



S.A. No.1006 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2025

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

S.A. No.1006 of 2009

1.Sumalatha

2.Vinu Chakravarthi

.. Appellants

Vs.

1.P.Arumugha Mudaliar (Died)

2.Vasuki

3.Anandan

4.Anandhi

5.Vairavel

.. Respondents

(R2 to R5 are brought on record as LR's of the deceased R1 vide order dated 09.02.2024 made in C.M.P. Nos.10097, 10100 & 10102 of 2020 in S.A. No.1006/2009)

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Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 06.08.2009 in A.S. No.66 of 2007 on the file of the II Additional Sub Court, Cuddalore, confirming the judgment and decree dated 23.07.2007 passed in O.S. No.235 of 2004 before the Principal District Munsif's Court, Cuddalore.

* * *



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For Appellants : Mrs.R.Meenal
For Respondents : Mr.T.S.Baskaran

JUDGMENT

This second appeal is directed against the judgment and decree of the II Additional Sub Court, Cuddalore, dated 06.08.2009 passed in A.S. No.66 of 2007 confirming the judgment and decree of the Principal District Munsif Court, Cuddalore, dated 23.07.2007 passed in O.S. No.235 of 2004.

2. The plaintiffs are the appellants herein. The first respondent is the sole defendant in the suit. Respondents 2 to 5 are his legal heirs. The suit property originally belonged to one Thiru.Natesa Padayachi, the grandfather of the plaintiffs. It is the case of the plaintiffs that the first wife of Natesa Padayachi died intestate in 1952, leaving behind her son Thiru.N.Mani, who is father of plaintiffs and her three daughters. After the death of Dhanabagayam, his first wife, Natesa Padayachi, married one Varadammal, as his second wife in or about 1956. It is also admitted that Natesa Padayachi died in or about 1970 after the Hindu Succession Act, 1956, came into force. It is stated that there was a partition in the family between the father of the plaintiffs and the second



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wife of Natesa Padayachi along with her children under a partition deed dated 10.12.1977. It is also admitted that the property allotted to the second wife of Natesa Padayachi is not the subject matter of the suit. The immovable properties allotted to Thiru.N.Mani is the suit 'B' Schedule properties.

3. The defendant in the suit is the purchaser of the property from the father of the plaintiffs by virtue of a sale deed dated 10.12.1979. The suit was contested by the defendant saying that the properties are the absolute properties of Thiru.N.Mani, the father of the plaintiffs and that the alienation by plaintiffs' father cannot be challenged. It is also contended that the suit filed in the year 2000 is barred by limitation, as the sale deed dated 10.12.1979 was not challenged within three years after the minors/plaintiffs attaining majority. The defendant also contended that he has perfected title by adverse possession.

4. On the admitted facts, the plaintiffs are not entitled to any relief. When it is admitted that the plaint 'B' schedule property is the absolute property of father of Thiru.N.Mani, i.e. Natesa Padayachi and it is not pleaded that the suit property is the joint family property of Thiru.N.Mani and his father Natesa Padayachi, the suit property cannot be the ancestral property or joint family property. It is admitted that the suit property was allotted to Thiru.N.Mani in



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the partition between Thiru.N.Mani and the second wife of Thiru.Natesa Padayachi. It is also admitted that Thiru.Natesa Padayachi died in or about 1970. Therefore, the plaintiffs cannot question the validity of the sale on the ground that their father has no absolute right to execute the sale deed.

5. As pointed out earlier, plaintiffs' father Thiru.N.Mani is entitled to inherit the property of his father under Section 8 of the Hindu Succession Act, 1956. The cause of action alleged in the plaint is wholly misconceived. The trial court, dismissed the suit after recording the finding that the plaintiffs have not proved by cogent evidence that the sale proceeds were not spent for the family. Since the trial court proceeded on the basis that the sale in favour of the respondent was for family necessity, the trial court did not go into other aspects. Aggrieved by the dismissal of the suit, the plaintiffs have filed an appeal before the II Additional Sub Court, Cuddalore in A.S. No.67 of 2007. The appellate court also confirmed the judgment of the trial court by holding that the appellants have not proved that the sale deed in favour of the respondent is without a legal necessity.

6. The following substantial questions of law have been raised by the appellants in the memorandum of grounds of appeal:



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"1. Whether in law the Courts below are right in overlooking that the appellant's share in the properties could not be alienated without strictly complying with the requirements of Section 8 of the Hindu Minorities and Guardianship Act?

2. Whether in law the Courts below are right in omitting to note that the suit having been filed when the first appellant was 18 and the second appellant was still a minor, was within time and not barred by limitation?

3. Whether in law the Courts below are not wrong in omitting to see that there was no proof of any binding family necessity for sale of the properties and that the sale was not for the welfare of the minors?

4. Whether in law the Courts below did not err in failing to see that the appellants were not parties to the sale and that they did not have to seek to set aside."

7. The first question of law may be applicable to a case where the father alienates the property of a minor without the permission of court. In the present case, the suit property is not the joint family property to which the plaintiffs



could claim any right along with their father. As pointed out earlier, the suit property is the absolute property of plaintiffs' father Thiru.N.Mani. Since the suit property was originally owned by the father of Thiru.N.Mani and the death of father of Thiru.N.Mani was after the Hindu Succession Act, came into force, the suit property devolved on Thiru.N.Mani, the father of the plaintiffs by virtue of Section 8 of the Hindu Succession Act. Therefore, the alienation by the father cannot be questioned by the legal heirs, as they have no interest over the property. Therefore, the question whether the suit property was sold by plaintiffs' father for legal necessity or not, is irrelevant in this case.

8. Assuming for a moment that the suit property was sold for any immoral purpose, it is not for the plaintiffs to question it, as they have no right over the property, as coparceners or members of joint family. It is the absolute discretion of father of the plaintiffs to execute the sale deed irrespective of the fact whether the sale consideration was utilised for a legal necessity or not. It is not necessary to prove that the sale is for legal necessity. This court, having regard to the fact that the plaintiffs have no right over the property and that the sale deed executed by the father of the plaintiffs, as the absolute owner of the property in 1979, the suit, as framed is not maintainable. Hence this appeal is devoid of any merits and deserves to be dismissed.



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9. In the result, the second appeal is dismissed, confirming judgment and decree of the II Additional Sub Court, Cuddalore, dated 06.08.2009 passed in A.S. No.66 of 2007 and the judgment and decree of the Principal District Munsif Court, Cuddalore, dated 23.07.2007 passed in O.S. No.235 of 2004. However, there is no order as to costs.

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Index : Yes/No
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To

- 1.The II Additional Sub Court, Cuddalore
- 2.The Principal District Munsif, Cuddalore



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