



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.12.2021

WEB COPY

CORAM:
THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A.No.1045 of 2021

M.Arumugam (Died)

1.A.Nachammal (F/66 years)
W/o.Late Arumugham

2.A.Mohankumar (M/46 years)
S/o.Late Arumugham

Both are residing at
No.2/16, Aandi Thottam,
Iduvai Villae, Iduvai Post,
Tiruppur Taluk and District.

A.Sivasubramaniyam (died) ... Appellants/Appellants/Plaintiff 2
and 3

.Vs.

1.B.Eswaran (M/57)
S/o.Late Bagavathi Gounder

2.Suppathal (F/79)
W/o.Late Bagavathi Gounder

3.Sundarambal (F/61)
D/o.Late Bagavathi Gounder
W/o.Palanisamy
No.4, Jawahar Nagar 4th Street,
Weavers Colony,
Tiruppur Town and Taluk.

4.A.Senniappan (M/54)
S/o.Late Annamalai Gounder

5.A.Chinnammal (F/76)
W/o.Late Annamalai Gounder,
R1, R2, R4 and R5 are residing at
Aandi Thottam,
Iduvai Village, Iduvai Post
Tiruppur Taluk and District.

... Respondents/Respondents/Defendants



PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the Judgment and decree of the learned Principal Subordinate Judge, Tiruppur in A.S.No.36 of 2014 dated 20.09.2019 partly setting aside the judgment and decree of the learned Additional District Munsif, Tiruppur in O.S.No.48 of 2007 dated 31.10.2014 and allow the Second Appeal.

For Appellants : Mr.J.Franklin

J U D G M E N T

The Second Appeal is filed challenging the Judgment of the learned Principal Sub-Judge, Tiruppur in A.S.No.36 of 2014 dated 20.09.2019, partly setting aside the Judgment of the learned Additional District Munsif, Tiruppur in O.S.No.48 of 2007 dated 31.10.2014.

2.One Arumugham, husband of the 1st Appellant and father of the 2nd Appellant filed a Suit against the Respondents, claiming the following reliefs:

"(a)Declaring that the Plaintiff is the absolute owner of the suit properties (C Schedule properties) and granting consequential injunction restraining the defendants and their men, agents, servants and any one claiming under them from any way interfering with the Plaintiff's peaceful possession and enjoyment of the suit properties.

(b)Declaring that the alleged sale deed dated 25.05.1970 in Document bearing No.1071/1970 and alleged release deed dated 05.01.200 in Document bearing No.145/2007 in Sub Registrar Office, Tirupur are null and void and unenforceable one and will not bind the Plaintiff's right in the suit properties.

(c)Awarding of the cost of the suit"

3.The case of the Appellants in brief is as follows:

The suit properties and other properties owned by one Muthu Gounder and his wife Samakkal @ Pappammal as ancestral property. Muthu Gounder died interstate, leaving his wife Samakkal @ Pappammal, Bagavathi Gounder, Annamalai Gounder and Arumugam/Plaintiff as his legalheirs. After the death of Muthu Gounder, his wife Samakkal @ Pappammal, his sons Bagavathi Gounder, Annamalai Gounder and Plaintiff who was a minor represented by his Mother Samakkal @ Pappammal partitioned the entire properties through a registered partition deed dated 11.09.1964. In the said partition, 'A' schedule property was



allotted to Bagavathi Gounder, 'B' schedule property was allotted to Annamalai Gounder and 'C' schedule property was allotted to Plaintiff. Bagavathi Gounder maintained 'C' schedule property as Kartha of the family. Bagavathi Gounder had secret arrangements, fraudulently created and fabricated sale deed on 25.05.1970, in respect of 'C' schedule properties. The said sale deed was not executed by Plaintiff and therefore, it is null and void and will not bind the Plaintiff. However, Bagavathi Gounder filed Suit for declaration and permanent injunction against the Plaintiff and Defendants 4 and 5 before the District Munsif, Tiruppur in O.S.No.218 of 1976. The said Suit was dismissed. Bagavathi Gounder died in the year 1984, leaving behind Defendants 1 to 3 as his legalheirs. Plaintiff alone is in possession and enjoyment of the suit schedule properties. Defendants 1 to 3 are trying to trespass and encroach the portion of the suit properties. Therefore, suit came to be filed for the relief stated above.

