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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

SA.No.278/2017 and CMP.No.6606/2017

C.Sakthivel (Deceased)

..Plaintiff/Respondent

1.Salaammal

2.Datchayani (Minor) age 12 years

3.Rajeev (Minor) Age 10 years

(Appellants 2 & 3 are minors

being represented by their mother

and natural guardian the

1st appellant and they are all

residing at

Bommasamudram Village,

Karagur Post,

Krishnagiri TK & Dt)

(Cause Title accepted vide order of this Court dated

03.04.2017 made in C.M.P. 5578/2017 in

S.A. SR. No. 23474/2017 by MSNJ)..Appellants/LRs of the Plaintiff

Vs.

C.Perumal

..Respondent/Appellant/Defendant

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code to allow the above Second Appeal with costs by setting aside the judgment and decree dated 12.01.2017 made in A.S.No.11/2015 on the file of the learned Principal Subordinate Judge, Krishnagiri reversing the the judgment and decree made in O.S.No.217/2011 dated 08.01.2015 on the file of the District Munsif, Krishnagiri.

For Appellants

:

Mr.S.Kanniah

For Respondent

:

Mr.D.Manimaran
for Mr.C.Jaya Bala



JUDGMENT

- (1) The legal heirs of the plaintiff in the suit in O.S.No.217/2011 on the file of the District Munsif Court, Krishnagiri are the appellants in the second appeal.
- (2) The husband of the 1st appellant by name C.Sakthivel filed the suit in O.S.No.217/2011 on the file of the District Munsif Court, Krishnagiri for declaration of his title and for consequential permanent injunction in respect of the suit property. The suit is also for a declaration declaring the Sale Deed dated 22.09.2008 in favour of the defendant with regard to the suit property is null and void.
- (3) The suit property is described as an extent of 19 $\frac{1}{4}$ cents of land in S.No.607/2003, in Paiyur Village, Krishnagiri Taluk.
- (4) The case of the plaintiff in the plaint are as follows:
- (5) The plaintiff and the defendant are brothers who are the sons of late Sri.Chinna Gounder and Smt.Mangammal. The suit property is the ancestral property of their mother. The plaintiff 's mother Smt.Mangammal inherited the suit property along with other properties from her father one Echappa Gounder. Echappa Gounder died leaving behind his three daughters by name Mangammal, Thulasiammal and Dekki @ Salammal. Out of three daughters, Thulasiammal died without issues. The plaintiff and defendant are the two sons of Mangammal. The other children of Mangammal have not been added as parties.
- (6) After the death of Echappa Gounder, one of his daughters by name Dekki @ Salammal filed a suit for partition of her father's properties in O.S.No.4/1981 and obtained a decree for partition. During execution proceedings, the elders of the village convened a panchayat and there was a settlement in the presence of panchayatars. As resolved by the panchayatars, it was decided to give 45 cents of land in S.No.607/3 as life estate to Dekki @ Salammal, her daughter and Thulasiammal for their enjoyment till their life and the vested right in favour of the two sons of Mangammal, namely the plaintiff and defendant. This settlement was agreed by all the three sisters in the presence of the village elders. The Deed of Settlement was written on 03.06.1993 and accepted and signed by Dekki @ Salammal,



Thulasiammal and Mangammal. The entire title in respect of the whole extent of 45 cents in S.No.607/3 vested with Mangammal.

