



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.(MD) No.126 of 2015

and

M.P.(MD) No.2 of 2015

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1.M.Sivashanmugam
2.M.Karumban
3.M.Sivanu @ Perumal
4.K.Subramanian

... Appellants /Appellants/defendants

vs.

Kiruthiga

... Respondent / Respondent/Plaintiff

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.146 of 2012 on the file of the Additional Sub Court, Tirunelveli, dated 24.02.2014 confirming the judgment and decree passed in O.S.No.299 of 2010 on the file of the Principal District Munsif Court, Tirunelveli, dated 13.08.2012.

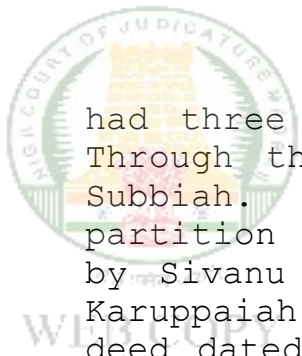
For Appellants : Mr.A.Mohamed Haneef
for M.P.Senthil
For Respondent : Mr.H.Arumugam

J U D G M E N T

The defendants in O.S.No.299 of 2010 on the file of the Principal District Munsif Court, Tirunelveli, having suffered a decree for declaration and permanent injunction upon its affirmation by the lower appellate Court in A.S.No.146 of 2012, have come up with this second appeal.

2. According to the plaintiff, the suit property originally belonged to one Valan Kudumban vide sale deeds dated 25.11.1959 and 09.12.1959. The said Valan Kudumban died leaving behind four sons, namely, Subbiah, Madan, Sivanu and Karumban. According to the plaintiff, at a partition between four sons of Valan Kudumban the property measuring about 14 cents in Survey No.2656/2 was divided into four equal shares of 3.5 cents, each. Eastern most land of 3.5 cents was allotted to the eldest son , namely, Subbiah and other sons were allotted the land situated on the further west.

3. It is the further claim of the plaintiff that Madan sold his 3.5 cents to Sivanu on 14.11.1960. Sivanu had two wives, namely, Arundhiammal and Rajammal. Through Avudaiyammal, Sivanu



had three sons, by name, Perumal, Thadiyakkaran and Karuppaiah. Through the second wife, Rajammal, Sivanu had one son by name, Subbiah. The heirs of Sivanu had entered into a registered partition deed on 23.05.1980, under which the property purchased by Sivanu from Madan measuring about 3.5 cents was allotted to Karuppaiah, the father of the plaintiff. Thereafter, under sale deed dated 17.07.1997, Karuppaiah sold the said 3.5 cents to the plaintiff. Though the said sale deed recites the total extent conveyed as 14 cents, subsequently, the same was rectified restricting it to 3.5 cents. Two rectification documents were executed by Karuppaiah, namely father of the plaintiff under Exs.A8 and A11, dated 07.07.2011 and 09.06.2009, respectively. Therefore, according to the plaintiff, she is entitled to the suit property measuring about 3.5 cents, which land was allotted to Madan in the partition that took place and sold by him to Sivanu under sale deed dated 14.11.1960. Contending that the defendants, who are the heirs of Madan attempted to deny her title and interfere with her possession, the plaintiff had come up with the above suit

4. The suit was resisted by the defendants contending that the sale deed dated 14.11.1960 is not true. Consequential sale deed dated 17.07.1997 executed by Karuppaiah in favour of the plaintiff was also denied. The fact that, the sale deed, dated 17.07.1997 attempts to convey entire property of 14 cents was also pointed as an invalidating factor. It is the further claim of the defendants that the suit property continued to be in possession of the heirs of Madan and the defendants 2 and 3 had executed power of attorney dated 26.06.2009 in favour of the fourth defendant and the fourth defendant acting under the said power of attorney had sold the property to the first defendant on 09.02.2010. Therefore, according to the defendants, the first defendant is the absolute owner of the property and he has been in possession of the property. On the above contentions, the defendants sought for dismissal of the suit.

5. At trial, the father of the plaintiff, Karuppaiah was examined as P.W.1 and other two witnesses were examined as P.Ws.2 and 3. Exs.A1 to A14 were produced on the side of the plaintiff. The second defendant was examined as D.W.1 while the defendants 1 and 4 were examined as D.Ws.2 and 3, respectively. Exs.B1 to B4 were marked. At the instance of the plaintiff, copy of the sale deed maintained with the Sub Registrar dated 14.11.1960 was summoned and marked as Ex.X1 and the Register maintained by the Sub Registrar containing thumb impression of Madan was marked as Ex.X2.

