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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.38 of 2014
and
M.P.No. 1 of 2014
and
CMP No.23725 of 2019

1. Subramanian
2. Tamil
3. Mangayarkarasi

... Appellants / Respondents 2 to 4 /
Defendants 3 to 5

Vs

1. Selvam
2. Kumaran
3. Kannan
4. Arivazhagan

...Respondents 1 to 4 / Appellants /
Plaintiffs

5. Ilangovan

...5th Respondent / 1st Respondent /
2nd Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 30.08.2013 in A.S.No.84 of 2010 on the file of the Principal District Judge, Cuddalore and reversing the Judgment and Decree dated 06.10.2004 in O.S.No.36 of 2003 on the file of the Subordinate Judge, Panruti.

For Appellants : Mr.D. Ravichander

For Respondents : R1, R2 & R4 - Served
R3 - Not ready in notice
R5 - Given up

JUDGMENT

The defendants 3 to 5 are the appellants in this second appeal.



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2. The respondents/plaintiffs filed a suit seeking for setting aside the sale deed dated 22.07.1981 insofar as their 4/5th share in the suit property is concerned and for partition and allotment of 4/5th share in the suit property in favour of the plaintiffs.

3. The case of the plaintiffs is that the suit property was purchased in the name of one Sekar and his four minor younger brothers, who are the plaintiffs in the suit, through a registered sale deed dated 12.06.1980, marked as Ex.A1. The said Sekar for himself and as the guardian of his four minor brothers, sold the suit property through a registered sale deed dated 22.07.1981, marked as Ex.A2 in favour of the defendant. Pursuant to the said sale, the defendant was also put in possession of the suit property.

4. The grievance of the plaintiffs is that the said sale deed does not bind them, since no permission was taken from the competent Court and hence the 4/5th share that is covered under the sale deed was challenged by the plaintiffs. It is under these circumstances, the suit came to be filed for the reliefs stated supra.

5. The defendant filed a written statement. They took a stand that at the time when the property was purchased, neither Sekar, nor his minor brothers had any independent income to purchase the property and the property itself was purchased by their father Ranganatha Padayachi in the name of his sons. The property was enjoyed as a joint family property by all the family members. It is further stated that the father was the person who was involved in the talks before the sale transaction was finalised. At the time when the sale deed was executed, he also stood as one of the witness to the sale deed and he was the actual beneficiary in the sale transaction. The defendant therefore claimed that he is a bonafide purchaser for value and he is in possession and enjoyment of the property and the plaintiffs have orchestrated this case along with their father, only to grab the property from the defendant. Hence, the defendant sought for the dismissal of the suit.

6. The Trial Court, on considering the facts and circumstances of the case and after analysing the oral and documentary evidence, came to a conclusion that the plaintiffs are not entitled for any relief in the suit and accordingly the suit was dismissed through a Judgment and Decree dated 06.10.2004. Aggrieved by the same, the plaintiffs filed an appeal in A.S.No.84 of 2010 before the District Court, Cuddalore. The lower Appellate Court, on re-appreciation of the oral and documentary evidence and after considering the findings of the Trial Court, allowed the appeal through a



Judgment and Decree dated 30.08.2013. Aggrieved by the same, the defendants have filed this second appeal.

7. Heard Mr.D.Ravichander, the learned counsel appearing on behalf of the appellants. The respondents were served notice and their names were also printed in the cause list. They were not represented in person or through counsel. This Court carefully perused the materials available on record and the findings of both the Courts below.

8. This Court at the time of admitting the second appeal framed the following substantial questions of law.

a) Is not the Judgment of the Appellate Court is perverse as it failed to consider the issue of limitation, when the suit was not filed within 3 years from the date of minor attaining majority and that too when the eldest brother attained majority 12 years back?

b) When the plaintiffs never examined the witness box, to substantiate that the father of plaintiff did not sell for the benefit of the minors, still is the learned District Judge is right in not taking adverse inference as against the plaintiffs ?

9. There is no dispute with regard to the fact that the suit property originally stood in the names of Sekar and the plaintiffs, who are his brothers. The property was purchased in their names through Ex.A1 in the year 1960. While analysing this document, the Trial Court found that on the very same day, yet another property was purchased in the name of the mother and the plaintiffs, which is evident from Ex.B3. Both the properties were sold on 22.07.1981. The suit property was sold in favour of the defendant and the property which was the subject matter of Ex.B3 was sold in favour of the wife of the defendant. The Trial Court also found that the plaintiffs filed a similar suit in O.S.No.306 of 1991 before the Sub Court, Cuddalore, challenging the said sale deed (Ex.B2). The suit was decreed. Aggrieved by the same, an appeal was filed by the wife of the defendant in A.S.No.54 of 1997 and the said appeal was allowed by Judgment and Decree dated 19.07.2000. This is also evident from Ex.B1. This important fact cannot be merely taken as a co-incidence and there is a pattern to the modus operandi adopted by the plaintiffs.

