



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 03.11.2020

CORAM::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

S.A.NO.784 OF 2010

&

M.P.NO.1 OF 2010

Devaraji Gounder,
S/o.Chinnakannu Gounder,
Konnampatti Village,
Kothakuttai Madura,
Vaniyambadi Taluk.

... Appellant/
First Plaintiff

/versus/

1. Kamalanathan,
2. Murugesan,
3. Chinnadurai,
4. Selvam,
All sons of Chinnakannu Gounder,
All at Konnampatti Village,
Kothakuttai Madura,
Vaniyambadi Taluk,
Vellore District.

... Respondents/
Plaintiffs 2 to 4 and
3rd Defendant

Prayer:

Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree dated 26.06.2007 and made in A.S.No.1 of 2003 on the file of Additional District Court (FTC), Tirupattur Vellore District, dismissing the appeal and reversing the Judgment and decree dated 28.02.1995 and made in O.S.No.472 of 1978 on the file of Additional District Munsif Court, Tirupattur.

For Appellant : Mr.N.A.Nissar Ahmed

For R4 : Mr.PA.Sudesh Kumar,

For R1 to R3 : No appearance



JUDGMENT

(The case has been heard through video conference)

The appellant herein is the 1st plaintiff in the suit filed for declaring right of 4/6 share in the suit property.

2. The case of the appellant before the Trial Court is that, the suit schedule property in S.No.56/1, Kothampatti village, Vaniyambadi Taluk, to an extent of 8.50 acres is held by him and his brother along with 1st & 3rd defendants as a hindu undivided joint family property. The plaintiffs are entitled to 4/6 share and the 1st & 3rd defendants are entitled for 1/6th share each. The 2nd defendant is trying to interfere the plaintiff's possession based on an alleged court auction purchase in an Execution Petition against the 1st defendant. The 2nd defendant can have no better title than the 1st defendant through whom he claim title over the property. The 1st defendant have only 1/6th share in the suit property, hence suit for partition.

3. The suit was contested by the 2nd defendant who has purchased a portion of the suit property from the Court auction purchaser. According to the 2nd defendant, the suit property is not the joint family property of the plaintiff, 1st and 3rd defendants. It is self acquired property of the 1st defendant, who has purchased the property from one Chinnana Achari and others on 31.10.1958. The 1st defendant was enjoying the suit property separately and independently. The plaintiffs 3 & 4 are still minors and partition suit filed on their behalf is not maintainable.

4. The 1st defendant borrowed money for his family and agricultural expenses from one Venkatesa Chettiar since the 1st defendant failed to repay the loan, Thiru.Venkatesa Chettiar filed O.S.No.737 of 1969 and obtained a decree against the 1st defendant. Pursuant to that decree, Execution Petition was filed and the suit property was put to auction. One Rajendran, purchased the property in the Court auction on 11.04.1973 and Court sale was confirmed on 17.07.1973. Possession was delivered to the auction purchaser on 06.08.1973. Since then, the said Rajendran was in possession and enjoyment of entire suit property, out of which he has sold 4 acres 30cent to the 2nd defendant on 29.06.1974 for a sum of Rs.6,000/- and the remaining portion was sold to one Kannu Goundar. After purchase of 4acres 30cents, the 2nd defendant has taken possession and enjoying the same by paying Kist to the Government. The plaintiffs are aware of these facts and Court sale which binds the plaintiffs.



5. Earlier, the 1st defendant filed a petition to set aside the same but same was dismissed. Further, revision before the High Court was also dismissed for non-compliance of the conditional order. The 1st defendant failed in all his attempt to set aside the Court auction sale and thereafter, through the plaintiffs trying to create dispute by sitting up title.

6. Earlier, a partition suit was filed by the plaintiff and the 3rd defendant in O.S.No.253 of 1975 on the file of District Munsif, Tirupattur. The said suit was dismissed for default on 05.06.1978. The present suit has no cause of action and also barred by res judicata. Further, the suit is also bad for non-joinder of necessary parties namely Venkatesa Chettiar, who is the decree holder and Thiru.Rajendran, the auction purchaser of the suit property through whom the 2nd defendant derived title.

7. Based on the above pleadings, the Trial Court framed the following issues.

(i). Whether the suit property is the self acquired property of the 1st defendant?

(ii). Whether the debt incurred by the 1st defendant is vitiated by the doctrine of Auyarvathika?

(iii). Whether the debt, decree and Court auction sale are binding on the plaintiffs?

(iv). Whether the suit is not maintainable?

(v). Whether the suit is barred by limitation?

(vi). Whether the 3rd and 4th plaintiffs are minors on the date of the suit?

(vii). Whether the suit is bad for non-joinder of necessary parties?

(viii). Whether the plaintiffs are entitled to partition and permanent injunction as prayed for?

(ix). Whether the 2nd defendant is entitled to exemplary costs?

(x). To what relief the plaintiffs entitled?

8. Before the Trial Court, the plaintiff has examined two witnesses and marked 14 Exhibits. On behalf of the defendants, one witness and 16 Exhibits were marked.

