



S.A.Nos.1219 and 1220 of 2001

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.Nos.1219 and 1220 of 2001

- 1.Subbiah Pillai(Died)
- 2.Sankaranarayanan
- 3.Sundariammal
- 4.Thanammal
- 5.Muthumala
- 6.Veeramanohari
- 7.Arunkumar
- 8.Kannidevi

...Appellants/Appellants/
LRS of Defendants, late
Kanniammal in both S.As

(A4 to A8 are brought on record
as LRS of the deceased 1st Appellants
vide Court Order Dated 27.10.2017)

-Vs-

- Pappa Ammal(Died)
- 2.M.Velammal
- 3.V.Muthulakshmi
- 4.P.Balakrishnan
- 5.P.Nallaperumal

...Respondent/Respondent



S.A.Nos.1219 and 1220 of 2001

WEB COPY

/Plaintiff in both S.As

*(R2 to R5 are brought on record as LRS of
the deceased sole respondent vide Court
order dated 25.03.2022 and 14.06.2022 respectively)*

COMMON PRAYER: Second Appeals filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 20.02.2001 passed in A.S.Nos.143 and 144 of 1999 on the file of the I Additional District Court, Thirunelveli, confirming the judgment and decree dated 30.06.1999 passed in O.S.No.282 and 443 of 1988 on the file of the Principal District Munsif Court, Valliyoor.

For Appellants
in both S.As : Mr.S.Jawaharlal

For Respondents : Mr.K.Sathiyasingh
in S.A.No.1219/2001 for M/s.P.Senthur Pandian

For Respondent : Mr.S.Rajasekar
in S.A.No.1220/2002

COMMON JUDGMENT

In S.A.No.1219 of 2001, the original respondent was the plaintiff and she filed a suit in O.S.No.282 of 1988 against the original appellants



S.A.Nos.1219 and 1220 of 2001

before the Principal District Munsif Court, Valliyoor, for partition and separate possession of share in the suit property. The said suit was decreed. Challenging the said judgment and decree, the respondents/defendants had filed an appeal in A.S.No.143 of 1999 before the I Additional District Court, Tirunelveli. The said appeal was also dismissed.

2.In S.A.No.1220 of 2001, the appellants are the plaintiffs have filed a suit in O.S.No.443 of 1988 before the Principal District Court, Valliyoor, for directing the first respondent to execute reconveyance of the properties described in the first schedule properties and hand over the possession of the second schedule property to the appellants and the second respondent or the first appellant. The suit was dismissed. Challenging the same, the appellants filed an appeal in A.S.No. 144 of 1999 before the First Additional District Court, Tirunelveli. The said appeal was dismissed.

3.Both the suits are identical and the parties are one and the same. Challenging the judgments and decrees passed by the lower Appellate



S.A.Nos.1219 and 1220 of 2001

Court, the present second appeals are filed before this Court by raising the following substantial questions of law:

“(a) Whether the evidence on record do not prove the case of the appellants that the “sale deed” Ex.A.1 was executed only at the insistence of the respondent herein, as a devise to escape from the provisions of various Debt Relief Acts, then in force, with an understanding that the plaint scheduled property, transferred to the respondent, in consideration of the interest on the loan, be reconveyed, once the loan amount is paid.

(b) Whether the trial Court has not failed to frame an issue, with regard to the plea of the appellants herein that they have perfected title to the suit property by adverse possession in view of their joint possession and enjoyment of the suit property and therefore, they are entitled to 1/4th share each, in the suit property.

(c) Whether the so called sale deed Ex.A.1 is correctly interpreted in the light of the plea of the appellants and other evidence on record, indicating that the sale deed was executed only as a deed of security, for the loan advanced by the respondent herein to the 3rd appellant herein.



S.A.Nos.1219 and 1220 of 2001

(d)Whether the appellants are not entitled to the reconveyance of the plaint scheduled property, as claimed in O.S.No.443 of 1988.”

4.The case of the respondent herein/plaintiff in O.S.No.282 of 1988 and the defendant in O.S.No.443 of 1988 is that the entire suit properties originally belonged to the appellants herein /defendants therein. Out of the entire properties, half of the suit properties were sold to the respondent/plaintiff for a sum of Rs.3,000/- through registered sale deed dated 19.05.1982. After purchasing the half of the suit properties, in the front side of the property, the respondent/plaintiff constructed a building and they were enjoying the possession jointly. But the appellants/defendants had sold only undivided half of the properties and hence, the respondent/plaintiff approached the appellants/defendants to divide the properties and handed over her share. He refused to do the same. Therefore, she sent a notice and even after receiving notice, the appellants/defendants did not take action. Hence, the respondent/plaintiff



S.A.Nos.1219 and 1220 of 2001

filed the suit for partition and separate possession.

