



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 27.01.2021	Date of Pronouncing Judgment 07.04.2021
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CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1912 of 2001

1.Selvamani (deceased)
2.Palaniswamy
3.Raja
4.Muthu
5.Mylammal
6.Jothi
7.Kala
(Appellants 5 to 7 are brought
on record as LR of the deceased
1st Appellant vide order dated.18.06.2004
in CMP Nos.18605 to 18607/03
in SA.1912/01)

.. Appellants/Plaintiffs

Vs.

1.Sarangapani Goundar
2.Mummurthy

.. Respondents/Respondents

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 30.06.2000 in A.S.No.9 of 1997 passed by the Additional District Judge, Villupuram on appeal from the judgment and decree dated 30.08.1996 passed by the Additional District Munsif, Ulunthurpet, in O.S.No.220 of 1995.

For Appellants	: Mrs. Nilaphar for Mrs. R. Meenal
For Respondent	: R1 - No Appearance R2 - Given up.

J U D G M E N T

The unsuccessful plaintiffs is the appellants herein. For the sake of convenience, parties are referred to as per the ranking before the trial Court.



2. The appellants / plaintiffs filed O.S.No.220 of 1995 before the Additional District Munsif Court, Ulundurpet for declaration of title over the suit property. After the life time of her mother Valliammai, the suit was decreed. In the appeal preferred by the first defendant in A.S.No.9/1997 before the Additional District Judge, Villupuram, the learned Judge has allowed the appeal and hence the second appeal.

3. At the time of admission, the following substantial question of law was framed:-

"Whether the first appellate Court was right in finding that the deed of settlement, viz., Ex.A3 was not acted upon?"

4. Heard the learned for the appellants / plaintiffs. None appeared for the first respondent. R2 given up before the trial Court.

5. The case of the plaintiffs in brief is that:

(i) The suit 1st item was purchased by the grandfather of the plaintiffs by name Narayana Padayachi by registered sale deed dated 30.11.1954 and the 2nd item was purchased on 27.03.1957 and thus properties are the self acquired properties of Narayana Padayach. He executed a settlement deed on 09.05.1961 in favour of the mother of the plaintiffs which was accepted and it was irrevocable document. In the said settlement there was a condition that it should be enjoyed by the plaintiffs mother for her life time and after her life it should be enjoyed by the male issues of Perumal Padayachi and Mummoorthy Padayachi who are the sons of Narayana Padayachi.

(ii) It is the further case that contrary to the settlement, Narayana Padayachi along with the settlee Valliammai conveyed the property to the 1st defendant on 14.05.1966 by registered sale deed which is not valid and binding on the plaintiffs. The plaintiffs have filed this suit for declaration for that they have absolute right to suit property after the life time of their mother Valliammai.

6. The second defendant, who is one of the sons of Narayana Padayachi namely Mummoorthy Padayachi remained ex-parte. The purchaser of the property, the first defendant Sarangapani Gounder filed written statement and the gist of the same, that are necessary are:

The suit properties are the joint family properties of Narayana Padayachi and his two sons Perumal Padayachi and Mummoorthy Padayachi. The settlement deed was not accepted and acted upon by Valliammai and it has not come into force. Since



there were family debts and in order to discharge them, out of necessity, Narayana Padayachi and his two sons along with Valliammai sold the suit items to this 1st defendant for a sale consideration of Rs.1,000/- by registered sale deed.

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7. It is seen from records that the trial Court has held that Ex.A3 settlement deed executed by Narayana Padayachi in favour of Valliammai is accepted and acted upon and hence the sale in favour of the first defendant by all the family members is not binding on the plaintiffs who are vested remainders.

8. Before the lower appellate Court, the point that has been taken up for considerations is:

Whether, the suit properties are joint family properties or self acquired properties of Narayana Padayachi viz., the grandfather of the plaintiffs and Ex.A3 settlement is accepted and acted upon.

9. On appreciation of the oral and documentary evidence, the lower appellate Court has come to the conclusion that the settlement deed is not accepted or acted upon and one of the sons of the settlor Narayana Padayachi namely Mummoorthy Padayachi (second defendant herein) was cultivating the land and also exercising his ownership by giving the property to third party under a mortgage by relying upon Ex.B2. Accordingly, allowed the appeal and thereby non suited the plaintiffs.

