



S.A.No.172 of 2013

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

S.A.No.172 of 2013

D. Sekar

...Appellant

Vs.

Sundararajan

... Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the Judgment and decree dated 20.09.2012 made in A.S. No.21 of 2009 on the file of the Court of the I Additional District Judge, Tindivanam, confirming the judgment and decree dated 28.02.2008 made in O.S.No.212 of 2000 on the file of the Court of the Principal District Munsif, Gingee.

For Appellant	: Mr.R.Agilesh
For Respondent	: Mr.R.P. Ruban Chakravarthy for M/s. Kaithamalai Kumaran



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JUDGMENT

The Second Appeal arises against the Judgment and decree of the Court of the I Additional District Judge at Tindivanam in A.S. No.21 of 2009 dated 20.09.2012 in confirming the judgment and decree of the Court of the Principal District Munsif, Tindivanam, in O.S.No.212 of 2000 dated 28.02.2008.

2. The plaintiff appeals before me. He had filed a suit for declaration of his title and for injunction with respect to 7.5 cents of land situate in Old Survey No.18/2 and New Survey No. 225/3, at Nadukuppam Village, Tindivanam Taluk, Villupuram District.

2.1. The property originally belonged to one Chellappa Chettiar. On 29.12.1946, under Ex.A3, Chellappa Chettiar alienated the property in favour of two brothers, namely, Balakrishnan and Veerabadran. However, the brothers got the document written in the name of the elder brother Balakrishnan. Balakrishnan and Veerabadran



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subsequently divided the property into equal halves, namely, 22½ cents on western side to go to Balakrishnan and 22½ cents on the eastern side to go to the younger brother Veerabadran.

2.2. Veerabadran had two sons, one Ranganathan and another son by name Shankar @ Jayachandran. Veerabadran's son Ranganathan predeceased him on 07.02.1997. He was survived by his wife Manjula and minor children Sathya and Satheesh. Manjula, Sathya and Satheesh sold the property in favour of the respondent Sundarrajan under Ex.B1 dated 28.10.1999. The extent mentioned in Ex.B1 was rectified to 7.5 cents on 15.02.2000 under Ex.B2. This is the suit schedule property.

2.3. It is the case of the plaintiff that the property was the absolute property of Balakrishnan and Veerabadran and they had divided the property and on such division Veerabadran executed a Power of Attorney in favour of his son Shankar on 22.10.1999 under Ex.A4. From Shankar @ Jayachandran, the plaintiff Sekar purchased the property on 04.11.1999 under Ex.A1. Since there was a dispute with



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respect to 7.5 cents, the plaintiff filed a suit for declaration of his title and for injunction.

3. On these pleadings, the learned Trial Court Judge framed the following issues.

1. வாதி கோரியுள்ள விளம்புகைபரிகாரம் வழங்கத்தக்கதா ?
2. வாதி கோரியுள்ள நிரந்தர தடைஉத்தரவு பரிகாரம் வழங்கத்தக்கதா ?
3. வேறென்ன பரிகாரம் ?

4. Before the Trial Court the plaintiff examined himself as P.W.1, the vendor of the defendant as P.W.2 and one Ramakrishnan as P.W.3. He marked Ex.A1 to Ex.A11. The defendant entered the witness box as D.W.1 and examined two other witnesses D.W.2 and D.W.3. He marked Ex.B1 to Ex.B7. On the basis of these pleadings and evidences, the learned Trial Court Judge came to the following conclusion



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- 1) that the Power of Attorney which had been executed by Veerabadran had been corrected from 225/2 old Survey No.18/3 to 225/3 old No.18/2; and
- 2) that the properties which had been purchased by Veerabadran and Balakrishnan were joint family properties and Veerabadran could not have sold the entire extent and the sale of 7.5 cents in favour of Sundarrajan is true and valid as the legalheirs of Ranganathan were entitled to alienate the same.

5. On an appeal being filed before the learned I Additional District Judge, Tindivanam, he concurred with the findings of the Trial Court and dismissed the appeal.

