

Natarajan Vs. V.Chinnasami

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Court : Chennai

Decided On : Jul-22-2013

Judge : R.S.Ramanathan

Appellant : Natarajan

Respondent : V.Chinnasami

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATE:

22. 7.2013 CORAM THE HON'BLE MR.JUSTICE R.S.RAMANATHAN A.S. No.1006 of 1990 1. Natarajan (Deceased) 2. Shanthadevi 3. Jayanthi (Appellants 2, 3 and R6 are brought on record as LRs of the deceased sole appellant vide order dated 7.1.2010 in C.M.P.Nos.1973 to 1975 of 2008) .. Appellants Vs.

1. V.Chinnasami 2. Sutharathnam 3. Maragatham (Deceased) 4. Manimekalai 5. Periyasami Naidu 6. N.Suganthi 7. V.Janakarajan 8. J.Murali 9. J.Sumathra (RR7to 9 are brought on record as LRs of the deceased R3 vide order dated 4.6.2013 in CMP No.604/2010) .. Respondents Appeal against the judgment and decree dated 18.11.1988 made in O.S.No.69 of 1985 on the file of the Subordinate Judge, Ariyalur. For appellant : Mr.R.Thiyagarajan, Senior Counsel for Mr.K.Kuppusamy For RR1 & 3 to 5 : Mr.S.V.Jayaraman, Senior Counsel for Mr.S.Gopalaratnam For R2 : Mr.M.Sriram For R6 : Mr.Mukund R.Pandian For RR7 to 9 : Mr.Chandramouli

JUDGMENT

The plaintiff in O.S.No.69 of 1985 on the file of the Sub Court Ariyalur is the appellant. The plaintiff filed the suit for partition and the same was dismissed and aggrieved by the same, this appeal is filed by the plaintiff.

2. The plaintiff died and his legal representatives were also brought on record. The case of the plaintiff as seen from the plaint is as follows:- The first defendant is the father and the plaintiff and defendants 2 to 4 are his children and the fifth defendant is the lessor. Item 1 of the suit properties is ancestral properties and items 3, 4 and 5 were purchased out of the income from the ancestral property and the first defendant was heavily indebted and therefore, to save the properties from the clutches of creditors, a document was executed on 26.6.1957 in respect of items 1, 2, 6 and 7 in favour of one Chellammal who was the junior mother-in-law of the first defendant and at that time, Chellammal was living with the first defendant and thereafter, the said Chellammal executed a gift deed in respect of those properties in favour of the first defendant on 1.7.1962 and that would also prove that the earlier sale deed dated 26.6.1957 executed by the first defendant in favour of Chellammal was a sham and nominal document. The other items of properties were purchased from the income from items 1, 2, 6 and 7 and therefore, all those properties are joint family properties and plaintiffs and defendants 1 and 2 executed mortgages in respect of those properties and the first defendant was only a Manager of the joint family consisting of plaintiffs and defendants 2 to 4. Nevertheless, the first defendant sold the suit properties to the third defendant and thereafter, the third defendant sold the property to the fourth defendant and the first defendant also sold some properties to the fourth defendant and those sale deeds are not binding and as the son of the joint family, the plaintiff is entitled to 1/3 share in the suit properties and therefore, filed the suit for partition.

3. The first defendant filed statement stating that items 1, 2, 6 and 7 were sold to Chellammal for a valid sale consideration and that sale deed is binding on the plaintiff and it was not executed to cheat the creditors and after the sale of items 1, 2, 6 and 7, there was no ancestral properties and on 1.7.1962, Chellammal executed a gift deed in respect of those properties to the first defendant and

therefore, items 1, 2 6 and 7 became separate properties of the first defendant and the plaintiff cannot claim any share in those properties and other properties were purchased from the income of the first defendant and all those properties were the properties of the first defendant and he has got every right to sell the properties and those sale deeds cannot be questioned. The plaintiff cannot have any share in those properties.

4. Defendants 3 to 5 adopted the statement filed by the first defendant.

5. The second defendant filed statement stating that the suit properties are the joint family properties of the plaintiff and defendants 1 and 2 and the sale in favour of defendants 3 and 4 are not binding the second defendant and the second defendant is also entitled to 1/3 share with the plaintiff.

6. The first defendant also filed an additional statement stating that the suit properties are his separate properties and they are not the joint family properties.

7. On the basis of the above pleadings, the following issues were framed:- "1. Whether the suit properties are liable to be partitioned?

2. Whether the plaintiff was ousted from the enjoyment of the suit properties?.

3. Whether the plaintiff is entitled to mesne profit?.

4. Whether the sale by the first defendant in favour of defendants 3 and 4 can be questioned by the plaintiff.

5. To what relief, the plaintiff is entitled?."

8. The additional issue framed is as follows:- ".Whether the properties are the Hindu Joint family properties and whether the plaintiff is entitled to a share?."

9. The plaintiff examined himself as PW1 and the first defendant examined himself as DW2 and the second defendant examined himself as DW1. On the side of the plaintiff, 15 exhibits were marked and on the side of the defendants, 7 exhibits were marked.

10. The Trial Court tried issue No.1 and additional issue No.1 and held that the suit properties are separate properties of the first defendant and the plaintiff and the second defendant cannot have any claim over the said properties and the sale in favour of Chellammal by the first defendant is a valid one. Issues 2 and 3 were decided as unnecessary as issue No.1 and additional issue No.1 were decided holding that the properties are the separate properties of the first defendant. Issue No.3 was also held against the plaintiff holding that the plaintiff was not entitled to mesne profits as he had no right over the properties. Issue No.4 was also answered against the plaintiff holding that the sale in favour of defendants 3 and 4 were valid and that cannot be challenged by the plaintiff and in the result, the suit was dismissed. Aggrieved by the judgment and decree, this appeal is filed.

