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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.02.2021
PRONOUNDED ON : 24.06.2021

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.439 of 1997

- 1.Arunachala Padayachi (Died)
- 2.Subramanian
- 3.Velayadam

... Appellants/plaintiffs

(third appellant declared as major, his guardian father 1st appellant Arunachala Pandayachi discharged from the guardianship vide order of Court dated 29.04.2019, made in CMP.No.10752 of 2019 in S.A.No.439 of 1997)

- 4.Anjalai

(fourth appellant brought on record as leal representative of the deceased first appellant viz., Arunchala Padayatchi vide order of Court dated 08.01.2020 made in CMP.No.24038 and 10754 of 2019)

Vs.

- 1.Velayuadam(Died)
- 2.Kandan
- 3.Palanimalai
- 4.Palaniammal

(RR2 to 4 brought on record as legal representatives of the deceased sole respondent vide order of Court dated 02.08.2018 made in CMP.No.2374 to 2376 of 2007 in S.A.No.439 of 1997)

- 5.Palaniammal
- 6.Palanivel
- 7.Maheswari

.. Respondents / Defendants

(RR5 to 7 brought on record as legal representatives of the deceased 1st appellant viz., Arunachala Padayachi vide order of Court dated 08.01.2020 made in CMP.No.24038 and 10754 of 2019)



PRAYER: This Second Appeal has been filed under Section 100 of CPC., against the judgment and decree of the Court of learned Principal District Judge, Villupuram, in A.S.No.318 of 1994 and dated 31.07.1996 in modifying the judgment and decree of the Court of the Principal District Munsif, Thirukilur in O.S.No.108 of 1987 and dated 26.09.1994

For Appellants : Ms.Abirami
for Mr.V.Raghavachari

For R1 : Died

For R2 & R3 : Mr.T.Gandhi

For R4 to R7 : No appearance

JUDGMENT

The appellants herein/plaintiffs have filed a suit in O.S.No.108 of 1987 before the District Munsif Court, Thirukoilur, seeking specific performance of the deed of re-conveyance executed under Ex.A1.

2.The plaint proceeds on the basis that the first plaintiff and others are the original owners of the suit property to an extent of acre 1.64 and they sold the same on 30.07.1981 to the defendant and on the very same day and the deed of re-conveyance was also entered (Ex.A1). Then, after lapse of 10 years of time, since the re-conveyance was not entered, after exchange of legal notice/Ex.A2, they have filed the suit.

3.The respondents herein/defendants have filed written statement contending that Ex.B2 is the sale deed in their favour and on the evening of that day, Ex.A1/suit deed of re-conveyance came into force and even before the same, the son of the first wife of the first plaintiff namely, Kuppusamy, had executed a sale deed to an extent of 56 cents in favour of one Munusamy Padayatchi under Ex.B1. Thereafter, from the said Munusamy Padayatchi, the defendants had purchased the said extent of 56 cents under Ex.B2 and therefore, prayed for dismissal of the suit.



4.The Trial Court has dismissed the suit on the ground that the first wife of the first plaintiff and the son of the first wife have not been impleaded as parties in the said suit. Furthermore, the son of the first wife of the first plaintiff had executed a sale deed in favour of Munusamy Padayatchi and therefore, they are necessary parties. Consequently, for non-joinder of necessary parties, the suit was dismissed. In the absence of challenge to Ex.B2 sale deed and Ex.B1 sale deed by the plaintiff, the Trial Court held that the plaintiffs are not entitled to relief.

5.Aggrieved against the same, the plaintiffs/appellants herein have filed A.S.No.318 of 1994, before the Principal District Court, Villupuram, wherein the learned counsel for the defendants contended that in view of the purchase of undivided share of 56 cents from Munusamy Padayatchi by the defendants to that extent, the suit relief may be modified and with regard to the balance extent, it can be decreed. Accepting the said contention, the learned District Judge, has decreed the suit on the ground that by virtue of sale deed in favour of the defendants Ex.B1 and Ex.B3, they are entitled to 56 cents and remaining extent of the land, the plaintiffs are entitled for a decree. Challenging the same the plaintiff has preferred this second appeal.

6.The above Second Appeal was admitted on the following substantial questions of law”:

“1.Whether the lower appellate Court below is right in decreeing the suit in part and in recognizing the alleged claim of the defendant on the basis of Ex.B2 especially when the suit is one for reconveyance?

2.Whether the lower appellate Court should not have held that the respondent is estopped from denying the right of the appellants and cannot vary the terms and conditions set forth in Ex.A1?

3.Whether the lower appellate Court had not failed to appreciate that the remedy of a purchaser of a Coparcenery property is to file a suit for partition and not in a suit for reconveyance?

4.Whether the Courts below should not have



seen that the contract is indivisible and it cannot be unilaterally changed by the defendant?

