



S.A.No. 1287 of 2007

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2025

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No.1287 of 2007

and

M.P.No.2 of 2007

Ravi Kumar

... Appellant

Vs.

1. Ramesh Kumar

Enkamma Bai (died)

3. N.L.Bhat

4. M/s.Paras & Co.,
rep. by Parasmal Jain

5. M/s. Jayaprakash Kapuchand,
rep. by Ratan Prakash

6. Suresh Kumar Shah



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7. Baskar Kumar Shah

8. P.B. Subadra Bai

9. Ishwarya

10. S.Sudarsan

11. Sunnitha

.. Respondents

PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure, praying to set aside the judgment and decree made in A.S.No.471 of 2004 dated 29.12.2006 on the file of Addl. District and Sessions Judge, Fast Track Court-III, Chennai thereby confirming the judgment and decree passed in O.S.No. 4162 of 1984 dated 15.12.2003 on the file of VII Asst. Judge, City Civil Court, Chennai.

For Appellant : Mr.A.Chidambaram

For Respondents : Mr.S.Kathik for R3 & R4

Mr.A.V.Arun for R7 & R8

R1, R2 & R6 – died

Batta due – R5, R9 to R11



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JUDGMENT

The appellant, who is the plaintiff filed the suit in O.S.No.4162 of 1984, on the file of VII Asst. Judge, City Civil Court, Chennai against the defendants 1 to 7 praying for the relief of partition and also directing the defendants to render proper account for the rental income in respect of suit property viz., house and premises bearing No.24 Narayana Naicken Street, Pudupet, Chennai-2. Both parties have contested the suit. On hearing both sides, the trial judge dismissed the suit. Against which, he preferred an appeal in A.S.No. 471 of 2004, wherein the appellate judge on analysing the facts and evidence on record, dismissed the appeal by confirming the findings of trial court. Now, challenging the concurrent findings, he preferred this Second Appeal.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

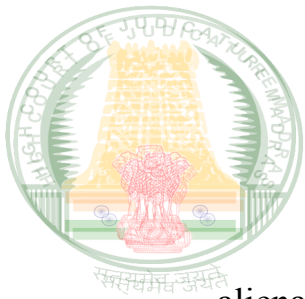


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3. Brief facts of the case is as follows :-

The plaintiff is the son of 1st defendant and younger brother of 2nd defendant. The case of plaintiff is that the suit house is a joint family property allotted to the share of his father Anand Shah as per the partition deed dated 09.03.1951 between himself and his family members. The plaintiff and defendants 1 and 2 are the legal heirs of Anand Shah, each entitled to their equal share in that property. During the life time, the plaintiff's father Anand Shah sold the joint family property to one Lakshmana Shah, husband of 4th defendant and father of 3rd defendant through sale deed dated 16.02.1960 on behalf of him. As a natural guardian of plaintiff and 2nd defendant, who were then minors without obtaining permission of the court as such executed the sale deed dated 16.02.1960 is not valid and not binding on the plaintiff and 2nd defendant. The plaintiff came to know recently, legal heirs of purchaser Lakshmana Shah, viz., defendants 3 and 4 attempted to sell the property to third party. Therefore, he issued notice calling upon the defendants 3 and 4 not to

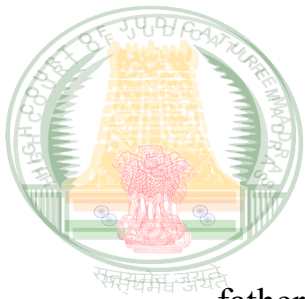


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alienate and also asked for rental income, since they collected the rent from the tenants, who are defendants 5, 6 and 7 and they were also directed to render true and proper accounts to the plaintiff. Pending suit, 1st defendant died. Therefore, the plaintiff and 2nd defendant equally entitled to half share in the suit property and prayed to decree the suit accordingly.

4.The defendants 1 and 4 died. The defendants 2, 5 and 6 remained absent and they were set exparte. The 3rd and 7th defendants contested the suit. As per the written statement of 3rd defendant, the plaintiff is aged about 26 years on the date of filing suit and he has not filed the suit within 3 years after attaining majority in respect of suit property, which was sold long back in the year 1960 as such the plaintiff's claim is barred by limitation. After lapse of 24 years, the plaintiff come forward with the suit for partition without asking any relief of declaration, besides the suit property was sold by the plaintiff's father for a valid consideration and the same was utilised to discharge the mortgage debt of the family and the same was bound by the family, indeed, father of plaintiff was managing affairs as kartha of the family, thereby the plaintiff is bound by the act of



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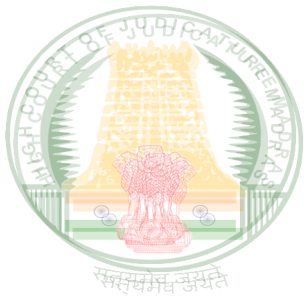
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father, the property was also sold to discharge the loan and for the welfare of the family, there was legal necessity not required to obtain permission to sell the property of minor share. After the purchase, the defendants 3 and 4 entitled to collect the rent and the same cannot be questioned by the plaintiff. Accordingly, he prayed to dismiss the suit.

