

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.02.2020

Date of Verdict : 27.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.956 of 2005
and
C.M.P.No.13177 of 2005

Vaduvammal ... Appellant/Plaintiff No.2

Vs.

1.Kasthuri
2.Subramani Gounder (Died)
3.Sivakumar
4.Komathi
5.Jaichithra
6.Vanaja
7.Menaga
(Respondents 3 to 7 are brought on
record as legal heirs of the deceased
R2 Viz., Subramani Gounder vide order
of the Court dated 09.12.2019
made in C.M.P.No.15803 to 15805
of 2018 in S.A.No.956 of 2005) ... Respondents/Defendants 1, 2

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 02.12.2004 of the learned Principal Subordinate Court, Nagapattinam dismissing the First Appeal No.74 of 2004 and confirming the judgment and decree dated 01.03.2004 of the learned District Munsif Court, Nagapattinam in O.S.No.464 of 2000.

For Appellant : Mr.V.Raghupathi

For RR1, 4 to 7: Mr.S.Sadasivan

For R2 : Died (steps taken)

For R3 : Not ready in notice

JUDGMENT

This second appeal is directed as against the Judgment and Decree dated 02.12.2004, in A.S.No.74 of 2004 on the file of the Principal Subordinate Court, Nagapattinam, confirming the Judgment and Decree dated 01.03.2004 in O.S.No.464 of 2004 on the file of the District Munsif Court, Nagapattinam.

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 and permanent injunction. Originally, the suit property was purchased by the first plaintiff in the name of his first wife Kunjammal by the registered sale deed dated 18.03.1957. After death of the said Kunjammal, he became the absolute owner of the suit property. Thereafter, the first plaintiff married the second plaintiff as his second wife. The second defendant is the son of elder brother of the first plaintiff and the first defendant is the wife of the second defendant. The plaintiffs have no issues and taking advantage of the circumstances, the second defendant mislead the first plaintiff to execute the sale deed in his favour. The first plaintiff had impression that he is going to execute Will, that too it will come into effect after his life time. Therefore, he was under misrepresentation and executed the sale deed. In the said sale deed, the sale consideration was mentioned as Rs.13,200/- and was paid to the first plaintiff for medical expenses of his first wife, the said Kunjammal. In fact, the first wife of the first plaintiff was died even as early as in the year 1992 itself. On the strength of the sale deed, the defendants entered into suit property and put up the construction. Hence, the suit is filed for declaration declaring that the sale deed is null and void and for permanent injunction.

4. Resisting the same, the defendants filed written statement stating that the sale deed was executed by the first plaintiff with the sound mind and it is valid. Further, all the averments and allegations made in the plaint are denied as false and frivolous. The suit itself is Barred by Limitation and it is liable to be dismissed.

4.1. The suit property is situated in the total extent of 40 cents in which, part of the property was purchased by the first defendant and the remaining portion ad-measuring 4 cents is under occupation of the first plaintiff and remaining 3 cents is a road. In fact, the said Kunjammal purchased the property by sale deed dated 18.03.1957 ad-measuring 40 cents, in which, the first defendant purchased the property ad-measuring 33 cents. The said Kunjammal was suffering from Cancer and as such the first plaintiff used to borrow money from the second defendant. Unfortunately, the said Kunjammal died due to failure of treatment. While she was alive, she

also executed two other sale deeds dated 27.11.1986 and 02.04.1987 in favour of the second defendant in respect of other properties. Likewise after her death, the first plaintiff is being the only legal heir, he executed the sale deed dated 11.02.1993 in respect of the suit property. Therefore, there is absolutely no cause of action to file the present suit and prayed for dismissal of the suit.

