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S.A.No.1008 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2022

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

S.A.No.1008 of 2022
and C.M.P.No.21624 of 2022

1. J.Mohanakrishnan
2. J.Gajalakshmi

... Appellants

Vs.

Malathi Jambunathan (Died)

1. Laila ammal
2. Subramani
3. R.Ravichandran
4. J.Lakshmi Kantham
5. K.Chidambaram
6. J.Gowri priya
7. J.Nithya

... Respondents

Prayer :- Second Appeal filed under Section 100 of C.P.C., to allow the appeal setting aside the judgment and decree dated 20.10.2021 passed in A.S.No.115 of 2017 on the file of the learned I Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 10.01.2017 passed in O.S.No.5295 of 2002 on the file of the learned XIII Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.P.Manikannan



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For Respondents : Mr.G.Veerapathiran
JUDGMENT

This Second Appeal has been filed as against the judgment and decree dated 20.10.2021 passed by the learned I Additional Judge, City Civil Court, Chennai, in A.S.No.115 of 2017, confirming the judgment and decree dated 10.01.2017 passed by the learned XIII Assistant Judge, City Civil Court, Chennai, in O.S.No.5295 of 2002, thereby dismissing the suit filed by the appellants for partition.

2. The case of the appellants is that the property originally belonged to their grandfather A.Narasimhalu Chetty and he had purchased the said property under a sale deed dated 20.12.1946. After his demise, his legal heirs are entitled to get 1/6th share. Thereafter, the other legal heirs had executed a release deed in favour of the appellants' father thereby relinquished their each 1/6th share. Therefore, the father of the appellants has become absolute owner of the entire property owned by their family members. During the life time of their father, some of the properties were sold out by him even before the birth of the appellants. Insofar as 1/6th share



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of their father is concerned, the same is joint family ancestral property being grandfather's property. Therefore, the appellants have right over 1/6th share of the property.

3. Further, the appellants' father died on 17.05.1993 leaving behind the appellants and their mother. Therefore, each of the appellants are entitled to have 1/3rd share in the said 1/6th share. When the appellants were minor, their mother also sold out some of the properties in favour of the deceased first respondent herein in the capacity of manager and karta. The said sale does not purport to be a sale for necessity or benefit of the joint family. Therefore, the appellants filed suit for partition as against their mother and the purchaser of the property.

4. In the said suit, one of the purchaser viz., the third respondent herein filed written statement stating that the first appellant was born on 12.05.1981 and the second appellant was born on 26.02.1979. After demise of her husband, the mother of the appellants was not having sufficient means to maintain herself and the two minor children, their education and



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welfare of the minor children. Therefore, without another option to sell the property, she sold out the property and the recital of the sale agreement categorically mentioned that she sold out the property to meet the educational expenses and welfare of the two minor children. There is no cause of action to file the suit as such the suit itself is not maintainable.

5. The deceased first respondent filed written statement stating that she purchased the property even when their father was alive and their father only sold out the property. In fact, the appellants have not born at the time of purchasing the suit property. Therefore, the suit itself is not maintainable that too for partition.

6. Initially the suit was filed for without even adding the other purchasers and other necessary party. Thereafter in the appeal suit, the appellate Court allowed the appeal and remitted back the matter for fresh trial. Thereafter, the trial Court after framing the issues, had examined P.W.1 & P.W.2 and marked documents in Ex.A.1 to Ex.A.22 on the side of the appellants and examined D.W.1 & D.W.2 and also marked documents



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in Ex.B.1 to Ex.B.7 on behalf of the respondents herein. On a perusal of the oral and documentary evidences, the trial Court dismissed the suit for the reason that the appellants did not even challenge the sale deeds which were executed by their father and mother. That apart, the suit itself barred by limitation as per the Section 60 of the Limitation Act. Aggrieved by the same the appellants filed an appeal suit in A.S.No.115 of 2017 and the same was also dismissed by confirming the judgment passed by the trial Court, as against which, the appellants filed this present Second Appeal.

7. In the present Second Appeal, the appellants raised the following substantially question of law:-

“(i) whether the suit for partition filed by the minor after becoming major appellants within the period as prescribed under Article 65 of the Limitation Act, 1963 is sufficient to remove the alienation created by natural guardian without leave of the Court?

(ii) Whether the right to sue arises for the minor after becoming major appellants in lien of Article 65 of the Limitation Act is application to claim partition without declaration of sale deeds under Article 60 of the



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Limitation Act?

(iii) Whether where the minor showed a vendor in the sale deed in Ex.A.22 is valid accordance with law without leave of the Court under Section 8(2) of the Hindu Minority Guardian Act, 1956?"