5. The tenant/7th defendant submitted the written statement stating that he paid a sum of Rs.90,000/- as rental advance and also paying electricity charges and at his cost, he repaired the portion of building, thereby he is entitled for reimbursement of the said sum.

6. Considering both side submissions, the trial judge had framed the following issues:-

- (i) Whether the suit without setting aside the sale deed dated 16.02.1960 is maintainable?
- (ii) Whether the plaintiff is entitled to $\frac{1}{2}$ share over the suit property?



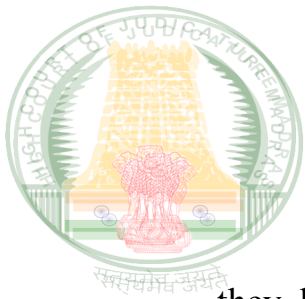
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(iii) Is the defendant liable to render accounts for the rental income as prayed for?

(iv) To what reliefs are plaintiff entitled?

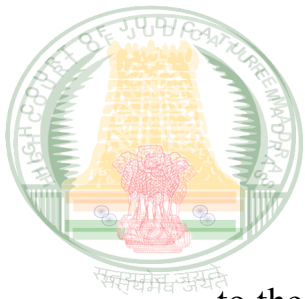
7. The plaintiff was examined as P.W.1. The documents Ex.A1 to Ex.A7 were marked. No oral and documentary evidence adduced on the side of defendants 3 and 7. On considering the evidence on record, the trial judge held that the suit property was originally belonged to plaintiff's father family. As a kartha of the family, his father managed the family and to discharge the loan as well as to meet out the marriage expenditure of daughters, he executed two sale deeds, however without obtaining proper permission from the court, his father sold the property to Lakshamana Shah, indeed the plaintiff and his brother were aged about only one year and two years respectively during that period. Therefore, the sale deed dated 16.02.1960 would not bind the plaintiff and 2nd defendant as his father not obtained any leave to sell the property. After purchase, defendants 3 and 4, legal heirs of Lakshmana Shah attempted to sell the property. Therefore, the cause of action arose to file suit. Furthermore,



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they have collected rent from the defendants 5 to 7 unjustly enriched themselves. Hence, the present suit for partition and for submission of accounts.

8. The contesting 3rd defendant submitted that the suit as such is not maintainable in law, since at the age of 26 years, the plaintiff filed the present suit more than three years after attaining majority, thereby the suit is barred by limitation. He would submit that the plaintiff's father sold the property in the year 1960 for a valid consideration to discharge the debts over the suit property. Nearly about 24 years later from the date of sale, the plaintiff come forward with the present suit without any prayer to set aside the sale claiming partition as such is clear case of abuse of process of law. Accordingly, he prayed to dismiss the suit as no merit. He would further submit that there is no necessity to obtain permission of the court for the reason that father of plaintiff sold the property for the purpose of discharging antecedent debts of the family. Therefore, for legal necessity, the property was sold. Hence, the objections raised by the plaintiff to that effect is unsustainable and there is no need to submit the accounts of rent

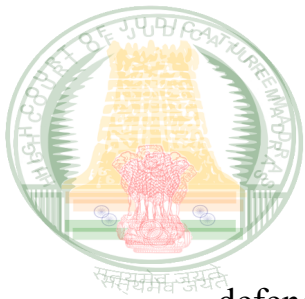


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to the plaintiff, however as absolute owners, they are entitled to collect the rent from the tenants. By filing the suit, the plaintiff attempted to occupy portion of property colluding with the tenants. Hence, he prayed to dismiss the suit.