5. In support of the plaintiff's case, P.W.1 and P.W.2 were examined and forty nine documents were marked as Exs.A1 to A49. On the side of the defendants D.W.1 to D.W.3 were examined and Exs.B1 to B13 were marked. 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 filed by the plaintiffs. Aggrieved over the judgment and decree of the trial Court, the plaintiffs preferred an appeal suit in A.S.No.74 of 2004 before the Principal Subordinate Court, Nagapattinam and the first Appellate Court also dismissed the appeal and confirmed the judgment and decree passed by the trial Court. Challenging the same, the second plaintiff has come forward with the present second appeal.

6. At the time of admission of the second appeal, the following substantial questions of law were framed :-

a) Whether the Courts below have properly and correctly interpreted Ex.B3 dated 11.02.1993 claimed to be a Sale Deed executed by the first plaintiff to and in favour of the first defendant?

b) Whether the Courts below are justifying in not considering age, sound disposing state of mind and circumstances under which the first plaintiff was made to believe that he executed a Will and not a sale deed, due to the undue influence and misrepresentation of the defendants?

c) Whether the findings about the validity of marriage between the plaintiff and his wife has been correctly determined by the Courts below?

7. The learned counsel appearing for the appellant/plaintiff and the respondents/defendants are present and they are reiterated the averments set out in the plaint as well as the written statement.

8. Heard Mr.V.Raghupathi, learned counsel appearing for the appellant and Mr.S.Sadasivan, learned counsel appearing for the respondent Nos. 1, 4 to 7.

9. This Court considered the rival submission made by the learned counsel on either side.

10. During the trial, the first plaintiff died and the second plaintiff alone conducted the trial. While the first wife of the first plaintiff was alive, he married the second plaintiff as his second wife. He lived with two wives. They had no issues. The suit property was purchased by the first wife of the first plaintiff, namely, Kunjammal. After her demise, the first plaintiff is being the only legal heir, he executed sale deed in respect of the suit property in favour of the defendants. The defendants are none other than the husband and wife. The second defendant is the son of elder brother of the first plaintiff and the first defendant is the wife of the second defendant. Admittedly, the first wife of the first plaintiff was suffering from Cancer for which, they borrowed money from the defendants. In fact, the said Kunjammal while she was alive, she borrowed money from the second defendant and also she executed sale deeds in favour of the second defendant. After her demise, the first plaintiff executed the sale deed in favour of the first defendant, which was marked as Ex.B3, which is equivalent to Ex.A2. The parent documents of the suit property were marked as Exs.B4 to B7. Though P.W.1 submitted that the first plaintiff was taken to Registrar Office only to execute Will, in the Registrar Office, he was misrepresented and obtained signature in the sale deed and the same was registered in favour of the first defendant. But she was not a witness to the said document and there was no evidence that she also accompanied the first plaintiff to the Registrar Office. Further, in the written statement itself the defendants categorically submitted that they have purchased only 33 cents out of 40 cents of the suit property. On perusal of Ex.B3, it is also categorically proved that the said Kunjammal purchased the total extent of 40 cents of the property comprised in S.No.228/17B. In the total extent of 40 cents, the first defendant purchased the land ad-measuring 33 cents and remaining property in which the first plaintiff constructed house and 3 cents of property was allotted for road. Hence, both the Courts below found that the plaintiffs failed to prove their case and dismissed the suit.

11. In view of the above, this Court does not find any valid reason to interfere with the reasonings and findings rendered by the Courts below as such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and dismissed the suit filed by the plaintiffs. Accordingly, this Court is of the considered opinion that no substantial question of law involved in this appeal. Be that as it may. All the substantial questions of law, formulated by this Court in this Second Appeal, are answered in favour of the defendants and as against the plaintiff.

12. Accordingly, this Second Appeal stands dismissed. No order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

rsi

To

1.The Principal Subordinate Judge,
Nagapattinam

2.The District Munsif,
Nagapattinam

Copy To :The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+1cc to Mr.V.Raghupathi, Advocate SR.No.18668

+1cc to Mr.S.Sadasivan, Advocate SR.No.17149

S.A.No.956 of 2005
and
C.M.P.No.13177 of 2005

NMI (CO)
GMY (28/08/2020)

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