- (7) Though it is admitted that Mangammal executed a Sale Deed under Ex.A1 dated 21.07.2005, in favour of defendant in respect of 23 cents at his request, the plaintiff further contended that his mother Mangammal later conveyed an extent of $19 \frac{1}{4}$ cents vide another Sale Deed dated 13.07.2009 in favour of the plaintiff.
- (8) Though it is admitted that by a Sale Deed under Ex.A2 dated 22.09.2008 the defendant had purchased the same extent of $19 \frac{1}{4}$ cents from Dekki @ Salammal and Rajammal. It is contended that the vendors had only life estate.
- (9) Based on the document Ex.A3 dated 13.07.2009 the plaintiff claimed title to the suit property which is measuring an extent of $19 \frac{1}{4}$ cents in S.No.607/3. From the averments in the plaint, the case of plaintiff is not consistent. When it refers to vested right in favour of plaintiff and defendant, the plea is also that Smt.Mangammal is the absolute owner of the entire suit property even after execution of the first Sale Deed in 2005. The settlement on 06.03.1993 pursuant to compromise is not established by any document.
- (10) The suit was contested by the respondent relying upon the Sale Deed under Ex.A2 dated 22.09.2008. The respondent has specifically denied the averments made in the plaint and contended that the suit property is in possession and enjoyment of the defendant.
- (11) The Trial Court after framing necessary issues and considering the documents Ex.A1 and A3, and referring to the boundary descriptions of the property and the evidence of DW1, held that the plaintiff has clearly established the case and that the defendant having purchased the lands from the life estate holders cannot get title under Ex.A2. The boundary description for the property are with reference to the entire extent of 45 cents in S.No.607/3, and the 1st document was in respect of extent of 23 cents out of 45 cents. The 2nd document is in respect of $19 \frac{1}{4}$ cents out of 45 cents. It is admitted that some portion of the property was acquired.



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(12) Since, the Trial Court did not consider the fact that the boundary description was with reference to both the extent, came to the conclusion that Mangammal had retained a portion of the property in S.No.607/3. Except the conclusion based on the boundary descriptions found in Ex.A1 and A3, this Court is unable to find any strong circumstance or evidence in support of the contention of the plaintiff. The Trial Court decreed the suit as prayed for. Aggrieved by the judgment and decree of the Trial Court, the defendant in the Suit preferred an appeal in A.S.No.11/2015 dated 12.01.2017, before the learned Principal Subordinate Judge, Krishnagiri.

(13) The Lower Appellate Court however reversed the judgment and decree of the Trial Court and held that the plaintiff has not proved his case. The Lower Appellate Court, considering the entire evidence came to the conclusion that the plaintiff cannot claim title under Mangammal after Mangammal had conveyed her right in respect of her entire holding in favour of the defendant by the Sale Deed dated 21.07.2005 under Ex.A1. The Lower Appellate Court while considering the document relied upon by the plaintiff dated 13.07.2009 found that the Sale Deed obtained much after the Sale Deed in favour of the defendant is not valid and would not bind the defendant. Since the Lower Appellate Court reversed the judgment by holding title in favour of the defendant, the legal heirs of the plaintiff have filed the above second appeal.

(14) The appellants have raised following substantial questions of law in the Memorandum of Grounds of Second Appeal.

1. Whether the First Appellate Court has committed an error in deciding the First Appeal without framing any valid issues?

2. Whether the First Appellate Court is justified in allowing the First Appeal without considering and setting aside the findings of the Trial Court, for the various issues framed by it?

3. Whether the First Appellate Court is correct in holding that the suit filed by the respondent is barred by limitation?



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4. Whether the First Appellate Court has committed an error in holding that the appellant's failure to club all the suits together for trial is fatal to his claim in the present suit, even though no suits were pending at the relevant time?

5. Whether the First Appellate Court has erred in holding that appellant's suit was not valued properly?

6. Whether the First Appellate Court has committed an error in relying upon the oral evidence of PW1 pertaining to the Settlement Deed dated 03.06.1991 even though it was not marked and received as an exhibit?

- (15) Learned counsel appearing for the appellants submitted that there was a partition in the family at the instance of one of the sisters Smt.Mangammal and there was a settlement based on a compromise. It is admitted that the suit for partition was filed by one of the sisters earlier. However, there is no document to prove the partition as it was pleaded by the plaintiff. Though the defendant also has agreed that there was a compromise, he dispute the manner of division. Though it is stated by the plaintiff that entire property belonged to Mangammal, there is no document to prove the same. Similarly, the case of plaintiff that the other sisters of Smt.Mangammal had only life estate is not proved by any document.
- (16) In the present case, the genealogy and the relationship between the parties are not in dispute. The properties are held to be the properties of Thiru.Echappa Gounder. There is no dispute that he had three daughters by name Mangammal Thulasiammal and Dekki @ Salammal and Thulasiammal is no more. Mangammal had three sons and two daughters. The dispute is between the two sons of Mangammal, the plaintiff and defendant. From the evidence, this Court is unable to hold that Mangammal has retained any other property after executing the Sale Deed under Ex.A1 in favour of the defendant in respect of the 23 cents out of 45 cents that belonged to the family. It is admitted that the defendant had also purchased an extent of 19 $\frac{1}{4}$ cents from Dekki @ Salammal and Rajamal. Thulasiammal is not a party to any of the Sale Deed, since she died without any issues.



