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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.No.1571 of 2011 and
M.P.No.1 of 2011

1.Poongavanam

2.Arumugham

... Appellants / Defendants

Vs.

1.Palaniammal

2.Devasagayam

... Respondents / Plaintiffs

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree of the learned Principal Subordinate Judge of Krishnagiri dated 04.08.2010 in A.S.No.21 of 2009 reversing the judgment and decree of the learned District Munsif of Krishnagiri dated 23.09.2008 in O.S.No.633 of 2004.

For Appellants : Mr.V.Nicholas

For Respondents : Mr.J.Saravanel



JUDGMENT

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This Second Appeal has been filed to set aside the judgment and decree of the learned Principal Subordinate Judge of Krishnagiri dated 04.08.2010 in A.S.No.21 of 2009 reversing the judgment and decree of the learned District Munsif of Krishnagiri dated 23.09.2008 in O.S.No.633 of 2004.

2. Heard Mr.V.Nicholas, learned counsel for the appellants and Mr.J.Saravanel, learned counsel for the respondents and perused the materials available on record.

3. The defendants are the appellants against whom the plaintiffs have filed a suit for declaration and permanent injunction along with recovery of possession. Though the Trial Court has dismissed the suit, on the First Appeal preferred by the plaintiffs, the First Appellate Court has allowed the Appeal and reversed the judgment of the Trial Court and decreed the suit. Aggrieved over that, the defendants have preferred this Second Appeal.



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4. The short facts pleaded in the plaint are as follows:

The suit properties detailed in A, B and C schedule are the absolute properties of the first plaintiff as it was her ancestral properties. The first plaintiff's father Kutti @ Madhu died 30 years ago leaving behind his first wife Kutti and the second wife Muthuvediammal. The first wife had a daughter by name Mariammal and the second wife's daughter's name is Palaniammal, the first plaintiff. The suit property is part of the share allotted to the first plaintiff and her mother Muthuvediammal in the partition deed executed between the wives and the children of late Kutti @ Madhu. The first plaintiff and her mother Muthuvediammal have been in possession and enjoyment of the suit property which would measure an extent of 1 acre 53 cents and the patta also stands in her name.

4.1. The first plaintiff and her mother Muthuvediammal have sold 25 cents to one Mariappan under a registered sale deed dated 17.04.1987. Muthuvediammal died in September 1998 leaving behind the first plaintiff as a only legal heir. The first plaintiff became an absolute owner of 1 acre 28 cents and Mutation of revenue records have also been effected in her name. The first plaintiff sold 89 cents which is shown in 'B' schedule to her close



relative Devasagayam who is the second plaintiff on 06.09.1999 which is marked as Ex.A3. The second plaintiff took possession of said 89 cents and he is in enjoyment of the same. The second plaintiff earlier filed a suit in O.S.No.47 of 2000 for the relief of declaration and injunction in respect of 89 cents against one Chinnakuppan and Periyakuppan. Later, the second plaintiff had withdrawn the suit in O.S.No.47 of 2000 with liberty to file a fresh suit. The sale deed dated 09.09.1998 in favour of Chinnakuppan is a false and forged one.

4.2. The second defendant is said to have entered into a sale agreement with Chinnakuppan and the first plaintiff on 18.05.1999 and later got a sale deed executed in favour of the first defendant on 14.07.1999 in respect of Chinnakuppan's share. Chinnakuppan cannot pass any title in favour of any third party including the first defendant. The sale agreement and the sale deed alleged by the defendants are all false and bogus. As the defendants tried to trespass the suit property and set up a false title, the plaintiffs have filed a suit for declaration of title and recovery of possession.