10. The Trial Court, on analysing the evidence, found that except for two different properties, all the other facts were similar and hence took into consideration the findings of the Appellate Court in A.S.No.54 of 1997. The Court also took into



consideration the evidence of P.W.1, who was the father of the plaintiffs, who admitted that both the properties formed part of the joint family and it was maintained by him. In view of the same, the Trial Court found that there was no requirement for getting the permission of the Court before the suit property was sold in favour of the defendant.

11. The part played by the father of the plaintiffs has a lot of significance in this case. Curiously in the present case, the plaintiffs did not get into the box and it was their father who examined himself as P.W.1. Similarly, the father of the plaintiffs also examined himself in the other suit in O.S.No.306 of 1991. Even in that suit, he was the witness to the document. The same is evident from the deposition, marked as Ex.B8. On considering the facts and circumstances of the case, the Trial Court came to a conclusion that the father of the plaintiffs was behind both the transactions and he was the witness to both the documents and hence he was the one who had purchased the property in the name of his sons and it was sold to meet the expenses of the family.

12. The Trial Court, while considering the scope of Section 8 of the Hindu Minor and Guardianship Act 1955 (herein after referred to as 'the Act'), referred to some of the reported decisions and found that if the minors do not challenge the transactions/documents within three years from the date of attaining majority, the same will bind them. By applying this principle, the Trial Court found that the property in question was a joint family property even as per the admission of P.W.1, who is the father and if the property is sold for the benefit of the family, the same will not be vitiated just because no permission was taken before the District Court under the Act. The Trial Court considered the father as the Karta of the family, who had purchased the property in the name of his sons and hence came to a conclusion that the permission of the Court was not required when the property was sold and when it was sold for the benefit of the family.

13. The lower Appellate Court, without appreciating the findings of the Trial Court and without considering the evidence of P.W.1, came to a conclusion that the sale was bad, since no permission was taken from the Court under the Act. The Appellate Court also brushed aside the issue of limitation on the ground that the sale itself was void ab initio. The lower Appellate Court also found that there is no proof to show that the property in question is a joint family property. Accordingly, the Judgement and Decree of the Trial Court was set aside and the suit was decreed as prayed for.



14. In the considered view of this Court, the Trial Court had the advantage of looking at the demeanour of P.W.1 and he being instrumental in initiating the proceedings. If really the plaintiffs wanted to safeguard their interest in the property, they should have got into the witness box and stood as witness to substantiate their case. Further, it was only the father of the plaintiffs, who was taking interest in getting the sale deed set aside. The father stood as a witness for the document and he was aware about the entire transaction and he was also involved in the discussions before the sale transaction. All of a sudden, he turns around and uses his sons, after nearly 21 years, and challenges the sale deed executed in favour of the defendant. This important aspect has not even been considered by the lower Appellate Court.

15. If really the property was not sold for the benefit of the family, the plaintiffs should have examined themselves as a witness and should have deposed that the sale did not take place for their benefit. If they did not choose to enter the witness box, what is available is only the evidence of P.W.1, who is their father and he admits that the property was part of the joint family and it was enjoyed by all the family members. Hence, the plaintiffs, not entering the witness box results in an adverse inference and such adverse inference was taken by the Trial Court. Unfortunately, the Appellate Court does not even go into this issue. Hence, the second substantial question of law is answered accordingly in favour of the appellants.

16. In the present case, the sale deed of the year 1981 was challenged in the year 2002. The eldest brother had attained majority 12 years prior to the filing of the suit. The sale deed that was executed in favour of the defendant cannot be held to be a document void ab initio, since this Court has found that it was part of the joint family property and the sale had taken place for the benefit of the family. In such circumstances, the suit ought to have been filed within three years from the date of attaining majority. It is a settled law that sale of the minors property without Court permission is voidable. Hence the sale must be challenged within three years from the date of attaining majority and any suit filed after the said period prescribed under Article 60 of the Limitation Act, will be barred. This important fact was also not taken into consideration by the lower Appellate Court. Hence the findings of the lower Appellate Court should be termed as perverse. The first substantial question of law is answered accordingly in favour of the appellants.

17. In view of the above discussion, this Court has absolutely no hesitation to interfere with the Judgment and Decree of the lower Appellate Court in A.S.No.84 of 2010, dated



30.08.2013 and accordingly the same is set aside. The Judgment and Decree of the Trial Court dismissing the suit, is restored.

18. In the result, this second appeal is allowed. Consequently, connected miscellaneous petitions are closed. Considering the facts and circumstances of the case, there will be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Lpp

To

1. The Principal District Judge,
Cuddalore.

2. The Subordinate Judge,
Panruti.

Copy to

The Section Officer,
VR Section,
High Court, Madras - 104.

+1cc to Mr.D. Ravichander, Advocate, S.R.No.18321

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