



A.S.(MD)No.199 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 23.03.2023

PRONOUNCED ON : 13.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD)No.199 of 2019

and

C.M.P.(MD)Nos.10120 and 10121 of 2019

B.Rajendra Prasad

...Appellant / 2nd Defendant

Vs.

1.G.Sridhar

2.G.Shanthi

3.G.Selvi

4.G.Meenal

K.Gopal (died)

5.M.Kamalesh

6.B.Rajesh

7.G.Pappa @ Pitchaiammal

...Respondents 1 to 4 / Plaintiffs

... Nil / 1st Defendant

... Respondents 5 to 7 / Defendants 3 to 5

PRAYER: This Appeal Suit is filed under Section 96 of C.P.C., r/w Order 41 Rule 1 of C.P.C., to set aside the decree and judgment dated 31.07.2019 made in O.S.No.128 of 2007 on the file of the IV Additional District Court, Madurai.

For Appellant	: Mr.M.Ajmal Khan, Senior Counsel for M/s.Ajmal Associates
For R1 to R4	: Mr.V.Ragavachari, Senior Counsel for Mr.S.A.Ajmal Khan
For R7	: Mr.P.Pethu Rajesh



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JUDGMENT

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This appeal has been directed against the judgment and decree dated 31.07.2019 made in O.S.No.128 of 2007 on the file of the IV Additional District Court, Madurai.

2.For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3.The brief facts, leading to the filing of this Appeal Suit, are as follows:-

(i)The plaintiffs are the son and daughters of the first and fifth defendants. The suit property is the ancestral property of Hindu Joint family of the plaintiffs and the first defendant. The plaintiffs are the co-parceners in the suit property. They are entitled to 1/5th share. The second defendant is the close associate and friend of the first defendant. One Panchavarnam and others had filed a suit in O.S.No.999 of 2002, which is pending on the file of the II Additional Sub Court, Madurai against the first defendant.

(ii)It is the case of the plaintiffs that the first defendant had created a sham and nominal document in favour of the second defendant without the



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knowledge and consent of the plaintiffs. If any transaction entered into between the first and second defendants, the same are fraudulent and invalid transaction and will not affect the plaintiffs' undivided 4/5th share. In the year 2007, the second defendant attempted to evict the 5th defendant/ Pitchaiammal from the suit property. Hence, the plaintiffs issued a legal notice dated 13.02.2007 to the defendants 1 and 2. The third defendant was also colluding with the second defendant. Hence, the suit for partition.

(iii) During the pendency of the suit, the first defendant, who is the father of the plaintiffs died. Therefore, the 5th defendant was impleaded as legal heir of the first defendant and the third defendant remained *ex-parte*.

(iv) It is the case of the second defendant that the suit property was originally purchased by one Karupppiah Konar, who is the grandfather of the plaintiffs and father of the first defendant. It is a self earned property of the said Karupppiah Konar. He has purchased the same in the year 1971 from one Rakappa Konar. In the year 1994, the said Karupppiah Konar bequeathed the suit property by way of a registered Will in favour of the first defendant. Hence, the first defendant has become absolute owner of the property. After the death of the said



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Karuppiah Konar, the first defendant sold the property to the second defendant for a total sale consideration of Rs.7,85,000/- (Rupees Seven Lakhs and Eighty Five Thousand Only) on 06.10.2003 and all the revenue records were transferred in the name of the second defendant. The alleged suit in O.S.No.999 of 2002, is noway connected with the present suit property. Hence, he prayed for dismissal of the suit.

4. Based on the above pleadings and written statement, the following issues were framed by the trial Court:-

“1. Whether the suit property is the ancestral property and Hindu Joint Family property of the 1st defendant and the plaintiffs?

2. Whether the suit property is separate property of the 1st defendant?

3. Whether the 1st defendant has got right to sell the suit property to the 2nd defendant?

4. Whether the sale deed in favour of the 2nd defendant bind the share of the plaintiffs?

5. Whether the suit property is in exclusive possession of the 2nd defendant?

6. To what relief the plaintiffs are entitled?. ”



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5. On the side of the plaintiffs, P.W.1 to P.W.3 were examined and Exs.A.1 to A.11 were marked. On the side of the defendants, D.W.1 to D.W.7 were examined and Exs.B.1 to B.19 were marked. Besides, Ex.X.1 to X.3 were marked.

6. The trial Court, after considering the oral and documentary evidence filed by both the parties, held that the second defendant has not obtained encumbrance certificate before purchasing the suit property and therefore, the sale is not binding on the plaintiffs and granted preliminary decree in favour of the plaintiffs. Challenging the same, the present appeal came to be filed by the 2nd defendant.

