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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

SA.No.530/2021 and CMP.No.11049/2021

[Virtual Mode]

1.Krishnan

2.Naina @ Prakash

3.Arunagiri

4.Lalitha

... Appellants/Respondents 8,9,10 and
11/LRs of 1st defendants

Vs.

1.M.Mani

2.N.Shanthi

3.S.Sumathi

4.Alexandar

5.Menaka

6.Geetha

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

...2nd and 3rd Respondents/3rd and 4th
Respondents/3rd and 4th Defendants

... Respondents 4 to 6/
Respondents 5 to 7/LRs of Plaintiff

Prayer:- Second Appeal filed under Section 100 of CPC to set aside the decree and judgment dated 20.11.2019 passed in AS.No.28/2017 on the file of the II Additional Subordinate Judge, Salem reversing the decree and judgment dated 03.10.2016 passed in O.S.No.633/2013 by the Principal District Munsif Court at Salem.

For Appellants : Mr.R.Nalliyappan

JUDGMENT

- (1) The learned counsel appearing for the appellant tried to mislead this Court by presenting the facts contrary to the pleadings and evidence. Apart from distortion of Courts, this Court finds an attempt is made by counsel so that this Court cannot understand or comprehend the case. The purpose behind the attitude and the misrepresentation of the



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counsel is unknown. Be that as it may, this Court on its own, read the papers and found that the Appeal is filed by the legal heirs of the deceased 1st defendant challenging the judgment and decree of II Additional Subordinate Judge, Salem in AS.No.28/2017 reversing the judgment and decree of the Trial Court namely Principal District Munsif Court, Salem in O.S.No.633/2013.

- (2) Brief facts that are necessary for the disposal of this Second Appeal are as follows:
- (3) The plaintiff is the mother of respondents 4 to 6 in this appeal. She filed the Suit in OS.No.633/2013 for partition and separate possession of her 1/5th share in the Suit property and for other consequential reliefs.
- (4) It is the case of plaintiff in the plaint that the Suit property originally belonged to one Sellayammal, grandmother of plaintiff. It is stated that the father of plaintiff by name Narayanan along with Sellayammal executed a registered Settlement Deed on 02.05.1976 in respect of the Suit property in favour of his wife, Panchalaiaammal and their children who are the plaintiff and defendants in the Suit.
- (5) It is admitted that the plaintiff and defendants 3 and 4 were minors when the Settlement Deed was executed and they were represented by their mother. It is the further case of plaintiff that the said Panchalaiaammal, the plaintiff and defendants were enjoying the Suit property as per the Settlement Deed till she died on 01.12.2004. Since, the plaintiff is also one of the heirs of Narayanan, it is stated that she is entitled to 1/5th share after the death of mother, Panchalaiaammal.
- (6) It is also admitted by the plaintiff that she came to know that her mother and others had executed a Release Deed on 09.11.1987. Though, the plaintiff had not executed any document in favour of the 1st defendant relinquishing her right over the Suit property, it is her specific case that she was surprised to notice the Release Deed when she applied for encumbrance certificate and obtained a copy of the same on 02.06.2013. Stating that the said document of release is invalid, it is contended that the mother had no right of alienation without leave of Court, especially when the plaintiff was a minor at that time, when the alleged deed was executed. The Suit was contested by the 1st



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defendant that a Kartha can alienate the property for the welfare of the minor and that the 1st defendant has spent huge amount for the celebration of the marriage for the plaintiff. It is stated that the Suit property originally belonged to their father, Narayanan. It is stated that the said Narayanan had executed a Settlement Deed in favour of his daughters. It is the further case of 1st defendant that by virtue of the Release Deed dated 09.11.1987, executed by Panchalaiaammal and two other sisters in favour of the 1st defendant, the property became the property of the 1st defendant. A plea was also raised that the 2nd defendant has filed a Suit against the 1st defendant and others in O.S.No.117/2011 on the file of the learned Principal District Munsif Court, Salem for partition and the plaintiff was also added as the 4th defendant. It is the further case of the 1st defendant that the subsequent Suit filed by the plaintiff is vexatious and hence prayed for dismissal of the Suit.

