



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE OF RESERVING JUDGMENT
30.03.2021

DATE OF PRONOUNCING JUDGMENT
16.07.2021

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

S.A.No.966 of 2000
and
C.M.P.No.22506 of 2019

1.Murugesan

2.Bakkiam

3.R. Rajarajeswari

[Third appellant impleaded as per
order dated 28.09.2012 in
CMP.No.868/2012]

..Appellants/Defendants 1 &2

Vs.

1.Kamala (deceased)

2.Krishnaveni (deceased)

3.Tharani

4.Narmadha

5.Manorama

6.Jagadeesan

7.Geetha

8.Nirmala

9.Ravi

10.Srinivasan

11.Suresh

12.M. Varadharajan (died)

13.M. Sridharan

14.M. Kannan

15.Sujatha

16.Dhananjaya Muniraj

17.Maheswara Muniraj



18.Minor Keerthikumar

..Respondents

[Respondents 12 to 14 brought on record as LR's of the deceased R1 viz., Kamala vide Court order dated 25.04.2018 made in CMP.No.5944 to 5946/2018 in S.A.No.966/2000]

[Respondents 15 to 18 brought on record as LR's of the deceased R12 viz., Varadharajan vide Court order dated 25.04.2018 made in CMP.No.8130, 8132 & 8136/2009 in S.A.No.966/2000]

Prayer: Second Appeal filed under Section 100 of C.P.C., against the decree and judgment dated 30.03.2000 rendered in A.S.No.82 of 1998 on the file of Subordinate Judge, Bhavani confirming the decree and judgment dated 30.04.1998 rendered in O.S.No.130 of 1982 on the file of Principal District Munsif, Bhavani.

For Appellants : Mr.N. Manokaran

For Respondents : Mr.V. Subramanian
for Mr.R. Ashokan, for R13 to R18
R1 & R12 - Died
R4, R6, R9 to R11 - No Appearance
R2, R3, R5, R7 & R8 - Dismissed
vide Court order

J U D G M E N T

The original defendants 1 and 2 are the appellants herein.

2.Pending second appeal, one Rajarajeswari purchased the property and filed C.M.P.No.868/2012 and it was allowed on 28.09.2012 and she was impleaded as third appellant. Originally, one Muthammal (now late) mother of the third respondent herein filed O.S.No.130/1982 before the Principal District Munsif Court, Bhavani against the original defendants praying for the relief of bare injunction. The suit was decreed on 30.04.1998.

3.Aggrrieved by the judgment and decree, the defendants 1 and 2 filed A.S.No.82/1988 before the Sub Court, Bhavani and the same was dismissed on 30.03.2000. Hence, the original defendants 1 and 2 filed the above second appeal 966/2000. As stated supra, the third defendant is subsequent purchaser.

4. At the time of admission, the following substantial



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questions of law were framed:-

1. Whether the suit in O.S.No.130/82 filed by Muthammal is premature one since she got right over the suit property only subsequent to the suit as per compromise decree in A.S.No.126/82.

2. Whether the Courts below are correct in holding that the fourth defendant is entitled to enter into compromise colluding with the plaintiff Muthammal with reference to suit property which was already sold to the defendants 1 and 2.

3. Whether the Courts below are correct in holding that the compromise decree in A.S.No.126/82 obtained by the plaintiff Muthammal colluding with the fourth defendant without impleading the defendants 1 and 2 as parties are binding on them.

4. Whether the Courts below are correct in holding that the amendment of prayer for delivery of possession is not barred by limitation without considering the fact that the prayer is amended by the legal representative of the original plaintiff in 1993.

5. Whether the Courts below are correct in allowing the prayer for delivery of possession of the suit property without paying the Court Fee for the market value of the property by the plaintiff.

6. Whether Kamala the legal representative of the plaintiff is entitled to claim a new relief and alter the nature of the suit.

5. Heard the learned counsel for the appellants and the learned counsel for the respondents 13 to 18.

6. The original plaintiff Muthammal is the wife of Rangasamy Naidu and they had three branches namely Muralisamy, Lingusamy, Rajamaal and Kamallamaal, the said Muthammal, on the death of Rangasamy Naidu filed the suit for partition in O.S.No.134/1969 before the Sub Court, Erode for partition. Final decree proceedings was initiated in I.A.No.1129/1969 and the same was compromised wherein, the suit schedule property was allotted to the fourth defendant-Saravanan, minor, represented by his mother D3. Final decree in the said suit is Ex.B2. Under Ex.B1, the second defendant Bakkiyam purchased the property from the original fourth defendant on 22.03.1979, it remains to be stated that the original plaintiff Muthammal has filed O.S.No.138/1972 before the learned Sub Judge, Erode to set aside



the decree viz., compromise partition decree in O.S.No.134/1969 and the suit was decreed and the vendor of the present appellant along with the minor preferred A.S.No.126/1982 before the Hon'ble High Court.

