



S.A.No.492 of 2001

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.492 of 2001

Narayanan alias Arumugam

... Appellant

Vs

- 1.Uma
- 2.Rajamanikkam Pillai (Died)
- 3.Kalyani Ammal (Died)
- 4.Piramanayagam (Died)
- 5.Chithiraivadivu alias Shanmugam
- 6.Subbiah (Died)
- 7.Piramu
- 8.Rajalakshmi
- 9.Minor Muthushanmugam
- 10.Minor Rajanarayanan

... Respondents

(R8 to R10 are brought on record as LR of the deceased 6th respondent vide order of Court dated 12.09.2003 made in C.M.P.Nos.16361 to 16363/2001. Minors R9 & R10 are represented by mother Rajalakshmi, 8th respondent)

(Memo dated 12.06.2023 in USR No.18490 is recorded as R3 died and sole appellant, R5 & R7 to R10, who are already on record as LRs of the deceased R3, vide Court order dated 15.04.2024)

(Memo dated 19.06.2023 presented before the Court on 15.04.2024 is recorded as R4 died and sole appellant, R5 & R7 to R10, who are already on record are recorded



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*as LRs of the deceased R4, vide Court order dated 15.04.2024)
(2nd respondent died and respondents 5 and 7 to 10, who
are already on record are recorded as LRs of the deceased
2nd respondent vide Court order dated 15.04.2024)*

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree passed in A.S.No.28 of 1997 dated 13.12.1999 on the file of the Sub-Court, Ambasamudram confirming the judgment and decree passed in O.S.No.399 of 1989 dated 30.09.1996 on the file of the District Munsif Court, Ambasamudram.

For Appellant	: Mr.V.Meenakshisundaram for Mr.D.Nallathambi
For Respondents	: Mr.Alex Benny Hook for M/s.D.Sathiyasri for R1 No Appearance for R5, R7 & R8 R2 to R4 & R6 died

JUDGMENT

The unsuccessful plaintiff in a suit for declaration and recovery of possession is the appellant. The suit was dismissed by the trial Court and the findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the concurrent findings, the plaintiff is before this Court.



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The averments found in the plaint:

2. According to the appellant/plaintiff, the suit property belonged to the second defendant. The third defendant is the wife of the second defendant. The plaintiff and defendants 4 to 7 are the children of defendants 2 and 3. The first defendant is the purchaser of the suit second schedule property from the second defendant. Since defendants 4 to 7 failed to co-operate with the plaintiff, the suit was filed by the plaintiff by arraying them as defendants. The entire suit property was shown as “first schedule” and the portion of the property purchased by the first defendant was shown as “second schedule”. The second defendant executed a settlement deed on 13.03.1963 in respect of the entire suit property viz., first schedule. As per the terms of the settlement, defendants 2 and 3 should enjoy the property for life time without any power of alienation and thereafter, the property should go to their legal heirs. On the basis of the said pleadings, the plaintiff sought for declaration that the sale deed executed by second defendant in favour of first defendant on 10.11.1975 would not be binding on the plaintiff and defendants 4 to 7, after the life time of defendants 2 and 3 and also for a consequential relief of recovery of possession of the suit property in



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favour of the plaintiff and defendants 4 to 7 after the life time of defendants 2 and 3.

The averments found in the written statement of the first defendant:

3. The first defendant filed a written statement and resisted the suit on the ground that the suit property was ancestral property of second defendant and he got the same under a partition deed dated 05.04.1958. The first defendant also claimed that the second defendant had no right to execute the settlement deed in respect of ancestral properties and hence, the settlement deed relied on by the plaintiff was not valid. It was also pleaded by the first defendant that the suit property (second schedule) was sold to the first defendant by second defendant for family necessity on 10.11.1975. The defendants 2, 3 and 6 executed a receipt for having received the sale consideration on 23.03.1981 and confirmed the sale transactions. It was also claimed that the defendants 5 and 7 also signed the receipt admitting that the sale was for family necessity. Thus, the first defendant claimed that sale in favour of the first defendant would bind the plaintiff and other children of the second defendant. It was also claimed by the first defendant that the sale transaction was not questioned by the plaintiff and other children of the second defendant within three years from the date of attaining majority and hence, the suit



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was barred by limitation.

