



S.A.Nos.1551 and 1552 of 1999

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.Nos.1551 and 1552 of 1999

S.A.No.1551 of 1999

1.P.Mookkan

2.P.Kumaram

...Appellants

-Vs-

1.Kodangi Ambalam

2.C.Perumal

3.C.Kumaran

4.Vengy

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree of the Court of the Principal District Judge, Dindigul District, Dindigul, made in A.S.No.83 of 1991, dated 31.08.1999, confirming the decree the judgment of the Court of the Additional District Munsif, Dindigul, made in O.S.No.281 of 1982, dated 31.10.1990.



S.A.Nos.1551 and 1552 of 1999

WEB COPY

For Appellant : Mr.G.Gomathi Sankar

For R4 : No appearance

R1, R2 & R4 : Died

S.A.No.1552 of 1999

1.Mookkan

2.Kumaram

...Appellants

-Vs-

1.Perumal Ambalam

2.Kodangi Ambalam

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the decree and judgment of the Court of the Principal District Judge, Dindigul District, Dindigul, made in A.S.No.166 of 1992, dated 31.08.1999, confirming the decree the judgment of the Court of the Additional District Munsif, Dindigul, made in O.S.No.802 of 1984, dated 31.10.1990.

For Appellants : Mr.G.Gomathi Sankar

R1 & R2 : Died



S.A.Nos.1551 and 1552 of 1999

WEB COPY

COMMON JUDGMENT

The defendants 2 and 3 in the suit are the appellants in S.A.No.1551 of 1999. The said second appeal is arising out of O.S.No.281 of 1982 on the file of Additional District Munsif Court, Dindigul. The first respondent herein filed a suit for declaration and injunction and the same was decreed by the Trial Court. Aggrieved by the same, the defendants 2 and 3 filed an appeal in A.S.No.83 of 1991 on the file of the Principal District Court, Dindigul and the same was dismissed. Hence, the above second appeal filed by the defendants 2 and 3.

2. The other second appeal in S.A.No.1552 of 1999 is arising out of O.S.No.802 of 1984 on the file of the Additional District Munsif Court, Dindigul. The plaintiffs in the said suit are appellants. The suit was filed by the appellants seeking partition of their 2/3rd share in the suit property and the said suit was dismissed. Aggrieved by the same, the appellants/plaintiffs filed an appeal in A.S.No.166 of 1992 and the same was dismissed. Hence, the plaintiffs have come up with this second appeal.



S.A.Nos.1551 and 1552 of 1999

WEB COPY

3. In this judgment, the plaintiffs in partition suit in O.S.No.802 of 1984 and the defendants 2 and 3 in the declaration and injunction suit in O.S.No.281 of 1982 are described as appellants and the plaintiff in declaration and injunction suit, namely, O.S.No.281 of 1982 and second defendant in partition suit, namely, O.S.No.802 of 1984, is described as contesting respondent.

4. According to the contesting respondent, the suit property belongs to Chinnathambi Ambalam, father of the second respondent, Perumal, in S.A.No. 1551 of 1999. The said Chinnathambi Ambalam had three children, namely, the respondents 2 to 4 in S.A.No.1551 of 1999. It was pleaded by the contesting respondent that in the family partition between the second respondent and his brothers, the suit property was allotted to the second respondent in the year 1973 and the said property was purchased by him under Ex.B.1, dated 17.12.1973. It was pleaded that the appellants herein the sons of second respondent tried to interfere with the peaceful possession of the contesting first respondent and hence, he was constrained to file a suit for declaration and injunction in O.S.No. 281 of 1982.



S.A.Nos.1551 and 1552 of 1999

WEB COPY

5. The appellants herein filed a written statement and contested the suit by raising a plea that the suit property is the ancestral property and they acquired right in the suit property by birth in the family. It was pleaded by them that in the sale deed executed by the second appellant in favour of the first respondent under Ex.B.1, the first appellant Mookkan was shown as minor, though he attained the age of majority on the date of sale deed. It was further submitted that the sale deed executed by the second respondent will not bind the share of his minor sons, namely, the appellants.

6. The first respondent filed a reply statement in the suit and raised the plea that the sale deed executed by the second respondent in favour of first respondent was for the family necessity and hence, the second respondent in his capacity as a kartha of Hindu joint family was entitled to sell the property binding the share of his sons.

7. On these pleadings, the parties went to the trial in O.S.No.281 of 1982. The appellants herein on their part filed a suit for partition claiming their



S.A.Nos.1551 and 1552 of 1999

WEB COPY

2/3rd share in the suit property by arraying their father/second respondent herein as the first defendant in the suit. The purchaser of the suit property from their father, namely, the first respondent herein was arrayed as second respondent in the said partition suit. Both suits were tried together and the evidence was recorded in the partition suit, namely, O.S.No.802 of 1984. On behalf of the appellants, the first appellant was examined as P.W.1 and yet another person namely, Palaniyandi, was examined as P.W.2. Ex.A.1 to Ex.A.4 were marked on the side of the appellants. On behalf of the contesting first respondent, he was examined as D.W.1 and one Velan was examined as D.W.2. Ex.B.1 to Ex.B.12 were marked on the side of the contesting first respondent. The second respondent/father of the appellants remained *ex parte*.

