

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2022

CORAM:

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

S.A.No. 1096 of 2021
and
C.M.P.No.21013 of 2021

K.Duriasamy,
S/o, Krishnamoorthi

...Appellant/Appellant/
3rd Defendant

Vs.

1. T.C.Gnanasekaran
S/o, Chinnusamy

...1st Respondent/1st Respondent/
Plaintiff

2. Samiyathal
W/o, Krishnamoorthy

3. Krishnamoorthy
S/o, Nallamuthu gounder

4. K.Nirmaladevi,
W/o, Kandavel ... 2 to 4 Respondents/ 2 to 4 Respondents/
1,3,4 defendants

Prayer: Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree dated 08.01.2020 passed in A.S.No.67 of 2017 on the file of the Principal Sub-ordinate Court, Erode, confirming the judgment and decree dated 09.10.2017 passed in O.S.No.469 of 2011 on the file of the I Additional District Munsif Court, Erode.

For Appellant : Mr.Vediappan
for V.Balamurugan

J U D G M E N T

This Second Appeal is filed challenging the judgment and decree dated 08.01.2020 passed in A.S.No.67 of 2017 on the file of the Principal Sub-ordinate Court, Erode, confirming the judgment and decree dated 09.10.2017 passed in O.S.No.469 of 2011 on the file of the I Additional District Munsif Court, Erode.

2. The first respondent/plaintiff filed a suit in O.S.No.469 of 2011 seeking for the reliefs of:

(a) to set aside the final decree in O.S.No.159 of 2007 dated 10.11.2010 on the file of the District Munsif of Erode, as collusive fraudulent vide, not valid in law and not binding the plaintiff

(b) declaring that the plaintiff is the absolute owner of the suit property by virtue of the sale deed dated 19.01.2007, Document No.1409/1995, SRO, Surampatti.

(c) restraining the defendants, their men and agents from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit properties by means of a permanent injunction.

(d) directing the defendants to pay the cost of the suit.

(e) granting such other and further reliefs as may deem fit and necessary in the circumstances of the case.

3. The case of the first respondent is that the suit property originally belonged to the second respondent/first defendant Samiyathal under a sale deed dated 14.06.1995. On 19.01.2007, the second respondent sold the suit property to the first respondent for a valuable consideration of Rs.3,29,800/- Possession was also delivered by the second respondent to the first respondent. The first respondent took possession of the suit property and he is in actual possession of the suit property and also enjoying the same. The first respondent's name has also been included in the patta 104 in respect of the suit property. During the last week of January 2010, the appellant and other respondents attempted to prevent the plaintiff from cultivating the lands. Therefore, police complaint has been made by the first respondent. Since the police officials have not taken any action, the first respondent sent a petition dated 04.08.2010 to the R.D.O, Erode. Even thereafter also, no action was taken against the appellant and other respondents. Hence, the first respondent has filed Crl.O.P.No.4374 of 2011, seeking a direction to register a case on the basis of the complaint of the first respondent and the petition is pending. The fourth defendant Nirmaladevi had filed a suit in O.S.No.159 of 2007 against the appellant and the respondents 2 and 3 and obtained an exparte preliminary and final decree in respect of the suit properties. The first respondent was not impleaded as party in the abovesaid suit. The final decree obtained by the fourth defendant is not valid, as it was obtained behind the back of the first respondent. Hence the suit for the aforesaid reliefs.

4. It is seen from the written statement of the second respondent that the claim of the first respondent that the suit property was purchased with the income of the second respondent

is not correct. It is also not correct to state that the first respondent paid a sum of Rs.3,29,800/- to the second respondent and took the possession of the suit property on the date of sale. The first respondent approached the second respondent for purchasing the property for a sum of Rs.8,40,000/- per acre and fixed the sale price of Rs.10,81,500/- and entered into an agreement on 10.07.2008. Further, the first respondent informed that the suit property is a joint family property and directed her to get the signatures of all the other family members. Without doing the same, the first respondent has filed the suit. The second respondent has no independent income. Her husband, the third respondent had ancestral properties in S.No.280/11. On 26.09.1994, those properties were sold to one Murugesan and from the income of this sale, the other properties were purchased in the name of the second respondent. It is a joint family property. Later it was mortgaged in the Thindalmalai Cooperative Bank. All the revenue records are still in the name of the second respondent. The second respondent is living in the suit property along with her husband. It is not correct to state that the suit in O.S.No.159 of 2007 is a collusive suit and hence the second respondent is not entitled to seek any relief. The appellant and the fourth defendant have also filed the written statement with similar contentions. The main substance made in the averments of the written statements is that the suit property was purchased in the name of the second respondent with the acceptance of all the family members and the suit property is not purchased out of her own funds or income. She does not have independent income. Therefore, the sale in favour of the first respondent by the second respondent will not bind the appellant and other respondents. The suit in O.S.No.159 of 2007 is not a collusive suit. The second respondent cannot sell the joint family properties on her own, to the first respondent. Hence, the sale of the property in favour of the first respondent by the second respondent will not bind the appellant and the other respondents.

5. The first respondent filed a reply statement denying all the averments made in the written statement filed by the appellant and other respondents. It is the case of the first respondent that the second respondent is the absolute owner of the suit property and it is not the joint family property. The suit in O.S.No.159 of 2007 is a collusive suit.

