



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 15.12.2021

C O R A M

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

Second Appeal No.2082 of 2004

1.G.Kuppan

2.G.Ravichandran

3.G.Saravanan

4.G.Thirunavukkarasu

..Appellants/ Plaintiffs

Vs

1.Lakshmiammal

2.Rajamani

3.Gowri

4.Nagendiran

5.Selvaraj

6.Venkatesan

7.Govindaraj

8.Valli

9.Dhanalakshmi

..Respondents/Respondents/Defendants

Prayer: Second Appeal is filed against the judgment and decree dated 16.10.2003, made in A.S.No.57 of 2001, on the file of the Subordinate Judge, Kancheepuram, confirming the Judgment and Decree dated 31.07.2001 made in O.S.No.17 of 1999, on the file of the District Munsif cum Judicial Magistrate, Uthiramerur.

For Appellant ... Mr.R.Nandakumar

For Respondent ... Mr.P.Ravishankar Rao
for R3 to R9
R1 Served No Appearance
R2 Died



J U D G M E N T

The second appeal is preferred against the judgment and decree dated 16.10.2003, made in A.S.No.57 of 2001, on the file of the Subordinate Judge, Kancheepuram, in confirming the judgment and decree dated 31.07.2001 made in O.S.No.17 of 1999, on the file of the District Munsif cum Judicial Magistrate, Uthiramerur.

2. The plaintiffs, who are not succeeded before the Courts below, are the appellants herein. For the sake of convenience, the parties are referred to as before the trial Court.

3. Facts briefly narrated and necessary for the disposal of the second appeal is as follows:

The plaintiffs are the sons of one Gopal Naicker. The first defendant is the wife of Gopal Naicker. The suit property is the joint family property of Gopal Naicker, which was in his possession and enjoyment. As legal representatives, the plaintiffs are entitled to 4/5 share in the suit property. It is the case of the plaintiffs that in order to grab the property belong to the plaintiffs, the first defendant executed a sale agreement in favour of the 2nd defendant. It is stated that for the repayment of the debts incurred by Gopal Naicker, the first defendant executed sale agreement in favour of the 2nd defendant. The sale was executed on 20.04.1979. It is not true to state that the first defendant bought 16 cents of land. It is the case of the plaintiffs that the sale is not true, not bonafide and not a valid one. It is their case that the sale is not binding the plaintiffs. However, it is their case that the 2nd defendant can claim an extent of 1/25th in the suit property. Hence, the plaint.

3.1. The case of the 2nd defendant before the trial Court is that since the wife of Gopal Naicker, who is the family manager/first defendant, has executed the sale in favour of the 2nd respondent, which is for a legal necessity, the plaintiffs, who were minor at that point of time is bound by the sale and hence, the suit is liable to be dismissed.

4. On the side of the plaintiffs, one witness was examined as P.W.1 and as many as 6 documents were exhibited as Ex.P1 to Ex.P6. On the side of the defendants, one Nagendran was examined as D.W.1 and Ex.D1 to Ex.D4 were marked as documents.



5. The trial Court, after considering the oral and documentary evidence, came to the conclusion that the sale has been executed by the first defendant in favour of the second defendant for valid consideration in order to repay the debts incurred by Gopal Naicker and hence, the said sale is valid and after the demise of the 2nd defendant, the defendants 3 to 10 were in peaceful possession and enjoyment of the suit property and hence, the plaintiffs are not entitled to claim the suit property and accordingly, the trial Court dismissed the suit.

6. As against the said dismissal, the plaintiffs filed an appeal before the first appellate Court. The first appellate Court, after considering the judgment and decree rendered by the trial Court, dismissed the appeal and answered in favour of the respondent/2nd defendant. Aggrieved by the concurrent judgment rendered by the Courts below, the plaintiffs are before this Court with this second appeal.

7. While admitting the second appeal, this Court framed the following substantial questions of law:

"1. Whether the Courts below are right in non-suiting the plaintiffs after having held that the plaintiffs are entitled to a substantial share but that they have been alienated by first defendant for family necessity?

2. Whether the Courts below are right in holding that first defendant alienated the suit property for joint family purpose and debts?"

8. The learned counsel for the appellants/plaintiffs contended that the trial Court failed to consider the fact that the first plaintiff and the first defendant have been living separately and in holding that the plaintiffs have not included all the properties and hence, the suit is bad for non joinder of all the properties. It is the further contention of the plaintiffs that the Courts below were erred in finding that the sale was for the legal necessity.

9. The learned counsel for the respondents contended that the findings rendered by the Courts below need not be interfered with. The sale made by the first defendant to the 2nd defendant is a bonafide sale. The plaintiffs have filed the suit nearly after 22 years of the sale made in favour of the 2nd defendant. The further contention of the respondents is that the sale deed dated 20.04.1979 executed in favour of the 2nd respondent has not been challenged and hence, the well considered judgment of the Courts below has to be confirmed.



WEB COPY

10. Both the Courts below have framed comprehensive and relevant issues and after discussed the issues in detail and have arrived at reasonable conclusion. The issue considered by the first appellate Court is as follows:

(1) Whether each of the appellant is entitled to 1/5th share in the suit property?

(2) Whether the sale by the first defendant/respondent in favour of the second defendant/respondent was for the purpose of discharging the joint family debts incurred by Gopal Naicker?

(3) Whether the second respondent was a bona fide purchaser for value?

(4) Whether the suit is bad for partial partition as all the property belonging to Gopal Naicker has not been included in the partition suits?

(5) Whether the plaintiffs are entitled to the relief as claimed?

Whether the decree and judgment of the trial Court is liable to be set aside.

11. It is an admitted fact that the suit property was allotted to the share of Gopal Naicker in a partition arrangement on 09.07.1966. Gopal Naicker died in the year 1978 leaving behind his wife and the plaintiffs as his legal heirs. After the death of Gopal Naicker, the first respondent/first defendant sold the property in favour of the second respondent/second defendant on the ground that the sale was towards discharging debts, which were incurred for legal necessity. It is equally an admitted fact that the plaintiffs were minors at the time when the sale took place. The sale is under challenge.

12. The Courts below have considered the fact that when the suit property was sold out, after discharging the debt, the first respondent has purchased the property in R.S.No.564/2A, to an extent of 16 cents. From the recitals in the sale deed executed by the first respondent, the Courts have come to the conclusion that the sale was for legal necessity. The recitals in the sale deed have been supported by oral evidence. The plaintiffs have not asked for any share in the property, which was purchased after the sale of the suit property and that the plaintiffs are not included remaining properties, which were available for partition. There is a finding to the effect that the suit is bad for partial partition. Accordingly, the Courts have taken note of the fact that the plaintiffs filed the suit, while they were residing along with the first respondent. The first appellate Court has also come to the conclusion that the



claim of the plaintiffs are not a bonafide one and hence the well considered and well answered judgment of the first appellate Court cannot be interfered with and hence, the second appeal is liable to be dismissed.

WEB COPY

13. In the result, the second appeal is dismissed. However, there is no orders as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

RR

To

1. The Subordinate Judge, Kancheepuram
2. The District Munsif cum Judicial Magistrate, Uthiramerur

Copy to

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

+2 Ccs to Mr.P.Ravishankar Rao, Advocate sr 66841.

S.A.No.2082 of 2004

GJ(CO)
SP(10/03/2022)