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Evidence let in by the parties:

4. Before the trial Court, the plaintiff was examined as P.W.1 and 5 documents were marked as Ex.A1 to Ex.A5. On behalf of the defendants, two witnesses were examined as D.W.1 and D.W.2 and 34 documents were marked as Ex.B1 to Ex.B34.

Findings of the Courts below:

5. On appreciation of oral and documentary evidence available on record, the trial Court came to the conclusion that the suit property was ancestral property of the second defendant and hence, the settlement deed executed by him was invalid. The trial Court also found that sale in favour of the first defendant was executed by the second defendant as Kartha of the Hindu joint family and hence, it was binding on the plaintiff and other children of the second defendant. As a necessary consequence, the suit was dismissed by the trial Court. Aggrieved by the



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same, the plaintiff filed an appeal in A.S.No.28 of 1997 on the file of Sub Court, Ambasamudram. The first appellate Court affirmed the findings of the appellate Court. Aggrieved by the concurrent findings, the plaintiff is before this Court.

Substantial question of law formulated at the time of admission of the Second Appeal:

6. At the time of admission, this Court formulated the following substantial question of law by an order dated 04.04.2001:

“(i) Whether the Courts below erred in law and misdirected themselves in proceeding as if Ex.A.1 settlement is void in law?

(ii) Whether the mother of the minors has the authority to convey the property of the minors when the father, the natural guardian is alive and he had not renounced his guardianship, nor the mother had been appointed as a guardian by a Court of law?

(iii) Whether in law the alienation of the minors' share by the father is binding on the minors?

(iv) Whether the suit claim is barred by limitation?”

Submissions of the learned Counsel appearing for the appellant:



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7. The learned counsel appearing for the appellant submitted that sale by second defendant in Ex.A2 was not a sale by Kartha. On the other hand, it was a sale by the second defendant along with defendants 3 to 6. The learned counsel elaborated it by submitting that the defendants 4, 5 and 6, who were minors at that point of time were represented by their mother third defendant in Ex.A2 sale and during the life time of the father, mother was incompetent to act as guardian of minor children. He further submitted that since defendants 4 to 6 were represented by mother in the document, it cannot be treated that it was a sale by Kartha of the family on behalf of the other junior members. Alternatively, the learned counsel submitted that having settled the property in favour of the third defendant and her children, the second defendant could not convey good title to the first defendant. Learned counsel further submitted that Ex.A2 was executed on 10.11.1975 and receipt of payment of consideration was issued only on 23.03.1981 and in such circumstances, the sale transaction completed only in the year 1981 and the suit was filed on 30.06.1989 well within 12 years and therefore, the suit was within time. In support of his submission, the learned counsel relied on the following judgments:



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1. *Uma Rani Vs. Hindustan Petroleum Corporation Limited*

reported in *1995 1 MLJ 428*;

2. *Durai alias Karunanidhi Vs. D.Devarajalu Naidu and 10*

others reported in *1980 (1) MLJ 507*; and

3. *Pattayi Padayachi (Died) and others Vs. Subbaraya Padayachi*

and others reported in *1980 (2) MLJ 296*.