6. On the basis of the above said pleadings, the learned Trial Judge framed the following issues and additional issue:

i. Whether the decree passed in O.S.No.159 of 2007 dated 10.11.2010 is not valid?

ii. Whether the defendant played fraud in getting the decree

in O.S.No.159 of 2007?

iii. Whether the plaintiff is the absolute owner of the suit property as per document No.1409 of 1995?

iv. Whether the plaintiff is in possession of the suit property?

v. Whether the plaintiff is entitled to get the relief of permanent injunction as prayed for?

vi. Whether the suit property is joint family property of defendant?

Vii. What are the other relief of the plaintiff is entitled?
Additional Issue:

Whether the first defendant is Benamidhar of the suit property

7. During trial, P.Ws.1 to 3 were examined and Exs.A1 to A27 were marked on the side of the first respondent/plaintiff. D.Ws.1 to 5 were examined and Exs.B1 to B53 were marked on the side the appellant/ third defendant. Exs.X1 to X3 were also marked.

8. On considering the oral and documentary evidence, the learned Trial Judge found that the suit property is the self acquired property of the second respondent. Therefore, the sale of the suit property in favour of the first respondent is legally valid. The appellant and the other respondents cannot contend that the suit property was purchased from the income derived from the sale of ancestral properties and for the benefit of joint family members, it was purchased in the name of the second respondent as binami by her husband. In view of the same, the learned Trial Judge found the sale in favour of the first respondent in respect of the suit property is valid and granted decree to set aside the final decree passed in O.S.No.159 of 2007 and declare the first respondent's absolute title in the suit property and ordered permanent injunction restraining the defendants and their men with his possession and enjoyment of the suit property.

9. Aggrieved against the judgment and decree of the trial court, the third defendant has filed A.S.No.67 of 2017 before the Principal Subordinate Court, Erode. The learned Appellate Court found that the suit property was purchased by the second respondent and therefore, it cannot be considered as a joint family property. In view of confirming the judgment and decree of the trial court and upholding the sale of the first

respondent, dismissed the appeal. Against the same, the third defendant has filed the second appeal.

10. Learned counsel for the appellant submitted that the suit property was purchased by the third respondent from the income derived from the sale of the other properties. The second respondent had no independent income on her own to purchase the property. The suit property was purchased in the name of the second respondent from the source made by the third respondent for the benefit and welfare of the joint family members consisting of appellant and the respondents 2 to 4. Therefore, the second respondent cannot sell the entire extent of the suit property on her own. The suit in O.S.No.159 of 2017 was filed only to enforce the right of claiming partition of share in the suit properties. Therefore, finding of the Courts below holding that the suit property is a self acquired property of the second respondent, therefore, she is entitled to sell the suit property to the first respondent and the first respondent is entitled to set aside the judgment and decree passed in O.S.No.159 of 2007 is incorrect.

11. Considered the rival submissions and perused the records.

12. The issues arise for consideration in this Second Appeal is very limited in the scope. It is very limited in the sense that when the property is purchased in the name of the female Hindu, whether it can be considered as joint family property.

13. Section 14 of the Hindu Succession act, 1956 reads as follows:

14. Property of a female Hindu to be her absolute property.

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not a limited owner.

Explanation. In this sub section, property includes both movable and immovable property acquired by a female Hindu by inheritance or devise or at a partition, or in lieu of maintenance of arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after the marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner, whatsoever, and also any such property held by her as stridhana

immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift will or other instrument or the decree, order or award prescribe a restricted estate in such property.

14. This section clearly indicates that any property possessed by a female Hindu, whether acquired before or after the commencement of this Act shall be held by her as owner thereof and not as a limited owner. In this case, it falls within the property mentioned in sub section 2 of section 14 of Hindu Succession Act. It is not in dispute that the suit property was purchased in the name of the second respondent. Therefore, it is absolute property of the second respondent and she is entitled to use it as a full owner. Therefore, the claim of the appellant and other respondents that the suit property was purchased with the income derived from selling the family property, purchased as binami in the name of the second respondent, for the benefit of joint family members cannot be entertained at all. The suit property can only be considered as a self acquired property of the second respondent. In her capacity as full owner thereof, she sold the suit property to the first respondent. After purchase of the suit property, he became the absolute owner of the suit property. In the suit for partition in O.S.No.159 of 2007, the first respondent is not a party to the suit. The suit property was purchased by him on 19.01.2007. After selling the suit property, this suit is filed by the fourth defendant seeking partition. The defendants in the suit remained exparte and exparte final decree was also passed. It obviously shows that it is a collusive suit. Therefore, judgment and the preliminary and final decree will not bind the first respondent. Both the Courts below have rightly found that the judgment and decree passed in O.S.No.159 of 2007 is collusive, fraudulent and it will not bind the second respondent. Accordingly decreed the suit as prayed for. There is no substantial question of law arise for consideration in this Second Appeal.

15. This Court also finds no reason to take different view in the matter. Therefore, this Court confirms the judgment and decree dated 08.01.2020 passed in A.S.No.67 of 2017 on the file of the Principal Sub-ordinate Court, Erode, confirming the judgment and decree dated 09.10.2017 passed in O.S.No.469 of 2011 on the file of the I Additional District Munsif Court, Erode.

16. In conclusion, the second appeal is dismissed with costs of first respondent throughout. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Subordinate Judge,
Principal Sub-ordinate Court, Erode.
2. The I Additional District Munsif,
I Additional District Munsif, Erode.

Copy to

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

S.A.No. 1096 of 2021 and
C.M.P.No.21013 of 2021

SMI(CO)
CT 30/05/2022