



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.01.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.(MD)No.608 of 2020

and

CMP(MD) Nos.6468 & 6469 of 2020

WEB COPY

1.K.R.Subitha
2.K.R.Subeer
3.K.R.Sunekar
4.Radha

:Appellants/Appellants/Plaintiffs

Vs.

1.Plory
2.Rubi Leela Beth

: Respondents/ Respondents/ Defendants

PRAYER:- Second Appeal filed under Section 100 of Code of Civil Procedure, against the judgment and Decree dated 06.11.2019 passed in A.S.No.132 of 2014, on the file of the Subordinate Judge, Kuzhithurai, confirming the judgment and decree daed 23.09.2014 passed in O.S.No.265 of 2002, on the file of the Principal District Munsif Court, Kuzhithurai.

For Appellant : Mr.M.R.Sreenivasan

JUDGMENT

The plaintiffs in O.S.No.265 of 2002 are the appellants. Challenge is to the dismissal of the suit and its affirmation in A.S.No.132 of 2014.

2.The suit was laid by the plaintiffs claiming that the suit property originally belonged to Podikutty Nadar, who died in the year 1990, leaving behind nine daughters and three sons. It is also claimed by the sons that the daughters were given in marriage prior to 1989 and they have no right over the property. According to the plaintiffs, the suit property is the ancestral property of Podikutty Nadar and after the death of Podikutty Nadar and his brother Manickam, the suit property was allotted to the third defendant in a family arrangement. The plaintiffs being the heirs of the third defendant are entitled to the share in the property. On the above allegations, the plaintiffs sought for 4/5th share in the suit property.

3.The suit was resisted by the first defendant, who is the purchaser of the property from 3rd defendant. The first defendant would contend that the suit property is a self-acquired property of third defendant. He has obtained the same under a Will executed by



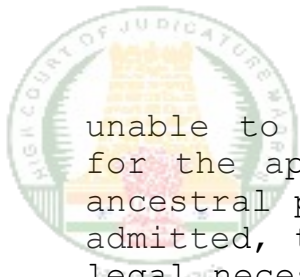
his father Podikutty Nadar. According to the first defendant, the third defendant, along with his mother, conveyed the property to the second defendant under a sale deed, dated 10.11.1994. The first defendant purchased the property from the second defendant on 25.11.1998. According to the first defendant, the suit itself is an abuse process of Court. The second defendant would also point out that after the sale, the third defendant had set up one Sulochanan Nair to file two suits in O.S.No.494 of 1998 and O.S.No.517 of 1998, for specific performance and injunction, on the basis of a fraudulent agreement. Those two suits were dismissed on 04.10.2004 and 20.09.2004 respectively. The third defendant himself had filed a suit in O.S.No.485 of 1998, for declaration of title and recovery of possession, which also came to be dismissed on 11.11.2003. The mother of the third defendant Chellammal had filed another Suit in O.S.No.276 of 1999 claiming partition, which also came to be dismissed on 12.12.2003. Having failed to his attempts to some how get the sale deed set aside, the third defendant has now set up his wife and children to file the above suit.

4. At trial, the fourth plaintiff was examined as PW 1 and Exs.A1 to A7 were marked. While the first defendant was examined as DW.1, Exs.B1 to B12 were marked.

5. The learned Principal District Munsif, Kulithurai, who tried the suit, upon consideration of the evidence, concluded that the plaintiffs have not established that the property is the ancestral property of third defendant. Though the Will was not produced, the learned trial judge took into account the recitals in the Will dated 10.11.1994, executed by the third defendant in favour of the second defendant and concluded that the suit property is not the ancestral property of the third defendant. The trial Court also faulted the plaintiffs for not impugning the alienation made by the third defendant since he was the Karta of the family. In the absence of any allegation as to the nature of the alienation made by the third defendant, the learned trial judge concluded that the plaintiffs cannot seek to attack the sale without there being pleadings, regarding the nature and purpose of the alienation. On the above findings, the learned trial judge dismissed the suit.

6. Aggrieved thereby, the plaintiffs preferred an appeal in A.S.No.132 of 2014. The learned Subordinate Judge, Kulithurai, who heard the appeal, agreed with the findings of the trial Court and dismissed the appeal. Hence, this Second Appeal.

7.I have heard Mr.M.R.Sreenivasan, learned counsel for the appellant. Mr.M.R.Sreenivasan, would contend that there is no evidence that the alienation was for the benefit of the minors. He would also contend that the Courts below have concluded that the property of the third defendant has been obtained by a Will executed by Podikutty Nadar ignoring the non-production of the Will. I am



unable to countenance both the contentions of the learned counsel for the appellants. Though it is claimed that the property is the ancestral property and the status of the third defendant as Karta is admitted, the plaintiffs have not whispered about the absence of the legal necessity in the plaint. In the absence of such pleadings, it is not open to the plaintiffs to contend that the alienation by the Karta is invalid. It is the settled proposition of law that even though the vendor is not described as Karta of the family, if he is the eldest male member the alienation should be shown to be one without legal necessity, in order to enable the other co-purchasers to impugne the same. Therefore, unless the plaintiffs pleaded and proved that there was no legal necessity, they cannot be heard to contend that the alienation is not binding on them.

8.As regards the second contention, admittedly the Will was executed by Podikutty Nadar in favour of his son third defendant. The third defendant has sold the property in favour of the second defendant during 1994 and the second defendant had sold the property to the first defendant in the year 1998. Neither the first defendant nor the second defendant can be expected to produce or prove the Will. The sale deed in favour of the second defendant was executed by the third defendant and his mother Chellammal, who obtained the property under the Will executed by Podikutty Nadar. Even otherwise, there is no evidence to show that the property is the ancestral property of the third defendant. The Courts below found that there is no evidence to establish that the property is the ancestral property in the hands of the third defendant. Such factual findings cannot be interfered with in the Second Appeal, unless it is shown to be perverse.

9. Despite his best efforts, the learned counsel for the appellant is unable to demonstrate that the factual findings of the Courts below are perverse. He is unable to point out any question of law, much less a substantial question of law in this appeal.

10. Accordingly, this second appeal is dismissed without being admitted. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)



To

- 1.The Subordinate Judge, Kuzhithurai
- 2.The Principal District Munsif Court,
Kuzhithurai.
- 3.The Section Officer, (2 copies)
VR Section
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.R.NANDAKUMAR, Advocate (SR-1726[F] dated 21/01/2021)

Judgment made in
S.A. (MD)No.608 of 2020 and
CMP(MD) Nos.6468 & 6469 of 2020
Dated 20.01.2021

VB (11.02.2021) 4P 6C