



S.A.No.339 of 2016

IN THE HIGH Court OF JUDICATURE AT MADRAS

Dated : 03.01.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.339 of 2016

Jayaraman

...Appellant

Vs.

1.Sivakumar

2.Dhanammal (Died)

3.Krupapuri

4.Sivakami

5.Vimala

6.Sivasankar

7.Seethalakshmi

...Respondents



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Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree of the I Additional Subordinate Judge, Villupuram dated 18.01.2016 made in A.S.No.36 of 2006 in confirming the Judgement and Decree of the I Additional District Munsif, Tirukoilur daed 28.02.2005 made in O.S.No.150 of 1998.

For Appellant : Mr.Rajarajan
for Mr.R.Balakrishnan

For Respondents : N.Suresh
1, 4 to 7

For Respondent 2 : Died

For Respondent 3 : Ex parte vide order dated
12.04.2016.

JUDGMENT

The plaintiff is the appellant before this Court. The suit in question is one for declaration that the settlement deeds dated



07.05.1982 executed by Kandhasamy Gounder in favour of the 1st defendant is null and void and for an injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the A – Schedule property. The parties are referred to in the same ranking as before the Trial Court in the narration of the case herein below set out.

2. The case of the plaintiff is that the suit property and other properties belonged to one Kandhasamy Gounder, the father of the plaintiff. It is the case of the plaintiff that these properties are the joint family properties. On 22.11.1987, the said Kandhasamy Gounder had died and prior to his death he had been bed ridden with paralysis and had also suffered a speech difficulty.

3. The case of the plaintiff is that his 1st wife is the 2nd defendant and the 1st defendant is his son born through the 2nd defendant. The 3rd defendant is the brother of the 2nd defendant. The



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case of the plaintiff is that all the revenue records, electricity service connection, etc., stands in his name and in exercise of his ownership he has also sold the properties on 08.06.1981. While so, the defendants have manipulated the said Kandhasamy Gounder and taking advantage of his weak health had got the settlement deeds dated 07.05.1982 executed in favour of the 1st defendant.

4. The plaintiff would contend that the B – Schedule properties are all properties which have been transacted by the plaintiff and Kandhasamy Gounder. Since there is a disturbance to the plaintiff's possession as a demand has now been made by the 1st defendant the suit came to be filed.

5. The 1st defendant had filed a written statement inter alia contending that the properties were not joint family properties but were the individual properties of the said Kandhasamy Gounder. The plaintiff was married to the 2nd defendant, however he had started

cohabiting with one Malarvizhi. This relationship was objected to and the said Kandhasamy Gounder, with an intent to provide for the defendants 1 and 2, had executed two settlement deeds in favour of the 1st defendant on 07.05.1982 in respect of his self acquired properties and the 2nd and 3rd defendants were appointed as his guardians.

6. The 1st defendant would submit that the said Kandhasamy Gounder was never unwell and he was hale and hearty or endowed with a clear mind. The settlement deeds have been executed by Kandhasamy Gounder fully comprehending his action and the settlement deeds are irrevocable.

7. The 1st defendant would submit that he had attained majority on 03.05.1998 and immediately he had taken steps to claim the property. It was also the case of the 1st defendant that the plaintiff with an evil intent of depriving the 1st defendant of his property had



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filed a suit and obtained an ex parte decree, showing the 1st defendant as an adult while, in reality he was a minor. On coming to know about the ex parte decree, the 1st defendant had filed I.A.No.1190 of 2003 and the ex parte decree was set aside. The 1st defendant would therefore submit that the plaintiff had committed fraud on Court and therefore prayed for the dismissal of the suit.

8. The 1st defendant had also stated that the said Malarvizhi was married to one Sivaraj, son of Kanniya Gounder. The 1st defendant would submit that besides himself there are three other daughters born to the plaintiff and the 2nd defendant. The settlement deed had come to be executed only on account of the fact that the plaintiff had failed to maintain the 1st and 2nd defendants and his daughters.

9. The plaintiff had filed a reply statement, wherein he would contend that the said Malarvizhi is his 2nd wife but however denied that she was married earlier to one Sivaraj. The plaintiff would also



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contend that his marriage to the said Malarvizhi has in no way been an impediment to his taking care of his first wife, the 2nd defendant and his children through and it is also his contention that he has not committed any fraud on Court.