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7. When the first appeal preferred by the vendor of the appellants are pending, the original plaintiff Muthammal seems to have filed O.S.No.130/1982 before the District Munsif Court, Bhavani for a bare injunction, on 12.03.1982, as if she is in possession of the suit property. Pending suit, the original plaintiff executed a Will in favour of the second plaintiff under Ex.A3 on 10.10.1983 and again there is another Will by the first plaintiff in favour of the second plaintiff under Ex.A4 on 03.11.1985. When that being so, on 10.11.1985, the original plaintiff Muthammal and the defendants 3 to 5, who are the appellants in A.S.No.126/1982 appears to have entered into a compromise in the appellate stage. The original plaintiff Muthammal died on 10.07.1988. Thereafter, it appears that the second plaintiff on the strength of the Will entered as a second plaintiff in the suit and filed I.A.No.33/1993 to amend the plaint to include the relief of declaration of title and for recovery of possession and for mandatory injunction. Though, the contention was raised before the trial Court regarding the limitation point with regard to declaration of title, it appears that the said plea was rejected and the suit was decreed on 30.04.1998 and the appeal was dismissed. Hence, the second appeal.

8. After perusal of the oral and documentary evidence submitted before the trial Court are to the effect that the original first plaintiff Muthammal filed suit in O.S.No.134/1969 under Ex.B2 in the year 1969. The preliminary decree was passed and final decree petition in I.A.No.1129/1969 is filed, the matter was compromised, in which it appears that the suit property was allotted to Saravanan / fourth defendant on 09.07.1969. From the said fourth defendant under Ex.B1, the second defendant Bakkiyam had appears to have purchased the property on 22.03.1979. When the matter being so, it is seen that the Muthammal has filed another suit in O.S.No.138/1972 before the Sub Court, Erode to set aside the decree in O.S.No.134/1969 without impleading the purchaser namely the second defendant / Bakkiyam assumes significance. The suit was decreed as could be seen from Ex.A1. Original defendants 3 to 5 have filed A.S.No.126/1982 before this Court, as could be seen from Ex.A2. While the first appeal filed by the original defendants 3 to 5 were pending before this Court as A.S.No.126/82, as stated supra, this original plaintiff Muthammal again seems to have filed another suit in O.S.No.130/1982 on 12.03.1982 namely the subject matter of the present case.



9. The relief sought for is for permanent injunction. Admittedly, on the date of filing of the plaint in O.S.No.130/82, on the footing that she has attained a decree in O.S.No.138/1972, ignoring the fact that the appeal is pending before the High Court in A.S.No.126/1982. It remains to be stated that it is only a bare injunction suit filed on 12.03.1982 assumes significance for the discussion infra.

10. Pending the present suit, the original plaintiff Muthammal appears to have been executed Ex.A3 Will in favour of the second plaintiff on 10.10.1983 and another subsequent Will under Ex.A4 on 03.11.1985 in favour of the second plaintiff. After execution of this A4 in favour of the second plaintiff, the said Muthammal and the defendants in the present suit 3 to 5 (excluding the defendants 1 and 2) who have purchased the property as early as on 22.03.1979 have entered into compromise in A.S.No.126/1982. On perusal of Ex.A2, a compromise decree granted by this Court, I find that the appellants 1 and 2 / defendants 1 and 2 who have purchased the property under Ex.B1 on 22.03.1979 have not added as a party nor added as a party to the compromise decree also assumes significance.

11. It appears that the suit property was re-allotted to the respondents 3 to 5 / defendants 3 to 5, wherein, Muthammal has relinquished the right in respect of the suit property assumes significance. While being so, as per pleadings, the first plaintiff Muthammal died on 10.07.1988 as per Ex.A5. The second appellant / second defendant paid Rs.250/- each to the defendants 4 and 5 through the advocate notice Exs.B3 and B4. While things stand as such, the second plaintiff Kamala, on the strength of Ex.A4 31.11.1985, filed petition to substitute herself as a legal representative of the deceased Muthammal, leaving behind other legal representatives. She based her claim on Ex.A4 Will. Thereafter, on perusal of the records, from the lower Court, I.A.No.3325/1993 was filed to amend the plaint prayer to include the relief of declaration, possession and for mandatory injunction. The said I.A., was allowed and the suit was also decreed on 30.04.1998. The appeal preferred by the defendants 1 and 2 in A.S.No.83/1988 was dismissed and hence, the above second appeal.

