



S.A.No.25 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.25 of 2017

V.Chandragantha

... Appellant

vs.

1.R.Kanagaraj

2.R.Vasanthi

3.R.Rangasamy

... Respondents

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the Judgment and decree dated 25.02.2016 made in A.S.No.82 of 2014 on the file of III Additional District and Sessions Judge at Coimbatore reversing the Judgment and decree dated 26.06.2014 made in O.S.No.575 of 2012 on the file of III Additional Subordinate Judge at Coimbatore.

For Appellant : Mr.S.Mukunth
Senior Counsel
for M/s.Sarvabhauman Associates

For R1 and R2 : Mr.N.Manokaran

For R3 : No Appearance



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J U D G E M E N T

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The 2nd defendant in the suit is the appellant. The respondents 1 and 2 filed a suit seeking declaration that the Sale Deed dated 06.07.2001 executed by the 3rd respondent/1st defendant is null and void and also permanent injunction restraining the defendants from interfering with peaceful possession and enjoyment of the suit property. The respondents 1 and 2/plaintiffs also sought for partition of 2/3rd share in the suit property. The respondents 1 and 2 also sought for permanent injunction restraining the 2nd defendant from alienating or encumbering the suit property.

2. The Trial Court dismissed the suit. Aggrieved by the same, the respondents 1 and 2 filed an appeal in A.S.No.82 of 2014 before the III Additional District and Sessions Judge, Coimbatore. The First Appellate Court reversed the findings of the Trial Court and allowed the appeal and granted decree for partition, declaration and injunction against the alienation as prayed for. The prayer in respect of the absolute injunction was dismissed. Aggrieved by the judgement and decree passed by the First Appellate Court, the 2nd defendant in the suit has come up by way of this



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second appeal.

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3. According to the respondents 1 and 2/plaintiffs, the suit property is ancestral property and hence, they are entitled to 2/3 share in the suit property. Originally the suit property was allotted to the share of their father R.Rangasamy namely the 3rd respondent. Originally there was a partition in the family between the father of the respondents 1 and 2 namely R.Rangasamy, his brother Duraisamy and grandfather Ramanna Gounder on 14.03.1991 and the suit property was allotted to the share of 3rd respondent under C-Schedule to the said partition document. It is the case of the respondents 1 and 2 that they have been in possession and enjoyment of the suit property along with 3rd respondent without any hindrance from third parties. On 16.07.2012, the respondents 1 and 2 came to know of the Sale Deed executed by the 3rd respondent in favour of the appellant and therefore, they were constrained to file the suit seeking above said relief.

4. The 3rd respondent remained *exparte*. The appellant/2nd defendant filed a written statement and admitted that the suit property was allotted to the share of 3rd respondent-R.Rangasamy in the family partition dated



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14.03.1991. It was averred by the appellant that the suit property was purchased on 06.07.2001 from 3rd respondent and she has been in possession and enjoyment of the suit property from that date onwards. It was specifically pleaded by the appellant that the respondents 1 and 2 had knowledge about the sale by the 3rd respondent and therefore, they were not entitled to maintain the suit. It was also pleaded that the suit property was separate property of the 3rd respondent and his father-Ramanna Gounder. The appellant further stated in her written statement that the plaintiffs/respondents 1 and 2 failed to challenge the sale within three years from the date of attaining majority. Therefore, the suit was barred by limitation.

5. Before the Trial Court, the 1st respondent was examined as PW.1 and 6 documents were marked on the side of the respondents 1 and 2/plaintiffs as Ex.A1 to A6. The appellant was examined as DW.1 and on her behalf, 4 documents were marked as Exs. B1 to B4.

