

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 06.01.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1064 of 2003
and C.M.P.No.9452 of 2003

1. Chandra Ammal (Died)
2. Munusamy
3. Perumal
4. Ganapathy
5. Valarmathy
6. Murugesan

(Appellants 2 to 6 are recorded as legal heirs of the deceased first appellant vide order of the Court dated 01.08.2019 made in S.A.No.1064 of 2003 as per memo dated 01.08.2019)

...Plaintiff/Appellants/Appellants

Vs.

1. Vedamanickam
2. Prema
3. Ramamoorthy
4. Balaji
5. Sreedhar
6. Umalakshmi

...Defendants/Respondents/Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 05.12.2002 made in A.S.No.2 of 2002 on the file of the Subordinate Court, Gudiyatham, confirming the judgment and decree dated 15.02.2002 made in O.S.No.504 of 1995 on the file of the District Munsif Court, Gudiyatham.

For Appellants

: Mr.K.Goviganesan

For Mr.M.Marudhachalam

For Respondents

For R1

: Mr.T.Karunakaran

For R2 to R4

: Notice served

For R5 & R6

: Notice dispensed with

JUDGMENT

This second appeal is directed as against the judgment and decree dated 05.12.2002 made in A.S.No.2 of 2002 on the file of the Subordinate Court, Gudiyatham, confirming the judgment and decree dated 15.02.2002 made in O.S.No.504 of 1995 on the file of the District Munsif Court, Gudiyatham.

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

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

3.1. The suit is filed for declaration and injunction. The suit property originally belonged to one Alanganeri Munusamy Gounder and he married one Muthammal. They gave birth to one Govindan. The first plaintiff is the wife of the said Govindan and the plaintiffs 2 to 6 are their sons and daughter. Immediately after birth of the said Govindan, the suit property became joint family property and after death of Alanganeri Munusamy Gounder, the entire suit property derived by the said Govindan. Since he was minor at the time of the death of his father, his mother Muthammal managed the property. But she has no right to alienate the suit property. After his attainment of majority, the said Govindan was in possession and enjoyment of the suit property, till his death. After death of the said Govindan, patta in respect of the suit property was transferred in the name of the first plaintiff and all the revenue records mutated in her name.

3.2. While being so, on 15.10.1987, one Dhanachezhiya Chettiyar and the first defendant tried to trespass into the suit property by showing the sale deed as if the said Muthammal, W/o. Alanganeri Munusamy Gounder had executed registered sale deed in favour of one Muninarashimalu Chettiyar, who is none other than the father of the said Dhanachezhiya Chettiyar. Whereas the said Muthammal had no right or title over the property as such, the sale deed executed by her is not a valid one. Even as a guardian of minor Govindan, she had no right to sell the property.

3.3. In fact, already the plaintiffs filed suit in O.S.No.865 of 1987 for declaration and injunction as against the said Dhanachezhiya Chettiyar and one Vedamanickam i.e., the first defendant herein. Pending the suit, the said Dhanachezhiya Chettiyar died and as such the defendants 2 to 6 were impleaded as parties. However the said suit was dismissed. Against which, the plaintiffs filed an appeal suit in A.S.No.29 of 1994 and on filing the separate application, the said appeal was dismissed

as withdrawn, with liberty to file fresh suit. The first defendant claimed title over the property, as if he purchased the suit property from the said Dhanachezhiya Chettiar. Hence the suit.

4. The case of the defendants is that the first plaintiff is not the wife of the said Govindan and the plaintiffs 2 to 6 are not the legal heirs of the said Govindan. It is true that the suit property originally belonged to one Alanganeri Munusamy Gounder and he married one Muthammal. They gave birth to two sons viz., Munusamy and Govindan. After the death of the said Alanganeri Munusamy Gounder his sons Munusamy, Govindan and his wife Muthammal jointly executed sale deed in respect of the suit property in favour of one Muninarashimalu Chettiar by a registered sale deed dated 07.02.1952. At the time of sale, the said Govindan was a minor, as such on behalf of him, as a guardian, his mother executed the sale deed. After the purchase, the said Muninarashimalu Chettiar and his son Dhanachezhiya Chettiar were in possession and enjoyment of the suit property. The second defendant is the wife of the said Dhanachezhiya Chettiar and the defendants 3 to 5 are the sons and daughters of the said Dhanachezhiya Chettiar. After the death of the said Muninarashimalu Chettiar his wife and son partitioned the properties by a partition deed dated 19.03.1976, in which the suit property was allotted to Dhanachezhiya Chettiar. Thereafter, all the revenue records were mutated in his name and for the valid sale consideration by a registered sale deed dated 25.06.1984, he sold out the suit property to the first defendant. After the purchase of the suit property, the first defendant mutated all the revenue records in his name and regularly paid the dues.