- (7) A plea was also raised that the Suit is barred by limitation as the plaintiff was ousted from enjoyment and 1st defendant is in exclusive possession from 1987. It is further stated that the Suit is barred by non joinder of the necessary parties. One important fact that is stated in the statement of 1st defendant is that the Release Deed was executed by showing only the 1st defendant as guardian for the plaintiff. The 2nd defendant in the Suit is one of the sisters of the plaintiff. A Written Statement was filed by her specifically stating that the Settlement Deed executed by the Narayanan and his mother was subject to several terms and conditions and that the said terms and conditions were flouted. It is stated that if the conditions are flouted, the document will be invalid.
- (8) It is further stated that the 1st defendant had fraudulently got a Release Deed executed by the mother and other sisters in favour of the 1st defendant, even during the time when the four daughters of Narayanan are minors. It is again stated that the plaintiff was represented by the 1st defendant who is the beneficiary under the Release Deed, and therefore the Release Deed is invalid. It is alleged further that the previous Settlement Deed in favour of the mother, she was not given any right of alienation with the clear intention to confer absolute title in favour of all the daughters of Narayanan. Therefore, a plea was raised by the 2nd defendant that the Release Deed is not only invalid but also fraudulent.



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- (9) Since, the previous Settlement Deed executed by the father was subject to certain conditions which were flouted by creating several alienations, the 2nd defendant described the transaction as a whole, as invalid in law and contended that they would not confer any right in favour of the 1st defendant. The Suit was dismissed mainly on the ground that the Suit was not filed within the period of limitation.
- (10) Further, the Trial Court also observed that the plaintiff was not in joint possession of the properties and therefore the Suit without paying the Court fee is not maintainable. Further, the Trial Court found that the Suit without a prayer to set aside the Release Deed executed by mother and others in favour of the 1st defendant is not maintainable after holding that the alienation is only voidable.
- (11) Referring to the provisions of Article 60(b) (ii) of the Limitation Act, the Trial court held that the limitation starts from the date when the guardian dies and that the Suit filed beyond three years after the death of mother or three years after the minor became major cannot be entertained.
- (12) The Trial Court relying upon a few judgments produced by the learned counsel appearing for the 1st defendant, held that the Suit is not maintainable without a prayer to set aside alienation namely the Release Deed. Aggrieved by the judgment and decree of the Trial Court the 2nd defendant preferred the Appeal in AS.No.28/2017 before the learned II Additional Subordinate Judge, Salem. The Lower Appellate court allowed the appeal by setting aside the judgment and decree of the learned Principal District Munsif Court in Salem in OS.No.633/2013 dated 03.10.2016. However, no relief was granted to the plaintiff. 2nd defendant was given liberty to prosecute her Suit for petition in O.S.No.56/2015. Aggrieved by the judgment and decree of the Appellate Court, the above Second Appeal is preferred by the legal heirs of the deceased, 1st defendant.
- (13) The learned counsel appearing for the appellants has referred to the pleadings of the 1st defendant and submitted that the Trial Court has accepted the plea of the 1st defendant on all issues and held that the Suit for partition is not maintainable. From the facts admitted and as seen from the judgment and decree of the Lower Appellate



Court, this Court finds that the 1st defendant has preferred this Appeal unnecessarily, challenging the findings.

(14) First of all, the 1st defendant though relies upon the Settlement Deed dated 02.05.1976 executed by Sellayammal and Narayanan in favour of Panchalaiaammal and others, she did not disclose the recitals of the document and the nature of disposition by the document which was filed before the Trial Court as Ex.A1. The Lower Appellate Court noticed that the Settlement Deed under Ex.A1 was subject to several conditions. As per the Settlement Deed, the mother had no right to deal with the property and was required to maintain the whole family and to give the daughters in marriage at the appropriate time and to give sridhana and protection to the daughters without any alienation or encumbrance over the Suit property.

(15) It was further recited that any alienation during the life time of mother is invalid, and that after the life time the property was to be taken by all the daughters with a power of alienation. Based on the recitals found in Ex.A1, the Lower Appellate Court found that the subsequent Release Deed under Ex.A2 is fraudulent and that therefore, the document Ex.A2 is invalid.

