
(2003) 03 MAD CK 0131
In the Madras High Court
Case No : SA. No. 2052 of 1989

Alamelu Ammal and E.G. Durairajan

APPELLANT

Vs

Govindasamy Naicker

RESPONDENT

Date of Decision : 13-03-2003

Acts Referred:

Transfer of Property Act, 1882 — Section 43, 44

Citation : (2003) 2 MLJ 99

Hon'ble Judges : K. Gnanaprakasam, J

Bench : Single Bench

Advocate : C.R. Rukmani, for the Appellant; T.V. Ramanujam, SC for T.V. Krishnamohan, for the Respondent

Final Decision : Allowed

Judgement

K. Gnanaprakasam, J.—The 1st appellant is the plaintiff and the 2nd appellant was ordered to be impleaded.

2. The plaintiff's suit is one for declaration and for permanent injunction. The plaintiff's case is that the suit property originally belonged to the plaintiff's father, Natesa Pillai, who had three daughters, viz. (1) Ponnammal, (2) Visalakshi and (3) Alamelu, the plaintiff herein. Natesa Pillai died in 1976. The plaintiff and her eldest sister Visalakshi partitioned the properties, left by Natesa Pillai, as per the compromise decree passed in OS. No. 41 of 1976, on the file of the Sub Court, Chingleput, where under, the properties are divided as follows:-

S.No Survey No. Visalakshi Plaintiff 1 S. No. 226/2 0.50 Cents out of 1 acre 89 cents 1.39 acres 2 S. No. 226/2 Well & 3 HP Motor, Pumpset and Service connection 1/3rd 2/3rd 3 S. No. 239/3 0--46 cents out of 0--92 cents 0--46 cent 4 S. No. 239/4 0--33 cents out of 0--66 cents 0--33 cents

Natesa Pillai's eldest daughter Ponnammal and her son Radhakrishnan were residing away from the suit Village and during the life time of Natesa Pillai, on their insistence, cash representing her 1/3rd share in the properties was given to

her about 25 years back and therefore, Ponnammal and her son Radhakrishnan had no right in those properties. Ponnammal died thereafter. Visalakshi and the plaintiff had sold 1 acre 58 cents in S. No. 239/3 and S. No. 239/4 to Pattammal, under the sale deed dated 25.3.1977 and the said sale deed was attested by Radhakrishnan, son of Ponnammal, with the knowledge of the contents thereof. The purchaser has been in possession and enjoyment of the same. Visalakshi sold 50 cents, which she got in S. NO. 226/2, to the defendant under the sale deed, dated 5.5.1980, but had retained her 1/3rd share in the well, 3 HP Motor and pumpset and service connection. The said 50 cents form south eastern corner of 1 acre 89 cents in S. No. 226/2 and the suit land is the remaining land in the said survey number. The defendant proclaimed that he had recently purchased 50 cents in the suit property from R. Radhakrishnan, son of Ponnammal. According to the plaintiff, the sale is not valid and binding upon her. The defendant is estopped from denying the title of the plaintiff, since he has already purchased the property from Visalakshi, admitting the partition between her and the plaintiff . Radhakrishnan is also estopped from claiming any interest in the suit property, since he was aware of the partition between Visalakshi and the plaintiff at all relevant times and he also admitted the same, by his attestation of the sale deed by Visalakshi and the plaintiff to Pattammal on 20.9.1983. As there was a threat to trespass, the plaintiff filed the suit.

3. The defendant, in his written statement, denied the plaintiff's title to the suit property. 50 cents of land, which was the subject matter of the compromise decree in OS. No. 41/1976, on the file of the Sub Court, Chingleput, has nothing to do with the 50 cents of land purchased by him from Radhakrishnan on 3.9.1989, as he is the son of Ponnammal, one of the daughters of Natesa Pillai, who had 1/3rd share in the property. As such, the sale in favour of the defendant is true and valid and also binding upon the plaintiff. He also claims possession of the property purchased by him. It is stated that the plaintiff is estopped from denying the title of the defendant, as the entire extent of 1 acre 89 cents after division has been enjoyed by each sharers separately with respect to their shares. The payment of cash equivalent to 1/3rd share to Ponnammal and to her son Radhakrishnan by Natesa Pillai is denied. The defendant is not aware of the sale by the plaintiff and Visalakshi to Pattammal. Attestation made by Radhakrishnan in the said sale deed cannot be used against him as an estoppel, as the plaintiff has to prove that Radhakrishnan attested the document, knowing the contents of the same. It is further stated that after the death of Natesa Pillai, the lands in S. No. 226/2 was divided into 3 equal shares among three daughters and the averments contra are denied.