7. The learned counsel for the appellant would mainly contend that the trial Court has not appreciated the evidence properly and shifted the entire burden on the defendants to prove the sale deed. Particularly, when the second defendant has proved the sale deed and his possession over the suit property, besides he has also established the Will left by the said Karupiah Konar, the trial Court without any evidence on the side of the plaintiffs, simply on the surmise and assumption,



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decreed the suit. Hence, the approach of the trial Court is against the fundamental principle of Law. Therefore, he prayed for allowing this appeal.

8.The learned counsel for the respondents 1 to 4 would submit that though there is no evidence to show that the property is ancestral property, it is their contention that the defendants have not registered the property for valid consideration and there is a tampering of the sale deed. In the certified copies produced before the Court, one of the witnesses' name is not available, whereas in the original produced by the defendants in the 11th column, it is stated as if the fifth defendant has also signed as one of the witnesses. Hence, the very document itself is fraudulent one and there is an inconsistency in the receipt of sale consideration. Therefore, Ex.B1, sale deed cannot be relied upon and will not convey any title to the property. Hence, only on this background, the trial Court has properly appreciated the evidence and decreed the suit.

9.In the light of the above submission, now, the points arise for consideration in this appeal are:-

(i)Whether the plaintiffs have discharged the very onus to show that the suit property is ancestral in character?;



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(ii)Whether the sale deed dated 06.10.2003 is valid, true and binding

on the plaintiffs?; and

(iii)Whether the plaintiffs are entitled to any share in the suit property?

10.The suit has been proceeded as if the suit property is an ancestral property. The plaintiffs are the co-owners of the property. Absolutely, there are no materials and details whatsoever pleaded in the plaint as to how the property passed on to his father and as to how the property acquired the character of ancestral in nature. Be that as it may, when P.W.1's evidence was carefully perused, it is seen that even in the chief examination she has never stated as to how the title passed on to the predecessors in title, except stating that the property is ancestral and Hindu Joint family property. However in the chief examination, she had denied the Will said to have been executed by the grandfather of the plaintiffs in favour of the father / the first defendant. P.W.1, in her cross examination, has admitted that the suit property stood in the name of their grandfather and she does not know as to whether the properties have been partitioned among his children. However, she has also admitted that her grandfather / Karupiah Konar purchased the suit property. Therefore, according



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to her, grandfather purchased the suit property from one Rakkappa Konar, who is the father of the fifth defendant and maternal grandfather of the plaintiffs. This admission assumes significance.

11.It is admitted by P.W.1 that the property was purchased by her grandfather. When the suit was filed, the first defendant was very much alive. Therefore, when the suit property was a self acquired property of the grandfather of the plaintiffs, the question of claiming share as coparcener does not arise at all. In the entire cross-examination, she has shown ignorance about the mortgage and other documents executed by the grandfather in respect of the suit property.

12.P.W.2 in the chief examination had also not stated as to how this property came into the possession of the family members and she had clearly admitted in the cross-examination that the property originally belonged to her grandfather and he executed the Will in favour of the first defendant. She has admitted that the second defendant had purchased the property from her father. Her admission is extracted as follows:

“இந்த தாவா சொத்தை எனது தாத்தா கருப்பையா கோனார் என் தந்தை கோபால்கோனருக்கு எழுதிக்கொடுத்துள்ளார். உயில் மூலம் எழுதிக்கொடுத்துள்ளார்..... 2ம் பிரதிவாதி ராஜேந்திர பிரசாத் தாவா சொத்தை என் தந்தையிடம் இருந்து விலைக்கு வாங்கியுள்ளார்.



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1ம்பிரதிவாதி ராஜேந்திர பிரசாத்தை எனது சிறுவயதிலேயே இருந்து தெரியும். ராக்கப்பக்கோனாரிடம் இருந்து கருப்பையா கோனார் பெறப்பட்ட கிரையப் பத்திரத்தை நான் தாக்கல் செய்யவில்லை.....□

13.She had also admitted that all the revenue records and property tax receipts are changed in the name of the second defendant and the second defendant is also collecting rents from the fourth respondent. The fifth defendant was not aware of the sale made in favour of the second defendant.

14.P.W.3, in the chief examination also similar to the evidence of P.W.1 and P.W.2, admitted that the property has been purchased by the grandfather. Further, no evidence whatsoever has been filed to show that the plaintiffs are residing in the suit property. P.W.1 admitted in her evidence that in one small portion, the first defendant was permitted to reside and other portions were already let out to the fourth defendant. The evidence of P.W.1 also indicates that the fourth defendant was paying rent to the second defendant. Totally, they had shown ignorance about Ex.B1, sale deed executed in favour of the second defendant by the father of the plaintiffs / the first defendant. No allegation has been made in the plaint as to the nature of the transaction and no relief whatsoever has been sought to cancel the document.



