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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.03.2021

PRONOUNCED ON : 07.04.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.144 of 2009

Perumal ...Appellant/2nd Respondent/2nd Defendant

Vs.

1.Selvi ...1st Respondent/Appellant/Plaintiff

2.Angammal ...2nd Respondent/1st Respondent/1st Defendant

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 31.07.2008 passed in A.S.No.29 of 2005 on the file of the Subordinate Court, Dharmapuri, reversing the judgment and decree dated 30.07.2004 passed in O.S.No.222 of 1998 on the file of the District Munsif Court, Palacode.

For Appellant : Mr.R.Selvakumar

For Respondent : Mr.S.Saravana Kumar
No.1 For Mr.M.Sudhakar

Respondent No.2 : No appearance
set exparte vide order
dated 26.03.2021

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 31.07.2008 passed in A.S.No.29 of 2005 on the file of the Subordinate Court, Dharmapuri, reversing the judgment and decree dated 30.07.2004 passed in O.S.No.222 of 1998 on the file of the District Munsif Court, Palacode.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.



the legal heirs viz., the plaintiff and the first defendant and thus it is seen that both the plaintiff and the first defendant would be each entitled to 1/2 share in the suit property.

7.The plaintiff would put forth the case that inasmuch as her mother Angammal had remarried, after the demise of her father, one Chinnaasamy and out of the said wedlock, the first defendant and Chinnaasamy had three children, according to the plaintiff, the first defendant had ceased to get any right in the property left by the deceased Periyannan, her ex-husband. As the abovesaid case of the plaintiff has been seriously challenged by the second defendant, though the first defendant had remained exparte, it is the bounden duty of the plaintiff to establish that the first defendant, after the demise of Periyannan, had married one Chinnaasamy and out of the said wedlock, they had three children and thereby, ceased to secure any right over the suit property left behind by Periyannan, her ex-husband. Pointing to the abovesaid case, absolutely, there is no material forthcoming on the part of the plaintiff. Merely because, the first defendant has remained exparte that by itself would not be a factor for upholding the abovesaid case of the plaintiff straightaway. When the abovesaid case of the plaintiff has been challenged by contesting the defendant viz., the second defendant, it is for the plaintiff to establish the abovesaid facts. However, the plaintiff has miserably failed to establish that her mother viz., the first defendant had remarried, after the demise of Periyannan, one Chinnaasamy and that they had three children out of the said marital relationship. In such view of the matter, it is found that the suit property being left by Periyannan, on his demise, the same would devolve upon his legal heirs, the first defendant and the plaintiff. Accordingly, it is also noted that the plaintiff has sought for the alternative relief of partition in the plaint.

8.The plaintiff would put forth the case that the second defendant is the lessee of the suit property. However, pointing to the same, absolutely, there is no material worth acceptance put forth on the part of the plaintiff. The same has been stoutly denied by the second defendant and according to him, he is not enjoying the suit property on the lease arrangement put forth by the plaintiff and on the other hand, it is his case that he has been enjoying the suit property in his independent right based on the purchase of the suit property from the first defendant by way of the sale deed dated 22.04.1972 marked as Ex.B1 by obtaining patta, paying kist etc., As regards the plea of the lease arrangement put forth by the plaintiff, there is no material worth acceptance placed by the plaintiff pointing to



the same. Therefore, the abovesaid case of the lease arrangement projected by the plaintiff does not merit acceptance.

9. The sale deed dated 22.04.1972 marked as Ex.B1 has been executed in favour of the second defendant by the first defendant. On a perusal of the sale deed marked as Ex.B1, therein also, it has been averred by the first defendant that she is only the wife of Periyannan and not the wife of Chinnaasamy as put forth by the plaintiff. It is further noted that the first defendant had alienated the suit property for meeting the family expenses, purchase of ploughing cows, building house and for discharging the debts etc. At the time of the execution of Ex.B1 sale deed, it is not in dispute that the plaintiff was only a minor about three years old. It is thus evident that Ex.B1 sale deed had been executed by the natural guardian of the plaintiff viz., her mother, the first defendant.

10. On the date of Ex.B1 sale deed, the plaintiff's father was not alive. Therefore, it is found that the plaintiff being a minor child at that point of time, as provided by Sections 4 & 6 of the Hindu Minority and Guardianship Act, 1956, the mother viz., the first defendant is the natural guardian of the plaintiff. As already pointed out, the suit property originally belonged to Periyannan, accordingly, it is seen that both the plaintiff and the first defendant would be entitled to obtain 1/2 share in the same. When considering the reasons assigned in the sale deed marked as Ex.B1, it is found that the first defendant, as the natural guardian of the plaintiff, had alienated the suit property only for meeting the family necessity and for the discharge of the debts. No doubt, the first defendant has not obtained the permission of the Court before alienating the 1/2 share belonging to the plaintiff in the suit property. Therefore, as provided under Section 8 of the Hindu Minority and Guardianship Act, 1956 any disposal of the 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 any person claiming under him. Therefore, it is found that the sale effected by the first defendant under Ex.B1, being made without obtaining proper permission of the Court qua the plaintiff's 1/2 share in the suit property, Ex.B1 sale deed is a voidable transaction in so far as the plaintiff's 1/2 share is concerned and therefore, the plaintiff is entitled to seek the avoidance of the same as per law.

