

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.02.2020

Date of Verdict : 18.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No. 800 of 2006

1. K.R.Vijayakarthish
2. K.J.Premnath
3. K.J.Vinodhkumar ...Appellants/Plaintiff
Vs.
1. P.C.Ramamurthy (Died)
2. K.N.Rajaram
3. K.N.Anantharaman
4. K.N.Mohan
5. K.N.Janardhanan
6. K.A.Gopinath
7. K.M.Sasikumar .. Respondents1 to 7/ Defendants1 to 7
8. Anusooya
9. Amreshbabu
10. Suganthi
(Respondents 8 to 10
brought on record as
legal heirs of the deceased
first respondent vide order
of the Court dated 13.08.2014
made in C.M.P.No. 9745 of 2006
in S.A.No.800 of 2006) ...

Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 10.10.2005, in A.S.No.41 of 2005 on the file of the Principal Sub Court, Salem, reversing the decree and judgment dated 11.01.2005 in O.S.No.1817 of 2004 on the file of the I Additional District Munsif Court, Salem.

For Appellants : Ms.Hema Sampath, Senior Counsel
For Mr.T.Sezhian

For Respondents

R1 : Died(steps taken)
For R2 to R7 : Notice served/ NA
For R8 to R10 : Mr.T.R.Rajaraman

JUDGMENT

This second appeal is directed as against the judgment and decree dated 10.10.2005, made in A.S.No.41 of 2005 on the file of the Principal Sub Court, Salem, reversing the

decree and judgment dated 11.01.2005 in O.S.No.1817 of 2004 on the file of the I Additional District Munsif Court, Salem.

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, recovery of possession along with damages. The first plaintiff is the son of the third defendant. The second plaintiff is the son of the second defendant. The third plaintiff is the son of the fourth defendant. The plaintiffs 4 & 5 are the sons of the fifth defendant. The suit property absolutely belonged to the plaintiffs. Their paternal grandfather K.D.Thirumalaier had executed a gift deed dated 17.01.1966, in favour of the defendants 2 to 5. According to the gift deed, the defendants 2 to 5 were given right to construct buildings thereon and to reside there and also to lease it out. They were prohibited from encumbering or selling the property during their life time. The defendants 2 to 5 had no absolute right over the suit property to sell the same.

3.2. While being so, the defendants 2 to 5 along with their cousin brothers filed suit in O.S.No.275 of 1974 before the District Munsif Court, Salem for getting possession of the property against the father of the first defendant. During the pendency of the suit, the father of the first defendant died and the first defendant was impleaded as his legal heir. In the said suit, they filed compromise petition and the compromise decree was also passed on 03.09.1976. According to the compromise decree, the defendants 2 to 5 were directed to execute the sale deed in respect of the suit property in favour of the first defendant on payment of Rs. 28,000/- in Court within the period of three months. Thereafter, the first defendant filed execution petition in R.E.P.No.209 of 1985 requesting the Court that as he had deposited the requisite amount and therefore directed the defendants 2 to 5 to execute the sale deed in his favour. Since the defendants 2 to 5 did not execute any sale deed, the Court had executed the sale deed on the deposit of sale consideration of Rs.28,000/- by the first defendant and closed the execution petition on 04.08.1993. The defendants 2 to 5 were not absolute owner of the suit property and they have no saleable right in the suit property. Thereby, the learned District Munsif Court, Salem, wrongly registered the sale deed in favour of the first defendant and it is null and void.

3.3. In fact at the time of compromise decree dated 03.09.1976, the third defendant had a son, who was born on 09.07.1974 and the fifth defendant also had a son, who was born on 10.07.1976. Therefore, on the date of compromise

decree, the sons of the defendants were in existence, and they were not made as party to the said suit. No permission also obtained from the Court to alienate the property, since the sons of the defendants 2 to 5 only have absolute right over the property. Hence the suit.

4. Resisting the same, the first defendant alone filed written statement and stated that suit itself is not maintainable, since no cause of action arose to file the suit. All the averments denied by the first defendant. It is true that the defendants 2 to 5 along with cousin bothers filed suit in O.S.No.275 of 1974 on the file of the District Munsif Court, Salem for possession of the suit property from the father of the first defendant. Originally, the property was leased out to the father of the first defendant and it was a vacant site and his father was paying rent for the vacant site at the rate of Rs.400/- per annum. He was running saw mill in the vacant land and the rent was periodically increased to Rs.120/- per month and later increased up to Rs.150/- per month.

