

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 20.03.2020	Delivered on 22.05.2020
---------------------------	----------------------------

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.Nos.321, 324 and 328 of 2020 and
CMP No.6527 of 2020 in SA No.321 of 2020,
CMP No.6554 of 2020 in SA No.324 of 2020
and CMP No.6660 of 2020 in SA No.328 of 2020

Vel.Jayakumar .. Appellant in SA Nos.321 & 324 of 2020
.. Appellant /2nd Defendant

T.Nagarathinam .. Appellant in SA No.328 of 2020
1st Defendant

vs.

1. K. Sonaimuthu

2. K.Ramasubbu

3. R.Karthikeyan

4. K.Chandrasekaran

K.Rangasamy (died) 5th Respondent/Plaintiff

5. V.Ravichandran

6. Palanisamy Respondents in both SA's /
Respondents 1 to 4, 6 & 7/Plaintiff 1-4 6 & 7

R.Rajesh (died) 8th Respondents in A.S/
LR of the 5th Plaintiffs

7. R.Kavitha

8. Mythili ... Respondents/Respondents 9 & 10/
LR of the 5th Plaintiff

9. Manju ... Respondents/11th respondents/
LR of the 5th Plaintiff

Prayer in SA No.321 of 2020: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 30.09.2019 made in A.S.No.43 of 2011 and on the file of the Court of the Principal Subordinate Judge, Tiruppur, confirming the judgment and decree dated 28.01.2011 made in O.S.No.816 of 2004 on the file of the Court of the District Munsif, Tiruppur.

Prayer in SA Nos.324 of 2020: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 30.09.2019 made in A.S.No.27 of 2011 and on the file of the Court of the Principal Subordinate Judge, Tiruppur, confirming the judgment and decree dated 28.01.2011 made in O.S.No.401 of 2006 on the file of the Court of the District Munsif, Tiruppur.

Prayer in SA Nos.328 of 2020: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 30.09.2019 made in A.S.No.28 of 2011 and on the file of the Court of the Principal Subordinate Judge, Tiruppur, confirming the judgment and decree dated 28.01.2011 made in O.S.No.401 of 2006 on the file of the Court of the District Munsif, Tiruppur.

For Appellants : Mr.S.Thangavel
for appellant in SA Nos.321 & 324/20
: Mr.P.Mathivanan
for appellant in SA No.328/20
For Respondents : Mr. V.P.Sengottuvel
Caveator in all the Appeals

C O M M O N J U D G E M E N T

The Second Appeal Nos.321 and 324 of 2020 have been filed by the second defendant in OS Nos.816 of 2004 and 401 of 2006 on the file of the District Munsif Court, Tiruppur, while Second Appeal No.328 of 2020 has been filed by the first defendant in OS No.401 of 2006 on the file of the District Munsif Court, Tiruppur.

2. The suit in OS No.401 of 2006 was laid by the plaintiffs therein seeking a declaration that the decree in OS No.778 of 1990 dated 24.04.2000 is a nullity and therefore, not binding on them. OS No.816 of 2004 (OS No.490 of 2003 on the file of Sub Court, Tiruppur) was filed by the plaintiffs in OS No.401 of 2006 for a permanent injunction restraining the defendants therein from interfering with the possession of the plaintiffs of the suit properties.

3. The facts leading to the above suits are as follows:

The suit properties originally belonged to one Kandasamy Gounder having been allotted to him under a Partition Deed dated 24.07.1964. The said Kandasamy Gounder had executed a Registered Will bequeathing 9 acres and 18 cents of land in Survey No.190, Pongupalayam Village, in favour of his three daughters Sarasu, Saroja and minor Nagarathinam. It is not in dispute that Kandasamy Gounder, died sometime in 1977. After his death the daughters of Kandasamy Gounder, Sarasu, Saroja and minor Nagarathinam represented by her mother and the natural guardian Karunaiammal, executed three sale deeds conveying 5 acres of land in Survey No.190 in favour of one Muthusamy Gounder (2 acres), Karupathal (2 acres) and Arumugam (1 acre).