7. Heard the learned counsel for both the parties on the above subject and perused the materials placed on record.

8. The plaintiff viz., Arunachala Padayachi (died) has filed the above suit for specific performance of the agreement under Ex.A1, dated 30.07.1981, which is in fact a deed of re-conveyance. The suit properties are belong to the plaintiff and his family members and on the very same day i.e., on 30.07.1981, he sold the property to the defendant for a sum of Rs.14,790/- by way of sale deed and on the very same day, the defendant has also executed the re-conveyance deed on payment of Rs.5,000/- as an advance and balance of Rs.9,790/- to be paid within 10 years to get the re-conveyance deed. After issuance of notice the suit was filed. The re-conveyance deed is marked as Ex.A1.

9. The case of the defendants in short is that before the execution of the re-conveyance deed, Kuppusamy, the son of the first plaintiff through his first wife had sold the property to the Munusamy Padayatchi under Ex.B1/dated 23.07.1981, who in turn had sold the property to defendant / Velayudha Padayatchi under Ex.B2 and since an extent of 56 cents covered under Exs.B1 & B2, the same can be deducted from the deed of re-conveyance. The Lower Appellate Court has accordingly recorded memo filed by the defendants and decreed the suit in part to the extent that was not covered under Ex.B2 and the same was under challenge. The sole ground that was taken before the Trial Court as well as the Lower Appellate Court is that there was a partition according to the family members and hence, the another property was allotted to the share of Munusamy Padayatchi and therefore, he does not own or any right over the property and hence, Exs.B1 & B2 will not advance the case of the defendants.

10. Before the Trial Court, the first plaintiff was examined as PW1, the first defendant was examined as DW1 and independent witnesses were also examined.

11. The first plaintiff viz., Arunachala Padayachi has two wives viz., Aarambu and Anjali. Through the first wife/Aarumbu, the first plaintiff has one son by name Kuppusamy. Admittedly, the first wife and the son of the first wife namely, Kuppusamy



were not made as a party to the suit. The Trial Court has dismissed the suit for not impleading necessary party. Execution of Ex.A1 was not in dispute; terms of the agreement are not in dispute. Though, the Trial Court had dismissed the suit in entirety, during the pendency of the first appeal, before the First Appellate Court it appears that the defendants' counsel has filed Memo except the land covered under Ex.B2 to an extent of 56 cents, the suit may be decreed. The memo was accepted and the decree was passed.

12.Both the Courts below have rightly come to the conclusion that except oral assertion of PW1 that there was partition between himself and the Kuppusamy, (who is the son born through the first wife of the first plaintiff), the same was not proved in the manner known to law. No other document or no other witness were examined in support of the same. On contrary, the defendants have marked Ex.B3/sale deed, wherein the plaintiff along with his first wife son have lands to the third party and recital therein indicates, there is no family partition. In other words, the plaintiff family is still stand joint till Ex.B3, dated 23.05.1994. Hence, both the Courts below have rightly rejected the said plea raised by the first plaintiff/first appellant regarding family partition wherein, Kuppusamy was allotted some other land in the family partition has not proved. It remains to be stated that even before execution of Ex.A1/sale deed on 30.07.1981, the son of first plaintiff has sold 56 cents under Ex.B1, dated 23.07.1981, in turn, purchased by defendant Ex.B2, on 30.07.1981 viz., on the same day of Ex.A1, assumes significance. Since, the plea of partition raised the plaintiff was held to be not proved and hence, Ex.B1 is valid to the limited of his share. In other words, even under Ex.A1, whether plaintiff can transfer and sale, the total extent to the defendant is doubtful.

13.As stated supra, under EX.B1 on 23.07.1981, Kuppusamy, son of the first plaintiff through his first wife has sold the property to the Munusamy Padayatchi, who in turn sold the property to the defendant and hence, the Lower Appellate Court has rightly appraised the factual position of the case and held that both Exs.B1 and B2 are valid in law and accordingly held that in view of the fact that the defendant had purchased 56 cents of the suit property from the son of the first plaintiff through his first wife. The deed of re-conveyance in respect of



remaining extent alone should be re-conveyed to the plaintiff does not suffer from any irregularity or illegality warranting interference.

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14. It remains to be stated that on the above factual matrix I did not find any substantial question of law arises as narrated since, the above substantial question of law raised on the above factual background, the same is held against the plaintiffs/appellants the order passed by the Lower Appellate Court is equitable order and the same is hereby confirmed.

15. Accordingly, this Second Appeal stands dismissed and the order passed by the learned Principal District Judge, Villupuram, in A.S.No.318 of 1994 and dated 31.07.1996 by modifying the order of the Court of the District Munsif, Thirukilur in O.S.No.108 of 1987 and dated 26.09.1994, is hereby confirmed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Villupuram.
2. The Principal District Munsif,
Thirukkivilur.
3. The Section Officer,
V.R Section, High Court, Madras.

+1cc to Mr.T.Gandhi, Advocate, S.R.No.29303

+1cc to M/s.V.Raghavachari, Advocate, S.R.No.29206

S.A.No.439 of 1997

SJ(CO)

SB(28/10/2021)