4. On the above said pleadings, the trial court framed necessary issues and the plaintiff examined herself as PW.1 and also examined one more witness and marked Exs.A1 to A11. The defendant examined himself as DW.1 and also examined one more witness and marked Exs.B1 to B11.

5. The trial court, after taking into consideration all the aspects of the case,

accepted the case of the plaintiff and decreed the suit. On appeal by the defendant in AS. No. 58/1989, before the District Court, Chingleput, the lower appellate court allowed the appeal. Aggrieved by the same, the plaintiff" has preferred this appeal.

6. I have heard the learned advocate for the appellant and the respondent and both of them have strenuously argued about their respective claims and the plaintiff claims estoppel against the defendant and the same was very much denied and disputed by the defendant.

7. Natesa Pillai had 3 daughters and also left certain properties. According to the plaintiff, after the death of Natesa Pillai, she and Visalakshi filed a suit in OS. No. 41/1976, before the Sub Court, Chingleput, which ended in passing a compromise decree, in which the suit property was allotted to the plaintiff. It is their case that Ponnammal was given cash equivalent to 1/3rd share in the properties during the life time of Natesa Pillai and therefore, Ponnammal and her son Radhakrishnan had no right in the properties left by Natesa Pillai and because of that, Ponnammal was not made as a party to the partition suit.

8. The defendant denies the payment of cash equivalent to 1/3rd share said to have been paid to Ponnammal by her father during his life time and further contends that the suit for partition between Alamelu Ammal and Visalakshi in exclusion of Ponnammal is not valid and not binding upon them. They also contend that Radhakrishnan is not estopped from claiming his share in the property of his grand father Natesa Pillai and he is not estopped from making such a claim, just because, he has signed the sale deed (Ex.A11) executed by Alamelu Ammal and Visalakshi in favour of Pattammal. According to the defendant, Radhakrishnan was not an attesting witness to Ex.A11 and he was only a confirming party of that transaction only and as such, there is no estoppel against him from claiming his mother's share in the property of Natesa Pillai.

9. The entire case rests on Ex.A11, wherein Radhakrishnan has joined in the execution of the sale deed as a co-vendor and it is the case of the plaintiff that as he joined in the execution of the sale deed, would amount to have had full knowledge about the earlier partition suit, in which, his mother was not a party and by joining in the execution of Ex.A11, he is estopped from questioning the decree passed in the earlier suit and also the properties allotted to the respective shares in the said suit. But, however, it is the contention of the defendant that Radhakrishnan was not at all an attesting witness to Ex.A11 and as he was having a share in the property, he was requested to join in the execution and he was also paid amount towards his share in the said property and therefore, he was only a co-executant of the sale and not an at testator.

10. Everything depends upon the appreciation of Ex.A11, the sale deed made by Alamelu Ammal and Visalakshi in favour of Pattammal. This appeal was admitted on the following substantial questions of law:-

i. Whether the first appellate court was wrong in law in not applying the principle

of estoppel to the defendant's vendor Radhakrishnan who attested and approved the document, Ex.A11, and who was silent to all the transactions made by the plaintiff and her sister, Visalakshi, in pursuance of the compromise decree effected in OS. No. 41/1976?

ii. Whether the first appellate court was wrong in law in not applying the principle of estoppel to the defendant also who had knowledge about the partition decree and the respective shares enjoyed by the plaintiff and her sister, Visalakshi when he purchased 50 cents in the suit survey number from the plaintiff's sister under Ex.B10?

11. With the above said back drop, now we have to consider, whether the principle of estoppel would be applicable to Radhakrishnan, as he has signed Ex.A11?