10. Heard the submissions of the appellant counsel on the above substantial question of law.

i) The suit property; there are two items in the suit property. As per pleading, first item was purchased by the grandfather of the plaintiff Narayana Padayachi under registered sale deed under Ex.A1 dated 30.11.1954. Second item of the property was purchased under the registered sale deed under Ex.A2 dated 27.03.1957. As per pleadings it is a self acquired property of Narayana Padayachi and so is the finding rendered by the lower appellate Court.

11. Relationship of the parties:

The suit property and other properties belonged to one Narayana Padayachi he had two sons Mummoorthy Padayachi (second defendant) Perumal Padayachi and wife is Vallaiammai (mother of the plaintiffs).

12. The nature and character of the suit property is admittedly, both Ex.A1 and A2 sale deeds stand in the name of Narayana Padayachi and the recital in Ex.A3 settlement also shows that the suit items are the self acquisitions of Narayana Padayachi. There is absolutely no evidence to prove that



Narayana Padayachi had ancestral lands and the suit lands were purchased out of joint family income or from the sale proceeds of the ancestral lands. Hence the suit properties are the self acquisition of Narayana Padayachi and he has got right to execute the settlement in favour of his daughter in law.

13. The learned counsel for the appellants would contend that the lower appellate Court having found that Ex.A3 settlement deed is in favour of the mother of the plaintiffs is valid ought to have held that it is acted upon. Consequently, ought to have held that Ex.B1 sale deed is in favour of the first defendant is not valid in law. I have given my anxious consideration to the said contention.

14. The first defendant has specifically raised a plea in the written statement as well as in D.W.1 that Ex.A3 settlement deed was not accepted and acted upon and no point of time Valliammai (the settlee was in possession). On the contrary, both the settlor along with the sons were enjoying the suit property and relied upon Ex.B2 to show and demonstrate that even after the alleged execution of Ex.A3 settlement deed, the elder son Mummoorthy Padayachi was enjoying the property and exercised act of ownership over the suit property by mortgage of the property under Ex.B2.

15. The bogyam executed by the second defendant on 17.03.1962 i.e., 10 months after the settlement in favour of one Kathavaraya Padayachi. In it he has left undivided 0.07 cents in the suit 1st item and 0.11/ ½ cents in the suit 2nd item apart from the vacant site in possession of the mortgages, to be enjoyed by him in lieu of interest payable by the mortgagor. Had the settlement had come into effect then the 2nd defendant would not have been allowed to mortgage his undivided share to the mortgages. This bogyam is recited in the sale deed Ex.B1 and the sale consideration is stated to be to discharge the bogyam executed by the 2nd defendant which confirms the acknowledgment of bogyam done by the 2nd defendant. Hence, I find that the second defendant, the elder son of the settlor Narayana Padayachi has exercised act of ownership in respect of part of the property and hence the finding given by the lower appellate Court that Ex.A3 settlement deed in favour of the Valliammai, (mother of the plaintiffs) is not acted upon is found to have force.

16. Furthermore, after perusing Ex.B1, I find that all is not well in the case of the plaintiffs. The reasons follows as under:

i) As per Ex.A3 settlement deed, it is executed on 09.05.1961 in favour of Valliammai (mother of the plaintiffs).



As per Ex.B2, portion of the property was mortgaged by the elder son of the settlor on 17.03.1962 i.e., much after the alleged settlement deed in favour of the mother of the plaintiffs.

17. Yet another point is that on perusing Ex.B1 sale deed in favour of the first defendant, Sarangapani Gounder, the said Ex.B1 sale deed is executed by the all the members of the family namely Narayana Padayachi and his son Mummoorthy Padayachi (Second defendant) and Valliammai (mother of the plaintiffs) in her individual capacity as well as as the natural guardian and mother of the plaintiffs who are then minors and hence I find that the mother of the plaintiffs Vallaiammai, as the widow of one of the sons of the settlor Narayana Padayachi and as the mother of the minor plaintiffs had executed a sale deed even in the year 1966 in and by which the entire property had been sold to the first defendant Sarangapani Gounder and he has obtained patta as could be seen from Exs.B3 and B4.

