

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[JUDGMENT RESERVED ON : 03.07.2019]

[JUDGMENT PRONOUNCED ON : 27.01.2020]

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1751 of 2001

Nagarathinam Appellant/Respondent/Defendant

... Vs ...

P.Duraisamy Gounder Respondent/Appellant/Plaintiff

Prayer : Appeal is filed under Section 100 of the Civil Procedure Code against the judgment dated 24.07.2000 made in A.S.No.88 of 1998 on the file of the Subordinate Judge, Udumalpet, setting aside the judgment and decree dated 28.10.1998 made in O.S.No.278 of 1996 on the file of the District Munsif, Pollachi.

For Appellant : Mr.T.R.Rajaraman
For Respondent : Mr.S.Sriram
for Mr.K.Govi Ganesan

JUDGMENT

The defeated defendant is the appellant herein. The respondent herein/plaintiff has filed a suit in O.S.No.278 of 1996 before the learned District Munsif, Pollachi, seeking for the relief of partition and also for future loss of income.

2. The plaint averments, in brief, are as under:-

[2.1]. The respondent herein/plaintiff has filed the above said suit in O.S.No.278 of 1996 before the learned District Munsif, Pollachi, seeking for the relief of partition and separate possession and also for mesne profits. The contention

of the respondent herein/plaintiff was that the suit property and other properties measuring 90 cents originally belonged to the family of Ramaseela Muthiah Boobathy and to his three sons and two daughters.

[2.2]. Under Ex.A.3-Sale Deed, dated 13.04.1994, the plaintiff has purchased 1/5th share in 90 cents from Sivakumar, son of Ramaseela Muthiah Boobathy.

[2.3]. The defendant has purchased the remaining land from the said Ramaseela Muthiah Boobathy and from his sons and daughters excluding Sivakumar under Ex.A.5-Sale Deed dated 25.04.1994. As the lands were purchased in common without specific boundaries, the plaintiff has filed the suit for partition and separate possession of 1/5th share in the property.

[2.4]. The defendant has filed written statement contending that the Sale Deed executed by the said Sivakumar is not valid as the said Sivakumar has no right to sell the property in favour of the plaintiff. On 17.02.1993 itself, the said Ramaseela Muthiah Boobathy and his two sons have entered into a Sale Agreement under Ex.A.4 with the defendant agreeing to sell the entire 90 cents of land and as per the said Sale Agreement-Ex.A.4, they have sold the property in favour of the defendant on 25.04.1994 and therefore, the Sale Deed executed by the son of Ramaseela Muthiah Boobathy viz., Sivakumar in favour of the plaintiff under Ex.A.3 is without bona fide and therefore, the suit is not maintainable.

[2.5]. The learned District Munsif, Pollachi, after considering the evidence both oral and documentary, has come to the conclusion that the Sale Deed/Ex.A.3, dated 13.04.1994 executed by the said Sivakumar in favour of the plaintiff is not valid. The Sale Agreement entered by the said Ramaseela Muthiah Boobathy as a Kartha of the family is binding on him as it is for legal necessity. Therefore, the sale of 1/5th share by the said Sivakumar is not valid and the defendant is the absolute owner of the entire 90 cents of land.

[2.6]. Aggrieved by the aforesaid judgment and decree passed by the Trial Court, the plaintiff has preferred an appeal in A.S.No.88 of 1998 before the learned Subordinate Judge, Udumalpet. The learned Subordinate Judge, has allowed the said appeal and held that the sale by the said Sivakumar, of his 1/5th share is valid and binding on the defendant and the Ramaseela Muthiah Boobathy has no right to sell his 1/5th share of major son Sivakumar in favour of the defendant. Aggrieved by the said judgment and decree, the defendant has preferred the

present second appeal before this Court.

3. The above second appeal was admitted by this Court on 10.12.2001 by framing the following substantial questions of law:-

"1. Is the learned Subordinate Judge correct in decreeing the suit for partition on the basis of the sale deed dated 13.04.1994 when the registered sale agreement dated 17.02.1993 executed by Ramaseela Muthia Boobathy as kartha of the family is binding on the vendor?

