



S.A.No.738 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 15.03.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal No.738 of 2013

1.Panneerselvam

2.Babu

... Appellants

-Versus-

Mohan

... Respondent

Appeal filed under Section 100 of C.P.C. against the judgement and decree of the learned Subordinate Judge, Chidambaram made in A.S.No.38 of 2011 dated 17.12.2012 reversing the judgment and decree of the learned Principal District Munsif Court, Chidambaram made in O.S.No.223 of 2009 dated 20.08.2011.

For Appellants : *Ms.Mahamandra Rajalakshmi*
for Mr.J.Ramakrishnan

For Respondent : *Mr.A.Muthukumar*

JUDGEMENT

The plaintiffs are the appellants before me.

2. The plaintiffs filed O.S.No.223 of 2009 before the learned Principal District Munsif, Chidambaram, seeking to declare the sale deed executed by



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their father/ Krishnamoorthy in favour of the sole respondent as null and void and for consequential recovery of possession.

3. The bare facts necessary for the case are that the suit schedule mentioned property belonged to one Uthirapathy, son of Ramasamy, the maternal grandfather of the plaintiffs. Out of natural love and affection towards the plaintiffs, the said Uthirapathy executed a settlement deed on 01.03.1999 settling the suit schedule mentioned property in favour of the plaintiffs. As the plaintiffs are minors on that date, the property was handed over to their natural guardian Krishnamoorthy, the father of the plaintiffs. Having acquired the property, Krishnamoorthy alienated the same in favour of the sole respondent on 27.11.2002. Prior to the alienation of the property, he did not obtain permission of the court. Therefore, treating the sale as voidable, the plaintiffs came forward with the suit for the aforesaid reliefs.

4. The defendant pleaded that the suit property originally belonged to Krishnamoorthy and he transferred the same to Uthirapathy, the maternal grandfather of the plaintiffs. When Krishnamoorthy wanted the property to be returned to him, Uthirapathy instead of giving the property in the name of Krishnamoorthy, settled the property in favour of his minor sons, to which



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Krishnamoorthy was agreeable.

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5. The defendant further pleaded that for valuable consideration and for legal necessity, the property was sold to him on 23.09.2002 and after acquiring the same, the defendant had improved upon the property. He claimed that he had spent a sum of Rs.20,000/- to improve the property. In any event, he pleaded that the suit is barred by limitation as Panneer selvam/first plaintiff was aged 15 years on the date of Ex.A2 and Babu/the second plaintiff was aged 13 years.

6. On these pleadings, the trial court framed the following issues:

- “ 1. Whether the suit is barred by limitation?*
- 2. Whether the plaintiff's are entitled for the relief of declaration and consequential for recovery of possession as prayed for?*
- 3. To what other relief the plaintiff's are entitled? ”*

7. On the side of the plaintiffs, two witnesses were examined viz., PW1/Babu and grandfather Uthirapathy as the settler of the property in favour of the children as PW2. Ex.A1 to Ex.A10 were marked. On the side of the



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defendant, the defendant examined himself as DW1 and two other witnesses by name Panneer and Chinnapillai as DW2 & DW3. On the side of the defendant, no documents were marked.

8. After considering the evidence before the court, the learned trial judge decreed the suit as prayed for. Against the said judgment and decree, the purchaser/the sole defendant preferred A.S.No.38 of 2011. After a detailed analysis of the judgment of the court below, the learned Appellate Judge came to the conclusion that the suit ought to have been presented for cancellation of the document, but what was sought for was only setting aside the document and therefore, allowed the appeal and dismissed the suit. Against this reversal finding, the present second appeal has been presented before this Court.

9. On 11.07.2013, this court did not admit the appeal, but had ordered notice regarding admission. Thereafter, the matter has been listed before me for admission and for appropriate orders in the appeal.

10. I heard Mrs.R.Mahamandra Rajalakshmi for the appellants and Mr.A.Muthukumar for the respondent.



11. I heard this appeal on the following substantial questions of law:

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“1. Having regard to scope and ambit of Section 8 of the Hindu Minority and Guardianship Act, 1956 and having regard to the fact that the subject matter property is absolute and exclusive property of minor's, whether the sale of Minor's property under Ex.A2 is not ab-initio void for want of court permission to sell the same?

2. When the Ex.A2 sale itself is ab-initio void, whether the prayer for cancellation of the same is required under law?

3. In any event, whether the lower appellate court is right in law in dismissing the suit holding that the suit is bad for want of prayer to set aside the sale deed under Ex.A2, more particularly when the plaintiffs have paid the court fee under Section 40 of the Tamil Nadu Court Fees and suits Valuation Act, 1955 and also when suit in substance it impliedly couched the prayer for cancellation as well?

