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S.A.No.372/2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 26-02-2024

CORAM

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

SECOND APPEAL No.372 of 2009

1.K.Dhanalakshmi

2.K.Koteeswaran

...

Appellants

-VS-

S.Kesavaram (deceased)

1.P.R.Pandian

2.M.K.Krishnamurthy

3.K.Amudhamozhi

4.M.Devakanya

...

Respondents

Appeal against the judgment and decree, dated 29.12.2008, passed in A.S.No.281 of 2007 on the file of VI Additional Judge, City Civil Court, Chennai, confirming the judgment and decree, dated 07.02.2007, passed in O.S.No.265 of 2002, on the file of XVI Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.K.V.Sundararajan

For Respondents 1 & 4 : No appearance

Respondent 2 : Died

For Respondent 3 : Mr.S.Sadasivan



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JUDGMENT

Plaintiffs in the suit are the appellants before this Court in this Second Appeal.

2. This Second Appeal is filed challenging the judgment and decree, dated 29.12.2008, passed in A.S.No.281 of 2007 on the file of VI Additional Judge, City Civil Court, Chennai, confirming the judgment and decree, dated 07.02.2007, passed in O.S.No.265 of 2002, on the file of XVI Assistant Judge, City Civil Court, Chennai.

3. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

4. According to the plaintiffs, they are the children of defendants 3 and 4; originally, the suit property was purchased by their paternal grandmother, namely, Jayalakshmi Ammal under an unregistered sale deed, dated 19.01.1969; the suit property was allotted in favour of their paternal grandmother, Jayalakshmi Ammal, by Tamil Nadu Slum Clearance Board, in short, "the Board", vide proceedings, dated 18.11.1981, and all the payments were made and receipts issued by the Board in favour of their grandmother; the suit property was the subject matter of the hire purchase agreement, entered into between their grandmother Jayalakshmi Ammal and Tamil Nadu Slum Clearance Board; the suit property is absolutely with Tamil Nadu Slum



Clearance Board and, as per the provisions of the Tamil Nadu Slum Clearance Board Act, no alienation is permitted and no eviction proceedings could be taken without the prior approval of the Board; Jayalakshmi Ammal died intestate on 04.08.1984 and their grandfather Kannappa also died on 07.08.1993; after the death of Jayalakshmi Ammal and Kannappa, they have succeeded to the suit property, as it devolved on them and third defendant as per Section 15 of the Hindu Succession Act; third defendant - father and fourth defendant - mother had executed a mortgage deed, dated 16.04.1997, in favour of first defendant and the said mortgage is null and void; third and fourth defendants had no right or title or interest to execute the mortgage deed and it was also in violation of the rules of the Board and, therefore, the mortgage deed executed will not bind the plaintiffs; after issuing legal notice, they have come up with the suit for declaration to declare the mortgage deed executed on 16.04.1997 as null and void and for a permanent injunction, restraining first defendant from taking any proceedings in respect of the suit property.

5. Third defendant resisted the suit by filing a written statement stating that upon the death of Jayalakshmi Ammal on 04.08.1984 and the death of his father Kannappa on 07.08.1993, it is he, who alone is entitled to inherit the suit property; when he is alive, the plaintiffs cannot inherit the suit property as per Section 15 of the Hindu Succession Act, as claimed by them; as he has inherited the suit property, he, along with fourth defendant, has executed the mortgage deed, which cannot be



questioned by the plaintiffs.

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6. First defendant also filed a separate written statement and resisted the suit, contending that as per Section 15 of the Hindu Succession Act, after the death of Jayalakshmi Ammal, the suit property is inherited by her husband Kannappa and third defendant; after the death of his father, third defendant has inherited the suit property; when third defendant is the owner of the suit property, he has executed the mortgage deed along with fourth defendant; and that Tamil Nadu Slum Clearance Board has also issued a sale deed in favour of Krishnamurthy - third defendant on 31.07.2000.

7. During the course of trial, on the side of plaintiffs, P.W.1 was examined and Exs.A-1 to A-9 were marked. On the side of defendants, D.Ws.1 and 2 were examined and Exs.B-1 and B-2 marked.

8. The trial Court, after appreciating the evidence and the documents, dismissed the suit. The trial Court found that when third defendant was alive, plaintiffs cannot inherit the suit property under Section 15 of the Hindu Succession Act. The trial Court also held that when third defendant had inherited the suit property and Tamil Nadu Slum Clearance Board, being the paramount owner, had not been made a party, the plaintiffs, who have no manner of title, cannot maintain the suit. Being aggrieved, the plaintiffs have filed A.S.No.281 of 2007 on the file of VI Additional Judge, City Civil Court, Chennai.