4. The minor, viz. Nagarathinam, who was represented by her mother Karunaiammal in those sale deeds attained majority sometime in 1981. Thereafter, the said Nagarathinam filed a suit in OS No.778 of 1990 on the file of the District Munsif, Tiruppur, against the purchasers, viz. Muthusamy Gounder, Karupathal, Arumugam and three other persons, viz. Ammasai Gounder, Murugesan and Palaniammal, who had purchased the remaining 4.18 acres, claiming partition and separate possession of her 1/3rd share.

5. During the pendency of the said suit, the purchasers under the Sale Deeds dated 12.04.1979 sold the property purchased by them on 15.10.1992 to one Kulandaiammal, Gouriammal and Saraswathi. On 29.08.1994, again during the pendency of OS No.778 of 1990, the plaintiffs in the present suits, viz. Sonaimuthu, Ramasubbu, Karthikeyan, Chandrasekaran and Rangasamy, purchased the suit properties from Gouriammal, Kulandaiammal and Saraswathi.

6. A preliminary decree came to be passed on 24.04.2000 declaring the plaintiffs' 1/3rd share in the suit property, upon the defendants therein remaining ex parte. The said Nagarathinam filed IA No.816 of 2000 on 13.07.2000, seeking a final decree in terms of the preliminary decree dated 24.04.2000. Though there were alienations pending the partition suit, the alienees were not made parties to the final decree proceedings. On 31.01.2001 based on the Report and Plan filed by the Commissioner, appointed in the final decree proceedings, a final decree came to be passed allotting certain extent of property in favour of Nagarathinam, the plaintiff in OS No.778 of 1990. Pursuant to the same, it is claimed that the said Nagarathinam filed EP No.21 of 2002 and she was put in possession of the property that was allotted to her on 13.12.2002.

7. Based on the said final decree, mutation of Revenue records was also carried out by the Revenue Authorities. Subsequently on 10.09.2003, the said Nagarathinam sold the property allotted to her in favour of one Santhilakshmi. On 22.09.2003, the plaintiffs in OS No.401 of 2006 filed OS No.490 of 2003 for permanent injunction on the file of Sub Court, Tirupur, the same was transferred to the file of District Munsif, Tirupur, and renumbered as O.S.No.816 of 2004. On 09.12.2003 Nagarathinam filed a written statement in the said suit. On 03.11.2004 Santhilakshmi, the purchaser from Nagarathinam sold the properties to Vel.Jayakumar, the second defendant in OS No.401 of 2006.

8. On 30.11.2006, the plaintiffs in OS No.816 of 2004 filed a suit in OS No.401 of 2006 seeking a declaration that the preliminary decree dated 24.04.2000 made in OS No.778 of 1990 is a nullity and hence not binding on the plaintiffs. The said plea was taken mainly on the ground that the suit for partition filed by Nagarathinam, nearly nine years after her attaining majority, without seeking to set aside the Sale Deeds dated 12.04.1979 executed by her mother Karunaiaammal on her behalf as her natural guardian were invalid. A suit for injunction was also filed by the plaintiffs, viz. the purchasers from the successors in interest of the alinees under the Sale Deeds dated 12.04.1979. Both the suits were tried together.

9. The sum and substance of the allegations in the plaint in the injunction suit, viz. OS No.816 of 2004 was that the plaintiffs were put in possession pursuant to their purchase on 29.08.1994 from the purchasers under the three Sale Deeds dated 15.10.1992, who in turn had purchased the properties from the daughters of Kandasamy Gounder, one of whom was a minor represented by her natural guardian under the three Sale Deeds dated 12.04.1979. As regards OS No.401 of 2006 which was filed for declaration that the decree in OS No.778 of 1990 is a nullity, the main claim of the plaintiffs was that the suit as framed without seeking a prayer to set aside the Sale Deeds dated 12.04.1979 executed by the guardian of the plaintiff in OS No 778 of 1990 in favour of the predecessors in interest of the plaintiffs is a nullity.

10. Reference is also made Section 8 of The Hindu Minority and Guardianship Act, 1956, which makes a Sale Deed executed by a natural guardian of a Hindu minor, without the permission of the Court voidable at the option of the minor. It was therefore contended that in the absence of a prayer for setting aside the Sale Deeds dated 12.04.1979, the plaintiff in OS No.778 of 1990 could not have sought for partition and a decree for partition without avoiding the Sale Deeds dated 12.04.1979 was itself invalid and would not confer any title on the plaintiff, as she did not have any at the time of institution of the suit in OS

No.778 of 1990.

