



S.A.(MD)No.550 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.06.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD)No.550 of 2009

1.Kathirammal
2.Muthammal
3.Ramasamy Gounder
4.R.Pandian

... Appellants

Vs

1.Chellapandi
2.Annamalai Gounder (Died)

... Respondents

*(Memo present before Court and recorded as R2 died,
R1 who is already on record and recorded as LR
of deceased R2 vide Court order dated 30.08.2019)*

PRAYER: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 28.04.2008 passed in A.S.No.444 of 2004 on the file of Additional Subordinate Court, Dindigul, confirming the judgment and decree dated 31.01.2001 passed in O.S.No.547 of 1998 on the file of I Additional District Munsif Court, Dindigul.

For Appellants : Mr.M.R.Srinevasan
for Mr.R.Nandakumar

For Respondents : No Appearance



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JUDGMENT

The defendants 2 to 5 in the suit are the appellants. The first respondent / plaintiff filed a suit for declaration of title and recovery of possession. The suit was decreed by the trial Court and the findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the concurrent findings, the appellants are before this Court.

2. According to the plaintiff, the suit properties originally belonged to the joint family of Subbiah Gounder, the father of the plaintiff. In the family partition, the suit properties were allotted to the share of the plaintiff's father. After his death, his heirs divided the suit properties and the suit property was allotted to the share of plaintiff and his mother Periyakkal. After the death of plaintiff's mother, the petitioner has become absolute owner of the property. It was claimed by the plaintiff that when the plaintiff was minor, he lost both of his parents and the fourth defendant and others attempted to interfere with the plaintiff's possession and therefore, the first defendant filed a suit for declaration of title, injunction and alternative prayer for partition in O.S.No.500 of



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1981 and the said suit was decreed granting declaration and injunction.

The appeal filed by the defendants therein was also dismissed. The first defendant and other defendants colluded together and brought out a sale, as if the minor plaintiff represented by first defendant sold the suit property in favour of defendants 2 and 4 by a sale deed dated 22.04.1983 and 16.04.1983 respectively. The said sale effected by the first defendant without permission of the Court is a void transaction and the defendants 2 and 4 would not get any title under the same. The plaintiff after attaining majority, acquired knowledge about the alienation made by the first defendant and hence, laid a suit for declaration of title and recovery of possession. The defendants in their written statement pleaded about the settlement deed executed by the second defendant in favour of the fifth defendant under registered settlement deed dated 18.09.1990. Since the second defendant has no title over the suit property, the said settlement deed will not convey any title to the 5th defendant. On these pleadings, the plaintiff sought for declaration of title and recovery of possession.

3. The first defendant remained *ex parte* and the suit was resisted by the other defendants by filing a written statement. It was claimed that



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the first defendant represented to the other defendants that he was in management of the properties of his grandson plaintiff and he wanted to sell the properties of the plaintiff in order to purchase some other property. The first defendant as guardian of plaintiff has sold Item 2 of the suit property in favour of second defendant for a consideration of Rs.4,600/- and item 3 was sold to fourth defendant for sale consideration of Rs.2,400/-. Out of the said consideration, the first defendant had purchased valuable land in the name of the plaintiff for a total consideration of Rs.5,750/-. The property purchased in the name of the plaintiff has got more value than the property sold to the defendants. The plaintiff, having received substantial benefit from the transaction, cannot turn around and tell the sale deed in favour of the defendants as void transactions.

4. The 5th defendant in his separate written statement averred that item 2 of the suit property settled in his favour on 18.09.1990 and after settlement, he has been in possession and enjoyment of the same. It was also averred by the 5th defendant that his settlor viz., second defendant was a *bona fide* purchaser for value without any notice of defect in title. On these pleadings, the fifth defendant sought for dismissal of the suit.