4.1. In fact the said Govindan did not challenge the sale deed dated 07.02.1952, after he attained majority and after his knowledge about the sale deed. Therefore, the sale deed bounded the said Govindan and he was estopped from claiming the suit property. At the time of execution of sale deed dated 07.02.1952, the plaintiffs 2 to 6 were not born and as such they cannot claim any ownership on the suit property. In fact, the said Govindan already filed suit in O.S.No.867 of 1983 as against the said Dhanachezhiya Chettiar and the first defendant as a cultivating tenant and sought for injunction in respect of the suit property. In the said suit, he categorically admitted that the defendants are the owners of the property. After his death, the said suit was dismissed on 30.11.1989 as abated and his legal heirs did not proceed the suit. Therefore, he prayed for dismissal of the suit.

5. On the side of the plaintiffs, they examined P.W.1 to P.W.3 and were marked Ex.A.1 to Ex.A.37. On the side of the

defendants, they examined D.W.1 to D.W.6 and were marked Ex.B.1 to Ex.B.26. Based on the material produced on record and 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 plaintiffs. Aggrieved by the same, the plaintiffs filed appeal suit in A.S.No.2 of 2002 and the same was also dismissed by the first appellate Court. Aggrieved by the same, the plaintiffs preferred this present second appeal.

6. At the time of admission of this second appeal on 17.07.2003, the following substantial questions of law were formulated for consideration:-

"1. Whether the Courts below are correct in presuming that Ex.B.1 is duly executed under Section 90 of the Indian Evidence Act contrary to the wordings employed thereunder and in view of the decisions reported in A.I.R.1948 Madras 388 and 87 Law Weekly, 799?

2. Whether the Court below are correct in law in presuming that the contents of Ex.B.1 are duly proved when the language in which it is written is not known to the executant?

3. Whether the Courts below are correct in law in holding that the appellants had no animus possidendi in view of the documentary evidence adduced by them and having held that they had been in possession of the suit property since 1943?"

7. Heard Mr.Govi Ganesan, learned counsel appearing for the appellants/plaintiffs and Mr.T.Karunakaran, learned counsel appearing for the first respondent/first defendant.

8. The suit property originally belongs to one Alanganeri Munusamy Gounder and he died after leaving behinds his two sons and wife one Muthammal. All the three have executed sale deed in favour of one Muninarashimalu Chettiar by a registered sale deed dated 07.02.1952 which was marked as Ex.B.1. After partition in the Muninarashimalu Chettiar's family by the registered partition deed dated 19.03.1976, the suit property was allotted to his son viz., Dhanachezhiya Chettiar and he sold out the suit property to the first defendant by the registered sale deed dated 25.06.1984 which is marked as Ex.B.10.

9. It is also seen from Ex.B.1, at the time of execution of the said sale deed dated 07.02.1952, the said Govindan i.e., the husband of the first plaintiff and the father of the

plaintiffs 2 to 6, was minor and on his behalf, his mother as a guardian of the said Govindan and his brother Muthusamy sold out the suit property in favour of the said Muninarashimalu Chettiar. Therefore, the said sale deed is a valid one and the property was sold out for valid sale consideration. Therefore, the said Govindan absolutely had no right or title over the suit property, since his brother and mother already sold out the property to Muninarashimalu Chettiar.

10. Even according to the plaintiffs, at the time of sale deed dated 07.02.1952 the said Govindan was minor. Even after attainment of his majority and after his knowledge, he did not challenge the said sale deed dated 07.02.1952. The said Govindan also filed a suit in the capacity of cultivating tenant as against the said Dhanachezhiya Chettiar and the first defendant in O.S.No.867 of 1983. The plaint copy of the said suit was marked as Ex.B.12 and it reveals that, the said Govindan categorically admitted that his brother Muthusamy and his mother Muthammal executed sale deed dated 07.02.1952 in favour of the said Muninarashimalu Chettiar. Even then he did not challenge the sale deed within the period of three years at least from his knowledge. Therefore, the present suit itself is clearly barred by limitation.

11. Further the said Govindan cannot claim the suit property as his ancestral property and his mother has no right or title over the property to sell the same, since originally the suit property along with other properties were purchased by the sale deed in the year 1938 by one Alanganeri Munusamy Gounder i.e., the father of the said Govindan. After his death, the property derived by the said Govindan and his brother and mother. It is also seen that the plaintiffs claimed the suit property as their ancestral property and they derived title over the suit property from their predecessors. They also claimed the suit property as they are in continuous possession and as such they are the absolute owner by adverse possession. But they failed to prove that the sale deed dated 17.02.11952 is void one. Whereas the said sale deed was clearly proved by the defendants and as such the plaintiffs have no right or title over the suit property.

12. In the light of the above discussions, this Court is of the opinion that the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly that the plaintiffs are not entitled for any relief as prayed for and dismissed the suit. Accordingly, this Court does not find any valid reason to interfere with the judgment and decree passed by the Courts below. This Court is of the considered opinion that no substantial questions of law involved in this appeal. Be that

as it may, all the substantial questions of law, formulated by this Court in this Second Appeal, are answered in favour of the defendants and as against the plaintiffs.

13. In fine, this Second Appeal fails and accordingly dismissed by confirming the judgment and decree of the Courts below with costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

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

+lcc to M/s.M.Marudhachalam, Advocate Sr.1715
+lcc to M/s.J.Karunakaran, Advocate Sr.1204

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