



S.A.No.244 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

S.A.No.244 of 2020
and C.M.P.No.5005 of 2020

1. R.Santhi
2. Rajkumar
3. Ramya
4. Rajeskumar

.. Appellants

Vs.

1. S.Muthulakshmi
2. S.Dhanalakshmi
3. R.Rajalakshmi
4. R.Ariharan
5. Keerthivasan

.. Respondents

Prayer:- Second Appeal filed under Section 100 of CPC to set aside the Judgment and Decree passed in A.S.No.87 of 2018 before the III Additional District and Sessions Judge, Cuddalore at Vridhachalam dated 21.08.2019 confirming the Judgment and Decree made in O.S.No.241 of 2012 on the file of the Principal Sub-ordinate Judge, Vridhachalam dated 30.10.2018.

For Appellants : Mr.D.Muthuselvam

For R1, R2 and R5 : No appearance
Notice served

For R3 and R4 : Mrs.V.Srimathi



S.A.No.244 of 2020

JUDGMENT

This second appeal has been filed as against the Judgment and Decree passed in A.S.No.87 of 2018 before the III Additional District and Sessions Judge, Cuddalore at Vridhachalam dated 21.08.2019 confirming the Judgment and Decree made in O.S.No.241 of 2012 on the file of the Principal Sub-ordinate Judge, Vridhachalam dated 30.10.2018, thereby dismissing the suit for declaration and delivery of possession.

2. For the sake of convenience, the parties are referred to as per their rankings in the Trial Court.

3. The case of the plaintiff in brief is that the suit property originally belong to one Vaithi, who is the paternal grand father of the first plaintiff's husband and the defendants 1 and 2. After the demise of the said Vaithi, the said property devolved on his son viz., one Kaliyan and Kaliyan's son one Ramachandran. The first and second defendants are the daughters of the said Kaliyan, who have no share in the suit property, since they were already offered money and jewels by their brother viz., the husband of the first plaintiff. The said Kaliyan and his son Ramachandran were in possession and enjoyment of the suit property. While being so, on 08.06.2011, excluding the husband of the



first plaintiff, the said Kaliyan and the defendants 1 and 2 joined together and sold out the suit property for a sale consideration of Rs.1,75,200/- in favour of the defendants 3 to 5. The husband of the first plaintiff died on 16.01.2011. All the plaintiffs are the legal heirs of the deceased Ramachandran. No partition had taken place in respect of the suit schedule property. Her husband also did not execute any release deed, thereby relinquishing his right in favour of the father of the defendants 1 and 2. Therefore, the said sale deed is not a valid one and it is liable to be declared as null and void. Hence, the suit.

4. The defendants 1 and 2 remained exparte. The defendants 3 to 5 resisted the case and filed their written statement stating that originally the property belong to the said Vaithi and after his demise, it was devolved upon his son Kaliyan. The said Kaliyan and his two daughters viz., the defendants 1 and 2 herein executed a sale deed in favour of them. It was agreed before the panchayatars in respect of the share of the husband of the first plaintiff, the said Kaliyan would execute a sale deed in favour of the first plaintiff in respect of the other properties and in turn her husband had executed an un-registered release deed dated 19.09.2005, thereby relinquishing his right over the suit property. Therefore, the husband of the first plaintiff has no right or title over the property and he is estopped from making any objections after execution of



the un-registered release deed.

WEB COPY

5. On the basis of the pleadings, the Trial framed the following issues,

- “ 1. Whether there is no cause of action for the suit?
2. Whether the Court fee paid by the plaintiffs is proper and correct?
3. Whether the Registered Sale deed dated 08.06.2011 executed by deceased Kaliyan and defendants 1 and 2 in favour of defendants 3 to 5 is invalid, void abinitio and liable to be cancelled?
4. Whether the plaintiff is entitled for Judgment and Decree as prayed for?
5. To what other reliefs?”*

6. On the side of the plaintiffs, they had examined P.Ws.1 to 4 and marked Exs.A1 to 6. On the side of the defendants, they had examined D.W.1 and D.W.2 and marked Exs.B1 to 8. On a perusal of oral and documentary evidences, the Trial Court dismissed the suit. Aggrieved by the same, the plaintiffs preferred an appeal and the same was also dismissed confirming the Judgment and Decree passed by the Trial Court. Hence, this second appeal.