12. It is the contention of the learned advocate for the appellant that Ex.A11, sale deed dated 25.3.1977 executed by Visalakshi and Alamelu Ammal in favour of Pattammal, in which Radhakrishnan joined as an attesting witness. It is also pointed out that Ex.A11 was prepared to be executed initially only by two persons, viz. Visalakshi and Alamelu and the same is evident from para 2 of Ex.A11, wherein it recites, "... Fkhurhkpg;gps;is ghh;ahs; fhrp tprhyhl;rpak;khs; (1) ////////// njtuh\$d; ghh;ahs; mynkyk;khs; (2). Mfpa eh";fs; ,UtUk; vGjpf;bflLj;j mad;g[d;bra; epyk; Rj;jtpf;fpwag;gj;jpuk;". Though Radhakrishnan was subsequently joined along with them in the execution of the sale deed, his name was not included in the place of vendors in para 2 of Ex.A11. It is also pointed out that the purpose of Radhakrishnan joining in the execution of Ex.A11 is set forth at para 5 of Ex.A11, wherein it is stated, ",f;fpwaj;ij xg;g[bfhsSk; tifapy; fhl;Lf;fhuiz ,uh\$khzpf;fk; gps;is Fkhh; R.uhjhfpuC;&z d; ifbahg;gk; bra;fpwhh;". That shows Radhakrishnan was familiar with the recitals in Ex.A11, in which, the vendors have stated that they got the properties as per the decree in OS. No. 41/1976 of Sub Court, Chingleput and Radhakrishnan, after having had knowledge about the said suit, had not chosen to challenge or set aside the decree or order in the said suit. But, he has submitted himself to the said decree and joined as a co-executant in Ex.A11, wherein it is clearly stated that he has joined in token of having accepted the sale. It is therefore argued on behalf of the plaintiff that Radhakrishnan had full knowledge about the earlier suit, in which his mother was not a party and no property was allotted to his mother, in view of the fact that cash equivalent to her 1/3rd share was given by her father Natesa Pillai and therefore, he is estopped from claiming any right in the property of his grand father and that therefore, the sale made in favour of the defendant is not valid and binding upon the plaintiff.

13. On the contrary, Mr. T.V. Ramanujam, learned senior advocate representing the respondent/defendant would submit that it is a misnomer to consider that Radhakrishnan was an attesting witnesses to Ex.A11, but, whereas his share in the property was recognised and only in the said circumstances, he was made to join in the sale deed as a co-executant and he was also paid Rs.500/- towards

his share. It is further contended that mere attestation does not amount to an estoppel. Attestation does not fix an attesting witness with knowledge of the contents of the document. Attestation does not of itself imply consent, though there may be circumstances which show that the attesting witness had knowledge of the contents of the document he attested and consented to. As such, an attesting witness is not estopped by his mere signature unless it could be established by independent evidence that to the signature was attached the express condition that it was intended to convey some thing more than a mere witnessing to the execution and was meant as involving consent to the transaction.

14. In Banwari Lal and Others Vs. Sukhdarshan Dayal, : it was held in,

"7., a particular plot of land bearing No. 19 was reserved for being used in common use as Dharmshala, but, none of the sale deeds on record contains a stipulation that plot No. 19 would be reserved for common use as a Dharmshala. For the matter of that, no reservation is made in any of the sale deeds as regards the use to which the plot may be put." In that case, the plea of estoppel was taken and accepted by the first two courts. But, it was held in para 8 that, "Evidence regarding the representation is vague and true facts were known to those who purchased the sub plots after plot No. 19 was sold to Manohari Devi in 1946. Besides, estoppel is but a rule of evidence and except in cases like those u/s 43 of the Transfer of Property Act, when a grant is fed by estoppel, the rule does not operate to create interest in property regarding which the representation is made."

15. Section 43 of the Transfer of Property Act deals with "Transfer by unauthorised person, who subsequently acquires interest in property" and it states, "Where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists. Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the same option."

16. It is the contention of the learned advocate for the respondent/defendant that mere Radhakrishnan joining in the execution of Ex.A11 would not amount to estoppel of his right in the property.

