



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.04.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)Nos.621 & 622 of 2010

WEB COPY

S.A.(MD)No.621 of 2010

1. P.Rajakumari
2. P.Prabhashanakumari
3. P.Pushpalatha
4. P.Justinraj @ Joseenthraj ... Appellants / Appellants /
Plaintiffs

Vs.

1. G.Dharmamuthu (Died)
2. M.Sundarakshi
3. M.Ambika
4. M.Selvam
5. M.Suseela
6. M.Rajeswari ... Respondents/Respondents 1,3 to 7 /
Defendants
7. Gnanaselvam
8. Dharmaraj
9. Muthukrishnan
- 10.Krishnaveni
- 11.Selvakumari
- 12.Gnana Sobhana
(R-7 to R-12 were *suo motu* impleaded as LR's. of the deceased R-
1 vide Order dated 31.03.2022)
... Respondents

Prayer: Second appeal filed under Section 100 of C.P.C.,
against the Judgment and Decree dated 16.12.2008 made in A.S.No.56

<https://hcservices.ecourts.gov.in/hcservices/>



of 2005 on the file of the Subordinate Judge, Kuzhithurai, confirming the Decree and Judgment dated 30.11.2004 made in O.S.No.408 of 1987 on the file of the I Additional District Munsif, Kuzhithurai.

For Appellants : Mr.P.Thiagarajan

For R-2 to R-12 : Mr.S.C.Herold Singh

* * *

S.A. (MD)No.622 of 2010

1. P.Rajakumari

2. P.Prabhashanakumari

3. P.Pushpalatha

4. P.Justinraj @ Joseenthraj ... Appellants / Respondents /
Plaintiffs

Vs.

1. M.Sundarakshi

2. M.Ambika

3. M.Selvan

4. M.Suseela

5. M.Rajeswari

6. I.Gnanaselvam ... Respondents / Appellants /
Defendants 3 to 7

7. G.Dharmamuthu (Died)

8. Gnanaselvam

9. Dharmaraj

10.Muthukrishnan

11.Krishnaveni

12.Selvakumari

13.Gnana Sobhana

(R-8 to R-13 were *suo motu* impleaded as LR's. of the deceased R-1 vide Order dated 31.03.2022)

... Respondents



Prayer: Second appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 16.12.2008 made in A.S.No.114 of 2005 on the file of the Subordinate Judge, Kuzhithurai, confirming the Decree and Judgment dated 30.11.2004 made in O.S.No.408 of 1987 on the file of the I Additional District Munsif, Kuzhithurai.

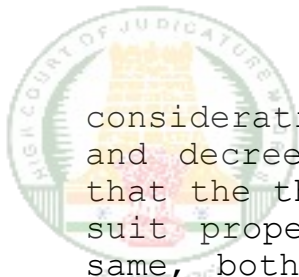
For Appellants : Mr.P.Thiagarajan

For R-1 to R-6
& R-8 to R-13 : Mr.S.C.Herold Singh

C O M M O N J U D G M E N T

The plaintiffs in O.S.No.408 of 1987 on the file of the I Additional District Munsif, Kuzhithurai, are the appellants in this second appeal.

2. The plaintiffs sought declaration of 4/5th share in the suit and for partitioning the same by metes and bounds by giving them separate possession. There is no dispute that the suit property belonged to Ponnaiyan Nadar. It measures 30 cents of land and it is located in Painkulam Village, Vilavancode Taluk, Kanyakumari District. Ponnaiyan Nadar and his wife passed away leaving behind four daughters and one son. Rajeswari was the eldest daughter. Due to certain circumstances, her siblings were brought up in an Orphanage. While so to meet the marriage expenses, it appears that the grandfather of the plaintiffs arranged sale of the suit property in favour of one Appukuttan in the year 1977. The sale deed was executed by Rajeswari herself on 23.12.1977. Later the said Appukuttan sold the suit property in favour of one Sundarakshi and Gnanaselvan. Contending that their sister could have alienated only her 1/5th share in the suit property, siblings of Rajeswari instituted the suit on 30.06.1987. Even though the subsequent purchasers were only Sundarakshi and Gnanaselvan, for reasons that are not quite clear, the plaintiffs chose to implead their respective husbands as defendants 1 and 2. Following the demise of the second defendant, his legal heirs including Sundarakshi came on record as defendants 3 to 7. Originally the suit was dismissed on the ground of non-joinder of Gnanaselvan. The plaintiffs filed the appeal. The first appellate Court remanded the matter and permitted the plaintiffs to implead Gnanaselvan also. Gnanaselvan got impleaded as eighth defendant on 06.03.2004. Based on the divergent pleadings, the trial Court had framed the necessary issues. The first plaintiff examined herself as P.W.1 and marked Ex.A.1 and Ex.A.2. The third defendant and the eighth defendant examined themselves as D.W.1 and D.W.2. Ex.B.1 to Ex.B.5 were marked. After