5. The facts pleaded in the written statement of the second defendant are as follows:

The second plaintiff has earlier filed a suit for the same relief and the same was dismissed. Both the suits have been filed on the same cause of action. The earlier suit would act as a *res judicata*. On the right reserved by the second plaintiff while withdrawing O.S.No.47 of 2000, this suit has been filed, however along with the first plaintiff which is not correct. In O.S.No.47 of 2000, Chinnakuppan and Periyakuppan were the defendants 3 and 4 and no relief has been sought against them. The first defendant obtained electricity connection in his name pursuant to the registered sale deed executed by Chinnakuppan on 14.07.1999 for 64 cents. It is false to state that the suit property belonged to the first plaintiff and the second plaintiff cannot claim complete right in respect of 'B' schedule as Chinnakuppan has sold 64 cents to the first defendant on 14.07.1999. The first plaintiff has married Chinnakuppan and on the date of marriage itself Muthuvediammal had executed the sale deed in favour of Chinnakuppan in respect of extent of 1 acre and 28 cents in S.No.36/2. The first plaintiff's husband is not Pandian. Chinnakuppan and the first plaintiff executed the sale agreement dated 18.05.1999 with the second defendant and thereafter



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½ share belonged to Chinnakuppan was sold to the first defendant on 14.07.1999. On 18.05.1999, Chinnakuppan had executed a sale agreement in favour of the first defendant, after receiving the part sale consideration of Rs.50,000/-. Since the plaintiffs have filed the suit despite having sold the suit property to the defendants, the suit has to be dismissed.

6. During the course of the trial, on the side of the plaintiffs, three witnesses were examined as P.W.1 to P.W.3 and eight documents have been marked as Exs.A1 to A8. On the side of the defendants, five witnesses were examined as D.W.1 to D.W.5 and Exs.B1 to B18 were marked.

7. At the conclusion of the trial and on considering the evidence available on record, the Trial Court has dismissed the suit. On the First Appeal preferred by the plaintiffs, the First Appellate Court allowed the Appeal and reversed the judgment of the Trial Court and decree the suit. Now, the Second Appeal has been filed by the defendants by raising the following substantial question of law:

“Whether in law the First Appellate Court is right in allowing the Appeal unmindful of the fact that the plaintiffs have not sought any relief for declaring the sale deeds



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dated 09.09.1998 and 14.07.1999 which are marked as Exs.B5 and B6, as null and void? ”

8. The limited point involved in this Second Appeal is about the title of the executant Chinnakuppan of the sale deed dated 14.07.1999 in favour of the first defendant which is marked as Ex.B6. The first defendant claims that his vendor Chinnakuppan has derived title to the property subjected to sale in Ex.B6, consequent to a sale deed executed in his favour by Muthuvediammal. Muthuvediammal is the first plaintiff's mother. The fact that the whole of the property belonged to Kutti @ Madhu cannot be disputed. Muthuvediammal is the second wife of Kutti @ Madhu and have acquired title through the original owner Kutti @ Madhu. In view of the partition entered into between the family members, the suit property has been allotted to the share of Muthuvediammal and her daughter, the first plaintiff along with other properties. Muthuvediammal sold 25 cents to Mariappan through a sale deed dated 17.04.1987 (Ex.A8). The said fact cannot be disputed. There is no dispute with regard to the 25 cents sold from and out of the whole of 1 acre 53 cents which was originally allotted to the share of Muthuvediammal and the first plaintiff.



9. According to the first plaintiff, she became entitled to the remaining whole of 1 acre 28 cents after the death of Muthuvediammal. But the first defendant claims that Chinnakuppan was married to the first plaintiff on 09.09.1998 and on the same day of marriage itself, Muthuvediammal had executed a sale deed in favour of the first plaintiff and Chinnakuppan.

10. The learned counsel for the first respondent submitted that the sale deed is not supported by any sale consideration and hence, it is void. Admittedly, the suit has not been filed to declare that the sale deed dated 09.09.1998 as void. During the lifetime of the original owner Muthuvediammal, she did not file any suit to declare the sale as null and void by claiming that she did not receive any sale consideration. The first defendant who claims title through Ex.B5 should discharge his burden by proving the very sale deed.

11. The first plaintiff is shown as the purchaser through Ex.B5. The first defendant claims that Chinnakuppan is the husband of the first plaintiff. Even though the registered sale deed also shows that Chinnakuppan was the husband of the first plaintiff, it is not known whether the marriage between



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the first plaintiff and Chinnakuppan has been dissolved subsequently and that the first plaintiff has married to one Pandian @ Mariappan as claimed by her. As per the submission of the first plaintiff, Chinnakuppan was also married to one Leela and he had children with her. Even though the first plaintiff calls Ex.B5 as a forged document and Muthuvediammal did not execute the same, no relief has been sought in respect of the sale deed.