Submissions of the learned counsel for the respondents:

8. The learned counsel appearing for the respondents tried to sustain the judgments passed by the Courts below by submitting that the evidence available on record established that the suit property was ancestral property of the second defendant and therefore, the settlement deed executed by him in respect of the ancestral property was invalid. The learned counsel further submitted that Kartha of the Hindu joint family is entitled to alienate the joint family property for the family necessity and in the case on hand, the sale by second defendant was only for family necessity and the same has been proved by documentary evidence. The learned counsel further submitted that the alienation made by the Kartha of the joint family was not questioned by the plaintiff and



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his siblings, within three years from the date of attaining majority and therefore, the Courts below rightly came to the conclusion that the suit prayer was barred by limitation. In support of his submission, the learned counsel relied on the judgment of the Hon'ble Supreme Court in *Sri Narayan Bal and others Vs. Sridhar Sutar and others* reported in (1996) 8 SCC 54.

Discussion on the question of law No.(i):

9. With regard to the character of the suit property, the averments in the plaint was not specific. The plaintiff vaguely made a plea, as if the suit property belonged to the second defendant. It was not specifically stated whether the suit property was his ancestral property or self acquired property. The first defendant in her written statement made a specific plea that the suit property was ancestral property of the second defendant and hence, the settlement deed executed by the second defendant was invalid. Ex.B3, dated 05.04.1958 was a partition deed between the second defendant and his brother Muthaiya Pillai. Hence, it is clear that the suit property was allotted to the share of the second defendant in the family partition and therefore, the Courts below based



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on the concrete evidence came to the conclusion that the suit property was ancestral property.

10. It is settled law, a coparcener is not entitled to execute a settlement deed in respect of his interest in the coparcenary in favour of third parties without a consent of other coparceners. In the case on hand, when Ex.A1 settlement deed was executed in the year 1961, creating life estate in favour of the third defendant and vested remainder in favour of heirs of defendants 2 and 3, the third defendant, fifth defendant and seventh defendant were not members of the coparcenary. The third defendant is only the wife of coparcener viz., second defendant. The 5th and 7th defendants are daughters of second defendant who were not coparceners as per the Hindu Laws stood at that point of time. Therefore, the settlement deed was executed in favour of non-coparceners (strangers to coparcenary) viz., defendants 3, 5, 7 and also in favour of coparceners defendants 4 and 6. The plaintiff, who was aged about 20 years on the date of presentation of the suit in the year 1989, obviously would not have been born at the time of Ex.A1. Therefore, Ex.A1 is a gift settlement deed in favour of non-coparceners as well as coparceners. As per the law laid down by the Hon'ble Apex Court in



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Thamma Venkata Subbamma (Dead) By LR Vs Thamma Rattamma

and others reported in (1987) 3 SCC 294, gift of coparcenary interest by one coparcener in favour of any one of the other co-parceners shall be treated as a release of coparcenary interest in favour of all the other coparceners. The said position can be gathered from the following observations of the Hon'ble Apex Court in the above mentioned judgment.

“20.....There is some force in the contention of the learned counsel for the respondents that the gift should be construed as relinquishment or renunciation of his undivided interest by the donor in favour of the other coparceners. Although the gift is ostensibly in favour of Veera Reddy, but really the donor meant to relinquish his interest in the coparcenary in favour of Veera Reddy and his sons. In this connection, we may refer to the following passage from Mulla's Hindu Law, Fifteenth Edition, Article 264 at page 357:-

"Art. 264. (1)Renunciation ,or relinquishment of his share.-A coparcener may renounce his interest in the coparcenary property in favour of the other coparceners as a body but not in favour of one or more of them. If he renounces in favour of one or more of them the renunciation enures for the benefit of all other coparceners and not for the sole benefit of the coparcener or coparceners in whose favour the renunciation is made. Such renunciation is not invalid



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even if the renouncing coparcener makes it a condition that he would be paid something towards maintenance. The renunciation or relinquishment must, of course, be genuine. If fictitious and not acted upon it would not be operative as between the parties and partition can be claimed."

21. Assuming that it is a renunciation in favour of one of the coparceners, namely, Veera Reddy, such renunciation enures for the benefit of all other coparceners and not for the sole benefit of the coparcener in whose favour the renunciation was made. In our view, the gift made by Rami Reddy to Veera Reddy should be construed as renunciation of his undivided interest in the coparcenary in favour of Veera Reddy and his sons who were the remaining coparceners. The gift was, therefore, valid construing the same as renunciation or relinquishment by Rani Reddy of his interest in the coparcenary and, accordingly, the consent of other coparceners was immaterial."