9. The learned counsel for appellant argues that before the trial court, the contesting defendants not adduced any evidence, without which, the trial court erroneously dismissed the suit and also failed to take note of the fact that the plaintiff and his family members were in physical possession of the property ever since 1960 onwards even after the sale made by his father and no suit for recovery of possession was filed by the purchaser. Therefore, even if any right devolves to the contesting defendants, it is deemed to have extinguished as per Sec.27 of Limitation Act. He would further argues that the court below by applying Art.60 of Limitation Act erroneously held that after attaining majority within three years, the suit was not filed by the plaintiff as such is erroneous. In fact, Art. 109 of Limitation Act alone would apply to the facts of the case. He would submit that there is no contra evidence on the side of contesting

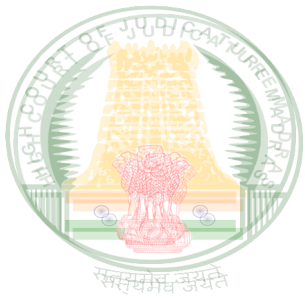


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defendants to establish that the sale was made for the benefit of family by erroneously appreciating the recitals of Ex.A2 sale deed as such is total misconception of facts and law and on this ground, the findings is liable to be set aside.

10. Submitting the above arguments, he has raised the following question of law for consideration of this Second Appeal :-

- (i) Whether the courts below are right in holding that the suit filed for partition by the plaintiff without a prayer for setting aside the sale by his father of the ancestral property during his minority is not maintainable in law?
- (ii) Are not the courts below wrong in dismissing the suit by applying Art.60 (Old Art.44) while only Art. 109(Old Art.126) of the Limitation Act would apply to the facts of the case?
- (iii) Whether the courts below erred in not applying Sec.27 of the Limitation Act while admittedly the plaintiff is in possession of major portion of the suit property even after the sale by the father and natural guardian?

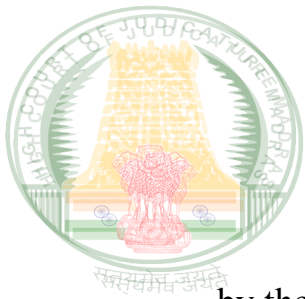


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11. Heard and considered rival submissions of learned counsel for appellant as well as respondents 3, 4 7 and 8 and perused the materials available on record.

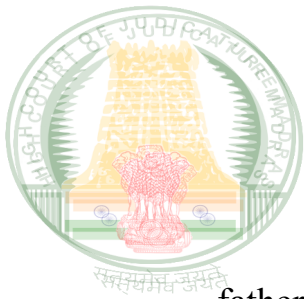
12. It is an undisputed fact that the suit property is a joint family property allotted to plaintiff's father Anand shah as per partition deed marked as Ex.A1 dated 09.05.1951, thereafter, his father sold the suit property to Lakshamana Shah, husband of 4th defendant and father of 3rd defendant through the sale deed dated 16.02.1960 (Ex.A2). The plaintiff contended that at that time of sale he was aged about one year and his brother was aged about two years and without obtaining leave of the court, for himself and on behalf of his minor son, his father sold the property. After attaining majority, when he came to know that the said sale was made without obtaining permission of the court is not valid and not binding on him and his brother (2nd defendant). But, the contesting 3rd defendant stated that his father purchased the property for a valid consideration from the plaintiff's father and the property has also been sold



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by the plaintiff's father in order to discharge the mortgage and other family debts, to that effect, the recitals also found in the sale deed. Considering that, in para 9 of the trial court findings, the learned trial judge has elaborately stated about the loan discharged by plaintiff's father, which was casted upon him at the time of partition held in the family. Therefore, for the legal necessity and to discharge the antecedent debts, the plaintiff's father sold the property to 3rd defendant's father Lakshmana Shah in the year 1960. Hence, leave of court would not arise. Further, the learned counsel for appellant argues that the defendants not adduced any evidence to prove that they have paid the valid consideration and the same was utilised by the plaintiff's father to discharge the loan. But as per the recitals found in Ex.A2 sale deed, it clearly denotes that to discharge the mortgage and other loan, the plaintiff's father sold the property, besides in Ex.A1 partition deed, loan was allotted to the share of plaintiff's father with an undertaking to discharge the same. Therefore, the recitals of the said document is the best evidence as per Sec.92 of Evidence Act, even though there is no evidence adduced on the side of defendants. The documents Ex.A1 and Ex.A2 relied on by the plaintiff itself proves that plaintiff's



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father owned family debts and under legal necessity the property was sold.

Hence, the objections raised by the plaintiff that no evidence was adduced on the side of defendants as such is not fatal to the proceedings.

