



A.S.No.177 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2024

CORAM

THE HONOURABLE **MR.JUSTICE K.KUMARESH BABU**
A.S.No.177 of 2017

1.Manikandan
2.Selvi

... Appellants/ Plaintiffs

Vs.

1.Munian
2.Kavitha
3.Shanthi
4.V.Ammasi
5.V.Munian
6.Nallavedi

... Respondents/ Defendants

PRAYER: Appeal filed under Section 96 read with Order 41 Rule 1 of CPC against the judgment and decree dated 28.11.2016, in O.S.No.9 of 2012 on the file of the I Additional District Court, Salem.

For Appellants : Ms.Zeenath Begum

For R1 : Died

For RR2 & 3 : Served – No appearance

For RR4 to 6 : Mr.T.S.Vijaya Raghavan

JUDGMENT

The Appeal suit had been preferred by the unsuccessful plaintiffs, whereby, the Court below had dismissed the suit filed by



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them, wherein, they have sought for a relief for declaration of the various sale deeds executed by their father as Kartha of the family as not binding on the plaintiffs and for consequential prayers on dividing the suit schedule properties into five equal shares and allot two shares by metes and bounds by means of a preliminary decree and for other reliefs.

2. Heard Ms.Zeenath Begum, learned counsel for the appellants and Mr.T.S.Vijaya Ragavan, learned counsel appearing for the respondents 4 to 6.

3. The case of the appellants before the trial Court was that the suit schedule properties were joint family properties consisting of themselves and respondents 1 to 3 being the father and sisters of the appellants. The properties fell into the share of the father of the plaintiffs by a registered partition and thereafter, the same had been held by the father as Kartha of the family.

4. The learned counsel for the appellant would submit that the father had created a fraudulent forged and unencumberable sale deeds



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in favour of the respondents 4 to 6 herein. She would further submit that at the time of execution of the sale deed, the appellants were minors and the father had not taken care of the family and he had sold the joint family properties to his whims and fancies without any regard to his family. Immediately on the appellants becoming major by age, they had instituted the suit for various prayers including declaration that the sale deeds executed by the father as Kartha of the family are not binding on them and sought for partition of the property. In support of their claim, the first appellant had examined himself as P.W.1 and three individual witnesses were examined as P.W. 2, 3 and 4. She would further submit that various documents had been filed in support of their contention. However, the Court below without looking into any of these facts had rejected the suit filed by them. She would submit that the judgment and decree of the Court below requires interference of this Court.

5. Countering her arguments, Mr.T.S.Vijaya Raghavan, learned counsel appearing on behalf of the respondents 4 to 6 would submit that the defendants 1 to 3 namely the father and sisters of the appellants remained *ex-parte*. The respondents 4 to 6 were bonafide



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purchasers of the property from the first defendant namely the father of the appellants. He would further submit that the first appellant was born on 03.08.1991 and the second appellant was born in the year 1994. In that context, he would submit that one of the documents that is marked as Ex.A.3 was the document that was executed much prior to the birth of the appellants and that the sale deed marked as Ex.A.4 was executed prior to the birth of the second appellant. Therefore, he would submit that those two documents cannot be challenged by the appellants as the sale has taken place much before to their birth and however, as regards to Ex.A.5 and 6, 15 and 16 at the most they would be entitled to only seek such a declaration in respect of the documents that have been executed on 28.08.1995. Even in that aspect, he would submit that the appellants have not produced any material evidence to drive home their contention that their father had not looked after their family and had spent the money for other purpose. He would further submit that the respondents 4 to 6 are all bonafide purchasers for value and there is also no evidence that has been produced by the appellants to submit that the sale deed executed by their father in favour of the respondents 4 to 6 were sham and nominal transactions. Therefore, he would submit that no interference



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is required to be made on the well considered judgment and decree of the Court below.

9. I have considered the submissions of the learned counsel appearing for the respective parties and perused the materials placed on record.

10. On the facts that had been placed before the trial court, the trial court has framed the following issues for consideration which are as follows:

a) whether the plaintiff is entitled for 2/5th share in the suit schedule property?

b) whether the sale deeds executed by the first defendant would bind plaintiffs and the defendants 2 and 3?

c) Whether the first defendant had executed the sale deed for the benefit of the family?

d) Whether the plaintiffs are entitled for a preliminary decree as prayed for?



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(e) *Whether the plaintiffs are entitled to the declaration as prayed for?*

11. On the various issues that had been framed by the Court below, the Court on considering the evidences both oral and documentary had come to a factual finding that the properties have been sold for the benefit of the family and in that aspect, it has also noted that under Ex.A.4, the same had been made only for the family expenses and to disbursal of money for certain debts. The Court below had also given a specific finding that the plaintiffs had not proved that there was no debts or any other medical expenses of the family. The Court below had also given a factual finding that as regards the sale deed dated 10.09.1986, both the appellants were not even born and that regards to the sale deed dated 21.12.1994, the second appellant was not born. It is also recorded by the Court below that the individual witnesses P.W.2 to 4 during their cross-examination had clearly admitted that they did not know under what circumstances the sale deed had been executed. Based upon the said factual findings, the Court below had rejected the claim of the appellants.

12. From the prayer sought for by the appellants in the suit, it



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could be seen that the property of the family had been sold by their father which they seek for a declaration that the same is not binding upon them. The further relief that had been prayed by them are all consequential prayers of the such declaration being granted. Hence, for the consideration of the appeal suit, I am of the view that the following issue would have to be decided.

(i) Whether the appellants are entitled for a declaration as prayed for by them?

(ii) If so, whether, they will be entitled for the relief of partition.

13. Admittedly, the appellants were born on 03.08.1991 (first appellant) and 1994 (second appellant). The father of appellants had sold one of the property in the year 1986 much before the appellants were born. Similarly, as regards to the sale deed dated 21.02.1994, the second appellant was not born. They cannot claim to set aside the documents which had been executed much before they had come into existence. They cannot also attack the execution by contending that the family was not in a penurious circumstances for the father to execute a sale deed. However, going to the documents that have been executed



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on 28.08.1995, that is after their birth, it is true that the appellants can seek to pray for such a declaration provided that by evidence they substantiate they there was no necessity for the Kartha of the family namely their father to execute the sale deeds on their behalf. In the present case, as pointed out by the trial Court, the individual witnesses examined by them in support of their claim in their respective cross-examination have clearly admitted that they were not aware of the circumstances under which the sale deed have been executed.

14. It is also to be noted that the first defendant, their father and the defendants 2 and 3, their sisters had remained ex-parte before the trial Court as well as they have not chosen to appear before this Court. But, that does not preclude the appellants from approaching the Court to bring them as a witness to substantiate their claim that the family was not in a condition which necessitated the execution of the sale deeds. This recourse had not been undertaken by the appellants.

15. In such view of the matter, the Court cannot presume that there was no condition which necessitated the sale of the properties belonging to the joint family. It is also further noted that the trial Court



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had given a categorical finding that under Ex.A.4, the property was sold for to meet the necessary family expenses apart from the repayment of certain debts, this is also not refuted by the appellants. Since, I have answered the Issue No.1 in negative, Issue No.2 need not be addressed upon.

16. In such view of the matter, I do not find any materials to interfere with the judgments and decree of the Court below. In fine, the appeal suit fails and is dismissed accordingly. However, there shall be no order as to costs.

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gba

Index :Yes/No

Internet: Yes/ No

To

I Additional District Judge, Salem



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K.KUMARESH BABU,J.

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