

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.12.2019

Date of Verdict : 07.01.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.787 of 2004

Damodaran ...Appellant/Plaintiff

Vs.

1. Raniammal

2. Papathiammal

...Respondents/1 & 2 Defendants

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 29.09.2003 passed in A.S.No.7 of 2003 on the file of the Sub Court, Madurantakam, reversing the judgment and decree dated 21.04.2003 made in O.S.No.155 of 1997 on the file of the District Munsif Court, Madurantakam.

For Appellant : Mr.M.S.Subramanian
For Mr.N.K.Sivakumar

For Respondents

For R1 : No appearance

For R2 : Notice served

JUDGMENT

This second appeal is directed as against the judgment and decree dated 29.09.2003 passed in A.S.No.7 of 2003 on the file of the Sub Court, Madurantakam, reversing the judgment and decree dated 21.04.2003 made in O.S.No.155 of 1997 on the file of the District Munsif Court, Madurantakam.

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 possession of the suit property. The suit schedule property originally belongs to one Narayanasamy Padayachi, who is the father of the plaintiff's mother, the second respondent herein. While he was in a sound state of mind, settled the property in the name of the second defendant i.e., the mother of the plaintiff on 07.04.1973, with a condition that the second defendant can enjoy the suit property without making any encumbrance over the property and after her demise, only the male legal heir of the second defendant may derive the prefect right and title to

the suit property. The second defendant had only life estate and as such the plaintiff is alone having absolute right over the suit property.

3.2. While being so, the second defendant sold out the suit property to the first defendant, when the plaintiff was minor. The sale deed executed in favour of the first defendant by the second defendant is contrary to the settlement deed dated 07.04.1973. By virtue of the said sale deed, the first defendant cannot derive any right or title over the property as the vendor i.e., the second defendant was not having absolute right or title over the property. As per the settlement deed, the second defendant only had life estate over the suit property, as such the sale deed dated 23.08.1979 executed by the second defendant in favour of the first defendant is sham and nominal and the sale itself voidable. Hence, the suit for declaration and possession.

4. Resisting the same, the first defendant filed written statement stating that the gift deed dated 07.04.1973 executed by Narayana Padayachi in favour of the second defendant and she was in possession and enjoyment of the property as the absolute owner until it was sold to the first defendant in the year 1979. It was sold out only to purchase another property and also to discharge some dues incurred for the family expenses of her daughter. The second defendant executed the registered sale deed in favour of the first defendant on behalf of herself and minor child for valid sale consideration. The alienation of the suit schedule property was only for the benefit of the minor child. In fact, the recital of the sale deed categorically mentioned about the benefit of the minor children. At the time of sale, the plaintiff was only 8 years old and as such, the second defendant executed sale deed in favour of the first defendant on her behalf and also on behalf of her minor son. In pursuant to the sale deed, the first defendant had taken possession and made lots of improvement in the suit schedule property. Thereafter, the subdivision has been effected and separate patta also granted in favour of the first defendant, even 15 years ago. Therefore, he prayed for dismissal of the suit.

5. On the side of the plaintiff examined P.W.1 to 3 and were marked Ex.A.1 to Ex.A.5. On the side of the defendants examined D.W.1 and were marked Ex.B.1 and Ex.B.2. Based on the material produced on record and both the oral and documentary evidence adduced by the respective parties and also the submissions made, the trial Court allowed the suit and decreed the same as prayed for by the plaintiff. Aggrieved by the same, the first defendant alone filed appeal suit in A.S.No.7 of 2003 and the first appellate Court reversed the findings of the trial Court and dismissed the suit filed by the plaintiff. Aggrieved by the same, the plaintiff filed this present second appeal.

6. At the time of admission of this second appeal on 29.04.2004, the following substantial question of law were formulated for consideration:-

"1. Whether a daughter's right in the properties under the settlement deed would get enlarged under Section 14(1)?

2. Whether the daughter has any preexisting right against the father to claim properties as having enlarged into an absolute estate?"

7. The learned counsel appearing for the appellant/plaintiff submitted that the plaintiff was born on 26.03.1977 and he attained majority on 26.03.1995. The grandfather of the plaintiff executed settlement deed dated 07.04.1973 in favour of his daughter i.e., the mother of the plaintiff in respect of the suit schedule property. The recital of settlement deed clearly shows that the settlee is entitled only for life estate and she has no absolute right, title over the property. After demise of the settlee i.e., the second defendant herein, only the male heir of the second defendant may derive the perfect title and right over the property. The plaintiff is the only son of the second defendant and he has absolute title and right over the suit property. Without his consent, since he was a minor, the second defendant executed sale deed in favour of the first defendant by sale deed dated 23.08.1973. The trial Court rightly allowed the suit but unfortunately, the first appellate Court dismissed the suit applying Section 14(1) of the Hindu Succession Act. The first appellate Court failed to consider that the settlement deed Ex.A.1 gave only restricted right to the second defendant to the effect of life estate. Therefore, she was prevented from alienating the property, which was settled by her father during his life time. Therefore, the sale deed is not valid one.