11. However, a gift by coparcener in favour of non-coparcener is void under Hindu Law. In the peculiar facts of this case, second defendant, a coparcener executed gift deed in favour of his wife third defendant creating life estate for himself and also in favour of the settlee with vested remainder to their legal heirs. Therefore, the gift was also in favour of his wife as well as daughters viz., 5 and 7, who were all not coparceners at that point of time. Therefore, the gift executed by second



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defendant is void to the extent of gift in favour of non-coparceners.

Once we come to the conclusion that gift by second defendant in favour of defendants 3, 5 and 7 was void, we cannot say there was a release of second defendant's coparcenary interest in favour of other coparceners. First of all in the peculiar facts of this case, the second defendant retained life estate in his favour. Therefore, there is no complete release of coparcenary interest in favour of other co-parceners. Secondly, creation of life interest in favour of third defendant and vested reminders in favour of daughters become void as gift in favour of non-coparceners. Therefore, there is no complete release of second defendant's interest in favour of other coparceners.

12. In such circumstances, the natural corollary would be notwithstanding execution of Ex.A1, the second defendant continue to be the co-parcener enjoying life estate and also enjoying his remaining interest over the property in respect of which the gift had become void. Therefore, he is entitled to act as Kartha of coparcenary and his alienations for family necessity would bind the other junior members. The Courts below came to the conclusion that the entire gift was void as gift was made in favour of some of the non coparceners. The said conclusion of the Courts below is not correct. As discussed earlier, the



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gift is partially void to the extent of gift in favour of non-coparceners.

Therefore, the fact remains notwithstanding execution of Ex.A1, the second defendant retained some interest in the coparcenary property at least the life interest. Therefore, it shall be treated, he continue to be the coparcener and there was no complete release of his right in favour of the other coparceners. [in respect of failed gift to non-coparceners),

13. In view of the discussion made earlier, the first question of law is answered partly in favour of the appellant and partly in favour of the respondents by holding that Ex.A1 settlement deed was void to the extent of gift in favour of wife and daughters of second defendant.

Discussion of questions of law Nos.(ii) and (iii):

14. Ex.A2 sale deed in favour of first defendant was executed by defendants 2 and 3 on 10.11.1975, defendant No.3 was joined as executant in her individual capacity and also as guardian of minor sons viz., defendants 4 and 6. The defendants 5 and 7 and plaintiff were not shown as party in Ex.A2 document. The learned counsel for the appellant forcibly argued that when father was alive, third defendant



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mother was not entitled to execute sale deed on behalf of the minor defendants 4 and 6. However, the Courts below came to the conclusion that Ex.A2 was executed for family necessity by Kartha of the family viz., second defendant and hence, the sale was binding on all the minor children. It is pertinent to note that the plaintiff and defendants 5 and 7 were not shown as *eo nomine* party in the sale deed represented by mother. The defendants 5 and 7 were daughters of the family and as discussed earlier, they were not coparceners at that point of time. Hence, there was no need to show them as a party.

15. As far as plaintiff is concerned, he was not represented by mother and the sale deed was executed by father, who was senior most male member of the family. As discussed earlier, notwithstanding execution of Ex.A1 gift deed, the second defendant (father) continue to be the member of the coparcenary, as he did not release his entire interest in the coparcenary. Therefore, there is no difficulty in coming to the conclusion that at the relevant point of time, second defendant acted as a Kartha of the coparcenary. He signed the document Ex.A1 and the same shall be construed as a sale by Kartha of the coparcenary. In case, it is shown the sale by Kartha was family necessity, it is binding on the minor



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co-parceners viz., the plaintiff and defendants 4 and 6.

