



S.A.No.795 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.795 of 2023

1.K.Sasikala
2.Kalaiselvi
3.M.Lakshmi
4.K.Bharathi
5.A.Anandhi
6.Shenbagavalli

... Appellants

Vs.

Anbalagan (died)

1.Angalin Anbarasi

2.Prithi Priyamalar

. . . Respondents

Prayer:- Appeal is filed under Section 100 of C.P.C against the decree and judgement dated 16.12.2022 passed in A.S.No.26 of 2017 on the file of the Sub Court, Tirupattur, Vellore District confirming the decree and judgement in O.S.No.36 of 2013 dated 14.03.2017 on



the file of the Additional District Munsif Court, Tirupattur.

For Appellant : Mr.PA.Sudesh Kumar

JUDGEMENT

The plaintiffs in a suit for declaration and permanent injunction who have lost in both the Courts below have filed the above appeal. The facts are briefly set out herein below and the parties are referred to in the same ranking as before the Trial Court.

2. The plaintiffs had filed the suit O.S.No.36 of 2013 on the file of the Additional District Munsif, Tirupattur praying for a declaration and a permanent injunction and also for a cancellation of the sale deed dated 03.11.1999 executed by Kannan @ Venkatachalam in favour of the defendants.

3. The plaintiffs' case is that the suit property and other item of



S.A.No.795 of 2023

properties were the ancestral properties of the one Koolan @ Chinnagounder who was in possession and enjoyment of the same. The said Koolan @ Chinnagounder had died intestate several years ago, leaving behind him surviving his sons as his legal heirs. Thereafter, there was a partition amongst the sons of Koolan @ Chinnagounder, under a partition deed dated 14.08.1975. Under this partition, the E schedule property fell to the share of Kannan @ Venkatachalam who is the father of the plaintiffs. The aforesaid Kannan @ Venkatachalam died on 22.12.2009 and his wife had also passed away on 05.01.2005. The plaintiffs are their only legal heirs as they have no male heirs.

4. The plaintiffs would submit that they are in enjoyment of the properties. The defendants who are third parties appear to have entered into an illegal sale deed with the plaintiffs' father on



S.A.No.795 of 2023

WEB COPY

03.11.1999 in respect of Survey No.392. This property is the ancestral property and Kannan @ Venkatachalam was not solely entitled to the property and therefore cannot make a sale independently. Therefore, the sale deed dated 03.11.1999 executed by the said Kannan @ Venkatachalam has to be cancelled. The plaintiffs would further submit that the properties are undivided and there is no specific boundaries and patta is standing in the name of the plaintiffs' ancestors. The plaintiffs would submit that the defendants had forcibly trespassed into the suit properties. Therefore, they have come forward with the suit in question.

5. A detailed written statement was filed inter alia contending that once the partition had taken place, it became the property of Kannan @ Venkatachalam. The defendants would submit that the suit property had been purchased by the 1st defendant from the father of



S.A.No.795 of 2023

WEB COPY

the plaintiffs for a valuable consideration and that apart Kannan @ Venkatachalam had obtained a mortgage loan of Rs.20,000/- from the 1st defendant by executing a mortgage deed dated 30.05.1996 in favour of the 1st defendant. In order to clear the mortgage loan and other debts incurred by the above said Kannan for celebrating the marriage of his daughter, the said Kannan had sold the property under the sale deed dated 03.11.1999 in favour of the 1st defendant who has since then been in enjoyment and possession of the same.

6. On 17.10.2012, the 1st defendant had executed a gift settlement deed in favour of his daughters, the 2nd and the 3rd defendants respectively and they have been in possession and enjoyment since then. The revenue records have also been mutated in the name of the 2nd and the 3rd defendants. The suit to declare this sale deed as null and void that too after 17 years and by the legal



S.A.No.795 of 2023

representatives of the vendor is not maintainable. The defendants would further submit that the suit is hopelessly barred by limitation and lacks merit. The suit has been filed only on account of the fact that the price of the property has been on the steady rise. Therefore, they sought for a dismissal of the suit.

7. The Trial Court had framed the following issues:-

1. Whether the plaintiffs are entitled to the suit properties?

2. Whether the sale deed dated 03.11.1999 is valid, binding upon the plaintiffs?

3. Whether the plaintiffs are in joint possession and enjoyment over the properties?

4. Whether the plaintiffs are entitled to the relief of declaration and permanent injunction?



S.A.No.795 of 2023

5. Whether the plaintiffs are entitled to the relief of cancellation of the sale deed dated 03.11.1999?

6. To what other relief the Plaintiff are entitled to?

8. On the side of the plaintiffs, 7 witnesses were examined and Ex.A.1 to A.3 were marked and Ex.X.1 and X.2 were marked through third party witnesses. On the side of the defendants, 4 witnesses were examined and Ex.B.1 to B.22 were marked.

