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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	23.07.2021
Pronounced On	03.08.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

S.A.No.169 of 2012

and

M.P.No.1 of 2012

(Through Video Conferencing)

1.Manogar

2.Sekar

3.Elangovan

4.Kanagavalli

...Appellants/Defendants 2 to 5

vs.

Ravi

...Respondent/Plaintiff

Second Appeal filed under Section 100 of Civil Procedure Code, 1908 against the Judgment and Decree dated 28.07.2011 passed in A.S.No.60 of 2010 by the Sub Court, Kallakurichi by confirming the Judgment and Decree dated 14.07.2010 passed in O.S.No.584 of 2008 by the III Additional District Munsif Court, Kallakurichi.

For Appellants : Mrs.R.Meenal

For Respondent : Mr.G.Ranganathan

J U D G M E N T

The appellants were the second to fifth defendants in O.S.No.584 of 2008. They are aggrieved by the impugned Judgment and Decree dated 28.07.2011 passed by the Subordinate Judges Court, Kallakurichi (hereinafter referred to as First Appellate Court) in A.S.No.60 of 2010.

2. By the impugned Judgment and Decree dated 28.07.2011, the First Appellate Court has upheld the Judgment and Decree dated 14.07.2010 passed by the III Additional District Munsif Court, Kallakurichi (hereinafter referred to as Trial Court) in O.S.No.584 of 2008.

3. The sole respondent was the plaintiff before the Trial Court in O.S.No.584 of 2008 and had filed the suit against his



mother, namely Chinnaponnu the first defendant and the appellants herein. The appellants herein are the paternal uncles and wife of one of paternal uncle to whom the property has been eventually sold.

4. The mother of the respondent is not a party in this Second Appeal. The case of the appellants before this Court is that a collusive proceeding was initiated by the respondent along with his mother Chinnaponnu who was arrayed as the first defendant in the suit who conveniently remained absent before Trial Court.

5. It is submitted that O.S.No.584 of 2008 was filed beyond the period of limitation and contrary to Article 60 of the Limitation Act, 1963. It is the case of the appellant that the suit was filed by the respondent belatedly to set aside the sale vide Ex.A2 Sale Deed dated 24.04.1998 by the respondent's mother Chinnaponnu (the first defendant) to the first to third appellants/second to fourth defendants and to set aside the subsequent sale vide Ex.A3 Sale Deed dated 23.12.2004 by the first to third appellants/second to fourth defendants to the fourth respondent/fifth defendant.

6. Learned Counsel for the appellants further submits that the property in question was settled in favour of the respondent/plaintiff by the paternal grandfather vide Ex.A1 dated 30.05.1997, wherein, the age of the respondent was given as 13 years. It is submitted that the property in question was sold by the respondent's mother for necessity of the respondent.

7. Learned Counsel for the appellants further submits that the respondent's mother Chinnaponnu/first defendant had executed a sale deed dated 24.04.1998 in Ex.A2 in favour of the first to third appellants/second to fourth defendants, in her capacity as a guardian of the respondent as the respondent was a minor at the time of execution of Ex.A2 Sale Deed dated 24.04.1998.

8. The learned counsel for the appellants however submits that in Ex.A19, the another Gift Deed dated 15.09.1991, the age of the respondent/plaintiff has been shown as 11 years.

9. It is submitted that long after the execution of Ex.A2 Sale Deed dated 24.04.1998 and Ex.A3 Sale Deed dated 23.12.2004, the suit was filed on 11.08.2008 and was therefore time barred.

10. It is submitted that both the Trial Court and the First Appellate Court committed error in concluding that the sale was made by the respondent's mother as a guardian of respondent without obtaining permission of the Court, when indeed the suit ought to have been filed within three years from the date of attaining majority as per Article 60 of the Limitation Act, 1963.



11. It is submitted that the respondent cannot plead ignorance of the sale as the sale was made by his own mother and the suit was filed in a collusive manner where the mother of the respondent/first defendant has remained exparte.

12. Defending the impugned Judgment and Decree, the learned counsel for the respondent submits that the sales in Ex.A2 dated 24.04.1998 and Ex.A3 dated 23.12.2004 were without knowledge of the respondent. On coming to know that his mother/first defendant had made transfers in favour of first to third appellants and thereafter to the fourth appellant, the suit came to be filed.

13. It is further submitted that where sales have been made without knowledge of a person who has a right over the property, the period of limitation would commence from the date of knowledge and not from the date of actual sale or attaining the majority. In this connection, he relied on the following decisions:-

i. Hindustan Commercial Bank Vs. Jagtar Singh, 1973 SCC OnLine P&H 190 : AIR 1974 P&H 208

ii. Ramachandra Monappa Kallihal and Another Vs. Sunanda Tukaram Koparde, 2016 SCC OnLine Kar 2851 : AIR 2016 Kar 140.