7.1. He further submitted that in the absent of any pre-existing right, the restricted right given in the settlement deed will not get enlarged as absolute estate under Section 14 (1) of the Hindu Succession Act. The learned counsel appearing for the appellant/plaintiff cited the following judgment to substantiate his argument :-

1. (1977) 3 SCC 99 - V.Tulasamma and others Vs. Sesha Reddy

2. AIR 1982 Aunjab & Haryana 202 - Jagir Singh Vs. Baboo Singh and others.

3. AIR 1985 Madras 248 - A.Venkataraman Vs. S.Rajalakshmi and others

4. AIR 2008 Kerala 112 - M.P.Lathika and ors Vs. Jayasree Sivanand and ors.

5. (2013) 4 SCC 636 - Shivdev Kaur and others Vs.

R.S.Grewal

8. Heard Mr.M.S.Subramanian, learned counsel appearing for the appellant/plaintiff. Though notices have been served, no one appeared on behalf of the defendants.

9. The plaintiff is none other than the son of the second defendant. The first defendant is the purchaser of the suit schedule property by the sale deed dated 23.08.1979. Originally the suit property belongs to the grandfather of the plaintiff. During his life time, he executed, settlement deed dated 07.04.1973 in favour of the second defendant being his daughter, with limited interest of estate till her life time. Thereafter, the male legal heir of the second defendant derive perfect title, right and interest over the suit property. The plaintiff is the only son of the second defendant. When the plaintiff was minor, the second defendant executed sale deed in respect of the suit property in favour of the first defendant by the registered sale deed dated 23.08.1979, which was marked as Ex.A.2. The recital of the sale deed shows that the second defendant sold the suit property to purchase an another property and also to discharge certain debts incurred for the family expenses of her daughter. The trial Court allowed the suit as prayed for in favour of the plaintiff by holding that the settlement deed executed by the father of the second defendant with limited extent viz., for life estate of the second defendant only. The absolute title and right over the property derived by the plaintiff to alienate the said property.

10. The first appellate Court reversed the finding of the trial Court by holding that the plaintiff and the second defendant are living in the same house and they have no quarrel. Before the trial Court, the second defendant conveniently absent and she was set exparte. The convenient absence revealed that the second defendant is engineered the suit to grab the property of the first defendant and cleverly, she was set ex-parte before the trial Court. Further held that the recital of Ex.A.1, the settlement deed clearly proved that the property given to the plaintiff's mother for love & affection and she is one of the daughter of Narayanasamy Padayachi and she was also with him and she helped him physically and mentally to her father. Therefore the question of limited estate is not at all arose, because of the admission of the plaintiff as well as the first defendant. Therefore, Ex.A.1 settlement deed is not limited to her life estate and only by applying the provisions under Section 14(1) of Hindu Successions Act, the life estate is automatically converted as absolute interest in favour of the second defendant herein. Therefore, the settlement deed becomes valid one and the second defendant had absolute right over the suit schedule property and hence, the sale deed dated 23.08.1979, which was marked as Ex.A.2 is a valid one. Thereafter, the first defendant is in possession and enjoyment of the suit property for the past several years and the first defendant is

a bonafide purchaser and allowed the appeal in favour of the first defendant.

11. Now the only point for consideration is that whether the daughter's right in the property under the settlement deed would get enlarged under Section 14(1) of Hindu Successions Act.

12. Admittedly, the grandfather of the plaintiff executed the settlement deed in favour of the second defendant is being one of the daughter. The settlement deed is limited with life estate of the second defendant and the male heir of the second defendant can derive perfect title, right and interest over the property. While the plaintiff was minor, the second defendant executed the sale deed in favour of the first defendant. The learned counsel appearing for the appellant/plaintiff cited the judgment reported in (1977) 3 SCC 99 in the case of V.Tulasamma and others Vs. Sesha Reddy which reads as follows :-

"69.....This circumstance would also seem to indicate that the legislative intendment was that sub-section (2) should be applicable only to cases where acquisition of property is made by a Hindu female for the first time without any pre-existing right-a kind of acquisition akin to one under gift or will. Where, however, property is acquired by a Hindu female at a partition or in lieu of right of maintenance, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of sub-section (2), even if the instrument, decree, order or award allotting the property prescribes a restricted estate in the property.

