

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2020

CORAM:

THE HONOURABLE MR.G.K.ILANTHIRAIYAN

S.A.No. 1481 of 2005

1.Uthrapathy
2.Minor Murugavel
3.Minor Rajasekar
(Appellants 2 and 3 represented by next
friend mother S.Sivakamasundari) ..Appellants/Appellants/
Plaintiffs

Vs.

1.Krishnamoorthy
2.Komathy
3.Kuppayee Ammal
4.Banumathi ..Respondents/Respondents/
Defendants

Prayer: Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree dated 25.08.2003 made in A.S.No. 1 of 2003 on the file of the Sub-Ordinate Judge, Chidambaram confirming the judgment and decree dated 28.03.2002 and made in O.S.No. 372 of 1991 on the file of the District Munsif Court, Chidambaram.

For Appellants : Sriram Sridevan

For Respondents : Mr. A.Muthukumar for R2 & R4
R1 & R3 Notice served - No Appearance

J U D G M E N T

This second appeal has been filed as against the judgment and decree dated 25.08.2003 made in A.S.No. 1 of 2003 on the file of the Sub-Ordinate Judge, Chidambaram confirming the judgment and decree dated 28.03.2002 and made in O.S.No. 372 of 1991 on the file of the District Munsif Court, Chidambaram.

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

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3. The case of the plaintiffs is that:-

3.1 The suit is filed for partition. The suit schedule property originally belonged to one M.P. Ramasamy Mudaliyar @ Pavadai Mudaliyar. He settled the property in favour of one Chinnaiya Mudaliyar under the registered settlement deed dated 06.09.1937. He was put in possession and enjoyment of the suit property from the date of settlement deed. He died intestate, leaving behind his son Thangavel Mudaliyar and his daughters, Pounambal and Thillaiammal. Thangavel Mudaliyar also died 10 years ago, leaving behind his wife, the second defendant herein, his only son, T.Krishnamoorthy, the first defendant herein and two daughters Kuppayee and Banumathi. The plaintiffs are the sons of aforesaid Krishnamoorthy and they being minors, are represented by their guardian, Sivagamasundari. Therefore, the suit property is the joint family property of the plaintiffs and their father, Krishnamoorthy along with other co-sharers. While being so, under a registered release deed dated 20.09.1984, the daughters of the Chinnaiya Mudaliyar namely, Pounambal and the daughters of Thangavel Mudaliyar namely, Banumathi and Kuppayee relinquished their right and interest over the suit property. By another release deed dated 27.09.1984, the another daughter of Chinnaiya Mudaliyar, Thillaiammal also relinquished their right over the suit property. Thus, Krishnamoorthy, the plaintiffs herein and Thaiyalnayagi ammal alone are entitled to suit property. As a coparcener, the plaintiffs are entitled to have 3/8th share in the suit property. Therefore, the plaintiffs issued notice on 11.02.1991 to the defendants for partition. Though it was received, no reply was sent. Hence, the suit.

4. Resisting the same, the defendants filed a written statement and contended that the suit property originally belonged to one Ramasamy Mudaliyar and he settled the property in favour of Chinnaiya Mudaliyar. The said settlement deed dated 06.09.1937 is not valid one since the settlor had no title over the property to settle the same in favour of the Chinnaiya Mudaliyar. The suit property is not an ancestral property and he has been in possession and enjoyment of the property on his own right for more than 12 years and as such he had title by perfective. On the death of the said Thangavel Mudaliyar, the suit property devolved upon by his legal heirs namely, his wife, Thaiyalnayagi Ammal, second defendant herein and his son Krishnamoorthy, the first defendant herein. His two daughters, Banumathi and Kuppayee relinquished their right in the suit property in favour of the defendants 1 and 2 by the release deed dated 20.09.1984. In fact, the another sister, Pounambal executed release deed dated 20.07.1984 in favour of the defendants 1 and 2. Therefore, the defendants 1 and 2 became

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the absolute owner of the suit property. The defendants 1 and 2 sold the suit property in favour of the 3rd defendant by the registered sale deed dated 24.04.1985 for a valid sale consideration. Thereby, the 3rd defendant had become absolute owner of the suit property and she has been in possession and enjoyment of the suit property. Therefore, the claim of the plaintiff about 3/8 share in the suit property as coparceners is misconceived and not at all maintainable and prayed for dismissal of the suit.

5. On the side of the plaintiffs, they examined P.W.1 and were marked Exs.A1 to A8. On the side of the defendants, they examined D.W.1 and D.W.2 and were marked Exs. B1 to B9. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the Trial Court dismissed the suit. Aggrieved by the same, the plaintiffs preferred an appeal in A.S.No. 1 of 2003 and the first Appellate Court also dismissed the suit and confirming the judgment and decree passed by the Trial Court. Aggrieved by the same, the plaintiffs filed this second appeal.

6. At the time of admission, the following substantial question of law were framed for consideration:-

"a. Whether in Hindu law, an after-born son cannot impeach alienation made by the father, if there is another son who was living at the time of alienation?

b. Whether a sale by the father asserting separate property right over the ancestral property sold can be held to be binding on sons on the basis that the sale is for necessity?

c. Whether a sale deed executed by a Hindu father not in his capacity as Kartha and not describing the property sold as joint family property is binding on sons while it was held that the property sold is ancestral property?

d. Whether a Kartha has right to sell dwelling ancestral house for a lesser value ?

e. Whether the value of property sold given by purchaser will become correct value in the absence of other evidence on the side of the purchaser? "

7. Heard, Mr. Sriram Sridevan, learned counsel appearing for the appellants and Mr. A.Muthukumar for respondents 2 and 4. Though notice served to respondents 1 and 3, none appears.

8. The suit is filed for partition. The case of the plaintiffs is that the plaintiffs, the first defendant and the sisters Kuppayee and Banumathi are the coparceners of the suit

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property and it is a joint family property in which the plaintiffs are intended to have 3/8 share. But the first defendant sold out the suit property in favour of the 3rd defendant therefore, the sale itself is void one and the said sale is not binding on the plaintiffs. Therefore, the plaintiffs issued legal notice dated 11.02.1991 seeking partition which was marked as Ex.A5. The reply notice sent by the defendants is marked as Ex.A6. The sale deed executed by the first defendant in favour of the 3rd defendant was marked as Ex.B3. Whereas, the defendants contended that the suit property is not at all the joint family property and it is a self-acquired property and exclusively belonged to the defendants 1 and 2, since the other sisters have executed their release deed thereby relinquished their right in favour of the 1 and 2 defendants. Therefore, they became absolute owner of the suit property and as such the plaintiffs have no share in the suit property. Admittedly, the sale deed, Ex.B3 was executed on 24.04.1985. Whereas, the 3rd plaintiff was born in the year 1988. Therefore, even assuming that the property is a joint family property, he is not eligible to have any share in the suit property. Further, the case of the plaintiffs is that from the year 1985 onwards, the plaintiffs and their mother are living separately from their father. While being so, the 3rd plaintiff was born in the year 1988. Therefore, the P.W.1 case is unbelievable one and as such both the Courts below rightly concluded that the plaintiffs are not entitled for any share in the suit property.

9. Therefore, this Court does not find any reason to interfere with the findings rendered by the Courts below. As such, this Court is of the considered opinion, no substantial questions of law are involved in this appeal. Be that as it may, the substantial questions of law are accordingly answered against the plaintiffs. In fine, this second appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To:-

1. The Sub-Ordinate Judge, Chidambaram.

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2. The District Munsif Court, Chidambaram.

+lcc to Mr.A.Muthukumar, Advocate SR.7045

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