12. The crux of the matter is whether Ex.A2, the compromise decree in A.S.No.126/1982 by this Court is binding upon the appellants 1 and 2 / defendants 1 and 2 or not and furthermore, in the absence of other legal representatives of the deceased Muthammal being made as a party to the suit, the suit is bad for non joinder of necessary parties and when the A.S.No.126/1982 is pending before the High Court, filing of the present suit in O.S.No.130/1982 is premature in law. On answering all these points, the other substantial law will follow.



13. After perusing the documents, I find that as per the compromise decree in O.S.No.134/1969 partition suit and preliminary decree was passed and pending final decree proceedings, the parties have entered into compromise, suit properties was allotted to the fourth defendant / Saravanan, the vendor of the appellants 1 and 2. The recital in Ex.B1 clearly shows that the sale deed dated 22.03.1979, the appellant purchased the suit property from the original fourth defendant-Saravanan represented by his mother and guardian Krishnaveni. In the sale deed, there is a recital that the suit property was allotted to Saravanan, as per the compromise decree in partition suit in O.S.No.134/1969 a compromise was entered in the final decree proceedings. When that being so, the suit in O.S.No.138/1972 filed by the original plaintiff on 11.12.1981, these original appellants herein viz., Bakkiyam and Murugesan are not made as a party, the suit was decreed, appeal was filed by none other than defendants 3 to 5 in the said suit.

14. When the appeal is pending before this Court, I find that the defendants 3 to 5 have suppressed the fact that Muthammal filed suit in O.S.No.138/1969 against the defendants 3 to 5 and others for cancelling the compromise decree in O.S.No.134/1969, as null and void. The defendants 3 to 5 have not taken any steps to implead the appellant herein as party to the compromise. Since they have already sold the suit property to the appellants, the original defendants 3 to 5 atleast would have taken steps to implead the appellants in A.S.No.126/1982 which is filed against the compromise decree against in O.S.No.138/1972 and thus, this Court comes to irreversible conclusion that the respondents 3 to 5 / defendants 3 and 5 have colluded with Muthammal and entered into compromise with her and gave up the right over the suit property to the Muthammal and conveniently accepted some other property is only with a view to defeat and defraud the appellant.

15. On combined reading of the decree in O.S.No.134/1969, (partition suit) filed by the Muthamaal and the decree in A.S.No.126/1982 (arising out of O.S.No.138/1972), I find that since, the appellants herein are not party in O.S.No.138/1972 as well as A.S.No.126/1982, any compromise entered between the parties especially the defendants 3 to 5 who are vendors of the appellants herein without impleading them, (they have entered the compromise in respect of the suit property) is not binding upon the appellants. In other words, on the date of entering into the compromise, the defendants 3 to 5 are not the owner of the suit property. Defendants 1 and 2 namely the appellants alone are the owner of the property by virtue of Ex.B1 sale deed. When that being so, in a suit where the very same property covered under Ex.B1, the subject matter, it not open to

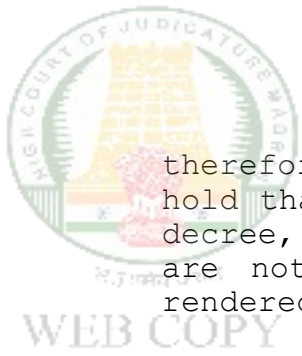


the defendants 3 to 5 to enter upon the compromise and furthermore, they have relinquished the right over the suit property in favour of Muthammal.

16. The original defendants 3 to 5 in the suit who are vendors of the appellants 1 and 2 cannot enter into the compromise relinquishing their right in respect of the suit property, which is already sold under Ex.B1 and giving that property to the Muthammal is not binding upon the defendants 1 and 2 namely appellants 1 and 2 herein. It remains to be stated that on perusal of Ex.A2, a compromise decree made in A.S.No.126/1982, no property was allotted to the defendants 3 to 5 but the third defendant Saravanan was allotted the houses and another property. It clearly demonstrates that by entering into a compromise in A.S.No.126/1982 all the persons namely the original plaintiff and the original defendants have wanted to defraud the defendants 1 and 2 namely appellants 1 and 2 and to deprive the right of the appellants herein accrued to them under Ex.B1 dated 22.03.1979 and hence, I find that the compromise decree based upon the compromise deed entered between the parties, without the presence of appellants 1 and 2 / defendants 1 and 2 is nothing but playing fraud upon this Court.

