



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 08.12.2020

Pronounced on: 14.12.2020

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Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

S.A.No.986 of 2010
& M.P.No.1 of 2010

Narayanan,
S/o.Perumal Gounder,
Veedur Village,
Tindivanam Taluk.

... Appellant/ Appellant/Plaintiff

/versus/

Ranganathan,
S/o.Periyasamy,
Veedur Taluk,
Tindivanam Taluk.

... Respondent/Respondent/Defendent

Prayer: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree made in A.S.No.6 of 2009 dated 19.10.2009 on the file of the Additional District Judge, (Fast Track Court - 2), Tindivanam, confirming the judgment and decree made in O.S.No.38 of 2006 dated 20.12.2007 on the file of the Principal District Munsif, Tindivanam.

For Appellant : Mr.P.Dinesh Kumar
for Mr.D.Ravichander

For Respondent : No appearance

J U D G M E N T

(The case has been heard through video conference)

The Appellant in this Second Appeal is the plaintiff in the suit. Aggrieved by the dismissal of the suit by the Trial Court and the Appeal by the First Appellate Court, the present Second Appeal is filed against the concurrent finding of the Courts below.

2. The case of the appellant as plaintiff in the original suit is that, the property described under 'B' schedule of the plaint originally belong to one Govinda Gounder S/o.Subburaya Gounder. He sold it to one Narayanasami S/o.Kuppa Padayachi under the registered sale deed dated 11.04.1944 and delivered



the possession. The property was under the exclusive possession and enjoyment of the said Narayanasami, till his death. He died intestate leaving behind his daughter Govindammal as his sole heir. She took possession of the property and enjoying it absolutely putting up a house on the South of item No.1 of 'A' schedule properties. This is a portion of item No.1 in the 'B' schedule properties. The said Govindammal, died about 8 years prior to the filing of this suit. She left behind her husband and two sons to inherit the suit properties. Govindammal husband Periyasami and her two sons Ranganathan and Manibalan divided the property among themselves about 6 or 7 years prior to the suit. At that time, Govindammal second son Manibalan was still a minor. The Northern portion in item No.1 of $\frac{1}{2}$ share in item No.2 of 'B' schedule was allotted to the share of Periyasami and the minor son Manibalan. The southern portion in item No.1 and $\frac{1}{2}$ share in item No.2 of the 'B' schedule was allotted to Ranganathan. The share allotted to Periyasami and his son Manibalan is the 'A' schedule property in the suit. The 2nd item property in the pathway for common use of both the parties.

3. On 22.11.2000, Periyasami for himself and on behalf of his minor son Manibalan sold the 'A' schedule property for Rs.7,500/- to the plaintiff/appellant and put him in possession. After mutation of the revenue records, joint patta No.631 issued to the plaintiff/appellant. While the plaintiff/appellant enjoying the item No.1 of the 'A' schedule property exclusively and the item No.2, pathway jointly with other pattadars. The son of Periyasami, the defendant/respondent herein, disgruntled by the appellant purchasing his father's share, with a scheme to drive away the plaintiff/appellant attempted on 18.01.2006, to interfere his possession of 1st item of the 'A' schedule property and exclude him from the item No.2 of 'A' schedule property. Hence, the suit for declaration of title in respect of item No.1 and $\frac{1}{2}$ share in item No.2 of the 'A' schedule property and for permanent injunction restraining the defendant/respondent from interfering with his exclusive possession of item No.1 and joint possession of item No.2 of the 'A' schedule properties. Or in alternate $\frac{1}{2}$ share in the item No.1 and item No.2 in the 'B' schedule properties.

4. The respondent contested the suit admitting the relationship narrated in the plaint, denied the alleged partition between Periyasami and his sons after the demise of Govindammal. The subsequent sale deed alleged to have been executed by Periyasami in favour of the plaintiff/appellant also denied. The plaintiff/appellant never in possession of the suit property. The inclusion of his name in the patta will not confer him any title. The suit property purchased by Narayana Padayachi on 11.04.1944. He built up a thatched house and living with his daughter Govindammal. After the death of

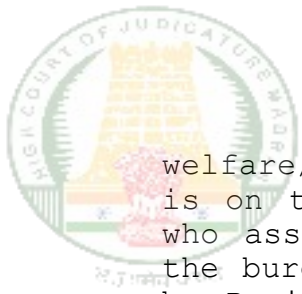


Narayana Padayachi, continue to enjoy the property paying tax. Patta was transferred in her name and she died in the year 1998. After her death, her husband Periyasamy and two sons Manibalan and Ranganathan (defendant) are in joint possession and enjoyment of the property till date. No division of property between the family members effected. The plaintiff is bereft of details about the alleged partition. Even whether it is a written partition or oral partition not mentioned in the plaint. In fact, Periyasami is an alcohol addict living a vagabond life. Manibalan is a man of immature mind incapable of recognising his Acts. The defendant/respondent alone taking care of the family. The sale deed relied by the plaintiff/appellant would not have executed with free will and knowledge. There is no necessity for his father Periyasami to sell the family residential property. Even assuming the sale deed is true, it will not bind the defendant/respondent, who have the right of pre-emption. Stranger cannot have a joint possession in the residential house.

