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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2025

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.No.1225 of 2012

1.Munialakshmi
2.Govindan
3.Madhesh
4.Devamma @ Desamma

... Appellants / Defendants

Vs.

1.Pappamma
2.Neela
3.Manju
4.Anusuya
5.Nandeeswaran
6.Srinivasan
7.Sivakumar

... Respondents / Plaintiffs 2 to 8

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 02.08.2010 made in A.S.No.19 of 2009 on the file of the Principal Subordinate Judge at Krishnagiri reversing the judgment and decree dated 30.10.2008 made in O.S.No.133 of 1996 on the file of the District Munsif Court at Krishnagiri.

For Appellants : Mr.K.Venkatasubban for
M/s.Sarvabhauman Associates

For Respondents : Mrs.V.Srimathi



JUDGMENT

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This Second Appeal has been filed to set aside the judgment and decree dated 02.08.2010 made in A.S.No.19 of 2009 on the file of the Principal Subordinate Judge at Krishnagiri reversing the judgment and decree dated 30.10.2008 made in O.S.No.133 of 1996 on the file of the District Munsif Court at Krishnagiri.

2. The appellants are the defendants. The deceased first plaintiff by name Varadappan has filed a suit against the defendants for seeking the relief of declaration and permanent injunction. The Trial Court has dismissed the suit and the First Appeal preferred by the plaintiffs 2 to 8 was allowed and the judgment and decree passed by the Trial Court was set aside. Aggrieved over the same, the defendants have filed this Second Appeal.

3. Heard Mr.K.Venkatasubban, learned counsel for the appellants and Mrs.V.Srimathi, learned counsel for the respondents and perused the materials available on record.



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4. The short facts pleaded in the plaint are as follows:

The suit property was purchased by the deceased Varadappan who was the first plaintiff in the suit, through a sale deed dated 12.06.1989 executed by Thimmappa, husband of the first defendant. The suit property was sold by the first defendant's husband for discharging the family debts and for maintaining his minor children. Immediately after the execution of the above sale deed, the plaintiffs had taken possession of the suit property and were in enjoyment of the same. On 14.04.1996, the first defendant attempted to trespass into the suit property and the deceased first plaintiff prevented the same. The first defendant denied the title of the deceased first plaintiff to the suit property. Hence, she trespassed into the suit property and dispossessed the plaintiffs. The first defendant did not have any title or possession over the suit property. Hence, the plaintiffs have filed a suit for declaration and permanent injunction. During the pendency of the suit, the first plaintiff died and his wife and children have been impleaded as plaintiffs 2 to 8. The defendants 2 to 4 have been impleaded on their petition filed to implead them as parties to the suit.



5. The averments made in the written statement filed by the first defendant are as follows:

The first defendant is in possession and enjoyment of the suit property and she has been cultivating in the said property. Chitta and adangal stand in the name of the first defendant's husband and patta also stands in his name. The first defendant's husband has not sold the suit property to the first plaintiff and the sale deed is a fraudulent one and it was not acted upon. The first defendant came to know about the existence of the sale deed just recently and that will not bind the interest of the defendants. Hence, the suit should be dismissed.

6. The averments made in the Written Statement filed by the defendants 2 to 4 are as follows:

The suit property was in possession and enjoyment of Thimmappa who is the husband of the first defendant. The plaintiffs cannot claim any right over the suit property in pursuant to the sale deed dated 12.06.1989. It is false to state that the plaintiffs are in possession and enjoyment of the suit property. The necessary parties are not impleaded and hence, the suit is bad for non-joinder of necessary parties.



7. On hearing both sides and on perusal of the above pleadings, the

Trial Court has framed the following issues:

"1. 2 முதல் 8 வாதிகளுக்கு தாவா சொத்து பாத்தியம் என்று விளம்புகை பரிகாரம் பெறுவதற்கு வாதிகள் அருகதையானவர்களா?

2. நிரந்தர உறுத்துக்கட்டளை பரிகாரம் வாதிகளுக்கு கிடைக்கக்கூடியதா?

3. வாதிகளுக்கு கிடைக்கும் வேறு பரிகாரங்கள் என்ன?"

