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SA No. 256 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-04-2025

CORAM

THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

SA No. 256 of 2023

AND

CMP NO. 7728 OF 2023, CMP NO. 1769 OF 2024

1. Kesava Gounder
S/o. Dhanakotti Gounder, Kattu Edaiyar
Village and Post, Ulundurpet Taluk,
Villupuram District

Appellant(s)

Vs

1. Kuppa Gounder
S/o. Narayana Gounder, Kattu Edaiyar
Village and Post, Ulundurpet Taluk,
Villupuram District

Respondent(s)

SA No. 256 of 2023

PRAYER

To set aside the Judgement and Decree dated 27.04.2018 made in AS.No. 104/2017 passed by the Ld Subordinate Court, Ulundurpet reversing the Judgement and Decree dated 16.12.2015 made in OS.No. 225/2006 passed by the Ld 1st Additional District Munsif, Ulundurpet

SA No. 256 of 2023

For Appellant(s): T.Gandhi

For Respondent(s): C.K.C. Dhruva For Sole
Respondent

JUDGEMENT

This Second appeal has been filed to set aside the Judgement and Decree



dated 27.04.2018 made in AS.No. 104/2017 passed by the Subordinate Court, Ulundurpet, reversing the Judgement and Decree dated 16.12.2015 made in OS.No. 225/2006 passed by the 1st Additional District Munsif, Ulundupet

2. The appellant herein is the plaintiff before the Trial Court, who filed the suit for the relief of declaration to declare him as the absolute owner of "A" schedule property with consequential relief that the sale made by him would not bind the minor defendant and he prayed to give direction to the first defendant in respect of alternative relief to allot land in "B" schedule property. The first defendant is his father and the second defendant is his sons.

3. Originally suit property belongs to the first Defendant's father Narayana Gounder, who executed the settlement deed in respect of A schedule property in favour of respondents 2 & 3/defendants 2 & 3, who were minors at that time. First defendant/Father of the second and third defendant was appointed as guardian in respect of A schedule property in which the first defendant's father has no independent right. The plaintiff owned adjacent land nearer to A schedule property. So, there was a proposal to purchase the same. Accordingly, on 06.07.1992, the first defendant sold entire A schedule property to the plaintiff with a term of that if any encumbrance arise in respect of A schedule property, the plaintiff can keep the B schedule property, which absolutely belongs to the first defendant. After purchasing the A Schedule property, the plaintiff possessed and enjoyed the same. But the first defendant' instigated the minor son/third defendant to file a suit challenging the purchase



made by the plaintiff. Hence, the plaintiff filed the present suit.

4. The first defendant contested the suit stating that as per the recitals of the sale deed made by him in favour of the plaintiff that if at any occasions sale in respect of minor's share declared as invalid, he agreed to give security for the sale consideration of Rs.18,000/- paid by the plaintiff. Third defendant contended that as per the settlement deed executed by his Grandfather "A" schedule property absolutely belongs to the 2 and 3 defendants in which he is having half share i.e., 24 cents. But, the first defendant/Father has no right and title. Therefore, the alleged sale made in favour of the plaintiff by the first defendant would not bind him and he filed the counter objection. Hence, he prayed to dismiss the suit.

5. Considering the submissions made by both sides, the Trial Court held that as per the settlement deed/Ex.B1 Narayana Gounder executed said document in favour of 2nd and 3rd defendants, who were minors in the year 1990 hence he appointed first defendant as guardian. But the first defendant sold the property which is covered under settlement deed/Ex.B1 which shown as "A" schedule property herein in favour of the plaintiff and as such it would not bind the second and third defendant. Accordingly, it was declared that purchase made by the plaintiff is not valid in respect of A schedule property but relief granted in respect of 'B' schedule property.

6. Challenging the same, the first defendant preferred A.S No. 104 of



2017 was filed before the Sub Court, Ulundurpet, Villupuram, which independently analysed the oral and documentary evidence, framed separate issues, and finally held that A schedule property was given absolute right to second and third defendant and the first defendant being a lawful guardian has no right to convey the property. Further, another minor son/second defendant had already attained majority, who has not disputed the sale and the third defendant, after attaining majority challenged the said sale. Therefore, in A schedule property, the third defendant is entitled to 24 cents remaining half share belongs to the plaintiff. Accordingly, relief was partly granted in favour of the plaintiff. The first appellate Court also observed that as per the recitals of the sale deeds property stands in the name of the plaintiff, the first defendant who executed the said deed gave a guarantee that in case of any dispute he would give surety of his individual property which is shown as B schedule in sale deed and also mentioned that in case of any dispute in respect of A schedule property the plaintiff is entitled to collect the sale consideration of Rs.18,000/- or equal value of the A schedule property. Therefore, the first appellate Court directed the first defendant to pay a sum of Rs.18,000/- or amount equal to half share of the A schedule property. Accordingly, in the said appeal was the order passed by the Trial Court was partly modified. Challenging the same, the plaintiff has approached this Court.

7. The learned counsel for the appellant/plaintiff submits that



intentionally first defendant sold the property to the plaintiff and on his instigation his minor son/third defendant filed the suit despite he spent huge amount to develop the property. Now, the father and son colluded among themselves causing interference to the plaintiff/appellant. Further, both the Courts below failed to consider the fact that the first defendant is having absolute property to the extent of 65 cents which is shown as B schedule in sale deed. Therefore, if at all any dispute with regard to A schedule the first defendant/vendor is bound to compensate it by giving 44 cents in B schedule property which is absolutely belongs to him. But the Courts below erroneously granted only compensation instead of allotting land property. Therefore, he prayed to allow this appeal.

