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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2022

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Second Appeal No.875 of 2013
and
MP No.1 of 2013

Mallika

... Appellant / Defendant

Vs.

Saroja
Rajambal (Deceased)

... Respondents / Plaintiffs

Cause title accepted vide order of
Court dated 18.7.2013 made in
M.P. No.1 of 2013 in SA SR. No.101832/12

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 31.08.2012 in AS No.43 of 2011 on the file of Principal Sub Judge, Tindivanam reversing the judgment and decree dated 18.07.2011 passed in OS No.222 of 2004 on the file of District Munsif-cum-Judicial Magistrate, Vanur.

For Appellant : Mr.T.Arulraj

For Respondents: Mr.S.R.Raghunath

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JUDGMENT

The first defendant is the appellant in this Second Appeal.

2. The plaintiff filed a suit seeking for the relief of partition and for allotment of half share in the suit property.

3. The case of the plaintiff is that the suit property belonged to her father under a registered Sale Deed dated 31.03.1993, marked as Ex.A1. He was in possession and enjoyment of the property. The further case of the plaintiff is that even during the lifetime of her father, he had expressed his



willingness to give half share in the suit property and the original Sale Deed was also handed over to the plaintiff. It is stated that the father of the plaintiff died intestate leaving behind his wife and two daughters who are the plaintiff and the first defendant.

4. It is further stated by the plaintiff that she requested for the partition of the suit property into two shares and for allotment of one share in her favour. The first defendant was not coming forward to effect the partition and she informed the plaintiff that their mother executed a Sale Deed on 05.05.1999, marked as Ex.B1, in favour of her minor son Suvarajappa and thereby she denied allotment of any share in favour of the plaintiff. Left with no other option, the partition suit came to be filed by the plaintiff.

5. The case of the first defendant is that the suit property was jointly purchased on 31.03.1993 by the father and mother and both had 50% share in the property. It was further stated that the plaintiff was already married and she is living in the matrimonial home and her parents never intended to give any share in the property. Thereafter, the father Sivayya died and the mother became the absolute owner of the property. She was in want of funds to take care of her medical needs and hence decided to sell the property. A sum of Rs.69,300/- was paid as sale consideration and a Sale Deed was executed in favour of the son of the first defendant. Thereafter, the suit property was in absolute possession and enjoyment of the first defendant and her family. Hence the first defendant sought for the dismissal of the suit.

6. The Trial Court after considering the oral and documentary evidence and taking into consideration the facts and circumstances of the case, held that the plaintiff is not entitled for half share in the suit property and that she is only entitled for $1/6^{\text{th}}$ share in the suit property and a preliminary decree was passed to that effect. Aggrieved by the same, the plaintiff filed an Appeal in AS No.43 of 2011. The Lower Appellate Court on re-appreciation of the oral and documentary evidence and after considering the findings of the Trial Court, came to a conclusion that the Sale Deed executed by the mother is not valid and binding on the plaintiff and accordingly modified the decree passed by the Trial Court and held that the plaintiff is entitled for half share in the suit property. Aggrieved by the same, the first defendant has filed the Second Appeal.



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7. When the Second Appeal was admitted the following substantial questions of law were framed:

1. Whether the First Appellate Court was right in holding that the suit property exclusively belongs to Sivayya, father of the plaintiff?

2. In any event whether the plaintiff is entitled to 1/2 share in the suit property even during the life time of second defendant, her mother, who has disposed of whatever share she is entitled in the suit property in favour of first defendant's son?

Thereafter the following additional substantial questions of law were framed:

a) Did the Lower Appellate Court went wrong in reversing without dealing with the findings of the Trial Court and giving reasons as mandated under Order XLI Rule 31 of CPC?

b) Whether the Lower Appellate Court went wrong in holding the registered Sale Deed as non-est in a collateral proceedings, wherein the plaintiff has not even sought for a declaration to that effect?

c) Whether the findings of the lower Appellate Court can be rendered as vitiated for improper appreciation of the oral and documentary evidence?

8. Heard Mr.T.Arulraj, learned counsel appearing for the appellant and Mr.S.R.Raghunath, learned counsel appearing for the respondent. This Court also carefully perused the materials available on record and the findings of both the Courts below.

9. It is an admitted case that the original Sale Deed that was marked as Ex.A1 stood in the name of P.M.Sivayya and his wife Rajambal. The said Sivayya died intestate leaving behind his wife and two daughters. The plaintiff and the first defendant are the daughters and the second defendant is the wife. The case of the plaintiff is that her mother was merely a name lender and she had no source of income to purchase the property and her father out of love and affection, included the name of the mother also in the Sale Deed.

10. The main issue that arises for consideration is with regard to the Sale Deed executed by the second defendant in favour of the minor son of the first defendant, marked as Ex.B1

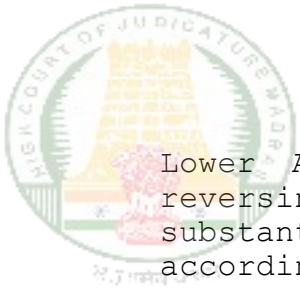


on 05.05.1999. It is seen from the document that the second defendant is claiming absolute ownership of the entire suit property and she has conveyed the entire suit property by virtue of this document. The Trial Court while considering the document has given a finding to the effect that the second defendant did not have the right to execute a Sale Deed and convey the entire property after the death of Sivayya on 02.02.1999. However, the Trial Court read down the document and upheld the document insofar as the half share of the second defendant and held that the plaintiff is not entitled for any share in this half share of the second defendant which was already conveyed in favour of the minor son of the first defendant.

11. The Lower Appellate Court went into the circumstances under which Ex.B1 was executed and found that it was totally artificial and there was absolutely no evidence for the consideration passing on in favour of the second defendant. The Lower Appellate Court also found that it was very unnatural for the second defendant to sell the property in favour of her own grandson and the natural conduct would be to execute a Will or a Settlement Deed, if at all she wanted to give a share to her grandson. Accordingly, the Lower Appellate Court held that Ex.B1 is vitiated due to the suspicious circumstances surrounding it and in any case the second defendant could not have executed the document for the entire property when admittedly she is claiming half share in the suit property. The Lower Appellate Court also took into consideration the fact that the second defendant died during the pendency of the Appeal and therefore, thought it appropriate to allot half share to the plaintiff and the other half to the first defendant.

12. In the considered view of this Court, Ex.B1 executed by the second defendant has to be completely disregarded since the second defendant has conveyed the entire property in the name of her minor grandson, who is none other than the son of the first defendant. This apart from the fact that the very execution of the document is shrouded in mystery and there is absolutely no proof for the consideration passing on to the second defendant. The Lower Appellate Court has given cogent reasons for disregarding Ex.B1 based on evidence and this Court does not find any ground to interfere with the same. The substantial questions of law 1 and 2 and the additional substantial question of law (b) are answered accordingly.

13. The Lower Appellate Court has considered the entire evidence available on record and has rendered its findings. The



Lower Appellate Court has also assigned proper reasons for reversing the findings of the Trial Court. The additional substantial questions of law (a) and (c) are answered accordingly.

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14. In the result, all the substantial questions of law are answered against the appellant and the Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

jv

To

1. The Principal Sub Judge,
Tindivanam.
2. The District Munsif-cum-Judicial Magistrate,
Vanur.
3. The Section Officer
VR Section, High Court Madras.

+1cc to Mr.T.Arulraj, Advocate, S.R.No.15404

+1cc to Mr.S.R.Raghunath, Advocate, S.R.No.15721

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MP No.1 of 201

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