consideration of the evidence on record, the trial Court by judgment and decree dated 30.11.2004 partly decreed the suit and declared that the third plaintiff alone will be entitled to 1/5th share in the suit property and granted corresponding relief. Aggrieved by the same, both the plaintiffs as well as the defendants filed appeals before the Sub Court, Kuzhithurai. The plaintiffs filed A.S.No.56 of 2005, while the defendants filed A.S.No.114 of 2005. By the judgment and decree dated 16.12.2008, the appeal filed by the plaintiffs was dismissed, while the appeal filed by the defendants was allowed. As a result, the suit came to be dismissed in *toto*. Challenging the same, these two second appeals came to be filed.

3. These second appeals were admitted on 07.03.2022 on the following substantial questions of law:-

" (i) When the elder sister of the plaintiffs who is not a natural guardian sold the property without getting any permission from the Court and the same is not binding on the plaintiffs and the transaction being a void one, is the learned Subordinate Judge right in holding the transaction as a voidable transaction?

(ii) Whether the Proviso to Section 21(1) of the Limitation Act, 1963 ought to be invoked in favour of the appellants? "

4. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellants and set aside the impugned judgment and decree passed by the first appellate Court and decreed the suit as prayed for.

5. Per contra, the learned counsel appearing for the respondents submitted that the impugned judgment and decree do not call for any interference.

6. I carefully considered the rival contentions and went through the evidence on record.

7. There is no dispute regarding the basic facts. The property belonged only to Ponnaiyan Nadar. After his demise and that of his wife, the suit property in its entirety devolved on their five children. Out of the five children, Rajeswari alone had attained majority in the year 1977, while her siblings were minors. The suit property was sold in favour of Appukuttan by Rajeswari under Ex.B.1 dated 23.12.1977. Of course in the said document, Rajeswari had described herself as guardian for her minor siblings. The minor siblings had been made as co-nominee parties to the sale deed. The suit was instituted in the year 1987. It is true that in the meanwhile Appukuttan had sold the suit property in favour of the third defendant and the eighth defendant on 15.03.1980 (Ex.B.3). The



purchasers under Ex.B.3 were impleaded as defendants only on 15.11.1990 and 06.03.2004. The first appellate Court came to the conclusion that Ex.B.1 sale was only voidable. The third plaintiff had attained majority by 1984 itself. The fourth plaintiff was a minor even at the time of institution of the suit. The Courts below took the view that within three years after attaining majority, the respective plaintiffs must have filed the suit. Since the suit was not filed within three years after they attained majority, the suit was held to be time barred. The learned counsel appearing for the appellants submitted that Section 21 of the Limitation Act has not been properly applied in the present case. Section 21 of the Limitation Act is as follows:-

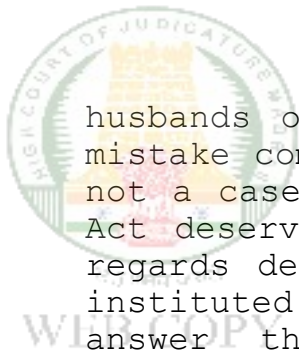
Effect of substituting or adding new plaintiff or defendant.