6. This Court on 22.03.2013 issued notice regarding admission and subsequently the appeal was admitted on the following substantial questions of law.

1. *"Whether the Lower Courts have not erred in concluding that the sale deed Exs.B1 and B2 by Manjula in favour of the respondent*



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2. *Whether the Lower Courts had erred in law in not finding that Manjula, wife of Ranganathan had no right to sell the undivided and un-allotted share of husband Ranganathan when the Kartha of the joint family is Veerabadra Gounder?*
3. *Whether the Lower Courts had not erred in law in holding that the plaintiff has not previous case when the respondent had admitted the power of attorney Ex.A4 and the sale deed in favour of appellant while disposing 7 ½ cents as per Ex.B1?*
4. *Whether the Lower Courts had erred in law that the defendant/respondent has proved the sale deed Ex.B1 suit property 7 ½ cents in his favour?*
5. *Whether the Lower Courts had erred in law in dismissing the Appeal of the respondent for declaration of title to suit property and permanent injunction?"*

7. Heard Mr.R.Agilesh, learned counsel for the appellant and Mr.R.P. Ruban Chakravarthy, learned counsel for the respondent.



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8. Mr.R.Agilesh would submit that the properties were self acquisition of Veerabadran and he had specifically stated in the Power of Attorney under Ex.A4 that the properties were his own properties and had alienated the same. He would further submit that there is no evidence to show that the properties were joint family properties of Balakrishnan and Veerabadran and therefore, plead that the judgment and decree of the courts below should be set aside.

9. Mr.R.P. Ruban Chakravarthy would argue that a bare look of the document under Ex.A4 is sufficient to come to the conclusion that Veerabadran had never granted power for alienation of Survey No.225/3 i.e. old Survey No.18/2 in favour of his son Shankar and that the entire purchase made by the appellant is based on the fabricated Power of Attorney and hence, the courts below were right in coming to such a conclusion. He would further add that P.W.1 and P.W.2, i.e. his vendor and the plaintiff who had entered into witness box had admitted that the properties are joint family properties and therefore, he would argue that the decree of the courts below requires no interference.



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10. I have carefully considered the arguments on either side.

11. I have to agree with Mr.Ruban Chakravarthy. P.W.1 and P.W.2 have infact entered into witness box and have specifically stated that the properties are joint family properties of Balakrishnan and Veerabadran. If the properties are joint family properties of Veerabadran and Balakrishnan, Veerabadran having partitioned the properties amongst themselves, the remainder of Veerabadran's family, namely.Ranganathan and Shankar would each be entitled 7.5 cents. It is this 7.5 cents which fell to the share of Ranganathan came to the hands of Manjula (P.W.2), Sathya and Satheesh. They inherited the property by virtue of the fact that Ranganathan predeceased Veerabadran and Shankar on 07.02.1997. While entering the witness box, P.W.1 had clearly and categorically deposed that the suit properties are "கூட்டு குடும்ப சொத்துக்கள்" of Veerabadran, Ranganathan and Shankar. Therefore, the share which Veerabadran could have alienated was his share of property and not the share which fell to Ranganathan as well as Shankar. Shankar, as a Power of Attorney, no doubt would be bound by



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the document he executed. The said document will not bind the legal heirs of the predeceased son, namely, Manjula, Sathya and Satheesh.

12. In the light of the admission made by P.W.1 and P.W.2, I do not find any reason to interfere with the judgment of the courts below.

13. In fine, the Second Appeal is dismissed. The judgment and decree of the learned I Additional District Judge, Tindivanam, dated 20.09.2012, in A.S. No.21 of 2009 in confirming the judgment and decree of the learned Principal District Munsif, Tindivanam, dated 28.02.2008 in O.S. No.212 of 2000 is confirmed. No costs.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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V.LAKSHMINARAYANAN, J.

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To

1. Additional District Judge, Tindivanam
2. The Principal District Munsif, Tindivanam,
3. The Section Officer, VR Section, High Court, Madras.

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