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(17) This Court is unable to find any consequences because Thulasiammal is not a party in any of the Sale Deeds. It was only after the Sale Deed under Ex.A2 executed by Dekki @ Salammal and Rajamal, the plaintiff has purchased an extent of 19 $\frac{1}{4}$ cents in S.No.607/3 from mother Mangammal under Ex.A3. The document under Ex.A3 in favour of plaintiff is on the basis that Mangammal had title to the entire property in S.No.607/3. As pointed out earlier though the plaintiff claimed that by settlement Mangammal was allotted the entire property, there is no document or oral evidence by independent witness. Merely because the defendant admit that there was a compromise, that cannot lead to inference that there was partition by metes and bounds by which mother Mangammal was allotted the entire extent in S.No.607/3. In the absence of any evidence to suggest that Mangammal had title to the entire property, the case of the plaintiff, based on Ex.A1 dated 17.07.2009 cannot be accepted as Magammal had already sold her right in favour of the defendant under Ex.A1 dated 21.07.2008. In a suit for declaration of title and for consequential injunction, the burden lies on the plaintiff to prove his case by putting forth evidence and this Court is unable to find any evidence to substantiate the case of partition as pleaded by plaintiff. As pointed out earlier the case of plaintiff is not consistent. The Lower Appellate Court has applied its mind to the whole evidence and held that the plaintiff has not proved his case of title.

(18) This Court is unable to find any error or irregularity in the decision or of the Lower Appellate Court. However, learned counsel appearing for the appellants relied upon the judgment of this Division Bench of this Court in the case of K.M.M. Kadar Hussain vs. O.M.R. Selvaraj and two others reported in 1997 (I) CTC 559 wherein the Division Bench of this Court has held that the Appellate Court should raise points for determination and state such reasons for decision on such points for determination. Referring to Order 41 Rule 31 of CPC, the Division Bench has held that the procedure prescribed is mandatory and failure to follow such mandatory provisions would render the judgment defective. This Court has no difficulty in accepting the law reiterated by this Court and the Hon'ble Supreme Court on the interpretation of Order 41 Rule 31 of CPC. However, an exception is carved out by this Court as well as the Hon'ble Supreme Court while considering the judgment whether it is defective and liable to be set aside for non observance of Order 41 Rule 31 CPC. It is to be



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noted that the Lower Appellate Court in the present case has considered all the issues that arise for consideration in the course of discussion. The main issue is whether Mangammal had title over the entire property or whether the manner of partition as pleaded by plaintiff is established by evidence.

(19) Having regard to the pleadings though the Lower Appellate Court has not framed points for determination, it has discussed the issues in detail. Both the parties knew well the issues on which the parties are in disagreement. Ultimately, the Lower Appellate Court has held that the plaintiff has not proved his case that Mangammal was the absolute owner of the entire property in S.No.607/3. The Lower Appellate Court has given sufficient reasons. The plaintiff has failed to prove his case by cogent evidence. The only document relied upon by the plaintiff is held to be invalid as Mangammal had already executed the Sale Deed in favour of the defendant in the suit in respect of her holding. Unless it is proved that the vendors of defendant under Ex.A2 had only life estate, the appellants are not entitled to any relief.

(20) In the result, the Second Appeal is dismissed with cost confirming the judgment and decree made in AS.No.11/2015 dated 12.01.2017 passed by the learned Principal Subordinate Judge, Krishnagiri in reversing the judgment and decree dated 07.12.2018 made in O.S.No.217/2011 08.01.2015 by the District Munsif Court, Krishnagiri. Consequently connected Civil Miscellaneous Petition is closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

cda
To

1.The Principal Subordinate Court, Krishnagiri.



2.The District Munsif, Krishnagiri.

Copy to

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

+1 CC to Mr.S.Kanniah, Advocate sr 18715.

SA.No.278/2017
and CMP.No.6606/2017

AJS (CO)
SP(17/05/2022)