8. The learned counsel appearing for the appellants submitted that the Courts below dismissed the suit by applying Section 60 of the Limitation Act. Whereas Section 65 of the Limitation Act alone is applicable in this case and as such the suit is very much maintainable and the suit is filed in time. He further contended that when the appellants' father was alive, the other legal heirs of the appellants' grandfather executed release deed in respect of their shares in favour of their father. Thus the property in respect of 1/6th share of their deceased father, they are entitled to have 1/3rd share. Even without getting any leave from the Court, their mother viz., fourth respondent herein sold out the property. The minor share cannot be sold out without any prior permission from the concerned Court. Therefore, the Courts below without considering the above facts dismissed the suit on the ground of limitation. Therefore, he prayed to allow this Second Appeal.



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9. Heard Mr.P.Manikannan, learned counsel appearing for the appellants and Mr.G.Veerapathiran, learned counsel appearing for the respondents.

10. On a perusal of records revealed that initially the suit was filed by the appellants only as against the deceased first respondent herein. The said suit was dismissed for the reason that without adding the other purchasers as parties to the suit. Aggrieved by the same, the appellants filed an appeal suit in A.S.No.88 of 2006 and the same was allowed by the judgment dated 30.08.2011 and remanded back to the trial Court for fresh trial. Thereafter the other respondents were impleaded as parties to the suit. Again the suit was dismissed and aggrieved by the same the appellants preferred an appeal suit in A.S.No.115 of 2017. The appeal suit was also dismissed as against which the present Second Appeal.

11. Admittedly, the suit property owned by the grandfather of the



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appellants. After demise of their grandfather, their father derived title over the property in respect of 1/6th share. The remaining 5/6th share are also released in favour of the appellants' father by the released deeds executed by the other legal heirs. Therefore, the appellants' father has become absolute owner of the property. During his life time, the deceased first respondent and the sixth respondent herein were purchased some properties. Thereafter, the appellants' father died. After his demise, the appellants and their mother are having equal 1/3rd share in respect of the remaining properties.

12. In fact, when the appellants' father sold out the property, they were not even born. When the appellants were minors, the fourth respondent herein viz., the mother of the appellants sold out remaining properties for their education and maintenance. In fact, the recitals of the sale deed are very clear that only for the purpose of education and maintenance of the minor children, the properties were sold out. The appellants after attaining majority, they filed the present suit. The first appellant was born on 12.05.1991 and the second appellant was born on 26.02.1979 and hence the first appellant attained majority on 12.05.1999 and the second appellant



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attained majority on 26.02.1997. However, the suit was laid only in the year 2002 after the period of three years from the date of their attaining majority.

As per the Section 60 of the Limitation Act, the appellants ought to have filed their suit within a period of three years from the date of attaining majority. Admittedly, the present suit was filed after the period of three years from the date of their attainment of majority. Therefore, they have no right to file a suit as per under Section 60 of the Limitation Act.

13. That apart, the appellants did not even challenge the sale deed executed in favour of the respondents herein. Further, it is true that without seeking prior permission from the Court under the Hindu Minority and Guardianship Act, 1956, the property has been sold out by the fourth respondent herein, after the demise of her husband. On a perusal of the sale deed dated 11.12.1995, its recitals are very clear that only for the purpose of maintaining her children and to take care of their welfare, it was executed by the fourth respondent herein.

14. It is also seen that after demise of her husband, the fourth



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respondent herein had to redeem the property which was mortgaged with the Madras City Co-operative Building Society Limited by her husband. In order to discharge the family debts, expenses and educational expenses of the appellants herein, the fourth respondent sold out the property. Therefore, at the time of filing the suit, no property is available for partition. Hence, without challenging the sale deed executed by the fourth respondent herein, the suit itself is not maintainable.

15. That apart, the appellants claimed that the suit is very much maintainable and Section 65 of the Limitation Act would apply to the case on hand. Even assuming that the suit is maintainable as per Section 65 of the Limitation Act, the appellants failed to value the property in full and they failed to pay the Court fee as if they are in possession of the suit property. Therefore, both the Courts below rightly dismissed the suit and this Court finds no infirmity or illegality in the order passed by the Courts below.

16. This Court finds no substantial question of law involved in the present appeal and this Second Appeal is dismissed without being admitted.



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Consequently, connected Civil Miscellaneous Petition is closed. There shall be no order as to costs.

22.12.2022

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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To

1. The I Additional Judge,
City Civil Court, Chennai.
2. The XIII Assistant Judge,
City Civil Court, Chennai.



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