

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.12.2022

CORAM:

THE HONOURABLE MR. JUSTICE **B. PUGALENDHI**

S.A. (MD) No. 731 of 2022
and
C.M.P. (MD) No. 10962 of 2022

1. Sivalingam

2. Gowrinathan

3. Pitchaimuthu

4. Sethuramachandran

Gandhinathan (Died)

6. G. Bhuvaneswari

7. G. Jeyameena

8. G. Sujitha

9. G. Saravanapandi : Appellants

[Appellants 2, 4 are represented through their power agents / Appellants 1, 3]

[Appellants 6 to 9 are brought on record as legal representatives of the deceased 5th appellant, vide order dated 01.11.2022]

Vs.

1. Somasundaram

2. Balasubramanian

3.Neelamegam

4.Rajamaniammal

5.Sakthivel @ Sarvanagurusamy Pillai

6.Thalayiammal

Kamalam (Died)

8.Muthulakshmi

9.N.Govindaraj

10.L.Malathi Lakshmanan

11.Kokila Kumeresan : Respondents

[Respondents 9 to 11 are brought on record as legal representatives of the deceased 7th respondent vide order dated 26.03.2014]

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code as against the judgment and decree dated 27.09.2004 in A.S.No.94 of 2002 on the file of the Sub Court, Sivagangai, confirming the judgment and decree dated 15.06.2001 in O.S.No.39 of 1999 on the file of the Principal District Munsif Court, Sivagangai.

For Appellants : Mr.H.Arumugam

For Respondents : Mr.R.A.Mohan Ram
for RR.1 to 4, 6

Mr.R.Sundar Srinivasan
for R.9

JUDGMENT

The appellants / plaintiffs have filed a suit in O.S.No.39 of 1999 for declaration and for a consequential relief of permanent injunction restraining the respondents / defendants from alienating and encumbering the suit property. The suit was dismissed by the learned Principal District Munsif, Sivagangai, by judgment and decree dated 15.06.2001 and the appeal filed as against the same was also dismissed by the learned Subordinate Judge, Sivagangai, in A.S.No.94 of 2002, dated 27.09.2004. As against the concurrent findings of the Courts below, the appellants / plaintiffs have moved the instant second appeal.

2.The appellants filed this second appeal on the following substantial questions of law:-

"1. Whether the findings of the courts below that Ex.A1 was purchased for the benefit of the joint family consisting of Chinnaiah Pillai and Muthaiah Pillai and such finding is against the principles of Hindu Law that there is no presumption that any property purchased by one member of the family is joint family property?"

2. Whether the courts below are justified in finding title to the suit property in favour of the defendants by relying upon boundary recitals in documents not inter parties?

3. Whether the courts below have failed to follow the principles of law that possession follow title in case of vacant site?"

3. Learned Counsel for the appellants submitted that the suit property originally belonged to one Muthannan, who sold the property to their grandfather, Chinnaiah Pillai, vide sale deed dated 08.05.1905. The said Chinnaiah Pillai had five sons and they are jointly enjoying the property. One of the sons of Chinnaiah Pillai, namely, Chokkalingam Pillai sold an extent of 756 sq.ft., out of 83 cents to one Subbammal, vide sale deed dated 08.05.1905 and the remaining portion is the suit schedule property.

4. He further submitted that during UDR, joint patta was wrongly issued in respect of the suit schedule property by including the names of the defendants 3 & 4. Therefore, they have made an application and also got an order to remove the name of the defendants from the patta. However,

the defendants are interfering with the peaceful possession of the appellants by creating forged documents. Therefore, they have filed the suit for declaration and injunction, however, the same was rejected.

5. Learned Counsel for the defendants submitted that Chinnaiah Pillai and his younger brother, Muthaiah Pillai, jointly purchased the property. Since Chinnaiah Pillai is the elder of the family, the sale deed was registered in his name. After the transaction, the brothers entered into partition, thereby, the southern side of the property was allotted to Chinnaiah Pillai and the northern side was allotted to Muthaiah Pillai. Both of them constructed houses in their respective shares. Muthaiah Pillai's sons, Narayanan and Somasundaram inherited his share. The legal heirs of Narayanan and Somasundaram sold their share of the property to Atheenamilagi Asari of Okkur on 11.05.1983 [Ex.B4], from whom, the father of the defendants 1 & 2 has purchased the property on 28.05.1984 [Ex.B5]. The fourth defendant has purchased the eastern portion of Muthaiah Pillai's property from Somasundaram, Rajasekaran and Dhinamani.

6.He further submitted that in the year 1944 [Ex.B1], the son of Chinnaiah Pillai, namely, Chokkalingam, leased out 756 sq.ft to one Alagarsamy Pillai, who, in turn, sold the same to his daughter, Subbammal, vide sale deed dated 10.02.1957 [Ex.B2]. The said Subbammal sold the property to the father of defendants 1 & 2, vide sale deed dated 08.11.1967 [Ex.B3]. In the deeds Ex.B1, Ex.B2 and Ex.B3, the northern boundary is shown as Narayana Pillai and Somasundara Pillai, sons of Muthaiah Pillai. In the deeds Ex.B4 and Ex.B5, the southern boundary is shown as Chinnaiah Pillai. Therefore, it is clear that the northern portion is allotted to Muthaiah Pillai and the southern portion is allotted to Chinnaiah Pillai. Taking all these aspects into account, both the Courts below have concurrently rejected the plea of the appellants.

7.Heard the learned Counsel appearing for the respective parties.

8.It appears that Chinnaiah Pillai had five sons, namely, Narayana Pillai, Aiyavu @ Aiyasamy Pillai, Ramaiah

Pillai, Muthukumar Pillai and Chokkalingam Pillai. The male legal heirs of Ramaiah Pillai [plaintiffs 1 & 2], Muthukumar Pillai [plaintiffs 3 & 4] and Aiyavu @ Aiyasamy Pillai [5th plaintiff] have filed the suit. However, the legal heirs of Narayana Pillai and Chokkalingam Pillai were not made as parties to the proceedings and therefore, the Courts below have rightly held that the relief of declaration could not be granted.

9.The documents Ex.B1 to Ex.B5 & Ex.B9 show that though the sale deed of the suit schedule properties stood in the name of Chinnaiah Pillai, it was purchased for the benefit of the joint family and that, there was a partition between Chinnaiah Pillai and his younger brother, Muthaiah Pillai and thereafter, alienation of Muthaiah Pillai's share took place, vide the documents Ex.B1 to Ex.B5 & Ex.B9.

10.Though the appellants / plaintiffs claim that the suit schedule properties were purchased in the year 1905, kist receipts after the year 1992 [Ex.A10 to Ex.A13] alone were filed. Neither any documents were produced nor any independent witnesses were examined to establish the

possession. On the other hand, the evidence of the defendants coupled with the documents Ex.B1 to Ex.B5, Ex.B9 shows that they are enjoying the northern portion of the suit properties.

11. Since the defendants have established their title, both the Courts below have negated the plea of the appellants / plaintiffs, over which, this Court does not find any error that warrants interference. That apart, though PW1 deposed that he came to know about the execution of the documents Ex.B5 & Ex.B9 in the year 1989, the suit was filed after a period of 10 years, after the period of limitation.

For the foregoing reasonings and discussions, this Court is not inclined to entertain this second appeal and the same is accordingly, dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
gk

02.12.2022

To

1. The Principal District Munsif,
Sivagangai.
2. The Subordinate Judge,
Sivagangai.

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B. PUGALENDHI, J.

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