12. It is true that the first plaintiff also got 1/2 share in 1 acre and 28 cents as one of the legal heirs of the deceased father Kutti @ Madhu. So far as the remaining 1/2 share is concerned, Muthuvediammal has got title. In that case, Muthuvediammal can only pass title only for 64 cents to Chinnakuppan and the first plaintiff through Ex.B5. The first plaintiff has already got title over 64 cents. She would also get title to 1/2 of her mother's share (i.e) for 32 cents by virtue of the sale deed Ex.B5. So the first plaintiff's entitlement would be over 1/2 of her share of 64 cents along with 32 cents for which she can derive title through sale deed dated Ex.B5. The total extent for which the first plaintiff's entitlement would be 96 cents and Chinnakuppan can get title for 32 cents and not more than that.



13. The contention of the first plaintiff is that the sale deed dated 09.09.1998 is not supported by consideration. If the first plaintiff claims that Chinnakuppan is a stranger and not her husband at the time when the sale deed was executed, the said fact which is contrary to the content of Ex.B5 should be proved. The first plaintiff has stated that the sale deed dated 09.09.1998 is not supported by any consideration. If the first plaintiff could speak on behalf of Chinnakuppan that he did not pay any sale consideration, that would only show that Chinnakuppan was not a total stranger to the first plaintiff and that the narration of her relationship with Chinnakuppan at the time of Ex.B5 can be true.

14. Ex.B5 is the registered document and the first defendant has discharged his burden by producing the very document itself in terms of Section 92 of the Indian Evidence Act. If the first plaintiff pleads contrary to the recitals of Ex.B5, the burden would be upon her to prove the contrary. The first plaintiff cannot simply ignore the sale deed Ex.B5 without seeking any specific relief on the same so far as it relates to the 1/2 of the share for which her mother Muthuvediammal is entitled to. Though the first plaintiff claims Ex.B5 sale deed is a forged one, it was not proved so before the



Court. The First Appellate Court had chosen to ignore Ex.B5 sale deed only on the oral evidence of D.W.2 Chinnakuppan. During his examination he has stated that he has paid the sale consideration of Rs.25,000/- to Muthuvediammal and he has also stated that he has assured Muthuvediammal that he will take care of the first plaintiff till his life time.

15. The First Appellate Court has found the evidence of D.W.2 is contradictory and hence, the sale consideration could not have passed to Muthuvediammal at any stage. D.W.2 has not stated that the document executed by Muthuvediammal is a settlement deed or gift deed. He has stated that Muthuvediammal executed a sale deed by getting a sale consideration of Rs.25,000/-. However, for the reason that he has married the first plaintiff, there was no contradiction in the evidence of D.W.2 so as to ignore Ex.B5 which is a registered sale deed.

16. Whatever may be fact, Chinnakuppan could pass title only for the extent for which he is entitled. As Muthuvediammal has got title only for 64 cents and the sale deed has been executed in favour of Chinnakuppan and the first plaintiff, the first plaintiff can get only an undivided 1/2 share of 32



cents and not more than that. If at all the first defendant has executed any sale agreement with Chinnakuppan, that can be only to the extent of 32 cents for which Chinnakuppan is entitled. Though the Trial Court has rightly analysed the evidence, the First Appellate Court got misguided itself on the presumption that whole of the sale deed dated 09.09.1998 is void and that, the plaintiffs can ignore the same. Had the above essential point got into attention of the First Appellate Court, the First Appellate Court would have modified and granted decree in favour of the plaintiffs only in respect of 96 cents. In view of the same, the substantial question of law is answered in favour of the appellants.

17. In the result, this Second Appeal is partly allowed so far it relates to 32 cents for which, the first defendant's vendor Chinnakuppan is entitled. and the suit is decreed in respect of the rest of the suit property measuring 96 cents in favour of the first plaintiff. The remaining extent and rest of the aspects of the judgment of the First Appellate Court would stands confirmed. No costs. Consequently, connected miscellaneous petition is closed.

26.11.2024

Speaking order

12/14



Index : Yes

Neutral Citation : Yes

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To

1.The Principal Subordinate Judge,
Krishnagiri.

2.The District Munsif Court,
Krishnagiri.



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R.N.MANJULA, J.

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