2. Is the learned Subordinate Judge correct in decreeing the suit when the plaintiff has purchased the suit property knowing about the sale agreement with a mala fide intention to defeat the rights of the defendant?

3. Is not the sale agreement dated 17.02.1993 is binding on the son Sivakumar when the same has been executed by Ramaseela Muthia Boobathy as kartha of the family?"

4. Learned counsel for the appellant/defendant made submissions in support of the substantial questions of law and the learned counsel appearing for the respondent/plaintiff made submissions in support of the judgment of the Lower Appellate Court.

5. Learned counsel for the appellant/defendant would contend that the Lower Appellate Court has erred in decreeing the suit for partition on the basis of Ex.A.3-Sale Deed dated 13.04.1994. In support of the said contention, the learned counsel also has relied upon a decision of the Hon'ble Supreme Court reported in 1953 AIR (SC) 487 [Sidheshwar Mukherjee Vs. Bhubneshwar Prasad Narain Singh and others] and also a decision of this Court reported in 1975 AIR (Madras) 316 [Venkatammal Vs. Sinna Venkatarama Chettiar and others].

6. The registration of Sale Agreement is prior in time executed by the father as a kartha of the family in favour of the defendant and Ex.A.5 is the Sale Deed executed by the Ramaseela Muthiah Boobathy and his sons and daughters in favour of the defendant and Ex.B.1 = (Ex.A.4) is the Sale Agreement executed by Ramaseela Muthiah Boobathy and his sons and daughters in favour of the defendant however Sivakumar is not a party and Ex.B.2 = (Ex.A.5) is the Sale Deed to that effect.

7. On perusal of Exs.A.3, A.4 = [Ex.B.1] and Ex.A.5 = [Ex.B.2], it is seen that the vendor of the plaintiff-Duraisamy Gounder is Sivakumar, who is one of the son of Ramaseela Muthiah Boobathy. The said Sivakumar had executed a Sale Deed under Ex.A.3 on 13.04.1994 conveying his 1/4th share [though in the Sale Deed it is mentioned as 1/4, in the plaint it has been prayed for 1/5th] and in respect of which, there is no dispute between the parties and the appellant/defendant-Nagarathinam has purchased 90 cents of land from the said Ramaseela Muthiah Boobathy and also from his two sons and two daughters under Ex.A.5-Sale Deed dated 25.04.1994.

8. Admittedly, Ex.A.3-Sale Deed executed in favour of the respondent/plaintiff is prior in time, while Ex.A.5-Sale Deed executed in favour of the appellant/defendant is later point of time by 12 days. It is projected that the said Ramaseela Muthiah Boobathy along with his two sons have executed a Sale Agreement as early as on 17.02.1993 under Ex.A.4 agreeing to sell the property to the appellant/defendant-Nagarathinam and subsequently, Ex.A.5-Sale Deed was executed.

9. As stated supra, in Ex.A.4-Sale Agreement, Sivakumar, the vendor of the plaintiff is neither a party nor a signatory to the agreement. It is elucidated in the cross-examination of D.W.1 that on the date of execution of the Sale Agreement-Ex.A.4, (dated 17.02.1993), the vendor of the plaintiff viz., Sivakumar is a major, but neither he is a party nor a signatory to the agreement. Admittedly, Sivakumar is a son of the Ramaseela Muthiah Boobathy and therefore, the alleged Sale Agreement-Ex.A.4 is not binding upon the said Sivakumar.

10. It appears that a plea has been raised before the trial Court that the said Ramaseela Muthiah Boobathy has entered into a Sale Agreement as a Kartha of the family however, since his one of the son Sivakumar is a major, the Sale Agreement is not binding upon him. Moreover, Sivakumar, one of the son of the said Ramaseela Muthiah Boobathy, being the vendor of the plaintiff is not a party to the alleged Sale Agreement and therefore, Ex.A.3-Sale Deed executed by the said Sivakumar in favour of the plaintiff is legally valid to the extent of his share. So also the Sale Deed-Ex.A.5 executed in favour of the appellant/defendant by the said Ramaseela Muthiah Boobathy along with his sons and daughters, excluding the Sivakumar is valid only to the extent of their share viz., 1/4th share (each).

