel appearing for the plaintiffs and the defendants are present and they reiterated the averments set out in the plaint as well as the written statement.

8. Heard, M/s.A.Nilapher, the learned counsel appearing for the appellants and Mr.S.K.Rakhunathan, the learned counsel appearing for the first respondent.

9. This Court considered the rival submissions made by the learned counsel on either side.

10. The plaintiffs are the sons and daughters of the first defendant. The suit property was originally owned by their grand grand father and by the partition deed dated 09.02.1984, all four of his sons divided the property, in which including the suit property was allotted to the father of the first defendant. The first defendant borrowed some loan from the second defendant on promissory note and when the first defendant failed to repay the same, the second defendant filed suit for recovery of money in O.S.No.407 of 1983 on the file of the District Munsif Court, Cuddalore. The said suit was decreed in his favour and to execute the decree, half of the suit property was auctioned and the same was purchased by him. The trial court decreed the suit as prayed by the plaintiffs insofar as the half of the portion of the suit property. So far as the remaining portion of the suit property, except the half of the portion purchased by the second defendant. It was also confirmed by the first appellate court.

11. Now the only substantial question of law framed by this Court is whether the decree granted against the first defendant and pursuant to the decree auction sale, insofar as the half portion of the suit property were binding on the plaintiffs who were not parties to the proceedings. Further whether the loan borrowed by the first defendant would not bind the appellants' share of the suit property. Partition deed between the first defendant's father and his brothers were marked as Ex.A.1 dated 09.02.1984. In the said partition, the suit schedule property along with the other properties were allotted to the father of the first defendant. Therefore, the property which was derived by the father of the first defendant was their ancestral property. Thereafter, the first defendant along with his



father, sold out so many properties to various persons, which is also categorically proved by the Ex.B.3 to Ex.B.9. Insofar as the half of the portion of the suit property is concerned, the first defendant borrowed money from the second defendant for his family expenditures, in which he failed to repay the loan. As such the second defendant filed suit for recovery of money in O.S.No.407 of 1983 on the file of the District Munsif Court, Cuddalore and the same was decreed and to execute the said decree, half of the portion of the suit schedule property was brought in court auction. In the said court auction, the second defendant purchased the half portion of the suit schedule property. Thereafter, he also mutated all the revenue records in his name. Therefore, the loan borrowed by the first defendant was for his family expenditures. The said property was brought for auction by the court proceedings. Therefore, the sale as well as the loan borrowed by the first defendant are binding the plaintiffs who are being the sons and daughters of the first defendant.

12. Further, the third plaintiff categorically deposed that his father, namely the first defendant borrowed loan from the second defendant, for which the suit property was brought in action sale. Therefore, they cannot take a stand that the sale of the said property and the loan borrowed by the first defendant are not binding on them. Therefore, the plaintiffs are not entitled for the entire suit schedule property. They are entitled only in respect of half share of the suit schedule property, namely except the property was auctioned by the court in the suit schedule property.

13. In the light of the above discussions, this Court does not find any valid reason to interfere with the findings rendered by the Courts below concurrently as such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons and concluded rightly. Accordingly, this Court is of the considered opinion that no substantial questions of law involved in the second appeal. Be that as it may, all the substantial questions of law, formulated by this Court in the Second Appeal, are answered in favour of the defendants.

14. Accordingly, the Second Appeal is dismissed. No order as to costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar



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To

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1. The Additional Subordinate Judge,
Cuddalore
2. The Additional District Munsif Court,
Cuddalore.

Copy to:
The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+1cc to Mr.R.Subramanian, Advocate, S.R.No.656
+1cc to Mr.S.K.Rakhunanthan, Advocate, S.R.No.335

S.A.Nos.1221 of 2001

RGN(CO)
CB(22/09/2021)