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5. Before the trial Court, the plaintiff was examined as P.W.1 and four documents were marked on his side as Ex.A1 to Ex.A4. On behalf of the defendants, second defendant and fifth defendant were examined as D.W.1 and D.W.2 and one Keppala Gounder was examined as D.W.3. On behalf of the defendants, four documents were marked as Ex.B1 to Ex.B4

6. On appreciation of evidence available on record, the trial Court came to the conclusion that the sale deed executed by the first defendant during minority of plaintiff was a void transaction and hence, granted decree for declaration of title and possession in favour of the plaintiff. Aggrieved by the same, the appellants herein preferred an appeal in A.S.No.444 of 2004 on the file of the Additional Sub Court, Dindigul. The findings of the trial Court was affirmed by the first appellate Court. Aggrieved by the concurrent findings, the appellants are before this Court.

7. At the time of admission, this Court formulated the following substantial questions of law by an order dated 12.02.2019:



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“1.Whether on the plaintiff's own admission that he was prepared to hand over the property purchased by his grandmother under Ex.B2, in lieu of suit property, that suit claim is maintainable and whether he is entitled to a decree without handing over possessions of the same?

2.Are not defendants 2 to 5 bonafide purchasers in view of the recitals in the documents and on the admission of the plaintiff?

8. The learned counsel appearing for the appellants submitted that the suit filed by the plaintiff seeking declaration of title and recovery of possession without prayer for setting aside the sale deed executed by the first defendant in favour of defendants 2 and 4 was not at all maintainable. The learned counsel further submitted that out of sale proceeds, the first defendant purchased a valuable property in the name of plaintiff under Ex.B2 and the person, who derived the benefit under the transaction, is not entitled to turn around and challenge the same. The learned counsel further submitted, by relying on Section 33 of the Specific Relief Act, 1963, the plaintiff is not entitled to seek recovery of possession without returning the benefits received by him under the sale effected by the first defendant to defendants 2 to 4.

9. The first defendant is the maternal grandfather of the plaintiff.



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The suit properties were sold by the first defendant acting as guardian of minor plaintiff in favour of defendants 2 and 4. The first defendant viz., grandfather of the plaintiff is not a natural guardian of minor plaintiff as per Section 4 of “The Hindu Minority and Guardianship Act, 1956” [hereinafter referred to as “the said Act” for the sake of brevity].

10. Section 8 of the said Act reads as follows:

“8. Powers of natural guardian.—(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court,—

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural



guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in subsection (2) except in case of necessity or for an evident advantage to the minor.

(5) The Guardians and Wards Act, 1890 (8 of 1890), shall apply to and in respect of an application for obtaining the permission of the court under sub-section (2) in all respects as if it were an application for obtaining the permission of the court under section 29 of that Act, and in particular—

(a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof;

(b) the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act; and

(c) an appeal shall lie from an order of the court refusing permission to the natural guardian to do any of the Acts mentioned in sub-section (2) of this section to the court to which appeals ordinarily lie from the decisions of that court.

(6) In this section, “Court” means the city civil court or a district court or a court empowered under section 4A of the Guardians and Wards Act, 1890 (8 of 1890), within the local limits of whose jurisdiction the immovable property in



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respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate.”

11. Section 11 of the said Act reads as follows:

“11. De facto guardian not to deal with minor’s property.—*After the commencement of this Act, no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the de facto guardian of the minor.”*

12. A perusal of the above provisions would make it clear that a natural guardian of a minor is not entitled to alienate property of the minor without permission of the Court and any such alienation without permission of this Court is voidable at the option of minor. However, section 8 of the said Act is not applicable to the facts of the present case, as the first defendant was not the natural guardian of minor plaintiff. At the time of sale, both the parents of the plaintiff was not alive and at the most, the maternal grandfather of the plaintiff viz., first defendant can only be treated as *de facto* guardian. Under Section 11 of the said Act, the *de facto* guardian is not entitled to deal with the property of the



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minors. Therefore, the sale effected by first defendant in his *de facto* capacity without permission of the Court is a void transaction and the Courts below rightly came to the conclusion that the sale effected by the first defendant in favour of defendants 2 and 4 was void transactions. The defendants cannot plead ignorance of law and claim that they were *bona fide* purchasers.