9. Ultimately, the learned Trial Judge had held that the plaintiffs have neither proved their title nor possession to the property and further suppressed many facts in the pleadings. Consequently, the suit was dismissed. Aggrieved by the same, the plaintiffs have filed A.S.No.26 of 2017 on the file of the Sub Court, Tirupattur. The



S.A.No.795 of 2023

learned Sub Judge had also confirmed the judgement and decree of the Trial Court. It is against this concurrent judgement and decree that the plaintiffs are before this Court.

10. Heard the learned counsel for the appellants/plaintiffs.

11. Admittedly, the property originally belonged to one Koolan @ Chinnagounder and on his death, his 4 sons which included the father of the plaintiffs had entered into a registered partition deed on 14.08.1975. Under the said partition deed, the suit schedule property which is described as the E schedule property therein was allotted to the share of the plaintiff's father. Though the plaintiffs had pleaded that the property was ancestral in the hands of Koolan @ Chinnagounder, no documents have been filed to prove the same. Thereafter, by reason of the partition, the property becomes the



S.A.No.795 of 2023

WEB COPY

exclusive property of Kannan @ Venkatachalam. As the owner of the property, the said Kannan had executed a sale deed Ex.A.1 in favour of the 1st defendant which is a valid sale deed and therefore the plaintiffs cannot seek to cancel the same that too when their father during his lifetime had not questioned the same. The Trial Court had noticed the suppression on the part of the plaintiffs which had been set out by the learned Trial Judge in para. no.8 of her judgment. In answer to issue nos.1 and 3, the learned Trial Judge had observed as follows:-

"And further Ex.A29 shows, the partition suit filed was transferred to Lok Adalath and there was a compromise decree. And it is pertinent to note here during compromise Item no.3 of suit property has been deleted alleging that it has been added mistakenly. And the compromise award was passed as if plaintiffs 2 to 6 receiving money from 1st plaintiff had allowed to declare the Item no.1 & 2 of the suit which is Item -1 & 2 in this suit as absolute property of 1st plaintiff namely Sasikala. But it is pertinent to note here that as



S.A.No.795 of 2023

per the documents Ex.B1 & Ex.B2 produced in this suit out of 1 Acre 64 cents of land in S.No. 392 item-1 property described in this suit, an extent of 1 Acre 24 cents were sold to 1st defendant by plaintiffs' father and there is a balance of 0.40 cents only and also as per sale deed Ex.B11 plaintiffs father had purchased an extent of 1 Acre 8 cents from his brother Govindasamy which was settled on 1st plaintiff on 04.04.2008 by Ex.B2 and so only 0.04 cents of land in S.No.392 was settled by Kannan @ Venkatachalam in favour of 1st plaintiff on 24.10.2007 by Ex.B1 and in Ex.B1 dated 24.10.2007 it is found 0.60 cents in S.No.392 which is item no.2 property in both suits O.S.36/2013 and O.S.161/2013 are also settled in favour of 1st plaintiff, Sasikala who is defendant in O.S.161/2013 while the Kannan is entitled only to 0.40 cents in S.No.393 as per Ex.A24, which shows that only basing on Ex.B1 & B2 the Lok adalath award was passed in O.S.161/2013. And further as pointed out by defence there is no explanation on side of plaintiffs why all these facts



S.A.No.795 of 2023

were suppressed in this suit."

WEB COPY

12. The above extract would show that pending this suit, plaintiffs 2 to 6 had filed a suit for partition in O.S.No.161 of 2013 only against the 1st plaintiff which was ultimately settled in Lok Adalat. The 1st defendant is not a party to this suit. Plaintiffs 2 to 6 had admitted that the items 1 and 2 of the suit property belong to the 1st defendant therein who is the 1st plaintiff in the instant suit.

13. In the light of the detailed findings of the Courts below which have not been vehemently contested by the appellants/plaintiffs, no case has been made out for setting aside the concurrent judgment and decree. Consequently, the Second Appeal stands dismissed. No costs.

02.11.2023

11/14



S.A.No.795 of 2023

Index: Yes/No

Speaking order/non-speaking order

Neutral Citation: Yes/No

shr



S.A.No.795 of 2023

WEB COPY

To

1. The Sub Court, Tirupattur, Vellore District.
2. The Additional District Munsif Court, Tirupattur.
3. The Section Officer,
V.R.Section,
High Court, Madras.



WEB COPY



S.A.No.795 of 2023

P.T.ASHA, J.,

shr

S.A.No.795 of 2023

02.11.2023