



S.A.(MD).Nos.104 and 105 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.03.2023

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

S.A.(MD).Nos.104 and 105 of 2023

and

C.M.P.(MD).No.2497 of 2023

S.A.(MD).No.104 of 2023

M.Sundaranantham

... Appellant/Appellant/
Plaintiff

Vs.

1.K.Sivakumar

2.K.Mahesh

3.N.Viswanath

4.N.Manickavasagam

5.Anuradha

6.Pranap Kumarasamy

7.Parvathi Sankari & Nayanika

...Respondents/Respondents/
Defendants

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 18.03.2021 passed in A.S.No.36 of 2020 on the file of the Principal District Court, Tirunelveli confirming the Judgment and Decree made in O.S.No.206 of 2014 on the file of the Additional



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Sub Court, Tirunelveli dated 06.11.2019, allow the Second Appeal.

S.A.(MD).No.105 of 2023

M.Sundaranantham

... Appellant/Appellant/
Plaintiff

Vs.

1.K.Sivakumar

2.K.Mahesh

3.K.Vinaikumarasamy

4.N.Viswanath

5.N.Manickavasagam

6.P.Anuradha

7.P.Parvathi Sankari & Nayanika

8.P.Pranap Kumarasamy

...Respondents/Respondents/
Defendants

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 18.03.2021 passed in A.S.No.37 of 2020 on the file of the Principal District Court, Tirunelveli confirming the Judgment and Decree made in O.S.No.72 of 2016 on the file of the Additional Sub Court, Tirunelveli dated 06.11.2019, allow the Second Appeal.

For Appellant : Mr.S.Kumar

For Respondents : Mr.M.Vallinayagam,
Senior Counsel
for Mr.D.Nallathambi



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(In both cases)

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COMMON JUDGMENT

Since both the Second Appeals arise out of a common judgment passed by the learned Principal District Judge, Tirunelveli in A.S.Nos.36 and 37 of 2020, they are taken up together for final disposal.

2. The appellant is the plaintiff in O.S.No.72 of 2016 and defendant in O.S.No.206 of 2014 on the file of the Additional Sub Court, Tirunelveli. The appellant originally filed O.S.No.383 of 2014 before the Principal District Munsif, Tirunelveli for relief of declaration that the suit property belongs to him and for permanent injunction against the respondents not to interfere with his possession or in the alternative for recovery of possession. The said suit was transferred to Additional Sub Court, Tirunelveli and renumbered as O.S.No.72 of 2016.

3. The case of the appellant/plaintiff in the suit filed by him, namely, O.S.No.72 of 2016 is that the suit property, which is 28.50 cents in Survey No.85/1B along with certain other properties belonged to his father, Muthukaruppa Pillai. He executed a Will on 17.10.1956 in respect of 96 cents



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in Survey No.85/1 and the suit schedule property forms part of the said total extent. As per the Will, the wife Lakshmiammal was entitled to sell half of the said extent, namely, 48 cents and utilise the sale consideration for the marriage expenses of the two daughters, Pichammal and Valliammal, who are the sisters of the appellant. As regards the remaining extent of 48 cents, the Will stated that Lakshmiammal shall have a life estate and after her death, the plaintiff/appellant would be entitled to 48 cents absolutely. However, contrary to the terms of the Will, the plaintiff/appellant's mother Lakshmiammal sold the suit schedule property to one Arumugathevar on 29.07.1967. Thereafter, the said Arumugathevar sold the property to one Chelladuraiathevar and Muthumaniammal on 22.05.1969. The said Chelladuraiathevar and Muthumaniammal sold the property to one Balasubramanian and Muthu Vinayagam through two sale deeds dated 12.10.1990 and 27.03.1991. The above said persons Balasubramanian and Muthu Vinayagam in turn sold the property in favour of Sivakumar and others on 03.08.2007. The plaintiff's mother expired on 05.06.2011.



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4. The respondents/defendants filed a written statement stating that the sale deed in favour of Arumugathevar was valid in law. The plaintiff was then a minor and the sale deed was executed by his mother as a guardian. The terms of the sale deed reveals that the plaintiff's mother had executed sale deed to meet out the educational expenses of the plaintiff and also to purchase another property in the name of the plaintiff. The plaintiff was 16 years old on 29.07.1967. He ought to have filed the suit for declaring the said sale as null and void within three years of his attaining majority in 1969. Therefore, the suit ought to have been filed in 1972. However, the suit is also bad, since Arumugathevar who initially purchased the property in 1967 was not made a party to the suit.