11. It is submitted by the learned Senior Counsel Mr.R.Thiyagarajan that the Trial Court, without properly appreciating Exs.A3 and A4, erred in holding that the suit properties are the separate properties of the first defendant. The learned Senior Counsel further submitted that the Trial Court, having found that items 1, 2, 6 and 7 were ancestral properties in the hands of the first defendant, ought to have held that the sale by the first defendant under Ex.A3 to Chellammal was not binding on the plaintiff and the second defendant as the first defendant had no right to sell the joint family properties without the consent of the plaintiff and the second defendant and the sale in favour of Chellammal under Ex.A3 was only a sham and nominal document and that was also proved by execution of Ex.A4 by Chellammal in favour of the first defendant and therefore, the court ought to have decreed the suit as prayed for. The learned Senior counsel further submitted that it is the specific case of the plaintiff that Chellammal was a widow depending upon the first defendant and she also admitted the same in Ex.A4 wherein she has admitted that she was depending upon the family of the first defendant for the livelihood and she was not having any means to purchase the property and the property was sold under Ex.A3 to Chellammal only to save the properties from the clutches of the creditors and that was the reason to re-convey the property after five years by way of settlement and therefore, the findings of the court below that the sale in favour of Chellammal was valid and binding on the plaintiff, was erroneous and is liable to be set aside. The learned Senior Counsel further submitted that once Ex.A3 was held to be a sham and nominal document, no title passes to the said Chellammal

and the property continues to be the property of the joint family of the plaintiff and defendants 1 and 2 and therefore, the plaintiff is entitled to claim share in that property.

12. On the basis of the above submission, the following point for consideration arises in this appeal:- ".Whether the suit properties are joint family properties of the plaintiff and defendants 1 and 2?".

13. Admittedly, one Vridhachala Reddiar was the owner of items 1, 2, 6 and 7 of the suit properties and his son was Chinnasamy Reddiar, the first defendant and Chinnasamy Reddiar had four children viz., the plaintiff and the second defendant were his sons and defendants 3 and 4 were his daughters. There is no dispute regarding the character of items 1, 2, 6 and 7 and the Trial Court also found that items 1, 2, 6 and 7 were the joint family properties. Therefore, we will have to see whether the sale in favour of Chellammal under Ex.A3 by Chinnasamy Reddiar was a sham and nominal document as contended by the plaintiff or it was for the necessity to discharge the mortgage. It is seen from para 4 of the plaint that the first defendant was heavily indebted and to save from the clutches of the creditors, a sham and nominal document was executed in favour of Chellammal. Therefore, the plaintiff admitted that the first defendant was heavily indebted. Under Ex.A3, items 1, 2, 6 and 7 were sold to Chellammal. It is seen from Ex.A3 that the property was sold for discharging the agricultural loan and pronote loan. Therefore, the sale in favour of Chellammal was for discharging the earlier loan incurred by the first defendant and the first defendant as the kartha of the joint family was entitled to sell the properties to discharge the earlier loans incurred by him and it was not the case of the plaintiff that the first defendant incurred loans for immoral purposes. Therefore, any sale deed to discharge the earlier loans by the kartha of the joint family is binding on the joint family properties.

14. Further, it was contended by the learned Senior Counsel for the appellant that Chellammal was not having any means to pay the sale consideration and she was living at the mercy of the plaintiff and defendants 1 and 2 and therefore, the recitals of consideration stated in Ex.A3 were not proved. The arguments of the learned Senior Counsel cannot be accepted having regard to the evidence of

PW1. PW1, in his evidence, admitted that Chellammal was having properties in the village where she was borne and she sold her properties in the year 1962. He further admitted that Chellammal was living with his family from 1962 onwards. Therefore, as per the evidence of PW1, Chellammal was living separately in the year 1957 and she started living under the roof of the first defendant from 1962 and therefore, there was no necessity for executing a sham and nominal document in favour of Chellammal in the year 1957 and Chellammal was having sufficient means to pay the sale consideration as per the evidence of PW1. In this aspect, the Trial Court has rightly held that under Ex.A3, Chellammal got title in respect of items 1, 2, 6 and 7. Therefore, she could have executed the gift deed in favour of the first defendant and the first defendant became the absolute owner of the suit properties.

15. Ex.A4 is the gift deed. It has been made clear in the gift deed that the first defendant was going to take care Chellammal for the rest of of her life. The first defendant also happened to be her so-in-law and therefore, out of love and affection, she executed the gift deed in favour of the first defendant. I do not find any unnatural thing in the execution of Ex.A4 by Chellammal in favour of the first defendant as admittedly, Chellammal came to the family of the first defendant in the year 1962 and having realised that she has to live with them, she executed the settlement deed in favour of the first defendant.

16. Once Chellammal was held to be the owner of the property and she executed the settlement deed in favour of the first defendant, the first defendant became the absolute owner of the properties viz., items 1, 2, 6 and 7 and thereafter, from the income from those properties, he purchased the other properties and those properties cannot be characterized as joint family properties and he has got every right to sell those properties in favour of any person. Considering all these aspects, the court below has rightly held that the plaintiff cannot challenge the sale by the first defendant and the plaintiff cannot claim any share. I do not find any infirmity in the findings of the Trial Court. In the result, the appeal is dismissed. No costs. ssk. To The Subordinate Judge Ariyalur