5. The Trial Court framed the necessary issues and examined 3 witnesses on behalf of the plaintiff and 2 witnesses on behalf of the defendant. 3 Exhibits on each side were marked and Ex.A-1 to Ex.A-3 and Ex.B-1 to Ex.B-3. Considering the recital in Ex.A-1 the sale deed executed by Periyasami on behalf of his minor son Manibalan, the Trial Court held that the deed does not clearly indicate whether Periyasami has sold his share along with the share of his minor son or sold the share of his minor son alone. The plaintiff has not ensured before buying whether there was partition between the family members. The purchaser, who intend to buy the share of the minor is expected to make reasonable enquiry about the necessity to sell the minor's share and whether the representative of the minor acting for the benefit of the minor. Mutation of revenue records and the joint patta Ex.A-2 and Ex.A-3 are not document of title. Having failed to prove the right of his vendor to alienate the minor's property, the Trial Court declined to grant the relief of declaration. Based on the evidence which proves the suit property is still in possession of Periyasamy and his two sons, the relief of permanent injunction to the plaintiff, who is not in possession of the property also declined. Since, the sale deed Ex.A-1 itself held not proved, the alternate relief of division of the suit property into two halves also dismissed.

6. The Appeal to the First Appellate Court was dismissed. The Trial Court judgment was confirmed. Hence, the Second Appeal against the concurrent finding filed.

7. The Learned Counsel for the Appellant submitted that the Courts below erred in not granting the relief sought. When the defendant had admitted the execution of the sale deed Ex.A-1 by his father, in favour of the appellant and only questioned its validity on the ground that, the sale was not for the



welfare/benefit of the minor son, the burden to prove the same is on the defendant. Contrary to settled law that, the person, who assert a fact should prove it, the Courts below had placed the burden on the plaintiff to prove that the property was sold by Periyasamy for the benefit of the family and his minor son. This fact is already part of the recital in Ex.A-1. Only the party who plead contrary to the recital found in the duly registered deed has to prove the contrary.

8. Regarding the possession of the property, the Learned Counsel impugned the judgement of the Courts below stating that, the Courts below failed to appreciate the oral evidence of P.W-2 and P.W-3 as a whole. Pointing out stray statement, it has erred in concluding the possession with the defendant and his family is admitted by the plaintiff witnesses. The patta Ex.A-2 and Chitta Ex.A-3 are the best piece of evidence to prove possession. The Courts below failed to give due credence to the plaintiff documents.

9. The Learned Counsel for the appellant particularly emphasised the point that even if the sale of the minor property under Ex.A-1 was not for the welfare of the minor, the validity of the said sale deed ought to have been challenged by the minor within 3 years from the date of attaining majority. Neither Manibalan nor his father Periyasamy, who executed the sale deed Ex.A-1 had questioned the validity of the sale till date. The other sharer the defendant have no locus to question the said sale with bald averment that, the sale was not for the benefit of the minor brother and the minor brother suffers mental illness. For neither of the plea, no evidence placed by the defendant for the Court to presume in favour of the defendant. If the Courts were not convinced, the plaintiff's entitlement for the relief of declaration, it ought to have atleast granted the relief of partition, the alternate relief sought in the plaint. After Ex.A-1, the appellant had entered the shoes of Periyasami and Maibalan. As a co-sharer, he is entitled to seek for partition.

10. On hearing the Learned Counsel for the appellant and on perusing the records, the following substantial questions of law formulated for consideration:-

a) Are not the judgment vitiated as the Learned District Judge failed to formulate point for determination and give a finding with respect to the plaintiff's prayer seeking for alternative relief for partition in case the Court comes to a conclusion when the plaintiff is not entitled for declaration?



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b). When it is settled in Law that the 1st Appeal Court being the final Court of fact, ought to have given independent finding without getting any influence over the findings of the Trial Court.

c). When the defendant having admitted the due execution of the sale deed and the only defence was that the sale deed was not for the benefit of the minor, still are the Courts below right in shifting the burden on the plaintiff to prove that the plaintiff is entitled to prove that the sale is for the benefit of the minor.?

11. Though, the sole respondent served with notice in the Second Appeal, had not entered appearance.

12. The fact that the suit property fall into the hands of Periyasami and his two sons Ranganathan and Manibalan, after the demise of Govidammal is not in dispute. The appellant claims that, there was partition among the family members in respect of the suit property and the 'A' schedule property was sold to him by Periyasami, on his behalf and on behalf of his minor son Manibalan. Contrarily the respondent plead that, there was no partition among the family members and they are jointly enjoying the property and in possession of the same. The sale deed Ex.A.1 alleged to have been executed by Periyasamy is not a valid deed.