4.The case of the Respondents/Defendants is that the suit properties originally belonged to Muthu Gounder. There was a partition deed dated 11.09.1964 and all the three sons were allotted share in the family properties. It is the case of the Respondents that on 25.05.1970, the Plaintiff sold his portion of 'C' schedule property in favour of Bagavathi Gounder. It is false and incorrect to state that Bagavathi Gounder had obtained the sale deed secretly and fraudulently. He himself sold an extent of 0.45 acres in S.F.N.217/1, 1.61 acres in S.F.198/3 and another 0.03 ½ acres in S.F.200/1 of Iduvoi Village, Tiruppur Taluk with 1/10 share in the well in S.F.200/1 in favour of Bagavathi Gounder by registered sale deed dated 25.05.1970. The suit is hopelessly barred by limitation. After purchase of the suit properties, Bagavathi Gounder dug a well in S.F.No.217/1 and obtained an Electricity Service connection. Necessary mutation had been made in revenue records. After the death of Bagavathi Gounder in the year 1984, Defendants 1 to 3, as legalheirs of Bagavathi Gounder are in possession and enjoyment of the suit properties. Electricity connection also changed in the name of Defendants. Bagavathi Gounder sold Well rights to Sennimalai Gounder on 28.01.1975. Plaintiff purchased the same Well rights from Sennimalai Gounder. The Defendant had put up a power loom godown in 3.5 cents in S.F.No.200/1 in the year 2000 and obtained a separate service connection. After purchase of suit properties from Plaintiff, Bagavathi Gounder and after him, Defendants are in possession and enjoyment of the suit properties for all these years. Plaintiff filed O.S.No.84 of 2007 claiming title in respect of a vacant land belonged to the Defendants. Suit in O.S.No.218 of 1976 is in respect of



house properties in the village and it has no connection with the properties involved in this case. Plaintiff has instituted the case only to harass the Defendants. The suit has no merit and liable to be dismissed.

5. On the basis of the above pleadings, the trial Court framed the following issues:

- (1) Whether the suit is barred by limitation?
- (2) Whether 'C' schedule property was maintained by Bagavathi Gounder as Kartha of Hindu joint family?
- (3) Whether the suit properties are in possession and enjoyment of the Plaintiff?
- (4) Whether sale deed and release deed can be declared as null and void?
- (5) Whether Plaintiff is entitled for the relief of declaration in respect of 'C' schedule properties?
- (6) Whether Plaintiff is entitled for the relief of permanent injunction?
- (7) To what other relief, the Plaintiff is entitled for?

6. During the trial, PW1 was examined and Ex.A1 to A14 were marked on the side of the Plaintiff. DW1 & 2 were examined and Ex.B1 to 15 were marked on the side of the Defendants.

7. On considering the oral and documentary evidences, the trial Court found that Plaintiff had sold the suit properties through Ex.A2 sale deed to Bagavathi Gounder and after purchase of the suit properties Bagavathi Gounder and after his death, Defendants 1 to 3 are in possession and enjoyment of the suit properties. In this view of the matter, trial Court dismissed the suit. However, in Appeal, the learned Appellate Judge, while confirming the finding of the trial Court in other aspects, found that Appellant is entitled for the relief of declaration and permanent injunction in respect of the properties allotted through partition and not covered under Ex.A2 sale deed. Not satisfied with that, now the Appellants have come up with this Appeal, for setting aside the judgment of the Court below and for decreeing the Suit.