5. While so, the defendants/respondents herein filed a suit in O.S.No.206 of 2014 for permanent injunction against the appellant in respect of the suit schedule property. They had reiterated the submissions made in their written statement filed in the earlier suit and stated that the property has been in possession of their predecessors in title since 1967. The appellant filed a written statement stating that the sale made by his mother in favour of the said Arumugathevar was null and void and that he was entitled to the suit schedule



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property only after the death of his mother and hence, his suit was filed within limitation and prayed for dismissal of the suit filed by the defendants/respondents herein.

6. The Trial Court tried both the suits together and framed several issues. The primary issues before the Trial Court were whether the sale deed executed by the appellant's mother in favour of Arumugathevar was null and void and whether the suit was barred by limitation and suffers from non-joinder of necessary parties. The Trial Court answered all the issues in favour of the respondents and found that the appellant/plaintiff's mother had sold the property only in favour of Arumugathevar as guardian of the appellant and not in her personal capacity. She had stated that the sale was made for purchase of another property in the name of the appellant and also for educational expenses of the appellant. The Trial Court also rejected the contention of the appellant that the suit was not barred by limitation since he acquired the right over the suit schedule property only after the death of his mother. The Trial Court found that the suit is also bad for non-joinder of necessary parties to the suit, namely, Arumugathevar and other subsequent purchasers of the property. Further, on facts, the Trial Court found that the appellant/plaintiff's mother had purchased the property in the name of the minor and hence, the appellant ought to have



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filed a suit challenging the said sale deed within three years after attaining majority. Hence, the Trial Court dismissed the suit filed by the appellant and decreed the suit filed by the respondents for permanent injunction.

7. The Appellate Court on consideration of the facts and circumstances of the case held that the appellant was not entitled to the relief as prayed for by him, since his suit was barred by limitation, suffered from non-joinder of necessary parties and for not challenging the other sale deeds except Ex.A3 (sale deed in favour of Arumugathevar) and Ex.A7 (sale deed in favour of the first respondent herein).

8. a) The learned counsel for the appellant submitted that Ex.A1 Will executed by the appellant's father stated that the suit schedule property shall be bequeathed to the appellant and the appellant's mother had no right to sell the suit schedule property. Since the appellant's mother died only in the year 2011, his right to make a claim for the suit property accrued only after her death. The suit was filed within three years from the date of the death of the appellant's mother and hence, it is not barred by limitation.



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b) The learned counsel further submitted that the findings of the Courts below that the suit is bad for non-joinder of parties is erroneous.

c) The learned counsel further submitted that the limitation to file a suit was within 12 years after demise of the appellant's mother in the year 2011 as per Article 65 explanation (a) of the Limitation Act. The Courts below had erred in holding that Article 60 (a) of the Limitation Act would be applicable to the facts of the instant case.

9. The learned Senior Counsel for the respondents would submit that the sale made by the mother of the appellant was in her capacity as guardian for the appellant. The recitals in the sale deed would show that the sale was made for meeting out the appellant's educational expenses and for purchasing another property in the name of the appellant. The Courts below have rightly concluded that the suit was barred by limitation. The appellant should have filed the suit within three years from the date of his attaining majority. He attained majority in the year 1969. The suit is also bad for non-joinder of necessary parties, since Arumugathevar, who originally purchased the property from the appellant's mother was not made a party to the suit. Further, in the suit, the appellant had claimed for a declaration that the sale deed executed in



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favour of Arumugathevar in 1967 and the sale deed executed in favour of the respondents in the year 2007 are null and void. There were several sale deeds in between these two sale deeds and in the absence of any pleading for prayer to declare those sale deeds as null and void, the prayer in the suit was not maintainable and the Courts below had rightly rejected the claim of the appellant.

10. Heard the learned counsel for the appellant and the learned counsel for the respondents.

11. Admittedly, the suit property belonged to the father of the appellant one Muthukaruppa Pillai. He executed a Will on 17.10.1956. He died in the year 1957 leaving behind his wife, one Lakshmiammal, two daughters Pichammal and Valliammal and the son, who is the appellant herein. The Will was in respect of several properties and one property was a land in Survey No.85/1 measuring an extent of 96 cents. The suit property forms part of the said 96 cents. The testator had stated that out of 96 cents, his wife Lakshmiammal could sell 48 cents for the purpose of conducting marriage of their two daughters, Pichammal and Valliammal and in respect of the remaining 48 cents, the testator had bequeathed life interest in favour of his wife,



