



S.A.Nos.135 of 2000 & 1854 of 2002

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2024

CORAM:

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

S.A.No.135 of 2000 and S.A.No.1854 of 2002

S.A.No.135 of 2000:

- 1 Elumalai (deceased)
- 2 E.Amutha
- 3 E.Kavitha
- 4 E.Anitha
- 5 E.Preveen kumar

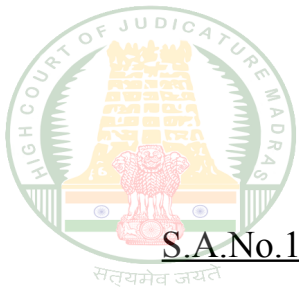
...Appellants/Appellants/
Legal Representatives of the 1st Defendant

(Appellants 2 to 5 brought on record as the legal representatives of the deceased sole appellant vide orders of this Court dated 28.11.2018 in C.M.P.No.1955 of 2009 in S.A.No.135 of 2000)

Vs.

- 1 Easwari Ammal
- 2 Punitha
- 3 Jayakumar
- 4 Thakshayani
- 5 Sujatha
- 6 Ramesh
- 7 T.Krishnamoorthy
- 8 Vishnukanthammal
- 9 Dr.D.Srinivasan
- 10 Parameswari
- 11 Karunamurthy
- 12 Jothi bai
- 13 Mani

... Respondents/Respondents/
Plaintiffs 1 to 6, 8 to 14



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S.A.No.1854 of 2002:

WEB COPY Elumalai (deceased)

- 2 E.Amutha
- 3 E.Kavitha
- 4 E.Anitha
- 5 E.Preveen kumar

...Appellants/Appellants/
Legal Representatives of the 2nd defendant

Vs.

- 1 Easwari Ammal
- 2 Punitha
- 3 Jayakumar
- 4 Thakshayani
- 5 Sujatha
- 6 Ramesh
- 7 D.Krishnasamy
- 8 Vishnukanthammal
- 9 Dr.D.Srinivasan
- 10 Parameswari
- 11 Karunamurthy
- 12 Jothi bai
- 13 Mani

... Respondents/Respondents/
Plaintiffs 1 to 6, 8 to 14

(Appellants 2 to 5 brought on record as the legal representatives of the deceased sole appellant vide orders of this Court dated 01.02.2013 in C.M.P.No.1638 of 2009 in S.A.No.1854 of 2002)

Prayer in S.A.No.135 of 2000: Second Appeal is filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 27.08.1999 made in A.S.No.1 of 1999 on the file of the learned Subordinate Judge, Cheyyar, confirming the Judgment and Decree dated 04.12.1991 made in O.S.No.259 of 1979 on the file of the learned District Munsif, Cheyyar.



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Prayer in S.A.No.1854 of 2002: Second Appeal is filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 27.08.1999 made in A.S.No.2 of 1999 on the file of the learned Subordinate Judge, Cheyyar, confirming the Judgment and Decree dated 04.12.1991 made in O.S.No.259 of 1979 on the file of the learned District Munsif, Cheyyar.

For Appellants : Mr.N Ganesh

For Respondents : Mr.C.Sri Ranjani for R1, R2, R5 and R6

Ms.Radha Gopalan for R4

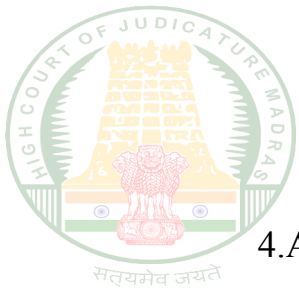
No appearance for R3, R7 to R11 and R 13

COMMON JUDGMENT

Challenging the concurrent findings of the Courts below, the 1st defendant preferred these appeals.

2.The parties are referred to in the same rank and array as before the Trial Court.

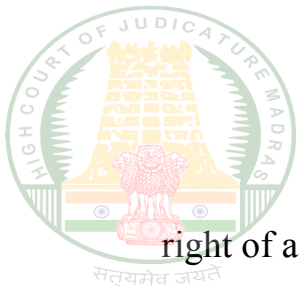
3.Before the Trial Court, the respondents 1 to 6 herein as plaintiffs filed a suit in O.S.No.259 of 1979 on the file of the learned District Munsif, Cheyyar, for the relief of declaration of title over the suit property morefully described in the Plaint schedule and recovery of possession in respect of the suit property.



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4. According to the plaintiffs, the 2nd defendant Pachiammal executed a Sale Deed on 13.04.1968 in favour of the 1st plaintiff's husband Sivaraja Mudaliar for herself on behalf of the minor 1st defendant, ever since he was in possession and enjoyment of the suit property during his life time. The said Sivaraja Mudaliar died on 13.06.1975 leaving behind his wife and children as his legal heirs. Thereafter, they enjoyed the property as absolute owner. After the death of her husband, the 1st plaintiff was residing at Vellore. Taking advantage of the same, the defendants trespassed into the suit property and made a false claim over the same. Hence, this suit.