4.1. The defendants 2 to 5 are the father of the plaintiffs 1 to 5 in the present suit. In fact, in the earlier suit in O.S.No.275 of 1974, the father of the first defendant filed written statement claiming benefit under Section 9 of the City Tenants Protection Act, 1955, since the property was leased out to him as vacant site. Further there was a compromise petition in I.A.No.1056 of 1976 in O.S.No.275 of 1974 and compromise decree was passed on 03.09.1976. By virtue of the same, the property ad measuring 1880 sq.ft., conveyed in favour of the first defendant for the valid sale consideration of Rs.28,000/- in execution Court in R.E.P.No.209 of 1985 on 04.08.1993.

4.2. In fact, the defendants 2 to 5 also filed execution petition in R.E.P.No.483 of 1984 for recovery of possession of the suit property, since the first defendant did not deposit the amount mentioned in the compromise decree and it was dismissed. As against which, they also preferred a civil revision petition in C.R.P.No.2176 of 1985 before this Court and the same was also dismissed by an order dated 21.10.1991. Hence he prayed for dismissal of the suit.

5. On the side of the plaintiffs, they examined P.W.1 and were marked Ex.A.1 to Ex.A.2. On the side of the defendants, they examined D.W.1 and were marked Ex.B.1 to Ex.B.12. 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 decreed the suit filed by the plaintiffs. Aggrieved by the same, the first defendant preferred an appeal suit in A.S.No.41 of 2005 and the first appellate Court allowed the appeal and dismissed the suit

filed by the plaintiffs. Aggrieved by the same, the plaintiffs preferred this present second appeal.

6. At the time of admission of this second appeal on 25.07.2006, the following substantial question of law was formulated for consideration:-

"Whether the lower appellate Court has committed an error in law in interpreting the recital in Ex.,A.1, Which on it's apparent tenor, gives only a life interest to D2 to D5, by holding that they get an absolute right?"

7. Ms.Hema Sampath, learned Senior Counsel appearing for the appellants/plaintiffs submitted that the plaintiffs are the absolute owner of the suit property under the settlement deed dated 17.01.1966, which was marked as Ex.A.1. When it being so, the first defendant ought not to have purchased the suit property as such he is not a bonafide purchaser. The recital of the gift deed, though executed in favour of their respective father viz., the defendants 2 to 5 in the suit, they have only life interest and they can construct building on the suit property and they can reside there and also can lease it out. They have no saleable interest or right over the suit property. The absolute right has been given only to the male heirs of the defendants 2 to 5 herein and as such, the plaintiffs are being the male legal heirs of the defendants 2 to 5, they have absolute right over the suit property.

7.1. She further contended that the defendants 2 to 5 never vested with any interest under the settlement deed. In this regard, she relied upon the following reported judgment:-

- (i) AIR 1972 Madras 333 - P.Ram Mohan Vs. Lalitha Raghuraman and ors
- (ii) (1996) 5 SCC 201 - Usha Subbarao Vs. B.N.Vishveswaraiah and ors.
- (iii) (2005) 4 SCC 315 - Vithalbhai (P) Ltd. Vs. Union Bank of India.

8. Per contra, the learned counsel appearing for the first defendant submitted that the suit itself is not maintainable, since no cause of action arose to file the suit. The plaintiffs mainly rely upon the Ex.A.1, the settlement deed executed in favour of the defendants 2 to 5. Though the settlement deed was executed only with the life interest to all the defendants 2 to 5 viz., the father of the plaintiffs, in respect of the suit property, when they are very much alive, the plaintiffs have absolutely no cause of action to challenge the sale deed executed in favour of the first defendant. They can only file suit for

recovery of possession that too after life time of their father. He relied upon the judgment reported in 2012 SCC online Mad 3002 in the case of Kaliappan (died) and ors Vs. A.K.Somasundaram (died) and ors., to the support of his contention.

9. Heard Ms.Hema Sampath, learned Senior Counsel appearing for the appellants/plaintiffs and MrT.R.Rajaraman, learned counsel appearing for the respondents 8-10/Legal heirs of the first defendant.

10. Admittedly, the plaintiffs are the sons of the defendants 2 to 5 in the suit. The plaintiffs great grandfather K.D.Thirumalaier had executed a gift deed dated 17.01.1966 in favour of the defendants 2 to 5 and their respective sons to be born to them, with regard to the suit property. The defendants 2 to 5 were given only life interest and they are prohibited from encumbering the suit property in any manner in their life time. They were given right to construct, mortgage, lease out and to reside there in the suit property.