4. When the subject matter of sale of minor's absolute and exclusive property under Ex.A2 are not for legal necessity and also not for the welfare of the minors namely the appellants, whether in law such a transaction under Ex.A2, is binding on the appellants?

5. Whether the lower appellate court was right in allowing the appeal by way of reversing the well



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considered judgment of the trial court?”

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12. Each question of law being connected with the other, I clubbed them together and answer the appeal on the following terms.

13. It is not in dispute that the plaintiffs' maternal grandfather/PW2 had settled the property in favour of the plaintiffs Panneer Selvam and Babu by way of a registered settlement deed dated 01.03.1999. A perusal of Ex.A1 shows that on the date of execution of the settlement deed, the plaintiffs were minors and hence, they were represented by their natural guardian, Krishnamoorthy/the father. From perusal of Ex.A2, it is clear that Krishnamoorthy had sold the property in favour of the respondent for a sum of Rs.11,700/-.

14. The issues that I have to decide are twofold viz., (i) whether the suit is barred by limitation and if not, (ii) whether the suit whereunder the plaintiffs have sought for relief of setting aside the sale deed can be treated as one for cancellation as argued by Mrs.R.Mahamandra Rajalakshmi.



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15. Mr.A. Muthukumar would invite my attention to Ex.A2 and would point out that the suit is barred by time as from the averments in Ex.A2, it is clear that Panner Selvam was aged 15 years old and Babu was 13 years old, which implies that they had attained majority in the year 2005 and therefore, the suit presented in the year 2009 is hopelessly barred by limitation.

16. In order to show that the plaintiffs have presented the suit within a period of three years from the date of attainment of majority, Mrs.R.Mahamandra Rajalakshmi would invite the attention of the court to Ex.A6, Ex.A7 and Ex.A8. These are the records maintained by the public authorities. Ex.A6 is the Secondary School Leaving Certificate issued by the Department of Government Examinations, Government of Tamil Nadu.

17. A perusal of Ex.A6 shows that the first plaintiff/Panneer Selvam was born on 10.02.1990. Ex.A7 and Ex.A8 are the School Leaving Certificates of the second plaintiff/Babu. Ex.A7 tallies with Ex.A8 and the date of birth of the second plaintiff/Babu has been given as 25.04.1991. Therefore, the first plaintiff attained majority on 10.02.2008. Similarly, the second plaintiff attained majority on 25.04.2009.



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18. I hasten to add that if the suit is barred as against the first plaintiff, it is equally barred against the second plaintiff, even though he would have been a minor. Therefore, all that I have to see is whether the suit is in time, considering the date of majority of the first plaintiff. As pointed out above, the first plaintiff became major on 10.02.2008 and the suit has been presented on 12.10.2009. In other words, it has been presented within three years from the date on which the first plaintiff became major.

19. Mr.A.Muthukumar would argue that the plaintiffs have produced only their SSLC certificates, but have not produced their birth certificates and therefore, no reliance has been placed upon the same. The certificate under Ex.A6 has been issued by the Government of Tamil Nadu, a sovereign authority, which conducts the examinations on year to year basis. Such certificate maintained by the authority is admissible for the purpose of proving the date of birth. Therefore, the submission of Mr.A.Muthukumar, as the birth certificate has not been produced, it is fatal to the case of the plaintiffs, does not appeal to me. I would rely upon Ex.A6 to come to the conclusion that the Panneer Selvam was born on 10.06.1990 and therefore, the suit filed on 12.10.2009 is in time.



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20. Turning to the next point as the effect of Ex.A2, all that I have to refer to is Sections 8(2) and 8(3) of the Hindu Minority and Guardianship Act.

Under Section 8(2) of the said Act, the Parliament has declared that **a natural guardian shall not without previous permission of the Court transferred by sale or other wise any part of the immovable property of a minor**. It is admitted fact that by both sides, in this case, that the natural guardian, Krishnamoorthy had not taken permission of the Court, prior to the alienation. The effect of such an alienation is treated under Section 8(3) of the Act. Under Section 8(3) of the said Act, if any property is disposed of by natural guardian, the same is voidable at the instance of the minor or any person claiming under him. If it is voidable, the minor has 12 years from the date of execution of the sale deed or three years from the date of majority to avoid the same.

21. If the suit is presented within a period of three years from the date of majority or within 12 years from the date of execution of the document, then the court would have to hold that such alienation, unless and until saved by an order of the court, is in time.

22. Applying Section 8(2) with Section 8(3) of the said Act to the facts of the present case, I have come to the conclusion that the plaintiffs, having moved



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the court within a year of attaining the majority to set aside the sale, have shown their manifest intention to treat the sale as voidable and as there is no protective order of the court to save the defendant, the sale has to be declared as void.

