



S,A.No.1073 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2024

CORAM

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

S.A.No.1073 of 2012
and
C.M.P.No.22851 of 2022

S.Kaliannan

...Plaintiff / Appellant /
Appellant

-Vs-

K.Subramani

...Defendant / Respondent
Respondent

Prayer:- Second Appeal preferred under Section 100 of CPC against the judgment and decree of the learned Subordinate Judge, Namakkal made in A.S.No.10 of 2009 dated 24.09.2012 confirming the judgment and decree passed by the learned Principal District Munsif, Namakkal in O.S.No.973 of 2006 dated 26.11.2008.

For Appellant : Mr.D.Shivakumaran

For Respondent : Mr.Karthikeyan
for Mr.M.Sathish Kumar

J U D G M E N T



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The plaintiff in the suit in O.S.No.973 of 2006 on the file of the learned Principal District Munsif, Namakkal, is the appellant in the above second appeal.

2. The appellant herein, as plaintiff, filed the suit for declaring that the suit property absolutely belongs to the plaintiff. The plaintiff also sought for permanent injunction restraining the defendant and their men from disturbing the plaintiff's peaceful possession and enjoyment of the suit property.

3. For the sake of convenience, the parties are referred as plaintiff and defendant as referred in the suit.

4. The contention of the plaintiff is that, he is the only son of Sengoda Gounder. The Hindu Joint family comprising of the plaintiff, his father & mother, owned certain properties. The suit schedule property was purchased by the plaintiff's father out of the Joint Family income by way of a sale deed dated 19.03.1981 from one Rathinam and others. The plaintiff contended that the plaintiff and his father were in possession and enjoyment of the suit schedule property.



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5. On 01.06.1985, there was a partition between the plaintiff's father and his brothers. In the year 1996, the plaintiff's father was addicted to certain bad habits and deserted the plaintiff and his mother and was living separately along with his own brother, Karuppana Gounder. The plaintiff's father executed a sale deed in respect of the total extent of the property i.e., 1 acre 78 cents in favour of the defendant. The sale consideration for the said property was fixed as Rs.25,000/-. The said sale deed was executed on 09.03.1998.

6. The plaintiff had filed a partition suit in O.S.No.169 of 1998 before the Sub Court, Namakkal and the same was dismissed on 18.12.2006, pursuant to the execution of the partition deed entered between the plaintiff and his father on 11.08.2006. To prevent the interference of the defendant in possession and enjoyment of the suit schedule property by the plaintiff, the above suit came to be filed.

7. The written statement was filed by the defendant denying the averments made by the plaintiff in his plaint. The defendant contended that a sale deed was executed by the plaintiff's father in favour of the defendant



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on 09.03.1998 in respect of the suit property for a sale consideration of Rs.25,000/-. The defendant further contended that after execution of the sale deed on 09.03.1998, the defendant was in actual possession and enjoyment of the suit schedule property and only to create trouble, the above suit was filed without any material.

8. Based on the plaint and written statement, the Trial Court had formulated the following issues:

a)Whether the suit property was acquired by the defendant as per the sale deed dated 09.03.1998 and whether it is true the suit property is in possession of the defendant?

b)Whether the suit property is self-acquired property of Sengoda Gounder or whether it was derived from the family property?

c)Whether the plaintiff is entitled for the relief of declaration?

d)Whether the plaintiff is entitled for the relief of permanent injunction?

e)To what other relief?

Additional Issues:

a)Whether the suit is maintainable without the prayer of declaration and possession?

b)Whether the Court fee paid by the plaintiff is correct?



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c) Whether the suit is barred by limitation?

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9. Before the Trial Court, P.W-1 & P.W-2 were examined and Exs.A-1 to A-8 were marked on the side of the plaintiff. On the side of the defendant, D.W-1 to D.W-3 were examined and Exs.B-1 to B-8 were marked.

10. Ex.A-1 is the sale deed in favour of the plaintiff's father. Ex.A-2 is the sale deed between the defendant and plaintiff's father. Ex.A-3 is the partition deed entered between the plaintiff and his father. Ex.A-4 is the partition deed between family members of the plaintiff's father. Ex.A-5 is the partition deed between the plaintiff's father and his brother. Ex.A-6 is the Chitta in respect of the suit schedule property. Ex.A-7 is the tax receipt. Ex.A-8 is the plaint filed in O.S.No.363 of 2007. Ex.B-1 is the plaint filed in O.S.No.169 of 1998, Ex.B-2 is the certified copy of the plaint filed in O.S.No.169 of 1998. Ex.B-3 is the written statement filed by the plaintiff's father in O.S.No.169 of 1998, Ex.B-4 is the affidavit of the defendant filed in O.S.No.169 of 1998. Ex.B-5 is the judgment in O.S.No.169 of 1998. Ex.B-6 is the decree in O.S.No.169 of 1998. Ex.B-7 is the agreement of sale between the plaintiff's father and the defendant dated 23.02.1998 and



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Ex.B-8 is the sale deed executed in favour of the defendant by the plaintiff's father on 09.03.1998.