6. On consideration of oral and documentary evidence available on



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record, the Trial Court came to the conclusion that the suit property was alienated by the 3rd respondent/1st defendant in favour of the appellant for family necessity and therefore, the plaintiffs are not entitled to maintain the suit. Aggrieved by the same, the respondents 1 and 2 filed an appeal in A.S.No.82 of 2014 on the file of the III Additional District and Sessions Judge, Coimbatore. The First Appellate Court reversed the findings of the Trial Court on the ground that the appellant failed to lead any evidence to establish that sale was for the benefit of the family by leading any evidence. Having come to the conclusion that the suit property was ancestral property, the First Appellate Court partly decreed the suit as mentioned above. Aggrieved by the same, the appellant is before this Court.

7. At the time of admission, this Court formulated the following substantial questions of law:-

“1. Is the Appellate Court right in reversing the decree and grant partition when it is clear from the recitals of sale deed, dated 06.07.2001 (Ex.A.2 and A.4) that the third respondent had sold the property to the Appellate for the legal benefit of the family?”



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2. Is the Appellate Court justified in entertaining the suit on payment of Court Fee under Sec. 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act, when it is established by Revenue Records Ex.B.1 to B4, Appellant alone is in possession of the suit property pursuant to the sale deed, dated 06.07.2001 and the respondents 1 and 2 are not in possession?

3. Is the Appellate Court justified in reserving the Judgment and Decree overlooking the fact that the suit is not filed within three years from the date of respondents 1 and 2 attaining majority in view of Article 60 of the Limitation Act?"

8. Mr.S.Mukunth, learned Senior Counsel appearing for the appellant submitted that in Ex.A2-Sale Deed in favour of the appellant, there is a clear recital that the sale was made by the 3rd respondent for the family necessity and hence, the sale in favour of the appellant is binding on the respondents 1 and 2/plaintiffs, who are minor children of appellant's vendor at that point of time. The learned Senior Counsel further submitted that the 3rd respondent sold the property even in the year 2001 and from that date onwards, the appellant has been in possession and enjoyment of the suit property and consequently, the valuation of the suit under Section 37 (2) of



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the Tamil Nadu Court Fees and Suits Valuation Act, 1955 is not correct.

The learned Senior Counsel further submitted that the suit has not been filed by the respondents 1 and 2 within three years from the date of attaining majority and consequently, the suit is barred under Article 60 of the Limitation Act, 1963.

9. Mr.N.Manoharan, learned counsel appearing for the respondents 1 and 2 submitted that mere recital in the sale deed is not sufficient and the appellant failed to plead in the written statement about the family necessity. When there is no plea that sale deed in favour of the appellant was for family necessity, the appellant cannot take advantage of any recital in the document. The learned counsel further submitted that apart from the recital in the document, there must be evidence in support of the contention that the same was for family necessity. In this regard, the learned counsel relied on the judgement of this Court in ***Javeed Basha and others vs. Rukkamma and others*** reported in ***2015 SCC Online Mad. 1261***. The learned counsel further submitted that the respondents 1 and 2 in their plaint specifically pleaded that they were in the joint possession of the suit property along with other co-owner namely the 3rd respondent. However, the appellant failed to



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plead any exclusive possession. In such circumstances, the valuation of the suit under Section 37 (2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 is correct. The learned counsel further by drawing the attention of this Court to Article 109 of the Limitation Act, 1963, submitted that if a Member or Coparcener wants to set aside his father's alienation of ancestral property, the limitation is twelve years and not three years as contended by the appellant.

Question of Law No.1:-

10. It was vehemently contended by the learned Senior Counsel appearing for the appellant that in view of recital in Exs.A2 and A4, Sale Deeds in favour of the appellant that the sale was made for family necessity, the same is binding on the minor children namely the respondents 1 and 2. As rightly contended by the learned counsel appearing for the respondents 1 and 2, a perusal of the written statement filed by the appellant would suggest that the appellant failed to plead that the sale in her favour was for family necessity. In the absence of any specific plea regarding family necessity, the appellant is not entitled to lead any evidence. It is settled law



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that there cannot be any evidence without a plea, therefore, the appellant is not entitled to take advantage of the recital found in Exs.A2 and A4, when there is no foundation in the pleadings. Further, in ***Javeed Basha and others vs. Rukkamma and others*** reported in ***2015 SCC Online Mad. 1261***, this Court while considering the plea of legal necessity observed as follows:-