11. Both the suits were resisted by defendants 1 and 2 contending that the suit in OS No.401 of 2006 seeking to set aside the decree dated 24.04.2000 is barred by limitation. It was the further contention that the plaintiff in OS No.778 of 1990 has taken possession of the property through Court by levying execution proceedings and therefore, her possession cannot be disputed by the plaintiffs, who claim under the defendants in OS No.778 of 1990.

12. At trial, the first plaintiff was examined as P.W.1 and one Duraipandian was examined as P.W.2. Exhibits A1 to A12 were marked on the side of the plaintiffs. On the side of the defendants, the first defendant Nagarathinam was examined as D.W.1, the second defendant Jayakumar, was examined as D.W.2 and one Sankarganesh was examined as D.W.3. Exhibits B1 to B19 were marked on the side of the defendants. Ex.X1 was marked through D.W.3 who was summoned to give evidence.

13. The Trial Court, upon a consideration of evidence on record concluded that the plaintiff in OS No.778 of 1990, viz. the appellant in Second Appeal No.328 of 2020 had no right over the properties on the date of institution of the partition suit, inasmuch as, the properties had been sold by her natural guardian and mother Karunaiammal under Sale Deeds dated 12.04.1979, which were marked as Exs.A2 to A4. The fact that the suit properties were allotted to Kandasamy Gounder at a partition on 20.07.1964 and the fact that the said Kandasamy Gounder bequeathed the properties to his three daughters under the Will dated 13.05.1974, was not disputed.

14. The Trial Court on application of Section 8 of the Hindu Minority and Guardianship Act, 1956, concluded that a sale by a natural guardian of Hindu minor is only voidable at the option of the minor and is not void ab initio. Since the plaintiff in OS No.778 of 1990, viz. the appellant in Second Appeal No.328 of 2020 has not chosen to seek to set aside the Sales dated 12.04.1979, she is not entitled to maintain the suit for partition. Upon the finding that the Sale Deeds dated 12.04.1979, viz. Exhibits A2, A3 and A4 denuded the plaintiff in OS No.778 of 1990 of title over the property, the Trial Court concluded that the very suit in OS No.778 of 1990 is an abuse of processes of Court and a decree passed therein is a nullity.

15. As regards the question of limitation, the Trial Court accepted the claim of the plaintiffs/respondents herein that they came to know about the institution of the suit and the proceedings therein, only after filing of the written statement in OS No.816 of 2004 and the suit having been filed within three years from the date of knowledge is well within time. The knowledge that was sought to be imputed on the plaintiffs to the

filing of the suit in OS No.778 of 1990, based on Ex.X1, was negatived by the Trial Court. The Trial Court concluded that in view of the Specific language of Article 58 of the Limitation Act, the Limitation for seeking a relief of declaration would start running only from the date of knowledge of the decree or the document, which is sought to be declared as a nullity.

16. The Trial Court also adverted to the fact that the decree in OS No.778 of 1990 being a nullity, no prayer for declaration is necessary to enable the plaintiffs to seek a relief of injunction. On the aforesaid findings the learned Trial Judge concluded that the plaintiffs/respondents herein can maintain a suit for permanent injunction alone, even in the absence of a prayer for declaration that the decree in OS No.778 of 1990 is a nullity. On the said conclusions, the Trial Court decreed both the suits as prayed for. Aggrieved the second defendant in both the suits filed AS Nos. 27 of 2011 and 43 of 2011, while the first defendant in OS No.401 of 2006 filed AS No.28 of 2011 against the judgment and decree in the said suit.

17. All the three Appeals were heard together by the Appellate Court. The Appellate Court on a re-appreciation of the evidence on record as well as the law relating to alienations by natural guardians concluded that the sale by the natural guardian of the plaintiff in OS No.778 of 1990 under the Exs.A2 to A4 dated 12.04.1979 would be valid in the absence of the minor choosing to avoid the same by filing a suit for declaration within the time allowed under Article 60 of the Limitation Act. The Lower Appellate Court also adverted to the fact that Section 8 of the Hindu Minority and Guardianship Act, 1956, does not make an alienation by the natural guardian of the minor's property without permission of the Court void ab initio, it only provides that the alienation could be avoided by the minor within three years from the date of attaining majority.

