



S.A.No.1006 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2024

CORAM

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

S.A.No. 1006 of 2022

1. Raja
2. Sakthi
3. Amudha

... Appellants

Vs.

1. K.Poongavanam
2. K.Madheswaran

... Respondents

Second Appeal filed under Section 100 of the Code of Civil Procedure to allow the second appeal by setting aside the judgment and decree passed by the Sub Court, Mettur in A.S.No.10 of 2018 dated 15.11.2021, confirming the judgment and decree dated 21.03.2017 passed by the District Munsif, Mettur in O.S.No.359 of 2010.

For Appellants : Mr.TS.Vijaya Raghavan

For Respondents : Mr.M.Rajasekar



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J U D G M E N T

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This appeal has been filed against the concurrent findings of dismissing the suit filed by the plaintiffs for declaration and injunction.

2. For the purpose of convenience, the parties are described as per their ranking in the Trial Court.

3. The case of the plaintiffs is that they are brothers and sister. The suit properties originally belonged to one Madhammal, who is the grandmother of the plaintiffs. The said Madhammal was having seven legal heirs and one among them is the plaintiffs' father, namely Palanisamy. In the year 2004, heirs of Madhammal and others have entered into a compromise, and final decree was passed in I.A.No.1040 of 2001 in O.S.No.356 of 2000 on the file of the District Munsif Court, Mettur. Based on the final decree passed, out of 8.49 acres of the suit properties situated in S.No.107/A, measuring 1.19 acres allotted to the plaintiffs' branch. After obtaining the possession of the respective shares allotted in the partition



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deed the plaintiffs and their family members were in peaceful possession and enjoyment of the suit property. While that being so, the possession of one of the allottees in S.No.107/A was threatened with dis-possession by the defendants herein, on the ground that the first defendant has purchased the land in S.No.107/A as per sale deed dated 02.04.1982 from plaintiffs' father Palanisamy. The defendants also filed separate suit in O.S.No.328 of 2010 on the file of the District Munsif Court, Mettur, in which the defendants claimed injunction against the plaintiffs from taking possession of the suit properties. After receiving summons in the present suit, the plaintiffs came to know that there is a sale deed dated 02.04.1982 which is alleged to have been executed by their father.

4. The further case of the plaintiffs is that Madhammal was having seven legal heirs and plaintiffs' father Palanisamy, is entitled to deal with the property measuring an extent of 1.19 acres, whereas, he has sold 2.12 acres of land in favour of the first defendant, knowing fully well that he is not having right to deal with the entire properties. The plaintiffs' father was living in wayward life and taking advantage of his weakness, the sale deed



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has been fraudulently obtained by the defendants and hence, the said sale deed did not bind the plaintiffs. Further, the sale deed dated 02.04.1982 was not acted upon till date and the possession of the property was not handed over to the first defendant. However, the first defendant has managed to obtain computer Patta and mutated the Revenue Records. Hence, the plaintiffs filed this suit, for declaration to declare the sale deed dated 02.04.1982 as null and void and consequently to grant permanent injunction restraining the defendants from in any manner disturbing their peaceful possession.

5. The defendants have filed written statement and contended that in the year 1982 itself, the plaintiffs' father sold the property in question in favour of the first defendant and they are in possession and enjoyment of the suit property. While that being so, to defeat the right of the defendants, the plaintiffs and their family members have consequently filed the suit and they have obtained final decree, on 20.09.2008, which is not at all binding on the defendants. It is further contended that they have purchased an extent of 2.12 ¼ acres in S.No.107/A, New S.No.84/2, Patta No.1339 at



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Kaveripuram Village, Mettur Taluk from the plaintiffs' father and they are in continuous possession of the suit properties. Suppressing this sale, in the suit filed by the plaintiffs and their family members in O.S.No.356 of 2000, final decree has also been passed and possession certificate was also issued without properly taking possession and the plaintiffs have no manner of right to question the sale deed.

6. The trial Court, after considering the submissions, framed necessary issues in this regard, after recording evidence of both sides, upon hearing the arguments, held that the plaintiffs' father is one of the legal heirs of Madhammal and he has come forward to sell the suit property measuring an extent of 2.12 acres in favour of the first defendant. The plaintiffs have not been able to establish the fact that the plaintiffs' father was not having any right to deal with the properties. It further held that the plaintiffs' were not able to prove that the sale deed/Ex.A6 was not acted upon from 1982. But the documents relied upon by the plaintiffs is only the possession certificate and final decree which are all subsequent documents. The defendants are not parties to earlier partition suit, hence, the decree and



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judgment is not binding on them and the plaintiffs failed to prove that the execution of the sale deed by the plaintiff's father is not a valid one and not binding on them. Consequently, the trial Court dismissed the suit. Aggrieved by the same, the plaintiffs approached the lower Appellate Court by way of an appeal in A.S.No.10 of 2018 before the Subordinate Court, Mettur, which also came to be dismissed. Challenging the concurrent findings of the Courts below, the plaintiffs have filed the present Second Appeal.