“17. In the present case, it was not proved by the plaintiffs that the sale was made by the deceased Shivaram for a legal necessity or the sale amount was utilised by him for the upliftment of the joint family. In fact, in the decision rendered in (R. Sridharan v. Ammaniammal) 2006 (2) CTC 377 it was held that the alienee has to prove that the sale consideration has been utilised for a worthy cause and for the benefit and upliftment of the joint family. In the absence of such evidence, the sale made by the Kartha cannot be said to be for a legal necessity. Mere retention of the amount in the hands of the alienee for the purchase of the lands would not suffice and there must be actual proof of purchase of other lands. When such evidence is missing in this case, the Courts below are justified in coming to the conclusion that the sale made by the deceased Shivaram does not bind the defendants in any manner.”



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WEB COPY 11. In the case on hand, there is no evidence on the side of the appellant to show that consideration paid to the 3rd respondent was utilised for family necessity. Therefore, in the absence of any plea or evidence supporting the contention of the learned Senior Counsel for the appellant that property was sold in favour of the appellant for family necessity and the consideration was utilised for family benefit, I am unable to accept his contention. Accordingly, the question of law No.1 is answered against the appellant.

Question of Law No.2:

12. The respondents 1 and 2 in their pleadings specifically raised a plea that the suit property was allotted to the share of the 3rd respondent in the family partition dated 14.03.1991 and the respondents 1 and 2 being his children, have been in possession and enjoyment of the suit property along with 3rd respondent. Though the respondents 1 and 2 pleaded joint possession in their plaint, the same has not been specifically denied by the appellant in her written statement. The appellant in her written statement



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vaguely pleaded that the plaintiff should pay court fee under Section 37 (1) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. However, there is no plea that the appellant had been in possession of the suit property to the exclusion of the respondents 1 and 2. In such circumstances, the valuation adopted by the respondents 1 and 2 under Section 37 (2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, is correct. Accordingly, the question of law No.2 is also answered against the appellant.

Question of Law No.3:-

13. It is admitted case that in Exs.A2 and A4-Sale Deeds in favour of the appellant, the respondents 1 and 2 were not made *Eo nomine* parties. Only in cases, where minor's property is sold by guardian by making minors as *Eo nomine* parties, there is a necessity to challenge the document and in such cases, Article 60 of Limitation Act, 1963, will be applicable. In the case on hand, the 3rd respondent in the sale deed executed in favour of the appellant failed to include the respondents 1 and 2 as *eo nomine* parties. Further, in the case on hand alienation of ancestral property is by father. In



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such circumstances, the correct provision of law applicable is Article 109 of the Limitation Act, 1963. Article 109 of the Limitation Act, 1963, reads as follows:-

Description of suit	Period of limitation	Time from which period begins to run
PART IX-Suits relating to miscellaneous matters		
109. By a Hindu governed by Mitakshara law to set aside his father's alienation of ancestral property.	Twelve years	When the alienee takes possession of the property

14. A perusal of the above Article would suggest that the limitation to set aside the father's alienation of ancestral property is twelve years from the date on which the alienee had taken of the possession of the property. In the case on hand, the properties were sold to appellant on 06.07.2001. The suit has been presented on 19.07.2012 well within twelve years from the date of sale and handing over of possession. In such circumstances, the suit is very much well within the limitation period of twelve years under Article 109 of the Limitation Act, 1963. Accordingly, the question of law No.3 is also answered against the appellant and in favour of the respondents 1 and 2.

15. In view of the conclusion reached by this Court in the above said substantial questions of law raised by this Court at the time of admission,



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the second appeal stands dismissed.

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In Nutshell:-

(i) The second appeal is dismissed.

(ii) In the facts and circumstances of the case, there shall be no order as to costs.

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Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
dm

To

1.The III Additional District and Sessions Court,
Coimbatore.

2.The III Additional Subordinate Court,
Coimbatore.



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S.SOUNTHAR, J.

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