



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2022

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

A.S.(MD)No.124 of 2019

WEB COPY

1.Deivendran

2.Minor Devi

3.Minor Manikandan

(Minor appellants 2 & 3 are represented by guardian
Mother Kannimari)

4.Arumugathai

5.Selvam

...Appellants/Plaintiffs

Vs.

1.Hemalatha

2.Marimuthu

...Respondents/Defendants

PRAYER: Appeal Suit is filed under Section 96 of the Civil Procedure Code, against the judgment and decree of the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur, dated 24.01.2019 in O.S.No.166 of 2011 and to decree the suit as prayed for.

For Appellants : Mr.Jothi Basu
Mr.VT.Prabakaran

For R1 : Mr.C.Vakeeswaran

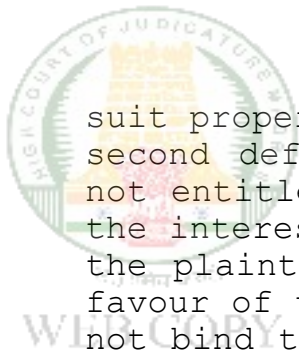
For R2 : No appearance

J U D G M E N T

This Appeal Suit has been filed challenging the judgment and decree of the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur, dated 24.01.2019, made in O.S.No.166 of 2011.

2.The appellants are the plaintiffs in the suit. The plaintiffs have filed the suit for the reliefs of declaration, partition and injunction.

3.The facts of the case is that the suit property was originally owned by the plaintiffs ancestor, by name Mayan @ Irulan by virtue of an oral partition deed entered between himself and his family members; after the demise of Mayan his only son Ayyanar inherited the property and he was in enjoyment of the same; Ayyanar died on 30.12.1994, leaving behind his son/second defendant, daughter/fifth plaintiff and his wife/fourth plaintiff; the plaintiffs 1 to 3 are the children of the second defendant; after the demise of Mayan, the



suit property was treated as joint family properties of Ayyanar, the second defendant and the fifth plaintiff, the second defendant is not entitled to make any alienation of the suit property by binding the interest of other joint family members; without the knowledge of the plaintiffs, the second defendant has sold the suit property in favour of the first defendant on 31.07.2003; the said sale deed will not bind the interest of the plaintiffs; since the second defendant has illegally executed a sale deed, in favour of the first defendant, the plaintiffs 1 to 4 have issued legal notice to the defendants on 19.09.2011, questioning the same; the defendants did not send any reply notice and hence the plaintiffs have filed the suit to declare the sale deed, dated 31.07.2003, as null and void and seeking other reliefs for partition and separate possession of the share in the suit property and also for permanent injunction, restraining the defendants from interfering with the possession and enjoyment.

4.The second defendant remained exparte. The first defendant contested the suit by stating that it is true that the suit property was originally belonged to one Mayan @ Irulan; the said Mayan had two wives; Ayyanar is the son of the first wife and the other wife of Mayan had three daughters; after the demise of Mayan also, the patta for the property continuously stood in the name of Mayan; the first wife of Mayan died in the year 1994; after her demise, her children and the children of the second wife of Mayan had inherited the suit property and they were in joint enjoyment; but the first defendant came to know all the details only subsequent to the filing of the suit; since the second defendant has stated that the suit property belonged to him absolutely, he got sale from him; after purchasing the suit property, the first defendant made some improvements and also constructed a house therein and the plaintiffs 4 & 5 were aware of the sale made by the second defendant in favour of the first defendant; despite that, they did not question the same within a period of limitation; the second defendant as Kartha of the family had sold the property in favour of the first defendant, for the welfare of the family; Since he was in-charge of education and up-bringing of the children, he needed to sell the suit property; hence, the same will bind the plaintiffs; though the plaintiffs have sought the relief of declaration in respect of the sale deed, dated 31.07.2003, no Court fee has been paid, as per Section 25 (d) of Tamil Nadu Court Fee Act; immediately after the same, the first defendant has taken possession of the suit property and the plaintiffs are continuously in the enjoyment of the same; after the demise of Ayyanar, the first wife Arumugathai executed a settlement deed, in respect of the property inherited from her husband in favour of the the second defendant on 01.04.2009; the said property belonged to her husband Ayyanar, by way of inheritance from his father Mayan, this would show that there was partition between the family members and they have been dealing with the respective shares as per their needs. Hence, the suit is not maintainable and is dismissed.