5.The case of the appellants is that the deceased Kanniyammal, borrowed a sum of Rs.3,000/- for his son viz., Sankaranarayanan, from the deceased first respondent and executed a sale deed only for collateral purpose. On the date of execution of the sale deed, there was an oral agreement that on repayment of the said amount of Rs.3,000/-, she has to reconvey the property mentioned in the sale deed. But, the deceased Kanniyammal after repaying the money, the deceased first respondent did not reconvey the property and therefore, the respondents are not entitled for partition.

6.The learned counsel appearing for the appellants would submit that the sale deed/Ex.A.1 was executed only at the instance of the first appellant viz., Kanniammal to the respondent, in order to escape from the Debt Relief Acts. The trial Court has not appreciated the real issue involved in both the cases. The appellants are entitled to 1/4th share each in the suit



S.A.Nos.1219 and 1220 of 2001

properties covered in O.S.No.282 of 1988. The deceased Kanniammal did not sell more than her share to the respondent, without admitting that even if the said sale was true and genuine. The learned counsel would further submit that the said Kanniammal, executed the sale deed only for a collateral purpose as security for the loan transaction between the deceased respondent and the said Kanniammal. One Late Veerabagu Pillai executed a Will in respect of the properties in favour of his two daughters namely, Kanniammal and Sundaram Ammal in two equitable shares by means of Ex.B.1-Will, dated 25.03.1941, with the condition that if any one of the daughters dies issueless, her share will devolve upon other daughter, who has issues. One of the daughters namely, Sundaram Ammal, died in the year 1970 issueless and her share devolved upon the said Kanniammal. Both Sundaram Ammal and Kanniammal were in joint possession and enjoyment of the properties and they are entitled to the suit properties as co-sharers. Though the above said will confer title on late Kanniammal, in her individual name. The fact that the suit properties were commonly possessed and enjoyed by the appellants. The suit property is worth about one lakh



S.A.Nos.1219 and 1220 of 2001

rupees and the late Kanniammal did not sell the half of it for a meagre amount of Rs.3,000/- which creates suspicious that Ex.A.1 could not be a true and valid sale deed.

7.The learned counsel would further submit that Ex.A.1, Ex.A.3, Ex.A8 and Ex.A.9 are not proof of conveying the title in favour of the deceased first respondent. During the pendency of the suit only, the respondents paid taxes and obtained receipts and the same will not bind the appellants. The evidence of P.W.3, the scribe of the sale deed, has not been supported the case of the respondents. The sale deed-Ex.A.1 was executed only at the instance of deceased Kanniyammal, as a devise to escape from the provisions of Debt Relief Acts. Further, the respondents have not prescribed title to the suit properties by adverse possession in view of the joint possession and enjoyment of the suit properties and hence, they are entitled to 1/4th share each in the suit property. Both the Courts below failed to appreciate the oral and documentary evidence and also the legal position and erroneously decreed the suit for partition which warrants interference of this Court.



S.A.Nos.1219 and 1220 of 2001

WEB COPY

8.The learned counsel for the respondent herein would submit that the appellants have not denied the sale deed and they have not denied the Will executed by Veerabagu Pillai in favour of two daughters in two equal shares with a condition that if any one of the daughters dies without any issues, the share of her has to go to the other daughter, who has issues. Therefore, admittedly, Sundaram Ammal, who is one of the daughters of the Veerabagu Pillai died, issueless and therefore, the deceased Kanniyammal got the entire properties and the half of the properties sold by way of sale deed and title also conveyed. However, sold half of the undivided share without partition and handed over the joint possession. Therefore, the appellants have not produced any document to prove the reconveyance of the suit properties and the sale deed also does not show the deceased Kanniyammal reserved the right of reconveyance and also does not mention the sale deed was executed only for collateral purpose as security. In the absence of documentary evidence, the appellants are prevented from let in evidence against the recital of the sale deed and the same is barred under



S.A.Nos.1219 and 1220 of 2001

Section 91 of Indian Evidence Act. Therefore, both the Courts below rightly appreciated the oral and documentary evidence and applied legal proposition and decreed the suit for partition and preliminary decree was passed. Therefore, there is no merit in the second appeal and the same is liable to be dismissed.