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16. It is also pertinent to note that 6th defendant Subbiah executed Ex.B10 payment receipt confirming Ex.A2 sale in favour of the first defendant. Under Ex.B10 unpaid sale price was received by the defendants 2, 3 and 6. Therefore, sale in favour of first defendant was confirmed by 6th defendant under Ex.B10. Even if the third defendant mother was not competent to represent the minors' interest in coparcenary and convey the property to the first defendant, when the document is jointly executed by Kartha of the family, the sale by Kartha is binding on the minor coparceners including the plaintiff, provided the same is shown to be as the one for family necessity. Both the Courts below, on appreciation of evidence available on record, came to the conclusion that Ex.A2 sale deed was executed for family necessity.

17. A perusal of recitals in Ex.A2 would suggest that the mortgage debt received by the second defendant under Ex.B1 mortgage deed in favour of Bagavathi Ammal was part of a sale consideration. A perusal of Ex.B1 would suggest that the second defendant mortgaged the suit property and received amount for maintenance of minor children and to meet the other family expenses including his daughter's marriage.



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Therefore, the Courts below are justified in coming to the conclusion that the second defendant was unable to discharge the mortgage debt and hence, suit property was sold to the first defendant by including mortgage debt as part of a sale consideration.

18. In view of the same, the conclusion reached by the Courts below that Ex.A2 sale was made by Kartha of the coparcenary for family necessity is a well considered finding and based on concrete evidence available on record. The said factual conclusion is not vitiated by any perversity and hence, the same is confirmed. Once this Court comes to the conclusion that Ex.A2 sale deed executed by the second defendant Kartha of the family is for family necessity, the same is binding on minor coparceners viz., the plaintiff, defendants 4 and 6. As mentioned earlier, 4th defendant was 31 years at the time of filing of the suit and he has not questioned the alienation within three years from the date of attaining majority. Likewise, 6th defendant was 27 years old at the time of plaint. He also failed to question the same within three years from the date of attaining majority. Obviously, for the said reasons, the defendants 4 and 6 were not arrayed as plaintiffs in the suit and plaint was presented only by the plaintiff who was only 20 years old at the time of presentation of



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the plaintiff. Therefore, the plaintiff is not entitled to pray for a declaration in favour of defendants 4 to 7, who failed to question the alienation by their father even after three years from the date of attaining majority. As far as plaintiff is concerned, though he filed the suit questioning the alienation within three years from the date of attaining majority, as discussed earlier the alienation by Kartha of the family was found to be for family necessity and hence, this Court holds the same is binding on the plaintiff. Accordingly, the findings of the Courts below with regard to the validity of Ex.A2 sale deed are confirmed and questions of law Nos.(ii) and (iii) are answered against the appellant.

Discussion on the question of law No.(iv)

19. As discussed earlier, the defendants 4 to 7 failed to question the alienation by their father within 12 years of sale or within three years from the date of attaining majority. The suit property is held to be an ancestral property and therefore, the plaintiff and defendants 4 and 6 alone can question the alienation. defendants 5 and 7 daughters were not co-parceners at the relevant point of time. Defendants 4 and 6 failed to question it within three years from the date of attaining majority. Hence,



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the suit prayer in favour of defendants 4 to 7 is barred by limitation. As far as plaintiff is concerned, he filed a suit within three years from the date of attaining majority. As discussed earlier, the sale in favour of first defendant was held to be for family necessity and hence, it is valid and binding on the plaintiff and therefore, the plaintiff is not entitled to any relief and hence, the question of law No.(iv) is answered against the plaintiff and in favour of the respondents.

20. In view of the answer to questions of law framed at the time of time admission, the Second appeal fails and the judgment and decree passed by the Courts below are confirmed. There shall be no order as to costs.

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NCC : Yes
Index : Yes

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To

1.The Subordinate Judge, Ambasamudram.



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2.The District Munsif, Ambasamudram.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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