8. The counsel for the defendants/respondents submit that the first defendant has no right to convey the minor's property and the same was rightly appreciated by the Courts below and to compensate the plaintiff's purchase the first appellate Court rightly gave a direction that the first defendant has to pay the sale consideration or to collect Rs.18,000/-.

9. For the sake of convenience the parties are denoted as per the suit. Considering both sides submissions and on perusal of records, the fact reveals that Narayana Gounder/grand father of the second and third defendants executed registered settlement deed dated 25.07.1990 in respect of 'A' Schedule property in favour of the minor second and third defendants by appointing first



defendant as guardian. Thereafter, the first defendant as guardian of the minor second and third defendants has sold the 'A' Schedule property to the plaintiff with an extent of 44 cents for valid sale consideration of Rs.18,000/- through sale deed dated 06.07.1992,. Ever since, the plaintiff was in possession and enjoyment of 'A' Schedule property. At the instigation of the first defendant, other defendants caused interference to the plaintiff. Hence, the plaintiff filed the present suit for declaration and also contend that at the time of the execution of sale deed first defendant/father of the minor second and third defendants assured that if any dispute arose in future in respect of 'A' schedule property, he agreed to give 'B' schedule property as surety. If at all he was not gained any right in 'A' Schedule property, he demanded 48 cents in 'B' schedule property which was belongs to the first defendant with declaratory relief and also handover the possession of the same in respect of 'B' schedule property.

10. On perusal of the settlement deed dated 25.07.1990, it reveals that the grandfather of the second and third defendants settled his property in favour of his minor grand sons/second and third defendants by appointing first defendant as guardian. The property found in settlement deed is 'A' schedule property is the present suit. On 06.07.1992, the first defendant as a guardian of the minor second and third defendants sold 'A' schedule property in favour of the plaintiff for valid consideration of Rs.18,000/-, through sale deed/Ex.A1, wherein it is stated the for the welfare of the minor child he want to sell the property and the



first defendant assured that if any encumbrance or dispute arose in respect of 'A' schedule property in future, he agreed to give 'B' schedule property as security. 'B' Schedule property is forming part of suit property in O.S No. 69 of 2006, on the file of I Additional District Munsif Court, Ulundurpet. While pending suit there was partition suit between the defendants in OS No. 69 of 2006 in that suit Kuppa Gounder/first defendant herein is plaintiff, who allotted with 86 cents in S.No. 209/1 i.e. 'B' Schedule property herein, but in the present suit eldest son/second defendant herein has not contested the case which also reveals that immediately 3 years from the date of attaining majority he has not filed any suit challenging the sale deed made by his father/first defendant in favour of the plaintiff herein but the third defendant filed the suit within 3 years from the date of attaining majority, therefore, the Trial Court has rightly given half share in 'A' schedule property by accepting his counter claim so also first appellate court has accepted the same. As per sale deed dated 06.07.1992 the plaintiff has purchased 48 cents in S. No. 195/1 in 'A' Schedule property. In respect of 'A' schedule property plaintiff is entitled to half share as the second defendant not contested the case in time. Therefore with regard to 24 cents in 'A' schedule property the sale deed is sustainable one. In respect of remaining 24 cents in 'A' Schedule property purchased by the plaintiff was denied by the defendants. But admittedly, the first defendant knowingly sold the property to the plaintiff and received sale consideration near about 28 years back. Now, at the instigation of his son he disputed the sale deed dated 06.07.1992. But as per



the recitals in sale deed dated 06.07.1992, the first defendant gave surety that if any encumbrance caused in future in respect of 'A' schedule property, he assured to give 'B' schedule property. Now, the encumbrance has caused by the defendants, therefore, as per recitals is sale deed dated 06.07.1992 24 cents 'B' schedule property i.e., S.No. 209/1 is ordered to be given to the plaintiff. But the first appellate Court has erroneously not appreciated the recitals of sale deed dated 06.07.1992, wherein the plaintiff was made to the plaintiff to purchase the property long back in the year of 1992, now at the instigation of his son the claimant caused interference, therefore, the plaintiff filed the present suit. Hence, the plaintiff is entitled to get share in the 'B' schedule property since it was assured by the first defendant at the time of selling the minor defendants property. This Second Appeal is allowed, Suit decreed in respect of 24 cents in 'A' Schedule property and remaining 24 cents in 'A' schedule property belongs to third defendant. The plaintiff is permitted to continue the possession of 24 cents in S.No. 195/1 in 'A' schedule property. As per the sale deed dated 06.07.1992 the plaintiff has purchased 48 cents out of which 24 cents allotted in 'A' Schedule property and remaining 24 cents allotted in S.No. 209/1 'B' schedule property, out of 1.15 acres, 24 cents allotted to the plaintiff which is forming part of 'B' schedule property to that effect relief of declaration and handing over the possession was permitted. It is pertinent to mention here that in 'B' schedule property out of 1.15 acres the plaintiff is allotted with 24 cents. Further, the first defendant is directed to execute the sale deed in favour of the



plaintiff for an extent of 24 cents in B schedule property failing which, the plaintiff entitled to register the decree to that effect.

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11. Accordingly, this Second appeal is allowed. The findings of the first appellate Court is modified. The first defendant is directed to execute the sale deed in favour of the plaintiff in respect of 24 cents in S.No. 209/1 in 'B' schedule property, within a period of two months from the date of receipt of copy of this judgement. Suit is partly decreed, 24 cents allotted in 'A' schedule and 24 cents allotted in S.No. 209/1. No Costs. Pending miscellaneous petition(s), if any, is/are closed.

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T.V.THAMILSELVI J.
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- To
1. The 1st Additional District Munsif, Ulundurpet
 2. The Subordinate Court, Ulundurpet.
 3. The Section Officer, V.R. Section,
High Court, Madras.

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