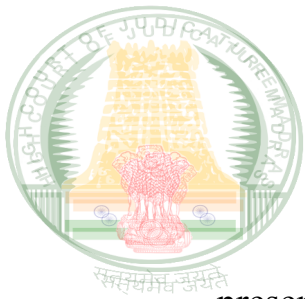
Admittedly, at the age of 26 years, the plaintiff come forward with the suit, but it was not filed the suit within three years after attaining majority.

13. By way of reply, the learned counsel for appellant argues that he has challenged the same under Art.109 of Limitation (Art.126 of Limitation Act and not under Art.60 of Limitation Act). Art. 109 of Limitation Act reads as follows :-

Art. 109

<i>By a Hindu governed by Mitakshara law to set aside his father's alienation of ancestral property</i>	<i>Twelve years</i>	<i>When the alienee takes possession of the property</i>
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Even assuming that Art. 109 apply to the facts of the case, but as rightly pointed out by the learned counsel for contesting defendants, the plaintiff has not sought for any relief to set aside the sale made by his father in the



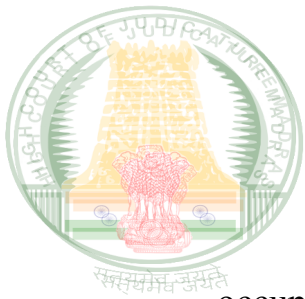
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present suit. Instead of that, he sought for the relief of partition only.

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Therefore, the arguments advanced on the side of plaintiff is that under Art.109 of Limitation Act, the plaintiff is entitled to file a suit as such is unsustainable one for the reason that prayer to the set aside the sale not found in the plaint. Thus, the trial judge rightly appreciated all the facts elaborately by discussing the facts and proposition of law while dismissing the suit. Hence, the arguments advanced on the side of plaintiff that he filed the suit by invoking Art.109 as such is not maintainable. Accordingly, question of law (2) is answered. So also, without getting the sale being set aside, the plaintiff filed the suit as such is not maintainable. Accordingly, the question of law (1) is answered.

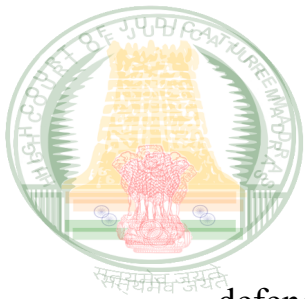
14. Further, the plaintiff contended that he is in possession of portion of property, but on perusal of trial court findings, he has not adduced any document to show that he was in possession of suit property on the date of filing suit in O.S.No.4162 of 1984. Hence, he has not proved that he is in possession of the suit property. Even assuming that he occupied any portion colluding with the tenants would amount to illegal



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occupation and he can be thrown out immediately from the occupied portion if any in the suit property. Therefore, Sec.27 of Limitation Act not given effect to rescue the plaintiff's case as the plaintiff has not proved his possession. Accordingly, the question of law (3) is answered. Thus, the trial court elaborately discussed the facts, which needs no interference by this court. By invoking Art.109 of Limitation Act, the learned counsel for plaintiff contended that he is entitled to proceed with the suit, but as discussed above, he has not sought for any relief to set aside the sale. Therefore, the said argument is not sustainable under law. The learned counsel for appellant sought liberty to file a fresh suit also not granted by this court for the reason that the original suit was filed by the plaintiff in the year 1984, all these years, nearly about 30 years the plaintiff causing interference in the enjoyment of property of the 3rd defendant, who is legal heir of original purchaser. Therefore, the conduct of plaintiff would proves that he wants to harass the contesting defendants. Considering that, this court is not inclined to grant such liberty to the plaintiff. Accordingly, this Second Appeal is dismissed as no merit. If at all, the plaintiff occupied any portion of the suit property, he is directed to hand over the same to the 3rd



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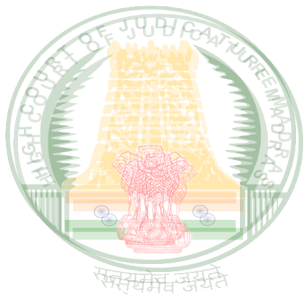
defendant and legal heir of 4th defendant within a period of eight weeks from the date of receipt of copy of this judgment. The plaintiff is also directed not to cause interference illegally with the enjoyment of the contesting defendants. Accordingly, this Second Appeal is dismissed as no merit. No costs. Consequently, connected Miscellaneous Petition is closed.

17.04.2025

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To

1. Addl. District and Sessions Judge, Fast Track Court-III, Chennai.
2. VII Asst. Judge, City Civil Court, Chennai.
3. Section Officer, VR Section, Madras High Court.



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T.V.THAMILSELVI, J.

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