70. This line of approach in the construction of sub-section (2) of section 14 is amply borne out by the trend of judicial decisions in this Court. We may in this connection refer to the decision in Badri Parasad's case (supra). The facts in that case were that one Gajju Mal owning self-acquired properties died in 1947 leaving five sons and a widow. On August 5, 1950, one Tulsi Ram Seth was appointed by the parties as an arbitrator for resolving certain differences which had arisen relating to partition of the properties left by Gujju Mal. The arbitrator made his award on December 31, 1950 and under clause 6 of the award, the 'widow was awarded certain properties and it was expressly stated in the award that she would have a

widow's estate in the properties awarded to her. While the widow was in possession of the properties, the Act came into force and the question arose whether on the coming into force of the Act, she became full owner of the properties under sub-section (1) or her estate in the properties remained a restricted one under sub-section (2) of section 14. This Court held that although the award gave a restricted estate to the widow in the properties allotted to her, it was sub-section (1) which applied and not sub-section (2), because inter alia the properties given to her under the award were on the basis of a pre-existing right which she had as an heir of her husband under the Hindu Women's Right to Property Act, 1937 and not as a new grant made for the first time. So also in *Nirmal Chand v. Vidya Wanti (dead)* by her legal representatives (1), there was a regular partition deed made on December 3, 1945 between Amin chand, a coparcener and (1) C.A. No. 609 of 1965, decided on January 21, 1969. Subhrai Bai, the widow of a deceased coparcener, under which a certain property was allotted to Subhrai Bai and it was specifically provided in the partition deed that Subhrai Bai would be entitled only to the user of the property and she would have no right to alienate it in any manner but would only have a life interest. Subhrai Bai died in 1957 subsequent to the coming into force of the Act after making a will bequeathing the property in favour of her daughter Vidyawati. The right of Subhrai Bai to bequeath the property by will was challenged on the ground that she had only a limited interest in the property and her case was covered by sub-section (2) and not sub-section (1). This contention was negatived and it was held by this Court that though it was true that the instrument of partition prescribed only a limited interest for Subhrai Bai in the property, that was in recognition of the legal position which then prevailed and hence it did not bring her case within the exception contained in sub-section (2) of section 14. This Court observed: "If Subhrai Bai was entitled to a share in her husband's properties then the suit proper- ties must be held to have been allotted to her in accordance with law. As the law then stood

she had only a life interest in the properties taken by her. Therefore the recital in the deed in question that she would have only a life interest in the properties allotted to her share is merely recording the true legal position. Hence it is' not possible to conclude that the properties in question were given to her subject to the condition of her enjoying it for her life time. Therefore the trial court as well as the first Appellate Court were right in holding that the facts of the case do not fall within s. 14(2) of the Hindu Succession Act, 1955."

It will be seen from these observations that even though the property was acquired by Subhrai Bai under the instrument of partition, which gave only a limited interest to her in the property, this Court held. that the case fell within sub- section (1) and not sub-section (2). The reason obviously was that the property was 'given to Subbrai Bai in virtue of a pre-existing right inhering in her and when the instrument of partition provided that she would only have a limited interest in the property, it merely provided for something which even otherwise would have been the legal position under the law as it then stood. It is only when property is acquired by a Hindu female as a new grant for the first time and the instrument, decree; order or award giving the property prescribes the terms on which it is to be held by the Hindu female, namely, as a restricted owner, that sub- section (2) comes into play and excludes the applicability of sub-section (1). The object of sub-section (2), as pointed out by this Court in Badri Persad's case (supra) while quoting with approval the observations made by the Madras High Court in Rangaswami Naicker v. Chinnammal(1), is "only to remove the disability of women imposed by law and not to interfere with contracts, grants or decree etc. by virtue of which a woman's right was restricted" and, there- fore, where property is acquired by a Hindu female under the instrument in virtue of a pre-existing (1) A.I.R. 1964 Mad. 387. right, such as a right to obtain property on partition or a right to maintenance and under the law as

it stood prior to the enactment of the Act, she would have no more than limited interest in the property, a provision in the instrument giving her limited interest in the property would be merely by way of record or recognition of the true legal position and the restriction on her interest being a "disability imposed by law" would be wiped out and her limited interest would be enlarged under sub-section (1). But where property is acquired by a Hindu female under an instrument for the first time without any pre-existing right solely by virtue of the instrument, she must hold it on the terms on which it is given to her and if what is given to her is a restricted estate, it would not be enlarged by reason of sub-section (2). The controversy before us, therefore, boils down to the narrow question whether in the 'present case the properties were acquired by the appellant under the compromise in virtue of a pre-existing right or they were acquired for the first time as a grant owing its origin to the compromise alone and to nothing else."