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15.The very evidence of P.W.1 makes it very clear that she was aware of the sale deed. Further, it is the specific case of the defendants that this property has been purchased by one Karuppiyah Konar, grandfather of the plaintiffs. It is his individual property, which was also admitted by the plaintiffs' side in the cross examination. Therefore, once the property was self acquired property of the said Karuppiyah Konar, grandfather of the plaintiffs, the plaintiffs would not get any share in the property when their father was very much alive and he had sold the property to the second defendant. The said Karuppiyah Konar has bequeathed the property only to his son, namely, the first defendant herein by a Registered Will. Though the plaintiffs have not stated anything about the Will in the entire pleadings, for the first time in their chief examination, they have taken a plea that the Will is forged one.

16.It is relevant to note that original copy of the Will has not been produced by the plaintiffs, whereas the defendants have obtained a certified copy of the Will and produced the same before the Court. Besides, the second defendant had also proved the Will by examining one of the attesting witnesses. Therefore, when the plaintiffs have failed to establish the ancestral character of the



property and they suppressed the very sale deed executed in favour of the second defendant in the plaint, the trial Court has travelled beyond the pleadings and shifted the burden on the defendants to establish their case, which is against the very fundamental principle of Law.

17.Further, there is no evidence whatsoever adduced on the side of the plaintiffs to prove that the property is ancestral property and they could become coparcener, whereas Ex.B1 sale deed executed by the first defendant clearly shows that the first defendant has sold the property to the second defendant. The evidence of P.W.1 and P.W.2 are also show that the sale deed executed by the first defendant in favour of the second defendant. When the property had been sold and conveyed to the second defendant, the trial Court without any pleadings avoided the sale deed executed by the father of the plaintiffs and disbelieved the same, which is against the fundamental principle of law. Therefore, merely because only one witness was shown in the document, thereafter another witness was adduced in the sale deed, that will not be a ground to impeach the very document itself. The certified copies of the sale deed clearly show that only there are two attesting witnesses. Later, the fifth defendant was shown as one of the attesting witnesses in the original document. The same would have been added by



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the second defendant, since the plaintiffs were taking prevaricating stand not only in this plaint but also in the other suit in O.S.No.999 of 2002 filed by someone. Therefore, mere an addition of one of the witnesses as witness in the sale deed at the later period will not take away the right derived under the sale deed.

18.Yet another contention of the learned counsel for the respondents 1 to 4 is that there are some inconsistencies in the evidence of D.W.1 as to the passing of consideration. It is not the case of the plaintiffs that the sale deed is not supported by any consideration at all. Therefore, merely because some minor insignificant admissions were made in the evidence of D.W.1 about the receipt of consideration and date of consideration, this Court is of the view that the same will not dent the registered sale deed, particularly, when the plaintiffs have not even established the right in the suit property. The first defendant had remained *ex-parte* conveniently for the reasons best known to him. It is relevant to note that in an another suit filed against the first defendant by some other persons, it was the stand taken by the first defendant and fifth defendant herein that the first defendant is the absolute owner of the property by virtue of the Will dated 02.12.1994.



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19.Tax had been paid by the second defendant and the fourth defendant was also paying rent to the second defendant. Therefore, merely because the first defendant was permitted to reside in the suit property, that cannot be said that the entire sale is void. The written statement filed in O.S.No.999 of 2002 is also received as additional evidence and marked on the side of the defendants. On perusal of the same, in paragraph No.7, the Will dated 12.11.1994 executed in favour of the first defendant was clearly admitted.

20.The first defendant's title is admitted based on the Will dated 12.11.1994 executed by the said Karuppiiah Konar. It is also pleaded that the property was purchased by the said Karuppiiah Konar. Be that as it may, even assuming that this additional written statement is not relevant to decide the present lis, even in the documents adduced on the side of the plaintiffs, there is no evidence to show that the property is ancestral property and the plaintiffs are co-sharers. The evidences of P.W.1 to P.W.3, itself indicate that the property was purchased by their grandfather and the second defendant purchased the same from the first defendant.



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21. Such being the position, in the absence of any right in the suit property, the plaintiffs cannot claim any share in the suit property. The trial Court shifted the entire onus on the defendants and disbelieved the sale deed in trivial issue. When the sale deed itself is not challenged by the parties, the trial Court gone beyond the fundamental principle of law and granted decree in favour of the plaintiffs. Therefore, the decree and judgment of the trial Court dated 31.07.2019 made in O.S.No.128 of 2007 on the file of the IV Additional District Court, Madurai, is liable to be interfered with, hence, the same is set aside. Accordingly the points are answered and this Appeal Suit is allowed and the suit filed by the plaintiffs is dismissed with costs. Consequently, connected miscellaneous petitions are closed.

13.04.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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Document marked before this Court:

Ex.B20-written statement filed in O.S.No.999 of 2002



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To

- 1.The IV Additional District Court,
Madurai.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

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Judgment made in
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