13. The learned counsel for the appellants by relying on the judgment of this Court in *Chinnannan Vs. Paranimalai and others* reported in *2006 (5) CTC 169* and *G.Rajendran Vs. Ayyanar @ Velu Ayyanar* reported in *2019 (3) MWN (Civil) 768*, submitted that a mere suit for declaration of title and possession filed by the plaintiff is not maintainable in the absence of prayer to set aside the sale effected by the first defendant. In the judgments relied on by the learned counsel for the appellants, the sale was effected by natural guardian of the minor plaintiff. Therefore, on the facts and circumstances of such cases, Section 8 of the said Act was made applicable and in such circumstances, the sale can be treated only as a voidable transaction and therefore, the minor was required to file a suit seeking to set aside the sale transactions.



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On the other hand, in the present case on hand, the sale is not effected by natural guardian and the same is effected by the defacto guardian and therefore, the sale transaction is hit by Section 11 of the said Act and the same is a void transaction. Once we come to the conclusion that the sale by first defendant is a void transaction, the plaintiff can simply ignore the same and seek declaration of title and recovery of possession. In view of the said reason, the submission made by the learned counsel for the appellants based on the above case laws are rejected.

14. The learned counsel for the appellants also by relying on Section 33 of Specific Relief Act, 1963 submitted that the plaintiff is not entitled to recovery of possession without returning the benefit derived by him under the sale transaction effected by the first defendant. Section 33 of the Specific Relief Act, 1963 reads as follows:

“33. Power to require benefit to be restored or compensation to be made when instrument is cancelled or is successfully resisted as being void or voidable.—

(1) On adjudging the cancellation of an instrument, the court may require the party to whom such relief is granted, to restore, so far as may be any benefit which he may have received from the other party and to make any compensation to him which justice may require.

(2) Where a defendant successfully resists any suit on the



ground—

(a) that the instrument sought to be enforced against him in the suit is voidable, the court may if the defendant has received any benefit under the instrument from the other party, require him to restore, so far as may be, such benefit to that party or to make compensation for it;

(b) that the agreement sought to be enforced against him in the suit is void by reason of his not having been competent to contract under section 11 of the Indian Contract Act, 1872 (9 of 1872), the court may, if the defendant has received any benefit under the agreement from the other party, require him to restore, so far as may be, such benefit to that party, to the extent to which he or his estate has benefited thereby.”

15. The learned counsel for the appellants specially relied on Section 33(2)(b) of the Specific Relief Act, 1963 in support of his contention. A reading of the said provision would make it clear that in a case for enforcement of the contract if the suit was resisted by the defendant on the ground that the contract was void due to incompetency of the person, the Court may direct the defendant to restore the benefits received by him to the plaintiff. In the case on hand, the suit is not filed for enforcement of any agreement against the defendants. It is simply filed for declaration of title of the plaintiff and the same is resisted by the first defendant by relying on void sale transaction. Further Section 33 (2)(b) only empowers the Court to direct the defendants, who



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resist the suit for enforcement of the contract on the ground that contract was void due to incompetency, to restore the benefits derived by him.

The learned counsel for the appellants cannot rely on the said Section and submit that the plaintiff shall be directed to restore the benefit to the defendants, when he seeks declaration of his title ignoring void transaction. Therefore, the submission made by the learned counsel for the appellants by relying on Section 33 of the Specific Relief Act, 1963 is not applicable to the facts of the case.

16. Further, the Courts below on appreciation of evidence came to a factual conclusion that the evidence available on record was not sufficient to infer the property purchased in favour of the plaintiff represented by his maternal grandmother (wife of D1) was purchased out of the sale proceeds received by the first defendant under Ex.A2 and Ex.A3. The total sale consideration received by the first defendant under Ex.A2 and Ex.A3 would be Rs.7,100/-. However, the sale consideration paid by plaintiff under Ex.B2 is Rs.5750/-. It is not known what happened to the remaining amount received by the first defendant. In such circumstances, the factual conclusion reached by the Courts below



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that the property purchased in the name of plaintiff under Ex.B2 is the out of benefit derived by the plaintiff by sale of suit property under Ex.A2 and Ex.A3 requires no interference. The substantial questions of law framed at the time of admission are answered against the appellants and the second appeal shall stand dismissed. There shall be no order as to costs.

11.06.2024

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NCC : Yes
Index : Yes

To

- 1.The Additional Subordinate Judge, Dindigul.
2. I Additional District Munsif, Dindigul.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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