9. The Trial Court, after considering the evidence held that the suit property was purchased by the 1st defendant on 03.10.1957. He had been enjoying the property absolutely till



the property was sold in Court auction, pursuant to the decree obtained by Thiru.Venkatesa Chettiar in O.S.No.637 of 1969.

10. Relying upon the sale certificate Ex.B.10 and delivery of possession marked as Ex.B.13. The sale deed executed by Rajendran in favour of 2nd defendant, the Trial Court has held that in the suit property, the plaintiffs are not entitled to seek any partition in respect of 4acres 30cents purchased by the 2nd defendant and with respect of the remaining extent, the Trial Court has declared the plaintiffs are entitled for 4/6th share and the defendant Nos.1, 3 & 4 should not interfere the peaceful possession of the plaintiffs.

11. Aggrieved by the disallowed portion, the plaintiffs have preferred Appeal before the Additional District Court, Tirupattur.

12. The Lower Appellate Court, on re-appreciating the evidence has held that entire suit property was sold in the Court auction and all the attempts to set aside the Court auction sale being dismissed. The alienation of the suit schedule property to Venkatesa Chettiar pursuant to the Execution Petition has attained finality. While so, Rajendran who is the auction purchaser has taken possession of the entire suit schedule property and alienated 4Acres 30cents of land to the 2nd defendant and 4acres 29cents of land to Kannu Goundar S/o.Mottaia Goundar. Therefore, the Lower Appellate Court set aside the Trial Court judgment and the suit in entirety was dismissed.

13. The Learned Counsel appearing for the appellant would submit that the Trial Court has accepted the case of the 2nd defendant and exempted 4acres 30cents of land purchased by the 2nd defendant and for the rest of the land, the Trial Court has granted injunction and declaration of title in respect of 4/6 share in the suit property. The other purchaser Kannu Goundar, who is the 4th defendant did not file any appeal. Pending 1st appeal, Kannu Goundar died and no steps were taken to implead his legal representatives.

14. In the said circumstances, the Second Appeal is filed by the plaintiff stating that when the appeal is only against the disallowed portion of 4 acres 30cents of land purchased by the 2nd defendant, the judgment and decree of the Appellate Court setting aside the entire decree of the Trial Court is erroneous and contrary to law.



15. On perusing the records, this Court finds that the Trial Court on considering the documents relating to the title of the property has held that the suit property was purchased by the 1st defendant Chinna Goundar from one Chinnanna Achari on 03.10.1957 vide Ex.B.1 and the said property is his absolute property. The 1st defendant has dealt the property as his absolute property by alienating a portion of it to Muniya Goundar and to Kanthammal under Ex.B.2 and Ex.B.3. While so, for his debt, the remaining property was sold under Court auction and possession of the property was delivered under Ex.B.13. Later, the auction purchaser Rajendran has sold 4 acres 30cents to the 2nd defendant under Ex.B.14. Therefore, the decree passed by the Trial Court exempting 4 acres 30cents of land purchased by the 2nd defendant is perfectly valid and to be confirmed.

16. The Lower Appellate Court has set aside the decree of the Trial Court in entirety. In view of the fact that the case of the plaintiffs that the suit property is the property of the joint family being rejected. Having held that the property is the absolute property of the 1st defendant and same was sold in the court auction. Neither the plaintiffs nor other defendants have no right in the property.

17. The Learned Counsel appearing for the appellant would submit that in any event the 1st defendant died interstate and Kannu Gounder whom alleged to have purchased 4.29 acres of land from Chinnakannu Gounder had not questioned the portion of the decree passed against him and therefore, the property left by Chinnakannu Gounder except the portion of the land sold to the 2nd defendant has to be apportioned between the legal representatives of Chinnakannu Gounder.

18. This Court is of the view that after holding that the suit property is the absolute property of the 1st defendant Chinnakannu Gounder and same was sold in the Court auction. Neither the 1st defendant nor legal representatives can have any right in the property. However, the Trial Court has exempted only 4.30 acres of land held by the 2nd defendant and had subjected the remaining portion of the land liable for partition. The Lower Appellate Court has rightly pointed out the illegality in the Trial Court finding and had reversed the Trial Court judgment. Though Kannu Gounder or his legal heirs have not preferred any appeal against that portion of the Trial Court decree, same cannot be sustained, in view of the fact that the suit property was the absolute property of the first defendant and he lost his title over the property in the Court auction sale to one Rajendran, who is not a party to the



proceedings. Hence, the judgment passed by the Lower Appellate Court is confirmed. Accordingly, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

WEB COPY

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

bsm

To

1. The Additional District Court (FTC),
Tirupattur Vellore District
2. The Additional District Munsif Court,
Tirupattur.

Copy To

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

+1cc to Mr.N.A.Nissar Ahmed, Advocate, S.R.No.35394

S.A.No.784 of 2010
& M.P.No.1 of 2010

RR(CO)
CS/31/08/2021