8. During the course of the trial, on the side of the plaintiffs, P.W.1 and P.W.2 were examined and Exs.A1 to A4 were marked. On the side of the defendants, D.W.1 to D.W.3 were examined and Exs.B1 to B3 were marked.

9. At the conclusion of the trial and on considering the evidence available on record, the Trial Court has dismissed the suit. On the First Appeal preferred by the plaintiffs 2 to 8, the First Appellate Court allowed the First Appeal and set aside the judgment and decree of the Trial Court. Now, the defendants have preferred this Second Appeal by raising the following substantial question of law:



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"Is the learned Appellate Court justified in upholding the sale deed (Ex.A1) as valid, when the respondents has not proved legal necessity of then minors (Appellants 2 and 3) as required under law?"

10. The learned counsel for the appellants submitted that despite the plaintiffs have got burden to prove before the Court that the suit property had been sold for some legal necessities of the minor children, the said fact was not proved. The Trial Court has rightly come to the conclusion that the plaintiffs do not prove that the sale deed dated 12.06.1989 (Ex.A1) has been executed by the executant Thimmappa for meeting out some legal necessity of the minor children. The First Appellate Court relied on the recitals in the sale deed alone and arrived at the conclusion that the sale consideration has been passed to the minors and thereby granted the relief of declaration by reversing the judgment and decree of the Trial Court. The patta in favour of the plaintiffs came into existence on 12.05.1999 subsequent to the cause of action pleaded in the plaint. Even after the sale deed was executed in the year 1989, patta and adangal continued to be in the name of the first defendant's husband.



11. The learned counsel for the respondents submitted that the defendants' witness D.W.2 has stated in his cross-examination that the first defendant's husband Thimmappa had sold his other portion of the suit property in favour of one Venkatesappa and he is in enjoyment of the same. It is claimed by the respondents that the defendants denied only the execution of the sale deed in favour of the deceased first plaintiff, though the other sale deed executed by Thimmappa in favour of Venkatesappa is not denied. The First Appellate Court has made an observation about passing of consideration through Ex.A1 sale deed and hence, it cannot be claimed that Ex.A1 is a fraudulent one. As how Venkatesappa had been put into possession in the other portion of the suit property, the deceased first plaintiff had also been put into possession and hence, the defendants cannot selectively deny the possession of the plaintiffs over the suit property.

12. Ex.A2 patta for the suit property stands in the name of the deceased first plaintiff and it is a joint patta. Even if the revenue records continue to stand in the name of the first defendant's husband, that alone cannot give a presumption that the possession continued with the



defendants. The fact that the sale deed has been executed in favour of the deceased first plaintiff Varadappan by the first defendant's husband Thimmappa is not denied. Though the first defendant who is the wife of Thimmappa has been examined as D.W.1 has stated in her evidence that the suit property has not been sold to the plaintiffs. The fact remains that there is a sale deed which is a registered sale deed of the year 1989. The plaintiffs who claim title to the suit property through the sale deed dated 12.06.1989 has produced the sale deed and that is available as Ex.A1.

13. Though in a normal course, the plaintiffs burden to prove that the suit property has been sold in favour of the deceased first plaintiff would be discharged by their production of the sale deed, in terms of Section 91 of the Evidence Act, the sale deed involves passing of the interest of the minors as well. Hence, it is claimed by the learned counsel for the appellants that the plaintiffs did not discharge their duty to prove that the sale deed has been executed for the legal necessity involving the minors' interest and in the absence thereof, it cannot be presumed that the valid title has been passed in favour of the deceased first plaintiff. In support of the above contention, the learned counsel for the appellants relief on the judgment of



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this Court rendered in the case of ***Javeed Basha and Others Vs. Rukkamma and Others, reported in 2015 2L.W. 591***. The attention of this Court was drawn to paragraph No.17 of the above judgment wherein it is held that *the sale made by the kartha of a joint family will not bind the legal heirs unless it is proved that the sale was effected for legal necessity and for the benefit of the family and that it has been utilised for the beneficial interest of the family*. For better clarity, the above paragraph is extracted hereunder:

