

Elango Vs. Poongodi and ors.

Elango Vs. Poongodi and ors.

SooperKanoon Citation : sooperkanoon.com/824343

Court : Chennai

Decided On : Nov-03-2000

Reported in : (2001)1MLJ254

Appellant : Elango

Respondent : Poongodi and ors.

Judgement :

M. Karpagavinayagam, J.

1. Elango, the appellant herein, is the defendant in the suit.
2. The respondents/plaintiffs filed a suit against the appellant for the relief of declaration of title and permanent injunction in respect of the suit property of an extent of 15 cents challenging the exchange deed dated 23.12.1988 executed by the plaintiffs, mother and brother in favour of the appellant/defendant. The trial court dismissed the suit. However, the lower appellate court, in the appeal filed by the plaintiffs, set aside the decree of the trial court and allowed the appeal, thereby decreed the suit. Hence, this second appeal by the defendant.
3. According to the plaintiffs, the suit property belonged to their father Ponna Padayachi by virtue of the sale deed executed by one Amavasai Gounder on 15.12.1980. After the death of Ponna Padayachi, the plaintiffs and their mother and brother were the legal heirs. They had been in possession of the suit property.

In the year 1988, the defendant misrepresented to their mother and brother and under the guise of executing as sale deed, got an exchange deed executed by them on their behalf and on behalf of the minors. The said exchange deed is invalid in law, since the first plaintiff is not a party to the document and the said document is not binding on the plaintiffs 2 and 3.

4. On the other hand, it is the case of the defendant/appellant that Ex.A-5 exchange deed is perfectly valid in law, as the same had been executed by the plaintiffs mother and brother being the natural guardian and the karta of the family respectively. The first plaintiff had already relinquished her right in respect of the property as she was given enough dowry at the time of her marriage. The exchange deed was executed by their mother and brother for the purpose of beneficially enjoying the property situate around their property. In the said document, the first plaintiff's husband himself had signed as an attesor. Both the mother and the brother had executed sale deeds in respect of an adjacent property on behalf of the minors to various other parties. Without challenging the said documents, the plaintiffs have come forward to challenge the exchange deed alone and the same would show that they have come to the court with an ulterior motive.

5. The trial court framed necessary issues and proceeded with the trial. The first plaintiff examined herself as P.W.1 and Exs.A-1 to A-5 were marked on behalf of the defendant, two witnesses were examined, P.W.7 is the defendant and on his behalf Exs.B-1 to B-6 were marked. The trial court, on consideration of the evidence oral and documentary concluded that the plaintiffs/respondents would not be entitled to the relief sought for and dismissed the suit.

6. Aggrieved by the same, the plaintiffs filed an appeal before the lower appellate court which in turn allowed the appeal and decreed the suit filed by the plaintiffs holding that Ex.A-5 exchange deed is not valid in law on the ground that no prior permission was obtained from the competent court as contemplated under Section 8. of the Hindu Minority and Guardianship Act.

7. Mr. Valliappan, the counsel for the appellant, would argue at length.

8. The following are the substantial questions of law mentioned in the grounds of appeal:

(i) When admittedly the suit property is a family property and when the brother of the plaintiffs who is the karta of the family and mother of the plaintiffs who is the natural guardian of the plaintiffs had jointly executed Ex.A-5 Exchange Deed to the benefit of the family, whether the lower appellate court is right in law in invoking Section 8 of the Hindu Minority and Guardianship Act, invalidating Ex.A-5 Exchange Deed?

(ii) When the appellant is in possession of the suit property by virtue of Ex.A-5 Exchange Deed, whether the lower appellate court is right in law in granting the relief of permanent injunction against him?

9. In elaboration of these substantial questions of law, the learned Counsel for the appellant would submit that the well considered judgment of the trial court dismissing the suit has been disturbed by the lower appellate court without any valid reason and that the lower appellate court has misapplied the law to the present facts of the case, as Section 8 of the Hindu Minority and Guardianship Act has no application inasmuch as the exchange deed had been executed by the natural guardian and the karta of the family, for the benefits of the minors.

10. On this aspect, the learned Counsel for the respondents/plaintiffs made his submission justifying the conclusion of the lower appellate court.

11. While considering the respective pleas and having given my anxious consideration to the judgments of both the courts below, this Court is called upon to deal with the main question as to whether Ex.A-5 exchange deed is a valid one in the light of the restriction imposed under Section 8 of the Hindu Minority and Guardianship Act.

12. According to the plaintiffs, after the death of their father, they got share in the suit property and as such, their mother and brother cannot alienate the property to the third party ignoring their rights that too, without obtaining permission from the competent court under Section 8 of the Act.

13. According to the defendant, the first plaintiff, at the time of marriage relinquished her right in favour of the co-sharers as she was given sufficient amount of dowry and since the suit property was given in exchange to the defendant who, in turn, settled his property in favour of the plaintiffs mother and brother which is situate adjacent to their other property for their better enjoyment, Section 8 of the Act would not apply.