14. I have considered the arguments advanced by the learned counsel for the appellants and the learned counsel for the respondent. I have perused the impugned Judgment and Decree passed by the First Appellate Court and the Judgment and Decree passed by the Trial Court.

15. In this appeal, the substantial questions of law arises that and for consideration as to whether O.S.No.584 of 2008 filed by the respondent was barred by limitation under Section 8 of the Hindu Minority and Guardianship Act, 1956 and under Article 59 and/ or 60 of the Limitation Act?

16. The said suit was filed for a declaration that the sale in Exs.A2 and A3 are bad and for a permanent injunction to restrain the appellants from interfering with the peaceful possession of the suit schedule property.

17. It is noticed that the paternal grandfather of the respondent namely Kumarapillai had settled the property in favour of respondent vide Ex.A1 dated 30.05.1997.

18. In Ex. A1 dated 30.05.1997, the age of the respondent has been given as 13 years. Therefore, the age of the respondent at the time of execution of Ex.A2 Sale Deed dated 24.04.1998 would have been only 14 years. He would have therefore attained the age of majority sometime in 2002.



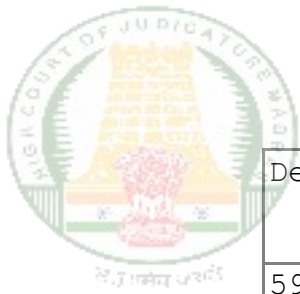
19. Therefore, the execution of Ex.A2 Sale Deed dated 24.04.1998 would have been contrary to Section 8 of the Hindu Minority and Guardianship Act, 1956.

20. Thus, O.S.No.584 of 2008 ought to have been filed by the respondent within three years from his attaining majority. If the age in Ex.A2 Sale Deed dated 24.04.1998 was the correct age, O.S.No. 584 of 2008 filed by the respondent in 1998 would have been time barred in view of Article 60 of the Limitation Act, 1963 as is evident from a reading of the said Article which reads as under :-

To set aside a transfer of property made by the guardian of a ward--		
(a)by the ward who has attained majority;	Three years	When the ward attains majority.
(b)by the ward's legal representative-		
i. when the ward dies within three years from the date of attaining majority;	Three years	When the ward attains majority.
ii. when the ward dies before attaining majority.	Three years	When the ward dies.

21. On the other hand, if the respondent was a major in 1998 at time of execution of Ex.A2 Sale Deed dated 24.04.1998, the sale in Ex.A2 Sale Deed dated 24.04.1998 was bad. In which case, Article 59 of the Limitation Act, 1963 would get attracted. Under Article 59, the date of knowledge of the respondent is relevant for canceling the deed.

22. The Article 59 of the Limitation Act, 1963 is reproduced below:-



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Description of suit	Period of limitation	Time from which period begins to run
59. To cancel or set aside an instrument or decree or for the rescission of a contract	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.

23. In the plaint, the respondent has given his age as 28 at the time of filing of the suit in the year 2008 and 11 years when Ex.A19 - Sale Deed dated 15.09.1991 was executed by the maternal grandfather. Thus, the age of the respondent would have been 18 years when Ex.A2 - Sale Deed dated 24.04.1998 was executed by his mother infavour of the 1st to 4th appellants in the year 1998.

24. Therefore, it stands confirmed that at the time of execution of Ex.A.2 Sale Deed dated 24.04.1998, the respondent was 18 years and had attained the age of majority. Thus, the suit ought to have been filed within three years from the date of execution of Ex.A.2 Sale deed under Article 59 of the Limitation Act, 1963 and not under Article 60 of the Limitation Act, 1963.

25. The respondent in his plaint has pleaded that he came to know about the two sale deeds in Ex.A2 dated 24.04.1998 and Ex.A.3 dated 23.12.2004 only in the year 2008. This has not been effectively contradicted or denied by the appellants before the Trial Court. Thus, the suit filed by the respondent in O.S.No.584 of 2008 before the III Additional District Munsif Court, Kallakurichi was well under Article 59 of the Limitation Act, 1963.

26. Therefore, I do not find any infirmity in the impugned Judgment and Decree dated 28.07.2011 passed by the First Appellate Court in A.S.No.60 of 2010 confirming the Judgment and Decree dated 14.07.2010 passed by the Trial Court in O.S.No.584 of 2008. Therefore, Section 9 of the Limitation Act, 1963 is answered against the appellant.



27. In view of the above, this appeal filed by the appellants is liable to be dismissed and accordingly it is dismissed. No costs. Consequently, connected miscellaneous petitions is closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

kkd

To

1. The Subordinate Judge
Kallakurichi

2. The III Additional District Munsif Court,
Kallakurichi.

+1 CC to M/s.R. Meenal, Advocate sr 38171

+1 CC to Mr.G.Ranganathan, Advocate sr 38211.

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and M.P.No.1 of 2012

PP(CO)
SP(27/10/2021)