11. Prior to the suit, there has been exchange of notices between the parties viz., the plaintiff and the second defendant and the same has been marked as Exs.A2 & A3. Inasmuch as the



first defendant is entitled to 1/2 share in the suit property, so far as her 1/2 share is concerned, Ex.B1 sale deed is found to be a valid transaction. Only in respect of the plaintiff's 1/2 share in the suit property, Ex.B1 is found to be a voidable transaction and the plaintiff is entitled to challenge the same as per law.

12. From the pleas put forth by the plaintiff in the plaint, the suit having been filed on 23.07.1998 and the plaintiff having described that she was aged about 27 years on the date of the filing of the suit, it is evident that the plaintiff would have been born in 1971. Thus, it is found that the plaintiff would have attained majority in 1989. Ex.B1, being a voidable transaction as far as the plaintiff's 1/2 share in the suit property, accordingly, the plaintiff would be entitled to challenge the same as per law. It is not in dispute that for challenging Ex.B1 sale deed, as regards her 1/2 share, the plaintiff should have laid the suit within three years, after she had attained majority. The same is provided under Article 60(a) of the Limitation Act, 1963. As per Article 60(a) of the Limitation Act, 1963, the time, to set aside the transfer of the property made by the Guardian of Ward, is three years and the abovesaid time runs from the period, when the Wards attains majority. Therefore, as rightly contended by the Second defendant's counsel, under Article 60(a) of the Limitation Act, 1963, it is not to be stated that the time to challenge Ex.B1 sale deed by the plaintiff qua her 1/2 share is from the date of the knowledge of Ex.B1 by the plaintiff and on the other hand, the time would commence from the period, when the plaintiff attains majority. Therefore, it is evident that the first appellate Court has erred in holding that the plaintiff would be entitled to challenge the sale deed from the date of the knowledge of Ex.B1 sale deed and thereby, proceeded to hold that since the plaintiff had come to know about the sale transaction Ex.B1 only from the reply notice sent by the second defendant dated 22.06.1998, her suit is not barred by limitation. However, when as per Article 60(a) of the Limitation Act, 1963, time does not run from the date of the knowledge of the plaintiff and on the other hand, the time runs from the date of her attaining majority and accordingly, when as above pointed out, the plaintiff having attained majority in the year 1989, she should have laid the suit within three years from the said date i.e. on or before 1992. However, the plaintiff has laid the suit only on 23.07.1998. Thus it is obvious that the plaintiff's suit is liable to be dismissed on the point of limitation and accordingly, the trial Court has rightly dismissed the plaintiff's suit. The reckoning of the period of limitation by



the first appellate Court from the date of the knowledge of the plaintiff qua Ex.B1 sale deed is found to be not sustainable in the eyes of law as above pointed out and accordingly, it is found that the first appellate Court's reasonings and conclusions on the point of limitation are liable to be set aside.

13.In the light of the abovesaid factors, when the sale deed effected by the natural guardian viz., the first defendant is only a voidable transaction and when the same has not been challenged by the plaintiff within the time allowed by law and when as above pointed out, the first defendant had only alienated the suit property for necessity, accordingly, the sale deed effected by the natural guardian would also be binding on the plaintiff, more particularly, when the plaintiff had also not chosen to challenge the same within the time framed by law, in such view of the matter, the plaintiff is found to be not entitled to seek any of the reliefs prayed for by her.

14.The second defendant has also taken the plea of limitation in the written statement and accordingly, it is noted that the trial Court has also framed an issue with reference to the same. Therefore, the contention put forth by the plaintiff's counsel that no plea of limitation has been raised by the defendant in written statement, as such, cannot be countenanced.

15.For the reasons aforesaid, the substantial questions of law formulated in the second appeal are accordingly, answered in favour of the second defendant and against the plaintiff.

In conclusion, the Judgement and Decree dated 31.07.2008 passed in A.S.No.29 of 2005 on the file of the Subordinate Court, Dharmapuri are set aside and resultantly, the judgment and decree dated 30.07.2004 passed in O.S.No.222 of 1998 on the file of the District Munsif Court, Palacode, are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



To:

1. The Subordinate Court, Dharmapuri.
2. The District Munsif Court, Palacode.
3. The Section Officer, V.R. Section, High Court, Madras.

+1 CC to Mr. R. Selvakumar, Advocate sr 21872.

S.A.No.144 of 2009

SS (CO)
SP (11/01/2022)