11. Originally, the suit property was a vacant site and it was leased out to the first defendant's father. Thereafter, the defendants 2 to 5 along with their cousin brothers filed suit in O.S.No.275 of 1974 before the District Munsif Court, Salem, for recovery of possession of the suit property from the father of the first defendant. While pending the suit, they filed compromise petition in I.A.No.1056 of 1976 and accordingly compromise decree was passed on 03.09.1976. By virtue of the said compromise decree, the defendants 2 to 5 were directed to sell the suit property in favour of the first defendant for the total sale consideration of Rs.28,000/-. Even then, they did not come forward to execute the sale deed. Therefore, the first defendant filed execution petition in R.E.P.No.209 of 1985 and the sale was executed in favour of him by the execution Court and the execution petition was also closed on 04.08.1993. Now the plaintiffs come forward with the present suit for declaration and recovery of possession, on the gift deed executed in favour of the them, which was marked as Ex.A.1. The only substantial question of law involved in this appeal is that whether the first appellate Court committed error in law in interpreting the recital of Ex.A.1, which on it's apparent tenor, gives only a life interest to the defendants 2 to 5 by holding that they get an absolute right.

12. On perusal of Ex.A.1, it revealed that the defendants 2 to 5 were given only life interest of suit property and the absolute right was given to the plaintiffs. It is crucial to note that the plaintiffs' father viz., the defendants 2 to 5 are very much alive and therefore, the plaintiffs have no right to claim the suit

property before the life of their respective father. Only after demise of their respective father, the plaintiffs can challenge the sale or any encumbrance created by the their respective father in the suit property. In this regard, the learned counsel appearing for the respondents relied upon the judgment reported in 2012 SCC online Mad 3002 in the case of Kaliappan (died) and ors Vs. A.K.Soma sundaram (died) and ors., which reads as follows :-

"61.The Appellants/Defendants, in law, are entitled to be in possession, till the life interest holder viz., Pavakkal is alive, as opined by this Court. During the life-time of Pavakkal, the Respondents/ Plaintiffs cannot seek the relief of declaration of their title in the suit properties. As such, the contra view taken by the trial Court as well as the First Appellate Court, that the Respondents/Plaintiffs are entitled to obtain the relief of declaration in respect of suit properties, are not in accordance with the well laid down principles of law.

62.However, this Court holds that the Appellants/Defendants are entitled to hold and enjoy the suit properties as per the Sale Deeds till the life-time of Pavakkal. Further, it is held by this Court that till the life-time of Pavakkal, the Respondents/Plaintiffs cannot claim the recovery of possession in respect of suit properties from the Appellants/Defendants because of the fact that Pavakkal during her life-time, having conveyed the suit properties, the Respondents/ Plaintiffs cannot seek recovery of possession because they as vested remainders have to wait till the exclusion of life interest holder viz., Pavakkal or her demise."

In the above judgment, this Court held that during the life time of the father, the sons cannot seek declaration or title in the suit property.

13. In the case on hand, admittedly the gift deed executed in favour of the defendants 2 to 5 and their sons i.e., the plaintiffs, who were not born. Insofar as the defendants 2 to 5 are concerned, they have given only life interest to the suit property and after their life time, their respective sons have absolute right over the suit property. Therefore, the above judgment squarely applies to

the case on hand. Hence the first defendant is entitled to hold and enjoy the suit property as per the sale deed. Till the life time of the defendants 2 to 5, the plaintiffs cannot claim any relief over the suit property. After the life time of the defendants 2 to 5, the plaintiffs can only file recovery of possession in respect of the suit property. The first appellate Court allowed the appeal on the point that the plaintiffs did not challenge the sale deed executed in favour of the first defendant and hence the suit is not maintainable. This Court concluded that the plaintiffs have no cause of action to file the present suit as against the first defendant, when their respective father are very much alive. The principles of law out lined in the above said decision are taken into consideration and followed as applicable to the case on hand.

14. In view of the above discussion, this Court does not find any valid reason to interfere with the reasonings and findings rendered by the first appellate Court to uphold the case of the plaintiffs. Therefore, this Court is of the considered opinion that no substantial question of law involved in this appeal. Be that as it may, the substantial question of law formulated by this Court is answered in favour of the defendants and as against the plaintiffs.

15. In fine, the second appeal stands dismissed by confirming the judgment and decree passed by the first appellate Court. There is no order as to costs.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Subordinate Judge,
Salem.

2. The I Additional District Munsif
Salem.

3. The Section Officer,
V.R. Section,
Madras High Court, Chennai.

+1cc to Mr.R.Subramanian , Advocate SR.No. 13901

+1cc to Mr.T.R.Rajaraman , Advocate SR.No. 14404

S.A.No. 800 of 2006

A.SK(29/09/2020)

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