17. It remains to be stated that a finding has been rendered by the lower appellate Court that these appellants have not obtained permission for purchase of the minor property. However, this Court finds that Muthammal who has no right over the property, in view of the earlier partition suit, cannot question the validity of the sale of the minor property. Furthermore, the recitals have clearly mentioned that the original third defendant Krishnaveni mother of the minor as a guardian, for the benefit of the minors interest and to repay the loan amount borrowed for studying for the welfare of the minors. It remains to be stated that the Saravanan (originally minor) /fourth defendant on attaining majority has not taken any steps to set aside the same in favour of the second defendant by his mother guardian Krishnaveni.

18. On attaining majority, he has not even challenged Ex.B1 sale deed. When the parties to the document has not challenged the sale deed as to the validity, it not open to the third party to challenge the same. After, the defendants 4 to 5 attaining majority, they have received Rs.500/- towards their interest as a balance of sale consideration from the second defendant and confirmed the same, as could be seen from Exs.B3 and B4. As observed earlier, the original defendants 3 to 5 cannot compromise the matter in A.S.No.126/1982, since they have sold the property as early as on 22.03.1979, as could be seen from Ex.B1 and hence, on the date of the compromise, the original defendants 3 to 5 have no right over the suit property and



therefore, both the Courts below have concurrently failed to hold that the defendants 1 and 2 cannot object to the compromise decree, without noticing the fact that the defendants 1 and 2 are not parties in A.S.No.126/1982 and hence, those findings rendered by the lower Court stands vacated.

19. In view of the finding in the preceding paragraph that the compromise decree (Ex.A2) in A.S.No.126/1982 before this Court is not binding upon the defendants 1 and 2/appellants 1 and 2 and coupled with the fact that the sale deed in favour of the appellants 1 and 2 under Ex.B2, any document executed by the original plaintiff Muthammal, bequeathing her right in favour of Kamala and others and its validity do not arises for consideration. Since Kamala has no title to convey under any document. In view of the finding that the compromise decree entered before this Court in A.S.No.126/1982 is not binding upon the original defendants 1 and 2/appellants 1 and 2, as it is committed as fraud on the Court. The continuing plaintiff has no right to take over the suit properties and hence, the validity of the above said alleged Will said to have been executed by the Muthammal does not arise for consideration.

20. It remains to be stated that this second appeal is arising out of O.S.No.138/1972 filed by the original plaintiff Muthammal. On her death on 10.07.1988, all the legal heirs were not brought on record, only Kamala was brought on record on the strength of Ex.A4 Will. Furthermore, the original plaintiff Muthammal has not chosen to seek the relief of declaration of title and for injunction and for recovery of possession. Admittedly, on the date of filing of the present suit in O.S.No.138/1972, the appeal suit in A.S.No.126/1982 is pending adjudication and in the absence of any prayer for delivery of possession, after the death of Muthammal, the present plaintiff Kamala (respondent No.1) cannot seek an application for amendment of prayer for delivery of possession of the suit property after expiry of 12 years.

21. Hence, I hold that during the pendency of A.S.No.126/1982, a bare injunction suit was filed and both the Courts below have committed an error in holding that the fourth defendant/respondent is entitled to enter into the compromise without noticing the fact that they have already sold the property even in the year 1976. In the absence of the purchaser of the suit property and the defendants 3 and 4 having already departed with the suit property by way of sale deed, they are not competent parties enough to enter into a compromise in A.S.No.126/1982 especially relinquishing their right, in the suit property, I find that the sale deed Ex.B1 is absolute one and as such, the same cannot circumvent by the vendors, by entering compromise in the back of the purchaser. Further, it



appears that the other defendants 3, 4 and 5 have taken other property which is nothing but fraud being committed on the Court.

22. On perusal of the documents filed by the defendants 1 and 2 / appellants 1 and 2 in Exs.B5 to B16, I find that original defendants 1 and 2 were in possession of the suit properties right from 1979, after the sale under Ex.B1 sale deed and thereafter, the third appellant is in a possession of the property and hence, I find that the above substantial questions of law are answered in affirmative in favour of the appellants herein and against the plaintiffs and hence, the other substantial questions of law D and E does not arises for consideration. In view of the decision arrived in the substantial question of law 1 to 3 and hence, the above second appeal is allowed and judgment and decree granted by both the Courts below are set aside. O.S.No.130/1982 on the file of Principal District Munsif Court, Bhavani, stands dismissed, with cost of Rs.5,000/-. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(JJ Act)

//True Copy//

Sub Assistant Registrar

AT

To

1. The Subordinate Judge,
Bhavani.
2. The Principal District Munsif,
Bhavani.

Copy To

The Section Officer,
V R Section, High Court,
Madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.33813

S.A.No.966 of 2000
and C.M.P.No.22506 of 2019

SV-I (CO)
RGA(23/11/2021)