



S.A.No.95 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.95 of 2020
and C.M.P.No.1994 of 2020
and C.M.P.No.26623 of 2023

Bharathi

... Appellant

Vs

1.Thangamani
2.Priyanka
3.Minor Lakshmi Priya
4.Natesan
5.Gnanasekaran
6.R.Selvam

... Respondents

Prayer: The Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree, dated 25.09.2019 passed in A.S.No.17 of 2017 on the file of the Additional District Judge, Dharmapuri, reversing the decree and judgment dated 29.02.2016 passed in O.S.No.98 of 2011 on the file of the Sub-Court, Harur.

For Appellant : Mr.M.S.Krishnan
Senior Counsel for
Mr.R.Rajarajan

For Respondents
For RR1 & 2 : Mr.P.M.Jayachandran



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For R3 : Minor, representing R1

For RR4 to 6 : No appearance

JUDGMENT

This Second Appeal has been filed against the judgment and decree dated 25.09.2019 passed in A.S.No.17 of 2017 on the file of the Additional District Judge, Dharmapuri, thereby reversing the decree and judgment dated 29.02.2016 passed in O.S.No.98 of 2011 on the file of the Sub-Court, Harur.

2.The second defendant in O.S.No.98 of 2011 is the appellant herein. The suit was filed by the wife and minor children of the 1st defendant, seeking relief of partition and also challenging the sale deeds executed by the 1st defendant in favour of the defendants 2 to 4 on the ground that the properties were joint family/ancestral properties acquired by the 1st defendant under the partition deed and therefore, the 1st defendant had no absolute right to deal with the same, especially, by way of sale in favour of the defendants 2 to 4.



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3.The 1st defendant initially filed a written statement stating that the sale deeds executed by him were valid and he had absolute right to deal with the suit items. The purchasers, namely, the defendants 2 to 4 had adopted the written statement filed by the 1st defendant as their vendor.

4.Before the Trial Court, the 1st plaintiff examined herself as P.W.1 and one P.Marappan was examined as P.W.2 and one S.Shanmugam was examined as P.W.3 and Exs.A1 to A4 were marked on the side of the plaintiffs. On the side of the defendants, the 1st defendant was examined as D.W.1 and nine other witnesses were examined. The second defendant examined himself as D.W.4 and similarly two purchasers namely 3rd and 4th defendants examined themselves as D.W.6 and D.W.7 and Exs.D1 to Ex.D19 were marked on the side of the defendants.

5.The Trial Court finding that item Nos.1 and 2 were self acquired properties of the 1st defendant proceeded to uphold the sale deeds



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executed by him in favour of the defendants 2 to 4. Interestingly, though the 1st defendant filed written statement supporting the sale transactions executed by him in favour of the defendants 2 to 4, while being examined as a witness, he has turned hostile and has chosen to support the case of the plaintiffs. However, the Trial Court having found that the 1st defendant had independent source of income and had purchased the suit items, especially, the properties that have been sold to the defendants 2 to 4 out of his self earned income, held that there was no question of any joint family nucleus, in order to give any right to the plaintiffs.

6.The suit for partition was decreed in so far as the rest of the items, apart from those that had been sold in favour of the defendants 2 to 4. The plaintiffs, aggrieved by the rejection of the relief for declaration that the sale deeds executed were not binding on them, filed a First Appeal in A.S.No.17 of 2017. The 1st Appellate Court has reversed the finding of the Trial Court even then so far as the relief for declaration are concerned. As against which, the 2nd defendant alone has chosen to prefer the above Second Appeal.



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7. At the time of admission of the Second Appeal on 03.02.2020, the following three substantial questions of law have been framed:

a) Whether the 1st Appellate Court is correct in granting the decree declaring the sale deed dated 15.09.2003 marked as Ex.B1 when the suit is filed eight years after execution of the sale deed?

b) Is not the 1st Appellate Court wrong in granting the decree for partition by setting aside Ex.B3 when the suit properties are the separate properties and not the ancestral properties of the 1st defendant?

c) Whether the 1st Appellate Court is correct in granting the decree to set aside the sale deed marked as Ex.B3 when the same is executed by the 1st defendant in his capacity as the Karta/Father of the minor children viz., plaintiffs 2 and 3.

8. Heard, Mr.M.S.Krishnan, learned Senior Counsel appearing for Mr.R.Rajaraman, learned counsel for the appellant and Mr.P.M.Jayachandran, learned counsel for the contesting respondents 1 and 2.



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9.It is an admitted fact that the other purchasers, namely the defendants 3 and 4 have not chosen to challenge the judgment and decree of the First Appellate Court. However, it is seen from the affidavit filed in C.M.P.No.26623 of 2023 under Order 41 Rule 27 of CPC taken out by the appellant/2nd defendant that pending the proceedings before the First Appellate Court, the defendants 3 and 4 have re-conveyed a substantial portion of the property which had been purchased by them, in favour of the 1st plaintiff. In fact, yet another document by way of settlement deed dated 31.08.2012 had also been executed by the 1st defendant in favour of his wife, who is none else than the 1st plaintiff. The said settlement deed and the registered documents have been executed out of natural love and affection the husband had for his wife. The said C.M.P.No.26623 of 2023 is also being taken up along with this Second Appeal.

10.Mr.M.S.Krishnan, learned Senior Counsel would take me through the findings of the Trial Court and also the First Appellate Court. He would contend that the First Appellate Court, without assigning any reasons or without any independent discussion on the oral and



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documentary evidence, has merely rendered findings that the properties are joint family properties and thereby the plaintiffs are entitled to their share and consequently, the sale deeds executed by the 1st defendant in favour of the 2nd defendant as well as the defendants 3 and 4, as if the properties were self acquired properties of the 1st defendant, were not valid and binding on the plaintiffs.