18. Having held so, the Lower Appellate Court concluded that the very suit for partition in OS No.778 of 1990 and the decree passed therein would be a nullity in the absence of Sale Deeds dated 12.04.1979, marked as Exs.A2 to A4, in the present proceeding being set aside in the manner known to law. The Lower Appellate Court also found that the plaintiffs in OS No.816 of 2004 had proved their possession by producing relevant Revenue documents. The documents that were produced by the appellant in SA Nos.321 and 324 of 2020 to show his possession were discarded on the ground that all the documents had come into the after the sale in his favour and he being a pendente lite purchaser is not entitled to claim that he is in possession of the property. The mutations effected pursuant to the decree in OS No.778 of 1990 were also rightly rejected by the Lower Appellate Court. On the said conclusions, the Lower Appellate

Court dismissed all the three Appeals.

19. Aggrieved, the second defendant in OS No.401 of 2006 and 816 of 2004 has come up with Second Appeal Nos.321 and 324 of 2020, while the first defendant in OS No.401 of 2006 has come up with Second Appeal No.328 of 2020.

20. I have heard Mr.S.Thangavel, learned counsel appearing for the appellant in SA Nos.321 & 324 of 2020, Mr.P.Mathivanan, learned counsel appearing for the appellant in SA No.328 of 2020 and Mr.V.P.Sengottuvel, learned counsel appearing for the Caveator in all the appeals.

21. Both Mr.S.Thangavel and Mr.P.Mathivanan would vehemently contend that the Courts below were not right in applying the doctrine possession follows title, inasmuch as, the suit properties were not vacant lands. It was further contended that once the defendants/appellants have proved their possession of the properties. The suit for permanent injunction in OS No.816 of 2004 ought not to have been decreed. It is their further contention that the decree in OS No.778 of 1990 being validly passed against the vendors of the present plaintiffs, they cannot be heard to contend that the said decree is null and void.

22. I have considered the submission of the learned counsels for the appellants.

23. The legal premise on which the second argument of the learned counsel for the appellants is based is fallacious. As rightly pointed by the Trial Court and the Appellate Court, Section 8 of the Hindu Minority and Guardianship Act, 1956, does not declare a sale by a natural guardian of Hindu Minor without permission of the Court void ab initio, it only makes the alienation voidable at the instance of the minor.

Section 8 of the Hindu Minority and Guardianship Act, 1956, reads as follows:

S. 8. Powers of natural guardian.-

(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realisation, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court,-

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or by any person claiming under him.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in the case of necessity or for an evident advantage to the minor.

(5) The Guardians and Wards Act, 1890 (8 of 1890), shall apply to and in respect of an application for obtaining permission of the court under sub-section (2) in all respects as if it were an application for obtaining the permission of the court under section 29 of that Act, and in particular—

(a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof;

(b) the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act; and

(c) an appeal shall lie from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section to the court to which appeals ordinarily lie from the decisions of that court.

(6) In this section "court" means the city civil court or a district court or a court empowered under section 4A of the Guardian and Wards Act, 1890 (8 of 1890), within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate.

24. A reading of Section 8 would show that a Hindu minor whose property alienated by the natural guardian will have to avoid it in a manner known to law within the period of limitation prescribed under Article 60 of the Limitation Act.

Article 60 of the Limitation Act reads as follows:

Description of suit	Period of Limitation	Time from which period begins to run
Article 60: To set aside a transfer of property made by the guardian of a Ward-		
(a) by the ward who has attained majority;	Three years	When the Ward attains majority
(b) by the ward's legal representative-		
(i) When the ward dies within three years from the date of attaining majority;	Three years	When the ward attains majority
(ii) When the ward dies before attaining majority	Three years	When the ward dies.