10. The learned I Additional District Munsif, Tirukoilur, before whom the suit was pending had framed the following issues:

- a. Whether the plaintiff is entitled to the declaration relief sought for?*
- b. Whether the plaintiff is entitled to the permanent injunction?*
- c. Whether the settlement deed dated 07.05.1982 is true and acted upon?*
- d. To what other relief?*

11. The plaintiff has examined himself as P.W.1 and two other witnesses as P.W.2 and P.W.3. Ex.A.1 to Ex.A.97 were marked on



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the side of the plaintiff. The 1st defendant has examined himself as D.W.1, the 2nd defendant was examined as D.W.4 and two other witnesses were examined as D.W.2 and D.W.3. Ex.B.1 to Ex.B.29 were marked on the side of the defendants.

12. The learned I Additional District Munsif, Tirukoilur, had observed that the 1st defendant was in possession of the settlement deed as he has produced the original of the same as Ex.B.28 and Ex.B.29 (Ex.A.17 and Ex.A.18), which would clearly show that the plaintiff had knowledge about the execution of the settlement deeds. The settlement deeds had been executed in the year 1982 and the suit filed in the year 1998 is therefore barred by limitation as per Article 58 of the Limitation Act.

13. The learned I Additional District Munsif, Tirukoilur, had further held that the plaintiff has not been able to show proof that the property in question is a joint family ancestral property. In fact,



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P.W.2 who had been examined on the side of the plaintiff to prove the ancestral nucleus in his cross examination would clearly depose that he does not know the extent of the joint family property and whether these properties yielded sufficient income to purchase a new property.

14. The learned I Additional District Munsif, Tirukoilur, held that the plaintiff has failed to prove excess income from the alleged ancestral property which formed the consideration for purchase of the suit properties. Therefore, the learned I Additional District Munsif, Tirukoilur, proceeded to dismiss the suit with reference to the prayer for declaration but however granted the relief of permanent injunction.

15. Challenging the said Judgement and Decree, in so far as the relief of declaration had been denied, the plaintiff had filed A.S.No.36 of 2006 on the file of the I Additional Sub Court, Villupuram. The defendants had however not filed any appeal against the decreed portion. The learned I Additional Sub Judge, Villupuram on

considering the evidence on record upheld the Judgement passed by the learned I Additional District Munsif, Tirukoilur and dismissed the appeal. Challenging the same, the defendant / appellant has filed the above Second Appeal, which has been admitted on the following Substantial Question of Law:

“a. Whether the Courts below are correct in upholding the settlement deeds Ex.A.17 and Ex.A.18 when admittedly Kandaswamy Gounder, who was one of the coparceners along with the appellant made a gift of his undivided coparcenary interest, which is void as per the ruling of the Hon'ble Supreme Court reported in 100 LW SC 1125?”

16. Heard the learned counsels on the either side.

17. It is brought to the notice of this Court by the learned counsel for the respondent / defendant that already a suit for recovery

of possession has been filed by the 1st defendant before the Court below. That apart the plaintiff had not contributed a single penny for the marriage of his daughters and they had to move Court to get the same.

18. The suit has been filed on the following grounds:

(a) That settlement deed executed by the said Kandhasamy Gounder is null and void for the reason that the properties are joint family properties, in which the plaintiff has an interest.

(b) Secondly, on the ground of adverse possession.

19. To prove that the properties are ancestral several documents had been filed by the plaintiff, particularly Ex.A.6 to Ex.A.8 and Ex.B.6, Ex.B.11 to Ex.B.19. However, a perusal of the same would show that Ex.A.6 to Ex.A.8 are documents under which the property has been purchased by Kandhasamy Gounder. B series exhibits are the documents showing the sale. However, all of this are subsequent



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to the purchase of the suit properties by the said Kandhasamy Gounder. That apart the deeds does not refer to the properties as ancestral. The plaintiff has not been able to establish the nexus between these transactions and the purchase of the suit property by Kandhasamy Gounder.

20. Even the witness examined on the side of the plaintiff i.e., P.W.2 has clearly deposed that he has no knowledge about the extent of joint family property and whether these joint family properties had yielded sufficient income for the purchase of the further properties. The plaintiff has miserably failed in proving the ancestral property nucleus for the purchase of the suit schedule properties.

21. The Courts below have rightly dismissed the suit in so far as it relates to the question of declaration. The Courts below have also held that the plea of joint family property and adverse possession are mutually contradictory and therefore has rejected the plea of adverse



possession as well. However, the decree for injunction has been granted which has not been challenged by the defendants. It is however now brought to the notice of this Court that the 1st defendant has moved a suit for recovery of possession.

22. Considering the fact that there is no proof to show the ancestral nucleus for the purchase of the suit schedule property, the substantial question of law is answered against the plaintiff and the Second Appeal stands dismissed. However, there shall be no order as to costs.

03.01.2023

Index : Yes/No
Internet : Yes/No
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To

1.The I Additional Subordinate Judge,
Villupuram.

2.The I Additional District Munsif,
Tirukoilur



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