11. It remains to be stated that Ex.A.4-Sale Agreement is not binding upon the vendor of the plaintiff, since the said Sivakumar is neither a signatory nor a party to the agreement.

Admittedly, Sivakumar is a major on the date of execution of the alleged Sale Agreement-Ex.A.4. Therefore, in respect of 1/5th share, Ex.A.3-Sale Deed is valid. So also, in respect of 4/5th share conveyed by the father and two sons and daughters Ex.A.5 is valid. In other wards, the defendant is entitled to 4/5th share only while the plaintiff is entitled to 1/5th share.

12. It is needless to say that mere agreement will not create any right in the suit property. The Trial Court wrongly construed the Transfer of Property Act as to the conferment of right and title under the Sale Agreement and which was correctly modified by the Lower Appellate Court and hence, the preliminary decree passed by the Lower Appellate Court is found to be correct and accordingly, all the substantial questions of law are answered in negation against the appellant/defendant. The Second Appeal is devoid of merits and the same is liable to be dismissed.

13. In the result,

[i] The Second Appeal is dismissed.

[ii] The respondent/plaintiff is entitled to preliminary decree for 1/5th share in the suit property measuring 90 cents of land.

[iii] The decree granted by the Trial Court in O.S.No.278 of 1996 as modified by the Lower Appellate Court in A.S.No.88 of 1998 is hereby confirmed.

[iv] However, there shall be no order as to costs.

-s/d-

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1. The Subordinate Judge,
Udumalpet.

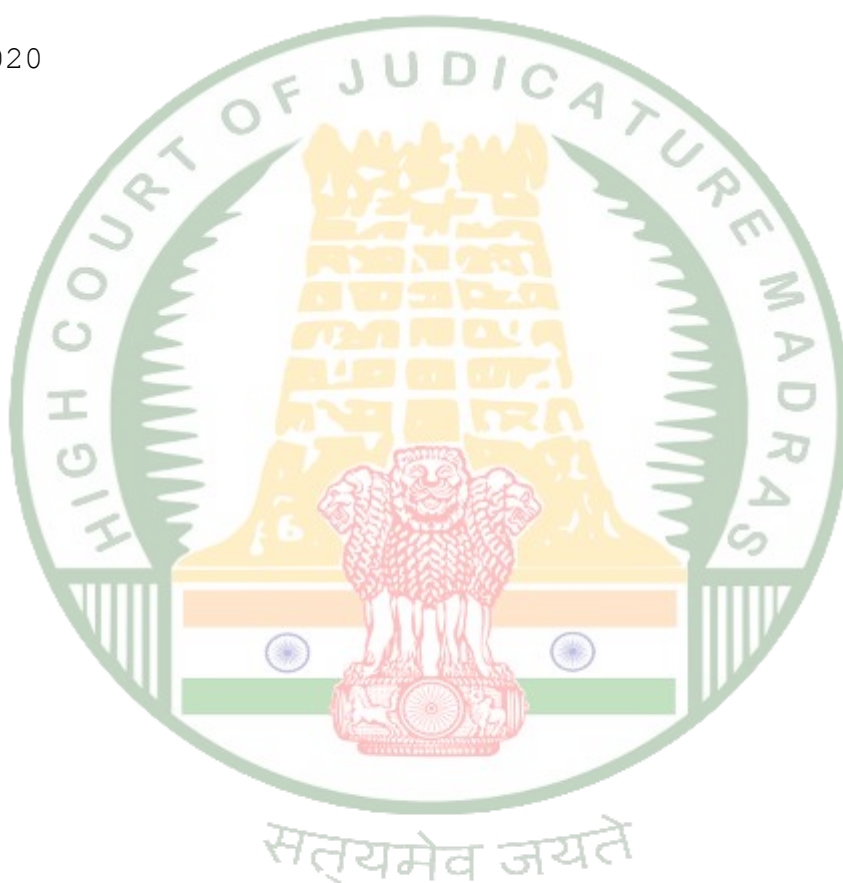
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