8. On the basis of the oral and documentary evidences available on record, the Trial Court came to the conclusion that the second respondent herein namely, the father of the appellants in his capacity as kartha of the Hindu joint family sold the suit property for family necessity and hence, the sale made by him in favour of first respondent will bind the appellants. Therefore, the Trial Court dismissed the suit for partition filed by the appellants and decreed the suit for



S.A.Nos.1551 and 1552 of 1999

WEB COPY

declaration and injunction filed by the contesting first respondent. Aggrieved by the same, two appeals were filed by the appellants in A.S.Nos.83 of 1991 and 166 of 1992. The first appellate Court concurred with the findings of the trial Court and hence, the appellants are before this Court.

9. The learned counsel for the appellants tried to assail the findings of the Courts below mainly on the ground that the sale contracted by father of the appellants was not for family necessity. It is the contention of the learned counsel for the appellants that there is no sufficient evidence available on record to support the plea of the respondents that the sale by the appellants' father in favour of the first respondent was for legal necessity. The learned counsel further submitted that the Ex.B.1- sale deed executed by the father of the appellants in favour of the first respondent was executed not only by the second respondent, namely, father of the appellants, it was also executed on behalf of the appellants by describing them as minor sons. The learned counsel for the appellants further submitted that in the birth extract, Ex.A.4, the date birth of the first appellant was mentioned as 27.12.1954 and hence, on the date of sale, namely, 17.12.1973, he attained a majority and therefore Ex.B.1-sale deed, would not bind the first



S.A.Nos.1551 and 1552 of 1999

appellant.

10. Heard Mr.G.Gomathi Sankar, learned counsel for the appellants and Perused the typed set of papers and other records.

11. A perusal of Ex.B.1-sale deed executed by Perumal Ambalam, the second respondent in S.A.No.1551 of 1999 in favour of Kodangi Ambalam, the contesting first respondent would suggest that the property was sold to contesting first respondent for a sale consideration of Rs.2,000/-. In the sale deed, there is a recital that the purchaser shall pay the debt contracted by father of the appellants, Perumal Ambalam. Ex.B.3 clinchingly proves the father of the appellants and his brother incurred a loan and the same was directed to be discharged by the purchaser under Ex.B.1. A perusal of Ex.B.1 and Ex.B.3 would suggest the existence of family debt contracted by father of the appellants and therefore, based on the documentary evidences, namely, Ex.B.1 and Ex.B.3 and also the oral evidences available on record, the Courts below came to the conclusion that the suit property was sold by father of the appellants in favour of the contesting first respondent, Kodangi Ambalam for family necessity and I do not see any



S.A.Nos.1551 and 1552 of 1999

perversity in the factual findings rendered by the Courts below and consequently, the first contention made by the learned counsel for the appellants is not acceptable to this Court.

12. The learned counsel for the appellants also submitted that on the date of sale made by the father of the appellants, the first appellant attained majority by relying on Ex.A4-Birth Extract. A perusal of Ex.A.4-Birth Extract would suggest that the name of the first appellant was not at all mentioned therein. Therefore, based on Ex.A.4, it cannot be safely concluded that he attained majority on the date of sale by his father. Therefore, the second contention made by the learned counsel for the appellants is also rejected. Further, even assuming that the first appellant attained majority on the date of sale contracted by his father, still the father of the appellants in his capacity as Kartha of Hindu joint family can sell the properties of the joint family for meeting their family necessity. This Court had already confirmed the factual findings made by the Courts below that the father of the appellants sold the suit property for the family necessity. In these circumstances, the second point raised by the learned counsel for the appellants pales into insignificance.



S.A.Nos.1551 and 1552 of 1999

WEB COPY

13. In view of the discussions made above, both the contentions raised by the learned counsel for the appellants are rejected and the second appeals do not involve any substantial question of law for consideration and consequently, there is no scope for interference with the factual findings and the conclusion reached by the Courts below under Section 100 of Code of Civil Procedure. Both the second Appeals are dismissed by confirming the judgments and decrees passed by the Courts below. No costs. Consequently, connected miscellaneous petition is closed.

20.12.2022

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
cp

To

- 1.The Principal District Judge,
Dindigul.
- 2.The Additional District Munsif,
Dindigul.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

10/11



WEB COPY



S.A.Nos.1551 and 1552 of 1999

S.SOUNTHAR, J.

cp

S.A.Nos.1551 and 1552 of 1999

20.12.2022