"17. As far as question of law is concerned, first it has to be considered whether the sale made by the deceased Shivaram is for a legal necessity and such necessity has been proved by the plaintiffs by legally acceptable evidence. As per the decision of the Honourable Supreme Court in (Sunder Das and others vs. Gajajanrao and others) reported in (1997) 9 Supreme Court Cases 701 the sale made by a Kartha of a joint family will bind his legal heirs. Of course, to nullify such a sale, it has to be proved that the head of the family indulged in immoral activities or illegal transaction. In the present case, it has not even averred that the Kartha Shivaram led a immoral life. Similarly, it was also not proved by the plaintiffs that there was legal necessity for the Kartha to sell the property in their favour. As held in the



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decision (*Subodhkumar and others vs. Bhagwant Namdeorao Mehetre and others*) reported in (2007) SCCR 287 the Karta of the Joint Hindu family has power to alienate for value the joint family property either for necessity or for benefit of the family. However, it should be shown that there was legal necessity for selling the property and that the sale consideration obtained thereon has to be utilised for the beneficial improvement of the joint family. In the present case, it was not proved by the plaintiffs that the sale was made by the deceased Shivaram for a legal necessity or the sale amount was utilised by him for the upliftment of the joint family. In fact, in the decision rendered in (*R. Sridharan and others vs. Ammaniammal and others*) 2006 (2) CTC 377 it was held that the alienee has to prove that the sale consideration has been utilised for a worthy cause and for the benefit and upliftment of the joint family. In the absence of such evidence, the sale made by the Kartha cannot be said to be for a legal necessity. Mere retention of the amount in the hands of the alienee for the purchase of the lands would not suffice and there must be actual proof of purchase of other lands. When such evidence is missing in this case, the Courts below are justified in coming to the conclusion that the sale made by the deceased Shivaram does not bind the defendants in any manner.



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Therefore, the first question of law in this appeal is answered against the plaintiffs/appellants."

14. In the instant case also the sale deed Ex.A1 has been executed by the first defendant's husband Thimmappa for himself and on behalf of the minor children (defendants 2 to 4) in his capacity as kartha / guardian for minor children. The learned Judge of the Trial Court has not convinced with the evidence available on record and had recorded a finding stating that the plaintiffs did not produce any proof to show that the sale has been effected for the benefit of the minors.

15. The suit has been filed in the year 1996. It is the contention of the learned counsel for the appellants that they were not aware of the sale deed dated 12.06.1989 which was marked as Ex.A1 until the suit is filed and hence, they could not challenge the same any time before the suit. Even after the suit was filed, the defendants did not file any counter suit to declare that the sale deed dated 12.06.1989 is null and void. The only contention of the appellants is that the plaintiffs who have filed a suit has got the burden



to prove that the sale deed is a valid sale deed and through which the first plaintiff has acquired valid title.

16. There cannot be any dispute with regard to the recitals of the sale deed and the recitals would show that the sale has been effected for a valuable consideration of Rs.7,500/-. None of the defendants have denied the fact that consideration has not been passed. The only contention of the defendants is that the consideration has not been utilised for the benefit of the minors and the sale deed has not been acted upon.

17. One clinching piece of evidence that was pointed out by the learned counsel for the respondents is that on the same day when the sale deed was executed in favour of the deceased first plaintiff, the first defendant's husband Thimmappa had executed another sale deed in favour of Venkatesappa in respect of the other portion of the suit property. In fact, D.W.1 herself has admitted the fact that a sale deed was executed in favour of Venkatesappa, though she did not accept that the other sale deed was also executed in one and the same day. In the written statement filed by the defendants, it was pleaded that the sale deed is a fraudulent one. When the



plaintiffs discharge their burden by producing the sale deed Ex.A1, the burden would shift upon the defendants to prove that the sale deed is a fraudulent one. The defence that the sale deed is a fraudulent one is one thing and the sale deed has not been executed for the beneficial interest of the minors is an another thing.