7. The appellants raised the following substantial questions of law,

- “ i) Whether the Courts below are correct in law in holding that the property in question is self-acquired property of the deceased Kaliyan, totally overlooking Ex.B4 un-registered Release Deed said to have been executed by the deceased Ramachandran?
ii) Whether the Courts below ought not to have rejected*



WEB COPY

Ex.B3 Sale Deed executed by kartha in the undivided joint family properties to the third parties?

iii) Whether the Courts below ought not to have accepted the Ex.B1 Sale Deed in favour of the 1st plaintiff executed by Kaliyan, after receipt of valid consideration amount?"

8. Admittedly, the suit property was originally owned by said Vaithi. The said Vaithi had purchased the suit property by the registered sale deed dated 18.05.1946. He had only one son by name Kaliyan. After the demise of the said Vaithi, the entire property devolved upon the said Kaliyan. It is not the case of the plaintiffs that the said Vaithi purchased the said property from the income of any ancestral property. The said Kaliyan was in possession and enjoyment of the suit property. Thereafter, the husband of the first plaintiff had executed a release deed in favour of his father 19.09.2005, which was marked as Ex.B4. Before that he had agreed to execute the said release deed, on condition that his father Kaliyan would execute the sale deed in favour of the first plaintiff. On the same day, viz., 19.09.2005, the said Kaliyan executed a registered sale deed in favour of the first plaintiff and one Saraswathi, in respect of the shares of the husband of the first plaintiff, which were marked as Exs.B1 and B2. Therefore, her husband has no right to claim any share in the property and he is estopped from making any claim in view of the execution of the un-registered release deed, 19.09.2005.



9. From the above, it is very clear that the suit property is a self acquired property of the deceased Kaliyan and the share of the husband of the first plaintiff was also relinquished by him by execution of a release deed, dated 19.09.2005. Therefore, this Court has no hesitation to answer the first substantial question of law in favour of the defendants.

10. As aforesaid, the suit property is a self acquired property and as such the said Kaliyan has title over the property and he had rightly executed a sale deed in favour of the first plaintiff. It cannot be said that the entire properties are undivided join family properties. The said Kaliyan, after execution of the release deed by his son viz., the husband of the first plaintiff, he had executed a sale deed in favour of the first plaintiff. On execution of the release deed by the husband of the first plaintiff, which was marked as Ex.B4, the said Kaliyan and D1 and D2 have absolute title over the property and they had executed a sale deed in favour of D3 to D5 which was marked as Ex.B3. Hence, this Court answered the second substantial question of law in favour of the defendants. The father-in-law of the first plaintiff had executed a sale deed in favour of the first plaintiff, which was marked as Exs.B1 and B2, only after the execution of a release deed by his son Ramachandran in favour of the said Kaliyan, D1 and D2. Further, the said Kaliyan, D1 and D2 had executed a sale deed only to meet



S.A.No.244 of 2020

out the family expenses and to discharge the family debts. After execution of the release deed, the said Kaliyan had executed a sale deed in favour of the first plaintiff. Therefore, the third substantial question of law is also answered in favour of the defendants.

11. Therefore, both the Courts below rightly dismissed the suit and this Court finds no infirmity or illegality in the orders passed by the Court below and also finds no substantial questions of law involved in this case and the second appeal is liable to be dismissed.

12. Accordingly, this Second Appeal is dismissed. Consequently, connected Miscellaneous petition is closed. No costs.

30.01.2023

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

mn

G.K.ILANTHIRAIYAN,J.



WEB COPY



S.A.No.244 of 2020

mn

To

1. The III Additional District and Sessions Judge, Cuddalore at Vridhachalam.
2. The Principal Sub-ordinate Judge, Vridhachalam.

S.A.No.244 of 2020
and C.M.P.No.5005 of 2020

30.01.2023