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9. The lower appellate Court, after re-appreciating the evidence, dismissed the appeal. Further aggrieved by the concurrent findings of facts, the plaintiffs are before this Court with the present Second Appeal.

10. This Court, by an order, dated 20.07.2009, ordered Notice of Motion.

11. Learned counsel for the appellants/plaintiffs argued that when admittedly there is a restrictive covenant in the allotment order issued by Tamil Nadu Slum Clearance Board that the property cannot be alienated, the mortgage executed by defendants 3 and 4 is against the public policy and, therefore, the same will not bind the plaintiffs. He would further contend that even though the Board has not been made as party to the suit, still, the plaintiffs, being the grand children of the original allottee - Jayalakshmi Ammal, can very well question the validity of the documents, executed by third and fourth defendants. He would also argue that even though the Courts below found that third and fourth defendants cannot make any alienation without prior approval of the Board, they erroneously dismissed the suit on the ground that the plaintiffs cannot challenge the mortgage deed, as they do not have any right. Accordingly, the learned counsel sought for interference with the judgment and decree of the Courts below.

12. Per contra, learned counsel for the respondents/defendants would



contend that the claim of the plaintiffs that they have become the legal heirs of Jayalakshmi Aammal under Section 15 of the Hindu Succession Act is against the very provision and when third defendant, who is the son, is alive and has inherited the suit property, the plaintiffs, who have no right to the suit property, cannot maintain the suit by challenging the mortgage deed executed by third defendant, who is the rightful owner. The learned counsel further contends that Tamil Nadu Slum Clearance Board has also executed a sale deed in favour of third respondent, as averred in the written statement, and that both the Courts below have arrived at a finding of fact based on the material available on record and, therefore, no substantial question of law is involved in this Second Appeal. Accordingly, he prayed for dismissal of this appeal.

13. Admittedly, the suit property belonged to Tamil Nadu Slum Clearance Board and, by an allotment order, dated 18.11.1981, the property has been allotted in favour of mother of third defendant - Jayalakshmi Ammal. Jayalakshmi Ammal had made payments in respect of the suit property and died in the year 1984 intestate leaving behind her husband and third defendant. Thereafter, Kannappa, husband of Jayalakshmi Ammal, also died on 07.08.1993. Pursuant to the death of Jayalakshmi Ammal and Kannappa, third defendant, being the only legal heir, has inherited the suit property.

14. As rightly held by both the Courts below, when third defendant is alive, as per Section 15 of the Hindu Succession Act, he is entitled to succeed to the property



of Jayalakshmi Ammal. As such, third defendant became the owner of the suit property.

The claim made by the plaintiffs that they are also the legal heirs of the deceased Jayalakshmi Ammal cannot be sustained, as they are only the grand children of Jayalakshmi Ammal and when their father, third defendant, is alive, they do not get any right over the suit property.

15. Plaintiffs have challenged the mortgage deed executed by third and fourth defendants in favour of first defendant. Though there is a restrictive covenant in the allotment order that alienation cannot be made without the prior approval of the Board, admittedly, the plaintiffs have not made the Board a party. In this case, no evidence has been let in to establish the fact as to whether there had been any approval from the Board or as contained in the written statement the sale deed has been executed in favour of third defendant. When the plaintiffs have not made the Board a party to the suit, their contention that in view of the restrictive covenant contained in the allotment order third defendant is not entitled to execute the mortgage deed cannot be sustained. If at all there is any lacuna or error in the mortgage deed executed by third defendant, it is for the Board to address the issue. When, admittedly, the Board is not made a party, the claim made by the plaintiffs that the mortgage deed executed by third defendant is void is not acceptable.

16. The findings of facts, arrived at by both the Courts below, that plaintiffs have no manner of right or title whatsoever in respect of the suit property and cannot



maintain the suit by challenging the document executed by third and fourth defendants, who are the rightful owners, are based on the material available on record and there is no perversity or illegality with the same. This Court does not find any question of law, much less substantial question of law, in this Second Appeal. In such circumstances, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, the connected M.P.No.1 of 2009 is closed.

26-02-2024

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To

1.VI Additional Judge,
City Civil Court,
Chennai.

2.XVI Assistant Judge,
City Civil Court,
Chennai.

3.V.R.Section,
High Court,
Madras.



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G.ARUL MURUGAN, J.

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