25. It is not in dispute that the appellant in SA No.328 of 2020 has not sought to avoid the alienation within the time prescribed under Article 60 of the Limitation Act. Therefore, the Sale Deeds dated 12.04.1979 marked as Exs.A2 to A4, have not been impeached in a manner known to law. They are thus valid documents and they conveyed title in favour of the purchaser under the said documents. A Partition Suit can be filed only by a person who has interest in presenti. Admittedly, upon execution of Exhibits A2 to A4 on 12.04.1979, the plaintiff (erstwhile minor) in OS No.778 of 1990 had lost the title that resided in her over properties, therefore, the very suit for partition is not maintainable. A decree for partition in favour of a person, who has lost title to the property on the date of the initiation of the partition suit, will not confer any right over on the decree holder. Therefore, the claim of the learned counsel for the appellants in all the three appeals to the effect that the decree in OS No.778 of 1990 would confer a right of her over the properties cannot be accepted.

26. As regards the point of Limitation, it is the contention of the learned counsels that Ex.X1 would reveal that

the plaintiffs had knowledge of the decree in OS No.778 of 1990 even on 09.10.2003 and therefore, the suit in OS No.401 of 2006 filed on 02.12.2006 is beyond the period of three years prescribed under Article 58 of the Limitation Act, is barred by limitation. Limitation is a mixed question of law and fact. Both the Courts below have found that the mere statement made in Ex.X1 on 09.10.2003 would not amount to knowledge of the decree in OS No.778 of 1990 on the plaintiffs in OS No.401 of 2006. The Courts below have concurrently found that knowledge of the decree in OS No.778 of 1990 could be imputed on the plaintiffs in OS No.401 of 2006, only from the date of the filing of the written statement in OS No.816 of 2004, if that date is taken as the date of accrual of cause of action for the plaintiffs in OS No.401 of 2006 to sue for a declaration that the decree is a nullity, then the suit filed by them is well within time. I do not see any perversity in the said finding of the Courts below in order to enable me to interfere with the same, even if another view is possible. The findings being concurrent findings cannot be disturbed by the second Appellate Court unless they are shown to be perverse. Despite their best efforts, the learned counsels for the appellants are unable to point out any perversity in the findings regarding the question of Limitation.

27. As regards the grant of relief of injunction, both the counsels would contend that since the plaintiff in OS No.778 of 1990 has taken possession through Court and she had handed over possession to the purchaser Santhilakshmi, who in turn had sold to the appellant in SA Nos. 321 and 324 of 2020, the Courts below were not right in concluding that the plaintiffs have established their possession on the date of the suit. Here again, the Courts below have concurrently found that the plaintiffs in OS No.816 of 2004 have proved that they have been in possession of the suit properties. Documentary evidence in the form of lay out plans and sale deeds have been produced to show that the plaintiffs in OS No.816 of 2004 were in possession of the property on the date of the suit. The transfer of Patta issued in the name of the Plaintiffs on 14.12.1994 has also been taken into account by the Courts below.

28. The Courts below have concluded that the suit property being a vacant land, the principle of possession follows title would apply. The proceedings in EP No.21 of 2002 have been rightly ignored as they are based on a decree which is a nullity. The mutation proceedings that were relied upon by the appellant in SA Nos.321 and 324 of 2020 were also rejected by the Trial Court and the Appellate Court on the ground that the Appellant in SA Nos. 321 and 324 of 2020 being a lis pendens purchaser is not entitled to claim based on mutations effected during the pendency of the suits and on a final decree passed pursuant to a preliminary decree which has been held to be a

nullity. I therefore do not see any illegality in the findings of the Courts below with reference to possession also.

29. Despite their best efforts, the learned counsel for the appellants in all these appeals are unable to make out any question of law much less substantial question of law, in order to enable me to entertain the Appeals. Hence, all these Second Appeals fail and they are accordingly dismissed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Principal Subordinate Judge,
Tiruppur.
2. The District Munsif,
Tiruppur.
3. The Section Officer,
V.R.Section,
High Court of Madras.

S.A.Nos.321, 324 and 328 of 2020 and
CMP No.6527 of 2020 in SA No.321 of 2020,
CMP No.6554 of 2020 in SA No.324 of 2020
and CMP No.6660 of 2020 in SA No.328 of 2020

RSV(CO)
GN(16/12/2020)

WEB COPY