5. The 1st defendant now attained majority and contested the Original Suits stating that at the time of alleged execution of Sale Deed of the year 1968, he was major and he has not received any sale consideration. Therefore, the alleged Sale Deed could not bind him. The 2nd defendant contested the case stating that she has not executed the Sale Deed on behalf of the 1st defendant since he was major at that time. Further, she contended that she never executed the Sale Deed in favour of Sivaraja Mudaliar. The 2nd defendant being an illiterate woman was misrepresented and obtained her thumb impression and the Sale Deed was created, thereby, she denied the execution of the Sale Deed dated 13.04.1968 stands in favour of the said Sivaraja Mudaliar as well as claiming



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right of adverse possession.

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6.The parties had gone to trial on the issues that were framed by the Trial Court. On the side of the plaintiffs, the 1st plaintiff had examined herself as P.W.1 and one Rangasamy as P.W.2 and Mr.Ramakrishan as P.W.3. Ex.A1 to Ex.A7 were marked. On the side of the defendants, the defendant Elumalai had examined himself as D.W.1 and six witnesses have been examined as D.W.2 to D.W.7. Ex.B1 to Ex.B28 were marked.

7.The Trial Court after analysing the oral and documentary evidence came to the conclusion that the Sale Deed dated 13.04.1968 relied by the plaintiffs marked as Ex.A1 stands in the name of Sivaraja Mudaliar, who is the husband of the 1st plaintiff said to be executed by the 2nd defendant's mother for herself on behalf of her minor son 1st defendant. But, the 1st defendant stated that he was major at the time of execution of the Sale Deed and to prove the same, he produced Ex.B.3 - Birth Certificate dated 02.04.1948 and Ex. B.4 to Ex.B.6 – Educational Certificates. On the date of the Sale Deed, he might have aged about 20 years. Therefore, the Trial Court held that the 1st defendant was major and the Birth Certificate of the 1st defendant is evident as per Section 35 of the Indian Evidence Act. Furthermore, the execution of the Sale Deed was



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proved by examining the attesor on her side and thereby, the Trial Judge held that the Sale Deed was executed by the 2nd defendant in favour of Sivaraja Mudaliar is valid. At the same time, the 1st defendant was not minor and it would not bind him in respect of his share. Accordingly, the suit was partly decreed and also directed to hand over the possession of half share from the suit property to the plaintiffs.

8.Challenging the said findings, the 2nd defendant filed an appeal in A.S.No.1 of 1999 on the file of the learned Subordinate Judge, Cheyyar, and the 1st defendant filed an appeal in A.S.No.2 of 1999 against the plaintiffs. Both the appeals were jointly heard by the learned First Appellate Judge and after analysing the evidence on record, the First Appellate Judge found that the 2nd defendant executed the Sale Deed for herself on behalf of her minor son, Elumalai, the 1st defendant, in order to clear the debts in the Agricultural Bank and the possession was also handed over to Sivaraja Mudaliar. The original title deed and Sale Deed were also in the custody of the plaintiffs. After the said purchase, Patta also obtained in the name of the deceased Sivaraja Mudaliar. Therefore, the First Appellate Judge concluded that the deceased Sivaraja Mudaliar obtained possession in pursuant to Ex.A.1 – Sale Deed dated 13.04.1968 and after demise of Sivaraja Mudaliar, in the year 1978, the



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defendants trespassed into the suit property. Immediately, the plaintiffs issued notice which shows that there is a trespass made in the year 1978, and thereafter, the present suit has been filed by the plaintiffs for the relief of recovery of possession. In respect of the share of the 1st defendant, the learned Judge held that the 1st defendant was major at the time of execution of Ex.A.1 - Sale Deed. Accordingly, the findings given by the Trial Judge was confirmed and dismissed both the appeals and directed the 1st defendant to handover half share of the suit property to the plaintiffs. Challenging the same, the present Second Appeals have been filed by the 1st defendant.

9.During the pendency of the Second Appeals, the 1st defendant died and his legal representatives have contested the case.

10.At the time of admission, this Court had framed the following Substantial Questions of Law:

*“(1)Whether the findings of the Courts below that Ex.A.1 –
Sale Deed is valid in Law?*



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(2)Whether the Judgment and Decree of the Courts below

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are legally sustainable inasmuch as they have found possession of the suit properties has been given to the vendor under Ex.A.1 ignoring Ex.B.10 to Ex.B.25 - Kist Receipts and Ex.B.8 and Ex.B.9 – Adangal Extracts?

(3)Whether the Judgment and Decree of the Courts below

for possession is legally sustainable inasmuch as they have found that the Sale Deed is binding only on the share of the mother of the appellant?”

11.The learned counsel appearing for the appellants would argue that that the Courts below failed to take note of the fact that there is no evidence on the side of the plaintiffs to prove the alleged trespass. In fact, they were in possession of the suit property ever since and Sivaraja Mudaliar was not given possession of the suit property nor enjoyed the same during his lifetime. Without any proof, the Courts below granted the relief in favour of the plaintiffs in respect of half share from the suit property, as such, it is unjust and liable to be set aside. He would also submit that the 2nd defendant/mother was an illiterate woman and taking advantage of the same, she was taken to the



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Registration Office and obtained the Sale Deed. Therefore, even the Sale would

not bind the 2nd defendant and it was not properly appreciated.