13. The recital of Ex.A-1 dated 22.11.2000 the sale deed executed by Pariyasami in respect of 'A' schedule property reveals, it is executed by Periyasami on behalf of his son Manibalan since on the date of executing Ex.A-1 he was a minor. Based on the sale deed, the mutation of revenue record has been effected and Patta Ex.A-2 and Chitta Ex.A-3 issued. In the joint patta No.631, Ex.A-2 the suit property is comprised and the appellant is shown as one of the joint pattadars. The patta is dated 08.06.2005. The suit is filed on 25.01.2006.

14. The foundation of the appellant case is based on the alleged partition between the family members of Periyasami and his two sons. The date of partition and whether it was oral or document not mentioned in the plaint or proved otherwise. In the recital of Ex.A-1, Periyasami has sold the $\frac{1}{2}$ share of his minor son in the 'B' schedule property to the appellant. When there are three sharers, how Manibalan got $\frac{1}{2}$ share instead of $\frac{1}{3}$ rd is not explained. If, the sale is valid and genuine, why the plaintiff did not take possession of the portion of the possession is not explained. The plaintiff plea that he was taken from his vendor is disproved through his own witness.



15. The Learned Counsel for the Appellant submitted that, the Courts below ought not to have disbelieved the plaintiff regarding possession simple on the evidence of P.W-2 and the said finding is based on misconception of fact. His vendor living in the portion allotted the respondent. The burden whether the sale of the property is for the benefit of the family and son should have been casted upon the respondent. Without formulation of point for determination regarding the alternate relief prayed, the First Appellate Court erred in dismissing the appeal.

16. From the evidence relied by the appellant there is no evidence to prove, the property of the Govindammal was divided among her legal heirs. There is no evidence to show there was necessity to sell the minors property for the benefit of the minor. It is mysterious how one of the sharer had sold $\frac{1}{2}$ share in the property to appellant, but not his share but the share of his minor son. The appellant claims, the Northern portion in item No.1 and $\frac{1}{2}$ share in item No.2 of 'B' schedule was allotted to the share of Periyasami and the minor son Manibalan and that portion was sold to him by Periyasami on behalf of his minor son Manibalan. The said alleged partition is denied by the other sharer Ranganathan.

17. To sustain his prayer, the plaintiff ought to have first proved that Manibalan was allotted the 'A' schedule property under the partition and next, Periyasami had reason to sell the property of his minor son Manibalan. Unless these two facts are proved, the alternate relief of partition of the property will not arise.

18. Apart from the sale deed Ex.A-1, other documents relied by the appellant is the grama patta and grama chitta. The admission made by the plaintiff and other witness P.W.2 prove that the possession of the suit property is with the Periyasami and his two sons. These evidence strongly cause suspicion the genuineness of Ex.A-2 and Ex.A-3.

19. The suit property belongs to three persons. Two adult and one minor. Under Ex.A-1, the appellant has purchased $\frac{1}{2}$ share in the property. The sale deed is executed by the father, on behalf of the minor son. No proof that the minor son got $\frac{1}{2}$ share in the suit property. It is stated in the written statement that the minor suffers mental illness and not competent to contract. The said averment not rebutted by the plaintiff/appellant. Therefore, the sale deed Ex.A-1 relied by the plaintiff is a tainted document. Through such a sale deed, the appellant is neither entitled for the relief of declaration nor for partition.

20. The Learned Counsel for the appellant contention is neither Periyasami nor Manibalan has challenged the sale deed Ex.A.1. While so, the respondent, the other sharer cannot



deprive the right and deny the title of the appellant. In this regard, it is pertinent to note that in the written statement apart from the right to alienate share in the joint family property to third party against his peremptory right, the mental status of Periyasami and Manibalan also questioned. The appellant has not controverted these averment.

21. Both the main relief and the alternate relief sought depends on the proof of the Ex.A-1 and the right of Periyasami to sell the property on behalf of his minor son. When the Ex.A-1 document itself proved to be executed under doubtful circumstances, the appellant is neither entitled for the alternate relief of partition. Omission to formulate specific point for determination regarding alternate relief not affect the decision of the Lower Appellate Court in any manner.

22. As a result, this Court holds that, the omission to frame the specific point for determination regarding the alternate relief of partition will not vitiate the First Appellate Court finding. The sale deed Ex.A-1 is a doubtful document, and it lack genuineness to alienate $\frac{1}{2}$ share in the family property. Therefore, the substantial questions of law is answered in negative. Hence, the Second Appeal is dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

bsm

To:-

- 1.The Additional District Judge, (Fast Track Court - 2),
Tindivanam.
- 2.The Principal District Munsif, Tindivanam.

Copy to:

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

+1cc to Mr.D.Ravichander, Advocate SR.No. 40638

S.A.No.986 of 2010
& M.P.No.1 of 2010

GJ(CO)
B.VC(12.08.2021)