(16) Since, the Lower Appellate Court found that the Suit filed by the 2nd defendant in O.S.No.56/2015 for partition is pending before the I Additional District Munsif Court, Salem, reversed the findings in the judgment and decree of the Trial Court and reserved the right of the 2nd defendant to proceed with the Suit filed by her in O.S.No.56/2015.

(17) The question raised is about the nature and validity of the Release Deed under Ex A2. The learned counsel appearing for the appellant had made submission quite contrary to the pleadings in the plaint and Written Statement and the findings of the Court below. This Court is unable to understand the purpose of this Second Appeal.

(18) The appellant has raised several grounds in the Memorandum of Appeal. Quite contrary to the admitted facts, the learned counsel has made only submissions focussing on the question of limitation. It is the specific case pleaded in the plaint that the plaintiff came to know about the Release Deed only on 12.06.2013.



(19) The Trial Court without considering the specific plea of plaintiff about her knowledge and the position that the 1st defendant did not dispute the specific case of plaintiff as to her knowledge about the Release Deed under Ex.A2 held that the Suit is barred by limitation. The Trial Court has found that the Suit ought to have been filed within three years from the date of alienation. It is to be seen that the document under Ex.A2 (Release Deed) is said to have been executed by mother and other sisters in favour of the 1st defendant. In this case, it is admitted by 1st defendant that in the Release Deed, the 1st defendant herself represented the plaintiff who was then a minor. When the mother is alive, 1st defendant cannot be the natural guardian. The beneficiary had represented the minor in the transaction. The Hon'ble Supreme Court has held in Madhegowda Vs. Ankegowda reported in AIR 2002 SC 215 that such alienation is not required to set aside and that minor can repudiate the transfer.

(20) It is not shown before this Court that the said Release Deed was for consideration. This Court is unable to find that the document was for the benefit of minors. Even a natural guardian cannot execute a Settlement Deed or Gift Deed representating the minor. Any document of conveyance by a Defacto guardian is invalid and void as it is opposed to Section 11 of the Hindu Minority and Guardianship Act, 1956. A prayer for setting aside the alienation is not required when a Suit is filed for partition repudiating the alienation if the alienation is not by a natural guardian.

(21) In this present case, the Lower Appellate Court has rendered a specific finding that the document Ex.A2 is contrary to the recitals of the document under Ex.A1. This Court is of the view that the document Ex.A2 is void as against plaintiff as the plaintiff was not represented by her natural guardian but by 1st defendant.

(22) The argument of counsel for appellants is contrary to the provisions of the Limitation Act. It is well settled that the starting point of limitation cannot be before the date of knowledge of aggrieved to file a Suit. The cause of action for filing a Suit cannot be before a person comes to know about the offending act/alienation. This Court is unable to appreciate any of the submissions of the learned counsel appearing for the appellant. The arguments of the learned counsel appearing for the appellants have no



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substance to lean in favour of the appellants. This Court finds no merit in the Second Appeal. It is to be noted that the appeal is unwarranted and not maintainable as the Trial Court dismissed the Suit and the Appellate Court though set aside the judgment of Trial Court did not give any relief to the plaintiff or 2nd defendant. As a result, there is no decree against the appellants. An appeal against mere findings is not maintainable.

(23) Accordingly, the Second Appeal is dismissed with costs. It is seen that the Lower Appellate Court after taking note of the fact that the 2nd defendant has already filed a Suit for the partition which is pending. Hence, uninfluenced by any of the observations made by this Court in the above judgment, it is open to the parties to prosecute or contest the Suit in O.S.No.56/2015 which is pending on the file of the I Additional District Munsif Court, Salem.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

cda

To

1.The II Additional Subordinate Judge,
Salem.

2.The Principal District Munsif,
Salem.

3.The I Additional District Munsif Court,
Salem.

4.The Section Officer,
VR Section, High Court,
Chennai.

+1cc to M/s.R.Nalliyappan, Advocate Sr.8397

SA.No.530/2021

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srg 14/06/2022