8. Learned counsel for the Appellants submitted that deceased Arumugam was a minor at the time of partition of the suit properties and other properties in the family of Muthu Gounder. Bagavathi Gounder, as an eldest member of the family maintained 'C' schedule property as Kartha. Deceased Arumugam has not executed the sale deed dated 25.05.1970, voluntarily and with a knowledge that he was executing the sale deed. Taking advantage of his tender age and also the fact that Bagavathi Gounder was the eldest member of the family and was acting as



Kartha, he fraudulently created Ex.B2 sale deed. Therefore, either Bagavathi Gounder or his legalheirs Defendants 1 to 3 cannot claim any right in the suit properties on the basis of Ex.B.2 sale deed. Without considering this main aspect, both the Courts below have dismissed the Suit in respect of the suit properties. But the Appellate Court granted limited relief in respect of properties allotted to deceased Arumugam in the partition, but not covered under Ex.B2. It is the submission of the learned counsel for the Appellants that the suit filed by deceased Arumugam in respect of the suit properties should have been decreed. However, without considering merits of the case, without properly appreciating the evidence and applying law, the suit was dismissed in respect of the suit properties. Thus, he submitted and prayed for reversal of the judgment of the Courts below.

9.Considered the submission of the learned counsel for the Appellants and perused the records.

10.On the pleadings stated above, it is evident that there is no dispute with regard to the fact that suit properties were originally belonged to Muthu Gounder and his wife Samakkal @ Pappammal. It is also not in dispute that there was a partition among the family members on 11.09.1964 and in the said partition 'A' schedule property was allotted to Bagavathi Gounder, 'B' schedule property was allotted to Annamalai Gounder and 'C' schedule property was allotted to Plaintiff, Arumugam. He was a minor at the time of partition and was represented by his Mother/next friend/guardian Samakkal @ Pappammal. Till this, there is no dispute. Parties are agreeing with each others case.

11.The dispute arises only when Arumugam set up a case that some portion of the properties allotted to him in partition was taken by Bagavathi Gounder by fraudulently creating a sale deed dated 25.05.1970. It is his case that sale deed was not executed by him and therefore, it has to be declared as null and void. It is not known as to what was the age of the Plaintiff/Arumugham at the time of execution of sale deed dated 25.05.1970. Learned counsel for the Appellant is not in a position to say, whether Appellant was a major or minor on 25.05.1970, when Ex.B2 sale deed was executed. Assuming that Appellant was a minor on 25.05.1970, he ought to have instituted the suit, challenging Ex.B2 sale deed, within three years after attaining majority. However, the suit was filed only after 37 years. Thus, Suit is palpably barred by limitation.

12.Both the Courts below have found from the evidence



available that after the execution of sale deed in favour of Bagavathi Gounder, necessary mutation have been made in revenue records. The suit properties were in possession and enjoyment of Bagavathi Gounder and after his death, Defendants 1 to 3 are in enjoyment and possession of the suit properties. It was also found that Appellants/Plaintiffs have not produced any materials to show that they are in possession and enjoyment of the suit properties, on the date of filing the suit. The earlier suit filed by the parties do not relate to the suit properties and therefore, earlier suits have no relevance to the disposal of this Second Appeal. The trial Court dismissed the suit stating that Appellants have not established their case for the reliefs claimed. However, first Appellate Court, after confirming the judgment of the trial Court and dis-entitlement of the Appellants/Plaintiffs in respect of suit properties observed saying that Appellants are entitled for the relief of declaration of title and injunction in respect of other properties allotted to Arumugam in the partition, which are not covered under Ex.B.2, sale deed. Those properties are not suit properties in this case. Therefore, granting a Decree for declaration of title and injunction in respect of properties not included as suit properties cannot be permitted and therefore, this particular finding of the first Appellate Court has to be necessarily reversed. The Appellate Court ought to have dismissed the appeal.

13. There is no substantial question(s) of law involved in this Second Appeal. This Court set aside the finding recorded by the Appellate Court, granting declaration of title and permanent injunction in respect of other properties allotted to the Plaintiff in the partition, which are not covered under Ex.B.2 sale deed. The finding of the Appellate Court in confirming the judgment of the trial Court that Appellants are not entitled for the relief claimed in respect of suit properties is confirmed.

14. Accordingly, the Second Appeal is dismissed. However, no order as to costs.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Subordinate Judge,
Tiruppur.

2.The Additional District Munsif,
Tiruppur.

S.A.No.1045 of 2021

SRA(CO)
GN(09/02/2022)