11. The Trial Court had considered the evidence produced on either side and came to the conclusion that the plaintiff is not entitled to the relief and dismissed the suit.

12. Aggrieved by the same, the plaintiff had filed the appeal before the Sub Court, Namakkal in A.S.No.10 of 2009. The First Appellate Court has taken the following points for determination:

(i) Whether the Judgment and Decree of the Trial Court has to be set aside?

(ii) Whether the appeal has to be allowed?

(iii) Whether the appeal is maintainable?

13. While examining the correctness of the judgment of the Trial Court, the First Appellate Court had come to the conclusion that Ex.B-8 sale deed executed by the plaintiff's father would only show that the suit property is a self-acquired property of the plaintiff's father and the sale deed was executed based on the full satisfaction between the plaintiff's father and the defendant.



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14. The First Appellate Court held that the defendant is the absolute owner of the suit property. The First Appellate Court found that the plaintiff has failed to prove his title and dismissed the appeal filed by the plaintiff and confirmed the judgment and decree passed by the Trial Court.

15. Aggrieved by the same, the present second appeal has been filed by the plaintiff in the suit. It is seen from the records that, this Court has admitted the second appeal on the following substantial questions of law:

a)Whether the Lower Appellate Judge was right in holding that the suit property purchased by the Sengoda Gounder under the sale deed dated 19.03.1981 is his self-acquisition ignoring the fact that Sengoda Gounder was the Karta of the joint family as on that date?

b)Whether the Lower Appellate Judge was right in treating the recitals in Ex.B-8 dated 09.03.1998 as conclusive proof of the fact that the suit property is the self-acquired property of Sengoda Gounder?

c)Whether the Lower Appellate Judge was right in disposing of the appeal without even framing proper points for determination as



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required under Order 41 Rule 31 of CPC?

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16. Learned counsel for the appellant would contend that the Trial Court and the First Appellate Court have miserably failed to note that the suit schedule property is a Hindu Joint Family Property and the sale deed marked as Ex.B-8 is not binding on the appellant.

17. Per contra, the learned counsel for the respondent would contend that the Trial Court as well as the First Appellate Court has categorically taken into consideration that the sale deed marked as Ex.B-8 clearly shows that the suit schedule property is a self-acquired property of the plaintiff's father. The suit which was filed by the plaintiff for partition between the plaintiff and his father in O.S.No.169 of 1998 was dismissed for default. The dismissal of the suit filed by the plaintiff in O.S.No.169 of 1998 would itself show that the suit schedule property is not a Hindu Joint Family property and the recitals would clearly show that it is a self-acquired property.

18. While examining the Judgment of the First Appellate Court, it is clear that the evidence of D.W-1 and Exs. B-1 to B-8 shows that the suit



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instituted by the plaintiff for partition between the plaintiff and his father was dismissed for default and the same was considered by the First Appellate Court. The sale deed in Ex. B-8 would categorically show that the suit schedule property is not a Hindu Joint Family property and it is a self-acquired property of the plaintiff's father Sengoda Gounder.

19. That apart, the appellant has not taken any steps to cancel the sale deed marked as Ex. B-8 which is executed in favour of the respondent. The appellant has failed to disprove the contention of the respondent that the suit property is a self-acquired property of the plaintiff's father by producing any oral and documentary evidence. Yet another pertinent point which has to be considered is that the appellant has not made his father, the said Sengoda Gounder as a party in the suit and the appellant has chosen not to examine his father as a witness to establish that the suit schedule property is not a self-acquired property of Sengoda Gounder or to ascertain the appellant's right over the suit schedule property.

20. In view of the above, all the substantial questions of law are answered in favour of the respondent.



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21. In the result, the second appeal stands dismissed. The judgment and decree of the learned Subordinate Judge, Namakkal, in A.S.No.10 of 2009 dated 24.09.2012 is confirmed. No costs. Connected miscellaneous petition is closed.

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Index : Yes/No

Speaking/Non Speaking order

To

- 1.The Subordinate Judge, Namakkal.
- 2.The Principal District Munsif, Namakkal.
- 3.The Section Officer, VR Records,
High Court, Chennai.



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N.SENTHILKUMAR, J.

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