



S.A.No.744 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2024

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.744 of 2017
and
C.M.P.No.21456 of 2017

Priya

...Appellant

Vs.

1.Mannan

2.Govindammal

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree passed in A.S. No.53 of 2014 dated 14.03.2016 on the file of the learned Principal District Judge at Vellore confirming the Judgment and Decree passed in O.S. No.123 of 2012 dated 11.06.2013 on the file of the learned Subordinate Judge, Vellore.

For Appellant : Mr.P.Ganapathi

For Respondent : Mr.P.Chandrasekaran



WEB COPY



S.A.No.744 of 2017

JUDGMENT

This Second Appeal has been filed against the Judgment and Decree passed in A.S. No.53 of 2014 dated 14.03.2016 on the file of the learned Principal District Judge at Vellore confirming the Judgment and Decree passed in O.S. No.123 of 2012 dated 11.06.2013 on the file of the learned Subordinate Judge, Vellore.

2. This Second Appeal has been admitted on the following substantial questions of law.

"i. Whether the sale deed Ex.A-2 executed by the second respondent Govindammal and her deceased husband Kannan, being the paternal grand parents to the appellant could be held to be valid in the absence of permission from the Court?

ii. Whether the suit is barred by limitation?

iii. Whether the plaintiff/appellant is entitled relief to recover possession from the defendants who are to be in possession over the suit property?"

3. The grievance of the plaintiff is that her paternal grandparents executed a sale deed in Ex.A.2 and alienated the property in which the plaintiff had a share. Admittedly, the plaintiff was a minor and the case of the plaintiff is that her maternal grandmother viz., Pushpa, has been appointed as guardian under the GWOP proceedings. Hence, in view



of the appointment of a guardian under the Guardian and Wards Act, 1890, the majority of the age would not be 18 but 21. Unfortunately, the plaintiff has not marked any papers pertaining to G.W.O.P No. 5 of 2002 on the file of the District Court, Thiruvannamalai, where the maternal grandmother Pushpa, was appointed as the guardian of the plaintiff, the then minor, in and by an order dated 26.02.2002.

4. The First Appellate Court has took note of the fact that the maternal grandmother was appointed as a guardian, but however, since no document related to G.W.O.P. proceedings was submitted by the plaintiff during trial and the said G.W.O.P proceedings were available as unmarked documents. The First Appellate Court did not take cognizance of the same and proceeded to hold that the paternal grandparents were the guardians and custodians of the minor and they had a right to alienate the property for the welfare of the minor.

5. The First Appellate Court also held that the suit was filed after a lapse of three years, from the date of the plaintiff attained majority. However, in view of the admitted fact that the maternal grandmother, Pushpa was appointed as guardian for the then minor plaintiff, the age



of majority has to be reckoned only as 21 years and not 18 years. On this limited score, the judgments of the Courts below are liable to be set aside. At the same time, it is for the plaintiff to establish that the sale by the paternal grandparents was unsustainable in the eye of law, in view of the appointment of the maternal grandmother as a guardian under the Guardian and Wards Act, 1890 and also to establish that the suit was filed in time and that the sale was not in the interest of the then minor plaintiff. Thus, I propose to remand the matter back to the First Appellate Court with liberty to both the plaintiff and defendants to let in evidence, oral and documentary and thereafter, the First Appellate Court viz., the Principal District Court, Vellore shall decide the matter in accordance with law, within a period of three months from the date of receipt of the copy of this judgment.

7. With the above directions, this Second Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

11.01.2024

Index : Yes/No



S.A.No.744 of 2017

Internet : Yes/No
rkp
To

- 1.The Principal District Judge,
Vellore.
- 2.The Subordinate Judge, Vellore.



WEB COPY



S.A.No.744 of 2017

P.B.BALAJI, J,

rkp

S.A.No.744 of 2017
and
C.M.P.No.21456 of 2017

11.01.2024