14. This Court incidentally would also take note of the following three important facts:

(1) Admittedly, the plaintiffs mother and brother had made alienation not only in respect of this property through exchange deed in favour of the appellant, but also sold some of the other properties to third parties. Those sale deeds were not challenged. In other words, instead of claiming partition of the properties through a suit for partition against the co-sharers, the plaintiffs have filed the suit only against the defendant in respect of the suit property alone.

(2) The exchange deed was executed on 23.12.1988 and the sale deed was registered on 6.7.1989. Admittedly, the first plaintiff's husband put signature in the said exchange deed attesting as a witness.

(3) P.W.1 would admit in her deposition that both her mother and brother had come to the court accompanying her.

15. These factors would indicate that Ex.A-5 exchange deed in favour of the defendant was executed by the plaintiffs mother and brother with the knowledge and consent of the plaintiffs family and after registration, the plaintiffs have been set up to file the suit against the defendant for some other motive.

16. Whatever it is, as stated above, we are now concerned with the question as to whether the exchange deed Ex.A-5 is valid or not in the light of the embargo put under Section 8 of the Act.

17. While dealing with the above question, it would be worthwhile to refer to the judgments cited by the counsel for the appellant wherein the principles in relating to the invoking of Section 8 of the Act have been laid down.

(1) Gangoji Rao v. H.K. Channappa A.I.R. 1983 Karn. 222; (2) Nathni Mishra v. Mahesh Misra : AIR1963 Pat146 ; (3) Sunamani Dei v. Babaji Das : AIR1974 Ori184 ; (4) Girdhar Singh v. Anand Singh A.I.R. 1982 Raj. 279; (5) Subramaniam v. K. Gounder : AIR1972 Mad377 ; (6) Sugga Bai v. Smt. Hiralal : AIR 1969 MP32 ; (7) Markandey v. Badan Singh A.I.R. 1988 All. 568; (8)Krishnakant, In re. : AIR1961 Guj68 .

18. The settled principles given in these decisions could be summarised as follows:

(i) Under the Hindu Law a Manager and karta of a joint family can alienate joint family property so as to bind the interest of minor coparceners in such property provided that the alienation is either for legal necessity or for the benefit of the estate.

(ii) The restrictions contained in Section 8 do not apply in respect of the undivided interest of a minor in joint family property and Section 8 does not debar a manager and karta of a joint family from alienating joint family property without obtaining the previous permission of the court even if the manager and karta happens to be the natural guardian in respect of the separate property of any one or more of the minor coparceners.

(iii) Section 8 of the Act does not apply to the joint interest of a minor in a family property which the manager is competent to dispose of under the general provisions of the Hindu Law, namely, for the benefit of the minor or for family need, etc.

(iv) The intention of the legislature in dealing with the powers of the natural guardian in Section 8 is not to fetter his powers in the matter of dealing with the joint family property including the undivided share of the minor in such property.

(v) When the minor and his mother constitute a Hindu joint family, each with a moiety of undivided interest in any immoveable property belonging to the family, in the absence of the father, the mother as natural guardian, can alienate even the minor's half share in the immoveable property under the personal laws. Section 8

of the Hindu Minority and Guardianship Act will not apply to such alienation.

(vi) In the absence of the father, the mother could manage the joint family property including the interest of the minors in such property. Section 12 does not empower appointment of a court guardian, the mother managing the family property being a natural guardian. Section 11 of the Act is not attracted and therefore, she can validly alienate the property including the minor's interest in it for family necessity or benefit without obtaining permission of the court.

19. These principles as laid down by various courts including the Apex Court would clearly indicate that Section 8 of the Act has no application when there is an alienation of the joint family property by the natural guardian for family benefit or for the benefit of the minor.

20. In the instant case, not only the mother, the natural guardian, but also the brother, the karta of the family had executed the exchange deed in favour of the defendant, the recital of Ex.A-5 exchange deed would show that it was executed for the beneficial enjoyment of the other properties by the plaintiffs mother and brother and their family. The suit property had been settled by way of exchange deed in favour of the defendant, who in turn, settled his property in favour of the plaintiffs mother and brother. There is no dispute in the fact that the property, which was settled in favour of the plaintiffs mother and brother is adjacent to the other property held by them. Similarly, the suit property is situate on the road side along with the other property belong to the defendant. Thus, it is clear that the alienation, namely, the exchange deed was made only for the benefit of the joint family.

21. From what is stated above, it is clear that Section 8 of the Act would not apply to the present case and consequently, it has to be held that the lower appellate court has misconstrued the relevant provision of the Hindu Minority and Guardianship Act and rendered the judgment ignoring the imperative legal principles and setting side the well reasoned judgment of the trial court. Therefore, the judgment and decree of the lower appellate court are set aside. Resultantly, the judgment and decree passed by the trial court dismissing the suit are restored.

22. In the result, the second appeal is allowed with costs. Consequently, C.M.P.No. 13878 of 1999 is closed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com