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Lakshmiammal and after her life to the appellant absolutely. The suit property admittedly is in respect of this portion of 48 cents, which was bequeathed in favour of the appellant absolutely. It is also admitted that this land measuring 48 cents was sold in favour of one Arumugathevar by the deed of sale dated 29.07.1967, which was marked as Ex.A3. Thereafter, the land was alienated several times. The next sale was made by Arumugathevar by sale deed dated 22.05.1969 marked as Ex.A4. Thereafter, the purchaser had executed two sale deeds, Ex.A5 and Ex.A6 dated 12.08.1990 and 27.03.1991. Subsequently, the purchasers had executed sale deed dated 03.08.2007 marked as Ex.A7 in favour of the respondents.

12. It is the appellant's stand that his mother who had only life interest in the suit property had no authority to alienate the property. The Will executed by his father had specifically stated that the appellant's mother had no right to create any encumbrance in the suit property. The said recital in the Will is also admitted. However, the question is whether the sale was made by the appellant's mother claiming interest in the property or whether she had sold the property on behalf of the minor, namely, the appellant herein as his guardian. The recitals of Ex.A3 sale deed executed by the appellant's mother in favour of one Arumugathevar has been extracted in the judgment of the Lower Appellate



Court. The recitals of the said sale deed Ex.A3 would clearly show that the appellant's mother had executed the sale deed only in her capacity as guardian of the appellant. The recitals would further indicate that she had executed the sale deed for purchase of another property in the name of the appellant and for the educational expenses of the appellant besides the expenses incurred for running the family. From the recitals, it is therefore clear that admitting that the appellant had right over the property, the sale was made by the guardian. The said sale has been made in violation of Section 8(1) and (2) of the Hindu Minority and Guardianship Act, 1956 inasmuch as the previous permission of the Court was not obtained by the guardian. Section 8 (3) states that the sale made by natural guardian in contravention of Sub Section (1) or (2) is voidable. Section 8(3) is extracted hereunder for better appreciation.

“(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.”

Since the sale deed is voidable only at the instance of the minor, it is not void *ab initio*. The appellant, who was 16 years old and a minor at the time of the sale deed, ought to have challenged the said sale within three years of his attaining majority. Article 60 of the Limitation Act makes it very clear that where a suit is filed to set aside a transfer of property made by the guardian of



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the ward, the suit has to be filed within three years from the date of his attaining majority. The suit in the instant case was filed nearly 45 years after the sale deed executed by the appellant's mother in 1967. Hence, both the Courts below had rightly held that the suit for declaration that the sale deed in favour of Arumugathevar executed by the appellant's mother in 1967 is barred by limitation.

13. The appellant had made a faint attempt and submitted that since his suit is also for possession and he acquired right only after the death of his mother, his suit was well within the limitation period prescribed under Article 65 of the Limitation Act. This Court is unable to countenance such an argument. This is not the case where the appellant's mother was in possession or somebody else on her behalf was in possession and the appellant had filed a suit for recovery of possession. As stated earlier, the facts reveal that the appellant's mother had executed the sale deed only in her capacity as guardian of the appellant admitting the appellant's right over the property. The appellant ought to have challenged the same if the said sale was not in accordance with the provisions of Hindu Minority and Guardianship Act, 1956 within three years from the date of his attaining majority. Hence, Article 65(a) has no application to the facts of the instant case.



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14. Further, this Court also finds several discrepancies in the suit filed by the appellant. He has not challenged the intervening sale deeds after Ex.A3 and before Ex.A7 was executed in favour of the respondents. He has also not made the original purchaser from the appellant's mother, namely, Arumugathevar, as a party to the suit. The suit also deserves to be dismissed on those grounds as well, as rightly observed by the Courts below.

15. As regards the suit filed by the respondents for injunction restraining the appellant from interfering with their possession, both the Courts below have rightly found that the respondents and their predecessors in title were in possession of the suit property since 1967. The Courts below also found that a portion of the property was acquired by the Government for laying road out of 48 cents and the suit schedule property is the remaining extent after such acquisition. The Courts below therefore found that their possession was lawful and granted the relief of permanent injunction in favour of the respondents herein.

16. For the above reasons, this Court finds that the judgments of the Courts below do not suffer from any infirmity either on facts or law. There is



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no question of law involved in the above Second Appeals much less a substantial question of law. Hence, both the Second Appeals deserve to be dismissed and are accordingly dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

01.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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To

- 1.The Principal District Court,
Tirunelveli
- 2.The Additional Sub Court,
Tirunelveli.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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