18. If the defendants attack the very genuinity of the sale deed, then the other defence that the sale deed was not executed for the benefit of the minors will not arise. As the defendants have taken up a plea that the sale deed itself is a fraudulent one, then it has to be first established whether the sale deed is not a genuine one and that it has been concocted by the deceased first plaintiff. But the evidence of D.W.1 who is the wife of Thimmappa would only show that even after filing of the suit, the defendants did not evince any interest even to peruse the sale deed Ex.A1. The specific evidence on this aspect as found from the evidence of D.W.1 is that the defendants did not take any steps to peruse the sale deed Ex.A1 with the permission of the Court. Such indifference on the part of the first defendant would only show that the defence of fraudulent sale deed is not a serious defence or the first defendant was not serious enough to disprove the



genuineness of Ex.A1 sale deed. When the first defendant accepts that the other portion of the suit property has been sold in favour of some other person and against whom no cause of action has been taken so far, the first defendant has selectively objected the sale deed executed in favour of the deceased first plaintiff.

19. When the plaintiffs had produced Ex.A1 sale deed and had adduced evidence that the sale deed has been executed as how it has been stated through the recitals found therein, the defendants would get the initial burden shifted upon them to prove that they came to know the existence of the sale deed itself only after filing of the suit. But the defendants 2 to 4 did not enter into the witness box to assert the said fact by subjecting themselves for cross-examination on this aspect. Though the plaintiffs have got the burden to prove that the sale executed by Thimmappa as kartha of the family for himself and on behalf of the minor children was for the beneficial interest of the minor children or for the family and also adduced evidence in this regard, the defendants 2 to 4 ought to have come to the box to assert that they did not have the knowledge about the sale deed at all till the filing of the suit.



20. To be noted that the defendants did not make out a contention that the husband of the first defendant had indulged in certain immoral activities and that he had led an immoral life and he had been in the habit of selling the properties just to fulfil his personal whims and fancies. Even in the citation relied upon by the learned counsel for the appellants in *Javeed Basha* case, it is observed that to nullify the sale it should be proved that the head of the family was indulged in immoral activities. At no point of time, the defendants have raised such defence probably because if the said contention is made, the burden would be on them to prove the same. When the defendants did not choose to challenge the other transaction especially the sale deed effected in favour of Venkatesappa by the first defendant's husband in his capacity as kartha, the first defendant cannot selectively choose to deny the sale deed executed in favour of the deceased first plaintiff alone.

21. As it appears from the evidence of D.W.1 and D.W.2 that the other portion of the suit property has been sold in favour of Venkatesappa by the first defendant's husband Thimmappa for the family necessity and the same has not been questioned. The evidence that has to be adduced by the



plaintiffs to prove that the sale deed has been executed for the family necessity which is inclusive of minor's interest also, can also be inferred from the conduct exhibited by the defendants.

22. It is reiterated that the defendants did not choose to disprove the genuineness of the sale deed Ex.A1 even though the specific plea that the said sale deed has been fraudulent and further the defendants themselves have admitted that the first defendant's husband Thimmappa has executed a similar sale deed in favour of Venkatesappa in respect of the other portion of the suit property and that was not objected any time before the suit or after the suit. The defendants 2 to 4 did not enter into the box and subject themselves for examination to prove that they had the knowledge about the sale deed only after the suit has been filed. Even if it might be true that the defendants came to know about the existence of the sale deed only after filing of the suit, that itself will not render the sale deed invalid so long as it is not proved that their father had executed the sale deed not for any family necessities but due to his immoral activities.



23. As stated already, the defendants did not allege that the deceased Thimmappa had indulged in any immoral activities and that he had been in the habit of selling the family properties to fulfil his immoral means. The First Appellate Court has rightly dealt the materials available on record and appreciated the evidence in a right perspective in order to come to the conclusion that the first plaintiff has a valid title in pursuant to Ex.A1 sale deed and allowed the First Appeal by setting aside the judgment and decree of the Trial Court. In view of the same, the substantial question of law is answered against the appellants.

24. In the result, this Second Appeal is dismissed and the judgment and decree dated 02.08.2010 made in A.S.No.19 of 2009 on the file of the Principal Subordinate Judge at Krishnagiri is confirmed and the suit is decreed in favour of the plaintiffs. No costs.

08.01.2025

Speaking order

Index : Yes

Neutral Citation : Yes

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R.N.MANJULA, J.

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To

- 1.The Principal Subordinate Judge,
Krishnagiri.
- 2.The District Munsif Court,
Krishnagiri.

S.A.No.1225 of 2012

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