5. Considering the above submissions, the learned trial judge has framed the following issues:-

- i. Whether the suit is bad for non-joinder of necessary parties?
- ii. Whether the sale deed executed by the second defendant is valid and binding the plaintiffs?
- iii. Whether the sale deed, dated 31.07.2003 is not binding the plaintiffs?
- iv. Whether the plaintiffs are entitled for 24/27 share in the suit properties?
- v. What are the other reliefs available to the plaintiffs?

6. During the course of trial, the following additional issue has also been framed by the learned trial judge.

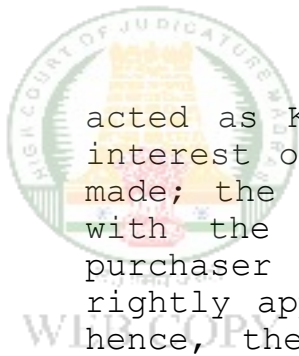
வழக்கு பகுதி பாகப் பிரிவினை தோஷத்தால் பாதிக்கப்பட்டுள்ளதா ?

7. During the course of trial, on the side of the plaintiffs, first plaintiff himself has been examined as PW 1 and Ex.A1 to A6 were marked. On the side of the defendants, two witnesses have been examined as DW 1 and DW 2 and Ex.B.1 to Ex.B8 were marked.

8. At the conclusion of the trial, considering the evidence on record and the documents placed before the Court, the learned trial judge has dismissed the suit. Aggrieved over the same, the plaintiffs have preferred this Appeal Suit.

9. The learned counsel for the appellants/plaintiffs submitted that the sale made by the second defendant in favour of the first defendant, in respect of the ancestral property would not bind the interest of the plaintiffs, who are also the sharers in the suit property; the second defendant had sold the property, when the plaintiffs 1 to 3 were minors and hence it will not bind their interest, in the sale deed, it is not stated that the sale made by the second defendant was for himself and on behalf of the minor sons, the alleged partition among the family members of the second defendant was not proved; since the minor plaintiffs filed the suit within three years on attaining the majority, it cannot be stated that it is barred by limitation; the learned trial judge had omitted to look into these details and dismissed the suit. Hence, the Appeal Suit should be allowed.

10. The learned counsel for the respondent submitted that despite there is a prayer of declaration of sale deed is null and void, no court fee is paid; it is not the case of the plaintiff that the second defendant has sold the property for any illegal or immoral purpose; even for the sake of arguments, the minor plaintiffs have also got any right over the suit property, the sale executed by the second defendant would still bind them; since the first defendant



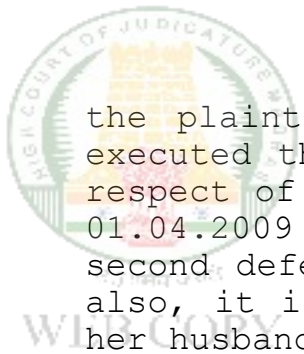
acted as Kartha of the family and dealt the suit property in the interest of welfare of the family, the alleged sale has also been made; the suit has been filed at a very belated stage by colluding with the second defendant; the first defendant is a bonafide purchaser of the suit property and the learned trial judge has rightly appreciated the evidence on record and dismissed the suit; hence, there is no need to interfere with the judgment of the learned trial Judge.

11.On the basis of the above rival submissions, I feel that the following points for consideration are essential for the purpose of deciding this Appeal Suit.