11.Per contra, Mr.P.M.Jayachandran, learned counsel for the contesting respondents 1 and 2 would support the judgment of the First Appellate Court and state that the 1st defendant has not let in any evidence to establish the reasons for sale of the property, especially when it has been set out in the documents that the properties had been sold for family necessity, namely, for discharging debts and also for the welfare of the minor children.

12.I have carefully considered the rival contentions advanced by the learned Senior Counsel for the appellant and the learned counsel for the respondents 1 and 2.



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13.Firstly, I shall take up C.M.P.No.26623 of 2023. The said application has been filed under Order 41 Rule 27 of CPC. The respondents 1 and 2 have not chosen to file any counter. However, the learned counsel for the respondents 1 and 2 would state that the documents which are now sought to be produced by way of additional affidavits are the documents that are came into existence, either pending suit or after disposal of the suit and therefore, the same are not relevant for determining the issues involved in the suit. However, on going through the additional documents, copies of which are filed along with the application, I find that under the settlement deed dated 31.08.2012, the 1st defendant has executed a gift settlement deed in favour of his wife, who is none else than the 1st plaintiff. Strangely, in the plaint, the plaintiffs, especially the 1st plaintiff who represented the plaintiffs 2 and 3 as mother and guardian, has stated that she has been living separately from her husband and even though there was an attempt at reconciliation, the 1st plaintiff joined the marital home and resided there briefly with the 1st defendant. Thereafter, she was forced to leave the marital home in view of the untold mental agony caused by the 1st plaintiff.



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14.While so, the fact that the settlement deed which is a registered document has been executed by the 1st defendant in favour of the 1st plaintiff falsifies the pleadings put forth in the plaint with regard to strained relationship between the husband and wife. In so far as the sale deeds dated 20.06.2016 and 22.07.2016 are concerned, it is seen that a substantial portion of the properties sold to the defendants 3 and 4 has been re-conveyed by way of registered sale deeds in favour of the 1st plaintiff. This probably is the reason that the defendants 3 and 4 have not chosen to challenge the judgment and decree of the First Appellate Court.

15.On going through the judgment and decree of the First Appellate Court, I am in agreement with the submissions of the learned Senior Counsel for the petitioner with regard to total non application of mind of the First Appellate Court. If the First Appellate Court had indeed held the properties to be ancestral/joint family properties, the First Appellate Court had lost sight of the fact that the 1st defendant would have become entitled to get a share in the said property and therefore, the sale deed, at least in so far as the 12 cents passage, would not have been



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set aside in toto. Even otherwise, I do not find any reasons assigned by the First Appellate Court to hold that the sale deed in favour of the 2nd defendant was null and void.

16.After discussing the pleadings of the parties and the findings of the Trial Court, the First Appellate Court had come to a conclusion that the properties are joint family properties and the 1st defendant did not have any right to independently deal with the same and therefore, the sale deeds executed in favour of the defendants 2 as well as 3 and 4 have to be set aside.

17.For all the above reasons, C.M.P.No.26623 of 2023 is ordered. The additional documents, namely certified copies of the settlement deed dated 31.08.2012, registered sale deed dated 20.06.2016 and registered sale deed dated 22.07.2016 are taken on record and they are marked as Ex.B20 to Ex.B22. Though the documents, namely the 1st document being executed pending the suit and second and third documents being sale deeds post disposal of the suit, in order to do substantial justice to the parties, I find that the said documents are necessarily to be taken on



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record especially since they expose the conduct of the plaintiffs who pleaded that the relationship between the 1st defendant/ husband and the 1st plaintiff/ wife was strained and that they were living separately for several years. However, in 2012, the husband/the 1st defendant executed a settlement deed in favour of his wife/the 1st plaintiff out of love and affection. The address mentioned in the settlement deed is one and the same for both the husband and the wife, namely, the 1st defendant and the 1st appellant. This coupled with the fact that the 1st defendant, despite filing a written statement denying the plaintiff's allegations at the time of giving evidence would only indicate that the 1st plaintiff and the 1st defendant were colluding between themselves in order to defeat the rights of the purchasers. The First Appellate Court has certainly not followed the mandate under Order 41 CPC in assessing the oral and documentary evidence independently and also assigning reasons as to why it was differed with the conclusions and findings rendered by the Trial Court.

18.Further as rightly pointed out by Mr.M.S.Krishnan, learned Senior Counsel, despite the sale deed being executed on 15.09.2003



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(Ex.P1) the suit for declaration was not filed within a period of three years, but was filed only after lapse of more than eight years, in 2011. Thus, the 1st substantial question of law is answered in favour of the appellant herein. In so far as the second and third substantial questions of law, having found that the Trial Court had rightly come to the conclusion that the properties were the independent and self acquired properties of the 1st defendant, the plaintiffs are not entitled to any decree for partition as claimed for by them. Therefore, the second and third substantial questions of law are also answered in favour of the appellant herein.

19.In the result, the Second Appeal stands allowed and the judgment and decree of the First Appellate Court dated 25.09.2019 is set aside. Consequently, the judgment and decree in O.S.No.98 of 2011 dated 29.02.2016 is restored. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

19.02.2024

Index: Yes/No

Speaking order/Non-speaking order

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To

- 1.The Additional District Judge, Dharmapuri.
- 2.The Sub-Court, Harur.
- 3.The Section Officer,
VR Section,
Madras High Court,
Chennai.



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P.B.BALAJI,J.

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