13. The Hon'ble Supreme Court of India held that the legislative intentment was that sub-section (2) of Section 14 of Hindu Succession Act should be applicable only to the case, where acquisition of property is made by a Hindu female for the first time without any pre-existing right - a kind of acquisition akin to one under gift or Will. Where, however, the property is acquired by a Hindu female at a partition or in lieu of right of maintenance, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of sub-section (2), even the instrument, decree, order or award allotting the property prescribes a restricted estate in the property. Further held that it is only when the property is acquired by a Hindu female as a new grant for the first time and the instrument, decree, order or award giving the property prescribed the terms on which it is to be held by the Hindu female, namely, as a restricted owner, that sub-section (2) comes into play and excludes the applicability of sub-section (1). The object of sub-section (2) of Section 14 of Hindu Succession Act is only to remove the disability of women imposed by law and not to interfere with contracts.

14. In the case on hand, the property was shelf acquired by the grandfather of the plaintiff. Thereafter, he executed settlement deed in favour of one of the daughter as gift ie., the second defendant. Therefore, the second defendant has no pre-existing right over the suit schedule property, since it

is self acquired property by her father. Therefore, the sub section (2) of Section 14 of the Hindu Succession Act will come into play and it exclude the applicability of the Section (1) of the Section 14 of the Hindu Succession Act.

15. He also cited the judgment of the Hon'ble Supreme Court of India reported in (2013) 4 SCC 636 in the case of Shivdev Kaur and others Vs. R.S.Grewal , which reads as follows :-

"14. Thus, in view of the above, the law on the issue can be summarised to the effect that if a Hindu female has been given only a "life interest", through Will or gift or any other document referred to in Section 14 of the Act 1956, the said rights would not stand crystallised into the absolute ownership as interpreting the provisions to the effect that she would acquire absolute ownership/title into the property by virtue of the provisions of Section 14(1) of the Act 1956, the provisions of Sections 14(2) and 30 of the Act 1956 would become otios. Section 14(2) carves out an exception to rule provided in sub- section (1) thereof, which clearly provides that if a property has been acquired by a Hindu female by a Will or gift, giving her only a "life interest", it would remain the same even after commencement of the Act 1956, and such a Hindu female cannot acquire absolute title."

Accordingly, the second defendant was given only life interest through the settlement deed and the said right would not stand crystallised into absolute ownership as interpreting the provisions to the effect that she would acquire absolute ownership into the property by virtue of the provisions of Section 14(1) of the Hindu Succession Act.

16. The first appellate Court improperly failed to consider those aspects and erred by holding that Section 14(1) of the Hindu Succession Act would come into play, as such the second defendant has absolute title over the property and the sale deed executed by her hold good. It is nothing but perverse and it is liable to be interfered. For ready reference, Section 14 of the Hindu Succession Act, 1956 is extracted hereunder :-

"14. Property of a female Hindu to be her absolute property. (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

(2) Nothing contained in sub-section

(1) shall apply to any pro- perty acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."

17. The second defendant has no pre-existing right over the suit schedule property and under Ex.A.1, she was given limited right of life estate and as such she cannot become absolute owner of the property as contemplated under Section 14(1) of the Hindu Succession Act. Hence, the first appellate Court had failed to consider the above position of law and proceed to have passed its own reasons and conclusion on assumption and presumption. As such in view of the matter, it is seen that the reasoning and conclusion of the first appellate Court holding that the case of the plaintiff suffered from perversity is absolutely baseless and against the provision of sub section (2) of Section 14 of the Hindu Succession Act. Accordingly, all the substantial questions of law formulated in this appeal are answered in favour of the plaintiff and as against the defendants.

18. In view of the above discussion, this Second Appeal is allowed and the judgment and decree dated 29.09.2003 passed in A.S.No.7 of 2003 on the file of the Sub Court, Madurantakam, is hereby set aside and resultantly, the suit filed by the plaintiff in O.S.No.155 of 1997 is allowed by restoring the judgment and decree dated 21.04.2003 made in O.S.No.155 of 1997 on the file of the District Munsif Court, Madurantakam, with costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

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

+1cc to Mr.N.K.Sivakumar, Advocate, S.R.No. 1483

S.A.No.787 of 2004