9.While admitting the second appeal, this Court has formulated the following substantial questions of law:

“1)Whether the trial Court has not failed to frame an issue with regard to the plea of the appellants herein that they have perfected title to the suit property by adverse possession in view of their joint possession and enjoyment of the suit property and therefore, they are entitled to 1/4th share each in the suit property?

2)Whether the so called sale deed Ex.A.1 is correctly interpreted in the light of the plea of the appellants and other evidences on record, indicating that the said deed was executed only as a deed of security, for the loan advanced by the



S.A.Nos.1219 and 1220 of 2001

respondent herein to the 3rd appellant herein?

3)Whether the respondent is entitled to a decree for partition of $\frac{1}{2}$ share in the suit property, as each appellant is entitled to $\frac{1}{4}$ th share in the suit property? ”

10.Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents and perused the materials available on record.

Question No.1

11.Since Kanniammal and her sister got the property through will executed by her father and they were enjoying the properties. Even though it is an undivided properties, the deceased Kanniammal sold half share in the suit properties. From the date of sale deed, the respondent/plaintiff also enjoying as the co-owner of the disputed entire properties. Therefore, once it is an admitted fact that half of the suit properties were sold and both are



S.A.Nos.1219 and 1220 of 2001

enjoying the properties as joint owners, the adverse possession against the co-owner would not raise. Any co-owner take adverse possession or the ouster, there must be a specific plea and proof that from what date she is enjoying the property as her own with the knowledge of the owner of the property, whereas, in this case, the respondents have not proved that after selling the property, more than 12 years she was enjoying the property. Therefore, in this case, there is no such material to show that the appellants/defendants proved that they were perfected title to the suit property by adverse possession, in view of the separate possession and enjoyment of the suit property. Therefore, substantial question of law No.1 is answered accordingly.

Question No.2

12.As far as the second substantial question of law is concerned, a reading of the recital of Ex.A.1, which clearly shows that the first appellant viz., Kanniammal has taken a specific plea that she did not sell the property



S.A.Nos.1219 and 1220 of 2001

and only executed a sale deed for collateral purpose, which is barred under Section 91 of the Indian Evidence Act. Once the recital of the sale deed clearly shows that it is an absolute sale deed and it is for the appellant to establish that it is not actually a sale deed, it is only executed for a collateral purpose. But the appellants/defendants has neither filed the suit for declaration declaring the said sale is null and void nor filed any counter claim for the same. They have taken the plea that it is only executed for a security purpose and even they have not sought for the relief of counter claim. Therefore, under these circumstances, once Ex.A.1 is proved that it is a sale deed, it is for the appellants/defendants has to contrary prove the same in the manner known to law that it is not a sale deed it is executed only for collateral purpose as security. Therefore, the learned counsel for the appellants/defendants stated that though there was an oral agreement for reconveyance, absolutely there is no evidence to show that there was an agreement for reconveyance and also the amount was not repaid and only after filing the suit, they have deposited the money, which clearly shows that it is not for a security purpose it is an absolute sale deed. The substantial



S.A.Nos.1219 and 1220 of 2001

question of law is answered accordingly.

Question No.3

13.Third substantial question of law is concerned, since the original owner Veerabagu Pillai has bequeathed his property in favour of his two daughters with condition that if any one of the daughters dies issueless, her share will devolve upon other daughters, who has got issues. As stated earlier, each daughter is entitled to half share and subsequently, one of the daughters viz., Sundaram Ammal had no issues. Therefore, her property also had gone to the appellants/defendants and they are entitled to entire properties. Therefore, the Kanniammal also executed a sale deed in favour of the respondent/plaintiff in respect of half share of the entire properties. The sister of the original appellant died without issues and therefore, it is not mentioned in the recital that she is entitled to only half share in entire properties and she has sold the half share from that half share. Therefore, recital in the document shows that the appellants are entitled to 1/4th share in the suit property.



S.A.Nos.1219 and 1220 of 2001

WEB COPY

14.Considering the facts and circumstances of the case, this Court finds that there is no merit in these appeals and the substantial questions of law are answered in favour of the respondents.

15.In the result, the second appeals fail and the same stand dismissed. No costs.

05.04.2023

NCC:Yes/No

Index:Yes/No

Internet:Yes/No

To

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



WEB COPY



S.A.Nos.1219 and 1220 of 2001

P.VELMURUGAN,J.

Ns

S.A.Nos.1219 and 1220 of 2001

05.04.2023