7. At the time of admission, this Court had framed the following substantial question of law :

" Whether the judgment of the Courts below is vitiated by its failure to consider the effect of dismissal of the suit for permanent injunction filed by the appellants earlier and its dismissal on the issue of possession ?"

8. The learned counsel for the appellants/plaintiffs submitted that the plaintiffs' father viz., Palanisamy, is one among the legal heirs of the



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original owner Madhammal, and he is not entitled to deal with the entire properties, since six other legal heirs are not party to the document i.e., Ex.A6. Even though the property was sold, but possession was not handed over to the defendants and subsequently, the suit properties were subjected to partition, in which, the branch of the plaintiffs was allotted an extent of 1.2 acres. He further submitted that the plaintiffs' father is leading a wayward life and without consent of co-sharers, the plaintiffs' father sold the property and subsequently, after his death, the plaintiffs are in possession and enjoyment of the suit properties.

9. The learned counsel for the defendants submitted that the suit property was sold in the year 1982 and immediately after mutation, the other owners were on record and possession was also handed over to them. While so, in the year 2000, the plaintiffs and their family members have filed the suit for partition and decree was also obtained for the properties already sold. The suit properties are not allotted to the plaintiffs and it was allotted in favour of other family members and they have not challenged the sale deed or the plaintiffs herein are not having any interest in the property as



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per partition decree. Conveniently, they are claiming that only after receiving summons in the suit filed by the defendants herein in O.S.No.328 of 2010 i.e., injunction suit filed against all the parties to the partition suit, they came to know about the sale deed dated 02.04.1982. The plaintiffs are not entitled to challenge the sale deed, after lapse of almost 30 years. He further submitted that the other co-owners who have inherited the properties from one Madhammal, have not challenged the sale deed executed by Palanisamy. Further, the plaintiffs are claiming title through only Palanisamy, and they are bound to accept to the act of Palanisamy and they cannot filed the suit.

10. I have considered the submissions of the learned counsel on either side, I have also carefully considered the judgements passed by both the Courts below. Both the Courts have observed that there is no evidence placed on record to show that the plaintiffs' father Palanisamy was leading in wayward life and he has acted against the interest of the family members. They observed that the sale deed has been challenged after 30 years, and the same is not maintainable. The defendants are in possession and enjoyment



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of the suit property and also mutation of records also made from the year 1982 onwards. This Court is not inclined to once again re-appreciate the evidence in this regard, since the power of this Court while exercising Section 100 Cr.P.C in Second Appeal is very limited.

11. The plaintiffs were not able to establish that their case that their father has executed a sale deed based on fraudulent act and the said sale deed is not binding on them. This Court also finds that other co-sharers have not come forward to challenge the sale deed and in the absence their challenge, it is only to be presumed that they have agreed with the sale or ratified act of the plaintiffs' father Palanisamy. The plaintiffs have no right to challenge the same. This Court finds that the decree and possession certificate handed over to the plaintiffs' and his relatives are not binding the defendants herein, since they are not the parties to the partition suit. The substantial question of law is framed based on the fact that, the suit filed by the defendants for injunction against the plaintiffs and their family members was dismissed for default. This dismissal shall not have any bearing in deciding this suit for the reasons that, earlier injunction suit was filed by the



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defendants to protect their possession. Admittedly, the plaintiffs claim that, they received summons in the earlier injunction suit, immediately come forward to file this suit to set aside the sale executed in favour of the defendants. That being so, in this suit, both the Courts had decided the title of the parties in this suit which is a comprehensive suit and the defendants decided to defend their title, in this suit. Both Courts have decided the title of the defendants and their possession in their favour. Hence, I am of the view that, dismissal of injunction suit filed by the defendants shall not be used to decree the present suit filed by the plaintiffs herein. Since the plaintiffs herein have challenged title of the defendants in the present suit, as well as in earlier suit, suit for prohibitory injunction simpliciter based on possession is not maintainable. Hence, the act of defendants to abandon the injunction suit and contesting the present title suit is valid. As held by the Hon'ble Apex Court in Anathula Sudhakar Vs. P.Buchi Reddy [AIR 2008 SC 2033] this abandonment shall not confer any right on the plaintiffs and it will not preclude the defendants from defending their title in this suit.

12. Both the Courts below have appreciated the evidence placed on



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record and dismissed the suit. There is no reason made out in this appeal, to interfere with the findings of both the Courts below.

13. In such view of the matter, I find no merit in this Second Appeal.

In fine, this Second Appeal fails and the same is dismissed. There shall be no order as to costs.

23.10.2024

Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
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To

- 1.The Sub Judge,
Mettur.
2. The District Munsif,
Mettur.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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K.RAJASEKAR, J.

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