6. On consideration of the evidence on record, the trial Court concluded that the sale deed dated 14.11.1960 had been executed by



Madan for and on behalf of his minor sons also, who are defendants 2 and 3. The said minor children having attained majority long back, have not taken any steps to have the sale deed set aside the sale deed dated 14.11.1960. Though the original sale deed was not produced before the Courts below, it was found that Exs.X1 and X2 proved execution of sale deed dated 14.11.1960 beyond doubt. Hence, the Courts below concluded that after the sale deed dated 14.11.1960, the defendants had no right over the property in order to enable them to execute the power of attorney in favour of the fourth defendant in the year 2009. Therefore, the sale deed executed by the fourth defendant in favour of the first defendant dated 09.02.2010 was held to be invalid and incapable, giving any right to the first defendant. On the aforesaid finding, the Courts below decreed the suit. Aggrieved the defendants have come up with this second appeal.

7. I have heard Mr.A.Mohamed Haneef, learned counsel for the appellants and Mr.H.Arumugam, learned counsel for the respondent.

8. The following substantial questions of law have been framed at the time of admission:-

"1)Whether the judgment and decree of the Courts below is vitiated in granting a decree even without advertting that the respondent as plaintiff did not even discharge the initial onus of proof on the basis of positive and acceptable evidence?

2)Whether the Courts below are right in deciding the issue of title merely on the basis of Ex.A3, which is only a registration copy in the absence of any explanation for non-production of the original, especially the veracity of the said document has been specifically disputed?

3) Whether the judgment and decree of the Courts below could be sustained in law which has been rendered on total misconception of facts and law, especially misconstruing the provision under Sections 64, 65 and 90 of the Indian Evidence Act?"

9. The learned counsel for the appellants would vehemently contend that the Courts below were not right in upholding the sale deed dated 14.11.1960, inasmuch as the original document was not produced and when the defendants have denied execution of the very document. He would also contend that the fact that the sale deed dated 17.07.1997 executed by Karuppiah in favour of the plaintiff attempts to convey the entire 14 cents would invalidate the same.

10. On the first contention of the learned counsel regarding validity of the sale deed dated 14.11.1960, it is seen that the said contention had not been raised. Regarding the thumb impression of Madan, the original document showing thumb impression of Madan maintained by the Sub Registrar has been



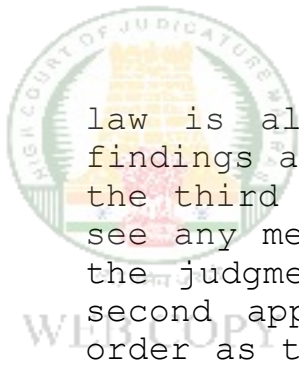
summoned and marked as Ex.X1 and attendance Register has also been summoned and marked as Ex.X2 to show that Madan had appeared before the Registering Officer had admitted, execution of the sale deed.

11. Once the document is registered in accordance with law and the Registering Officer makes endorsements under Section 58 of the Registration Act, the said endorsements have to be presumed to be true in view of Section 60 (2) of the Registration Act. After all the act of registration is an official act performed by the Registration Officer in discharge of his official duties and unless there is strong evidence available to rebut the presumption, the presumption regarding correctness of the endorsements made by the Registration Authorities under Section 58 of the Registration Act cannot be disbelieved. Exs.X1 and X2 would show that Madan had appeared before the Registering Authority and acknowledged execution of the sale deed dated 14.11.1960, which was marked as Ex.A2. Therefore, the claim of the defendant that the sale deed, dated 14.11.1960 was not executed by Madan cannot be countenanced.

12. As regards the second question, though I see some force in the contention of the learned counsel for the appellants, the suit property itself was only 3.5 cents. The plaintiff never claimed title to the entire 14 cents. It is seen from the two rectification deeds marked as Exs.A8 and A11 that the sale deed dated 17.07.1997 marked as Ex.A6 has been rectified and it has been restricted only to 3.5 cents of land purchased under sale deed dated 14.11.1960. I see no substance in the second argument of the learned counsel for the appellants.

13. As regards the substantial questions of law, the Courts below have found that the plaintiff has established her title in the manner known to law by producing registered documents. The Courts below have believed the said documents and came to the conclusion that the plaintiff has proved her title. I find that there is no evidence on the side of the defendants to rebut the presumption created under Section 60(2) of the Registration Act. Hence, the first question of law is answered against the appellants.

14. In the foregoing paragraphs, I have discussed about non production of original document of Ex.A3, copy of which, available with the Sub Registrar has been summoned and attendance registrar has also been marked. The said evidence goes a long way to prove the execution of Ex.A3. It is also pointed out that though the defendants 2 and 3 are co-nominee parties to the document, they have not chosen to challenge the same within the three years time stipulated after they attained majority. The second question of



law is also answered against the appellants. In view of the findings and the answers to the first and second questions of law, the third question of law does not really arise. Hence, I do not see any merit in the second appeal warranting any interference in the judgment and decree of the Courts below. Accordingly, this second appeal fails and dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1.The Additional Subordinate Judge, Tirunelveli.

2.The Principal District Munsif,
Tirunelveli,

copy to

The Section Officer,-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.M.P.SENTHIL, Advocate (SR-1021[F] dated 09/01/2020)

+1 CC to Mr.H.ARUMUGAM, Advocate (SR-1094[F] dated 09/01/2020)

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