23. This brings me to the last point of the argument of Mr.A.Muthukumar that under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act, the plaintiffs ought to have sought for cancellation of the document and the mere prayer for setting aside the sale does not pass muster.

24. I called for the original records in the suit and I found the valuation slip attached to the plaint. In the valuation slip, it is shown that as the plaintiffs treated the market value of the property as Rs.11,500/- and paid the court fee of Rs.863/-, the valuation has been done under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act. Had the valuation been under Section 25(d), I would have held that the relief that was sought for by the plaintiffs cannot be granted by the court. However, having valued under Section 40 and paid the court fee thereof, the mere fact that the plaintiffs have not sought for the relief of cancellation but for setting aside will not affect the facts of the



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25. Under a similar situation, this Court in ***G.Subashini and another vs. P.Lakshmi Bhai*** reported in ***(1987) 100 LW 489***, the Hon'ble Mr.M.Srinivasan (as he then was) was pleased to hold that it is the duty of the court to see the case of the plaintiffs as gathered from the averments in the body of the plaint and should not be carried away by the prayer portion alone. His Lordship had further held that it is for the court to decide the appropriate relief and the mould the relief depending upon the facts of the case. The relevant portion of the said judgment reads as follows:

“14.....The case of a plaintiff has to be gathered from the averments made in the body of the plaint and not from the prayer paragraph. The prayer only relates to the relief which the plaintiff seeks from the court on the basis of the averments made in the earlier paragraphs. The appropriate relief that has to be prayed for by a plaintiff is very often decided by the counsel and not by the client. The client instructs the counsel on the facts. After setting out the facts, the counsel frames the relief that has to be obtained from the Court. It is always for the court to decide whether on the averments made in the plaint and the evidence let in by the plaintiff, the relief prayed for by the plaintiff could be granted or not. The power of the



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Court to mould the relief according to the facts established by evidence cannot be disputed. The dictum of Natesan, J. in Lakshmiammal v. Sivakamu Natesan, 82 L.W. 589, may be referred with advantage in this connection. The learned Judge observed as follows:—

“It seems to me that neither of the parties, when they adduced evidence in this case, nor the courts below have kept before themselves the principles above set out from the decided cases in coming to their conclusion as to the true relationship between the plaintiff and the defendants in the matter of latter's occupation of the plaintiff's land. Also neither the plaintiff nor the defendant should be penalised for overstating their case and putting exaggerated versions. If the Court can find the true and real relationship between the parties, notwithstanding some ornamentation and some trappings in the cases of the parties, the court should give relief according to the rights found”.

In my opinion, the change in the prayer in the plaint even assuming that it was made with the knowledge and consent of the plaintiff, shall not prevent the court from granting the appropriate relief to the plaintiff, if she has made out a case therefor. The prayer in the plaint has always to



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28. Mrs.R.Mahamandra Rajalakshmi submits that the said amount has already been deposited into the court.

29. Apart from that, as pointed out by Mr.A.Muthukumar, the further sum of Rs.20,000/- had been spent by the defendant towards the development of the property and the plaintiffs enjoying the benefit of the property by virtue of the decree of the court, would also have to compensate the defendant to an extent of Rs.20,000/-. I find considerable force in this submission.

30. In fine, the second appeal is allowed. The judgment and decree of the court of Subordinate Judge, Chidambaram in A.S.No.38 of 2011 dated 17.12.2012 is set aside and the judgment and decree of the court of principal District Munsif at Chidambaram in OS.No.223 of 2009 dated 20.08.2011 stands restored with an additional condition that the plaintiffs will deposit a sum of Rs.20,000/- together with interest at the rate of 9% per annum from the date of sale deed till the date of repayment to the credit of the suit in O.S.No.223 of 2009. The plaintiff will be entitled to the superstructure on the property, after payment of the aforesaid sums. Unless and until, the plaintiffs deposit the



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aforesaid amount, they will not entitled to execute the decree. On such deposits, the defendant will be entitled to withdraw Rs.11,700/- already deposited together with accrued interest, if any and the compensation of Rs.20,000/- together with the aforesaid interest, ordered under this judgment without notice or objection from the plaintiffs.

31. Since the defendant has developed the property and his right has been defeated on technical grounds, I am not inclined to impose costs.

15.03.2024

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Index : Yes / no
Neutral Citation : Yes / no
Speaking / Non Speaking Order

To

- 1.The Subordinate Judge, Chidambaram
- 2.The Principal District Munsif Court, Chidambaram



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V.LAKSHMINARAYANAN, J.
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