18. It remains to be stated that though the plaintiffs claims that under Ex.A3 settlement deed life estate was given to mother of the plaintiffs namely Valliammai (Daughter-in-law of Narayana Padayachi) After death, vested remainder passed to the male heirs of the Perumal Padayachi and Mummoorthy Padayachi. Since the second defendant, elder son Mummoorthy had no male issues, plaintiffs claim title to the property as a vested remainder. For the reasons best known, the plaintiffs have not averred the date of death of their mother namely Valliammai. For the reasons unknown, they have not disclosed the date of death of Valliammai so as to claim right under the vested remainder clause under Ex.A3 settlement deed.

19. As stated supra, under Ex.B1 sale deed dated 14.05.1966, entire suit property has been sold by all members of the family in order to discharge family debt. In the sale deed, the plaintiffs who are then minors were duly represented by the mother Valliammai. The sale deed is of the year 1966, suit is filed in the year 1995 namely after 33 years. On the analysis of Ex.B1, it is found that that the family had debts and to discharge them there was a necessity to sell the suit items to the 1st defendant.

20. It is pertinent to point that the settlee Valliammai had also joined in the execution of sale which would only show that she had not accepted and acted upon the settlement and that is why the sale is executed by all the family members and not by her alone. This sale deed is executed on 14.05.1966 i.e., 5 years after the settlement. In between the period there is no evidence either oral or document to prove that settlee had ever dealt with the suit items. No mutation had taken place and she



has not paid kist for the suit items. Whereas, the patta had been transferred in the name of the 1st defendant in patta No.181 and new patta is granted in patta No.125. The kist paid for the old patta is Ex.B4. The oral testimony also supports the 1st defendant's case only. Hence, I find that even after Ex.A3 settlement deed in favour of Valliammai (mother of the plaintiffs) the property has been dealt with by one of the sons of Narayana Padayachi as could be seen from Ex.B3. Within five years of the settlement deed under Ex.B3, all the family members have sold the property to the first defendant under Ex.A4 equivalent to Ex.B1 and the suit is filed after 33 years. When all the members have jointly executed a valid sale deed for family necessity to discharge the family debt, I find that the plaintiffs on attaining majority would have challenged the sale deed. In order to get over the point of limitation, it appears as if, that the suit is framed based upon Ex.A3 sale deed which is nothing but abuse of process of Court.

21. Taking into consideration that the mother of the plaintiffs who had life estate and the minors have been duly represented by their mother on behalf of the vested remainder under the settlement deed joined by the original owner namely grandfather Narayana Padayachi and his elder son Mummoorthy Padayachi has sold the entire extent of the property to the first defendant and hence I find that Ex.A4 is a valid sale deed in favour of the first defendant. Instead of challenging the sale deed, the plaintiffs have adopted dubious method of circumventing the law and filed the suit for declaration of title as stated in the plaint, to avoid, law of limitations.

22. For the reasons stated in the preceding paragraphs, this Court finds that the suit property is a self acquired property of Narayana Padayachi as held by the lower appellate Court and the same is hereby confirmed. Though the settlement deed was executed, it was not acted upon and the said finding of the lower appellate Court, for the different reasoning stated in the preceding paragraphs, is also hereby confirmed and accordingly, the settlement deed was not acted upon. De hors the above factual position, under Ex.A4, entire property was sold by all the members of the family to and in favour of the first defendant Sarangapani Gounder and even the plaintiffs were duly represented by their mother and hence Ex.A4 is binding upon the plaintiffs and consequently, the first defendant being the purchaser of the property from all the members of the family is the owner of the property under a valid purchase under Ex.A4.

23. When that being the case, the relief sought for by the plaintiffs for declaration of title cannot stand the legal scrutiny of law and hence in this view of the matter, this Court



finds that the above substantial question of law is answered in negation against the appellants and the appeal is devoid of merits.

24. Accordingly, the appeal is dismissed with costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AT

To

1. The Additional District Judge,
Villupuram
2. The Additional District Munsif,
Ulunthurpet.

Copy to:

The Section Officer,
VR Section,
High Court, Madras.

+1CC to Mr.R.Subramanian, Advocate, Sr.No.22238

Pre-delivery Order in
S.A.No.1912 of 2001

SSI (CO)
K.RK. (11.11.2021)