- i. Whether the Sale Deed, dated 31.07.2003 executed by the second defendant in favour of the first defendant will not bind the plaintiffs?
- ii. Whether the judgment of the trial Court in dismissing the suit is fair and proper?

12. The fact that the suit property originally belonged to Mayan @ Irulan is not disputed. The said Mayan had only one son by name Ayyanar and the said Ayyanar died on 30.12.1994. The plaintiffs have claimed that Ayyanar had one wife, one son and one daughter. The respondent/defendant has disputed the same and submitted that Ayyanar had another wife and through her he had three daughters and they are impleaded as parties to the suit. It is to be noted that the daughters of the second wife of the Ayyanar have not filed any petition to implead them as parties in the suit. The second defendant had executed a sale deed in favour of the first defendant on 31.07.2003 and the sale deed is produced as Ex.A3. The recitals of the sale deed would show that the second defendant has executed the same in favour of the first defendant. It is submitted by the learned counsel for the appellant that even in the sale deed, recitals were not to that effect. The second defendant sold the property for himself and on behalf of the minor children. It is claimed by the learned counsel for the appellant that the second defendant has sold the property in his capacity as Kartha of the family and would imply that in whatever way the property was dealt by the Kartha that would bind the other family members of the joint family. It is true that the plaintiffs have not filed the suit by stating that the alienation made by the second defendant is only for immoral and illegal reasons.

13.Despite the minor plaintiffs 2 & 3 were represented by the wife of Marimuthu in her capacity as mother, she has not been examined as a witness on the side of the plaintiffs to state that she was not aware of the sale made by the second defendant in favour of the first defendant. The best person who can say about the necessity for the family can be the wife of Marimuthu. Neither she was impleaded as party to the suit nor was she examined as a witness on behalf of



the plaintiffs. It should be noted that the fourth plaintiff had executed the settlement deed in favour of the second defendant, in respect of other family properties. The said settlement deed, dated 01.04.2009 executed by the fourth plaintiff in favour of her son/the second defendant was marked as Ex.B.5. In the said settlement deed also, it is stated that her inheritance of the property is through her husband Ayyanar and Ayyanar inherited it from his father Mayan @ Irulan. Such individual dealing of family properties by one of the legal heirs of the said Ayyanar would show that there was some arrangements between the family members in respect of properties and each of the sharer had dealt the properties in accordance with their needs.

14.In fact, the second defendant who got the settlement deed from his mother had in turn sold the same in favour of a third party. The above fact was not disputed by the plaintiffs. Excepting the suit property, no other property has been impleaded in the suit despite the relief of partition is also sought for. During the course of arguments, it is submitted by the learned counsel for the respondent that court fee has been paid for the relief of declaration. The fact remains that court fee has been valued at Rs.1,000/- and not at the value of the sale deed. Whatever may be the case, the evidence available on record would show that other legal heirs of Ayyanar had got individual interest in some of the family properties and dealt them in their individual capacity without adding other members in such dealings. Under such circumstances, it cannot be held that sale made by the second defendant in favour of the first defendant alone is null and void and that it was done without the knowledge of the other family members. Thus, the points are answered against the appellants. The learned trial judge had rightly appreciated the evidence on record and rightly dismissed the suit. In my considered view, I do not find any merit in this appeal suit.

15.In the result, this Appeal Suit is dismissed. The judgment of the learned Principal District and Sessions Judge, Virudhunagar District, dated 24.01.2019 in O.S.No.166 of 2011 is hereby confirmed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vrn



To

1.The Principal District and Sessions Judge,
Virudhunagar District,
Srivilliputhur.

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

+1 CC to M/s.C.VAKEESWARAN, Advocate (SR-12826[F] dated
17/03/2022)

+1 CC to M/s.G.M.LAW OFFICE, Advocate (SR-12885[F] dated
18/03/2022)

A.S. (MD) No.124 of 2019
17.03.2022

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