12.*Per contra*, the learned counsel for the respondents would contend that for a valid consideration, Sivaraja Mudaliar purchased the property from the 2nd defendant who executed the Sale Deed for herself and on behalf of her minor son and he was in possession and enjoyment of the suit property till his lifetime. After his demise, the plaintiffs were out of native place and the defendants trespassed into the suit property. Immediately, the plaintiffs issued notice in the year 1977 and filed the Original Suit. From 1977 onwards, the defendants trespassed and enjoyed the suit property and have not allowed the plaintiffs who are the legal heirs of the deceased Sivaraja Mudaliar. The Courts below have rightly granted half share in favour of the plaintiffs in respect of the suit property. To drag on the proceedings, the present Second Appeals have been filed.

13.On perusal of the records, it is true that the suit was filed in the year 1979 by a widow and her children who are the legal heirs of the deceased Sivaraja Mudaliar stating that the defendants trespassed into the suit property. Admittedly, Ex.A.1 – Sale Deed stands in the name of Sivaraja Mudaliar



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executed by the 2nd defendant for herself and on behalf of the 1st defendant. The

1st defendant claimed that he was major at the time of execution of Sale Deed and to prove the same, he produced Ex.B.2 to Ex.B.4 - Certificates in which his Date of Birth is of the year 1948, therefore, at the time of execution of Sale Deed in the year 1968, he was 20 years old, therefore, the Sale Deed executed in favour of 1st defendant would not bind his half share.

14.Though the Appeal Suits preferred was dismissed no Second Appeal was filed as against the same by the plaintiff. However, the remaining half share of the suit property is belonged to the 2nd defendant, who also contended that the Sale Deed was forcibly obtained from her and to disprove the same, they examined the attestor of the document who stated that to discharge the loan in the Society, the 2nd defendant wanted to sell the property and the said Sivaraja Mudaliar purchased the property for a valid consideration and the loan amount was discharged by him by paying the amount to the Society. For the same, Receipt has also been issued in his favour which clearly shows the necessity arose to sell the suit property, accordingly, the property was sold to the deceased Sivaraja Mudaliar. There was no rebuttal evidence on the side of the defendants to disprove the said facts. Therefore, the Courts below has rightly appreciated the facts and Ex.A1 - Sale Deed has been executed for a valid



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consideration by the 2nd defendant. Therefore, the Sale Deed in respect of the 2nd defendant is valid and the same would bind her. Accordingly, the suit was rightly decreed in respect of the half share of the suit property. The Substantial Question of Law No.1 is answered accordingly.

15.After execution of the Sale Deed of the year 1968, the possession was handed over to the said Sivaraja Mudaliar and Patta also mutated in his name. In respect of trespass in the year 1977, the plaintiff issued notice and thereafter, the present suit has been filed in the year 1979. Ex.A3 and A4 shows that after purchase, possession was handed over to Sivaraja Mudaliar and after his demise, the defendants trespassed into the suit property. Therefore, the Courts below has rightly appreciated all the facts and events and granted possession in respect of half share as such is maintainable. The Substantial Questions of Law Nos.2 and 3 answered accordingly.

16.Accordingly, these Second Appeals are dismissed. Considering the facts that the suit was filed in the year 1979 by a Widow along with her minor sons, after the demise of her husband Sivaraja Mudaliar, who purchased the property from the defendants and due to trespass in the suit properties by the defendants, the defendants have enjoyed the same nearly 40 years. Admittedly,



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the plaintiffs are entitled to half share in the suit properties and the 1st defendant

is entitled to half share in the suit properties. The entire extent of the suit properties as per the Plaint schedule is 4 acres and 84 cents. In S.No.9/2A, the total extent is 2.48 cents and in S.No.2/9B, the total extent is 2.36 cents. Therefore, the plaintiffs are entitled to 2.42 cents in the suit properties and the legal representatives of the deceased 1st defendant is entitled to 2.42 cents in the suit properties.

17.Further, to avoid multiplicity of proceedings and in the interest of Justice, accordingly Final Decree is passed. The Western Portion of the suit property in S.No.9/2A to an extent of 2.42 is allotted to the share of the plaintiffs and the remaining extent in S.No.9/2A as well as the entire extent in S.No.9/2B is allotted to the share of the 1st defendant. To demarcate the boundaries, both the parties are directed to measure the properties with the help of Surveyor by paying necessary fee and fix the stones. The defendants are directed to hand over the possession of the suit properties to an extent of 2.42 cents in favour of the plaintiffs within a period of six weeks from the date of



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receipt of a copy of this Judgment, failing which, the plaintiffs are entitled to evict the defendants as per the Court of Law and that the execution proceedings also to be completed within a period of three months, as the suit was filed in the year 1979. There shall be no order as to costs.

04.12.2024

Speaking / Non Speaking order

Neutral Citation : Yes/No

Index : Yes/No

mps

To

1.The Subordinate Judge,
Cheyyar.

2.The District Munsif,
Cheyyar.

3.The Section Officer,
VR Section,
Madras High Court.



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T.V.THAMAILSELVI, J.

mps

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