(1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party:

Provided that where the Court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

Section 21(1) is very clear that as regards the newly impleaded party the suit will be deemed to have been instituted, when he was so made a party. In this case, the third defendant was impleaded on 15.11.1990 and the eighth defendant was impleaded on 06.03.2004. Therefore, in view of Section 21(1), as regards defendants 3 and 8 the suit shall be deemed to have been instituted only on the said dates. It is true that the trial Court could have invoked the proviso and held that the suit as regards the defendants shall be deemed to have been instituted on the date of the original institution of the suit itself. But then in this case, no such order was passed by the trial Court. When the trial Court did not choose to invoke the proviso to Section 21(1) of the Limitation Act, the question invoking the proviso at this stage does not arise. In any event, the requirement is that the Court must be satisfied that the omission to include the new plaintiff or defendant was due to a mistake made in good faith. In this case, defendants 3 and 8 are purchasers under Ex.B.3. It is also a registered document. If the plaintiffs had applied for encumbrance certificate, their names would have been automatically shown. Even without following this basic exercise, the suit had been filed only against the respective



husbands of defendants 3 and 8. Therefore, I cannot say that the mistake committed by the plaintiffs was made in good faith. This is not a case in which the proviso to Section 21(1) of the Limitation Act deserves to be invoked. The Courts below rightly held that as regards defendants 3 and 8, the suit shall be deemed to have been instituted on the respective dates, when they were impleaded. I answer the second substantial question of law against the appellants.

8. Ex.B.1 was executed only by the eldest sister. She was obviously not a de jure guardian of her siblings. She could have been only a defacto guardian. In fact Rejeswari does not appear to have acted as a defacto guardian. Her siblings were brought up in an orphanage. Only for the purpose of describing herself in the sale deed, she had chosen to make it appear as if she was executing on behalf of her minor siblings. This is a case in which Section 11 of The Hindu Minority and Guardianship Act, 1956 will squarely apply. Section 11 of the Act is as follows:-

De facto guardian not to deal with minor's property

After the commencement of this Act, no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the *de facto* guardian of the minor.

9. The learned counsel appearing for the appellants drew my attention to the decision reported in **AIR 2002 SC 215 (Madhegowda (D) by LRs. Vs. Ankegowda (D) by LRs. and Others)** and **AIR 2019 SC 2696 (Murugan Vs. Kesava Gounder (Dead) through LRs. and Others)**. It was laid down in the said decision that the transfer of the minors interest by a de facto guardian/ manager having been made in violation of the express bar provided under section 11 of The Hindu Minority and Guardianship Act is per se invalid. It was further observed that the existence or otherwise of legal necessity is not relevant in the case of such invalid transfer. This provision furnishes complete answer to the contention advanced by the learned counsel appearing for the respondents. The respondents' counsel called upon this Court to bear in mind equitable considerations. According to him, only for the purpose of meeting out the marriage expenses, Rajeswari's grandfather arranged the sale. He had also signed as one of the attestors. The learned counsel also pointed out that the family appeared to have had other items of property which had not been included in the said partition. These considerations do have any bearing when it comes to application of Section 11 of The Hindu Minority and Guardianship Act, 1956. I hold that the said transaction is clearly hit by Section 11 of the Act.

10. The question that arises for consideration is whether the suit can be decreed as prayed for. I answer the first substantial question of law in favour of the appellants. The plaintiffs



themselves concede that the defendants are entitled to 1/5th share in the suit property because Rajeswari has interest in the suit property.

11. The eighth defendant was impleaded in the suit only in the year 2004. Thus for more than 24 years eighth defendant was in possession and enjoyment of her share in the suit property. It is again beyond dispute that the third plaintiff had attained majority in 1984 and the fourth plaintiff was minor at the time of filing of the suit. The eighth defendant was added as a party some sixteen years after the fourth plaintiff attained majority.

12. Looked at from any angle, the suit has to be necessarily dismissed as regards the eighth defendant. It is decreed that the third and eighth defendants will be entitled to 1/5th undivided share in the suit property. The eighth defendant will also be entitled to undivided 12 cents out of 30 cents in her own capacity. As regards the balance 18 cents, the plaintiffs will be entitled to 12 cents in the suit property. These second appeals are partly allowed. The suit is decreed accordingly.

13. In case, if there is any property left by Ponnaiyan Nadar is still available, the third defendant herein is of course at liberty to work out her rights in accordance with law. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Subordinate Judge,
Kuzhithurai.
2. The I Additional District Munsif,
Kuzhithurai.



3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+3 CC to M/s.S.C. HEROLD SINGH, Advocate (SR-20151,20768[F] dated
21/04/2022)

+1 CC to M/s.P. THIYAGARAJAN, Advocate (SR-20669[F] dated
22/04/2022)

S.A. (MD) Nos. 621 & 622 of 2010
21.04.2022

RK(07/06/2022) 8P 9C