17. Reliance is also placed upon the case of Ramaswamy Gounder, Chinnasami Gounder alias Chinna Gounder Vs. Anantapadmanabha Iyer 1971 I MLJ 392 wherein it was held that "where a person, having a tangible interest in the property affected by a deed, attests that deed, his attestation should be taken as proof of his consent to and knowledge of the correctness of the recitals in the deed. Therefore, in the facts and circumstances of the case, A and R were estopped from contending that M had only a life interest and did not have an

absolute interest in the property in question and consequently, the plaintiff as the successor in interest of A and R, is also estopped from putting forward that contention."

18. A Division Bench of this court in the case of Kanakavalli Ammal Vs. Ulaganatha Pillai and another 1977 TNLJ 174 has observed, "It is an accepted principle of law that mere attestation of a document would not by itself impute knowledge of the contents or the recitals therein. But this principle cannot be taken to be axiomatically true, for there are attestations and attestations and they vary in accordance with the circumstances and facts of each case. If in a given case the attestation by a person interested in the property which is dealt with under the challenged document attests it under circumstances and events which would impute knowledge of the recitals therein, then the said attestor having approbated the document and the transaction by such an active participation and involvement, cannot reprobate later to suit her or his convenience."

19. In Kannappan Vs. Pargunan and 9 others, : this court relied upon the case of Banwari Lal and Others Vs. Sukhdarshan Dayal, : referred supra, wherein it was held, "Only ground on which title could be obtained under the principle of estoppel is u/s 43 of the Transfer of Property Act."

20. Now let us consider the position of Radhakrishnan, who joined as co-executant in Ex.A11 would or would not amount to estoppel.

21. It is in evidence that Radhakrishnan is a "karnam" and he had himself written several documents. In Ex.A11, there is a reference to the earlier suit in OS. No. 41/1976, in which Alamelu Ammal and Visalakshi alone have partitioned the properties and Radhakrishnan and Ponnammal were excluded. Knowing full well of the said decree, it has been recited in Ex.A11 that Radhakrishnan has joined as a co-executant in Ex.A11. Though Radhakrishnan gave evidence and stated that he has received Rs.500/- towards his share, there is no recital to that effect in Ex.A11 and therefore, his evidence is an improvement. It cannot be said that he has merely joined in the execution as a co-executant nor he is a confirming party of the said sale alone, as contended by the respondent/defendant. But, on the other hand, it is made out that he had joined as a co-executant in Ex.A11, accepting the sale deed and if the contention of the defendant is true that his share amount was paid, nothing prevented in mentioning the same in Ex.A11 and in the absence of the same, it would amount to accepting the decree in OS. No. 41/1976 between Alamelu Ammal and Visalakshi, to which Radhakrishnan was not a party. But, his joining in Ex.A11 with his eyes wide opened would amount to his acceptance of the decree in the earlier suit. Applying the ratio of the decision in 1977-TLNJ-174, I am of the view that he is estopped from giving a go by to the said decree and therefore, his sale in favour of the defendant is not valid. Another circumstance for coming to the said conclusion is that, it appears that Radhakrishnan has now filed the suit in OS. No. 251/1989 before the District Munsif, Chingleput against Alamelu Ammal, Visalakshi, Pattammal and Govindasamy, the defendant herein, for partition of

the properties and allotment of his 1/3rd share. The copy of the plaint alone was enclosed along with the typed set of papers. But, however, the fact that Radhakrishnan has filed the said suit is not disputed by the defendant. But, at the same time, both the plaintiff and the defendant are not in a position to say the stage of the said suit. But, the fact remains that Radhakrishnan has gone to the court in 1989, claiming his 1/3rd share in the properties left by his grand father, Natesa Pillai and the plaint was verified on 12.6.1989 after 12 years of Ex.A11, which is dated 25.3.1977. There is a reference about the sale in favour of Pattammal in Ex.A11 and therefore, Radhakrishnan having had full knowledge about the partition between Alamelu Ammal and Visalakshi, had chosen to file the present suit for partition and by the said act also it could easily be inferred that he had full knowledge about the partition and accepting the partition only, he had subscribed his signature in Ex.A11 and therefore, he is estopped from claiming a share in the property. As such, the sale made by Radhakrishnan to the defendant under Ex.B1, dated 3.1.1983 is not valid and binding upon the plaintiff and it would not convey any title to the defendant. That apart, the defendant, who is the purchaser of the property, which was not ear-marked to his vendor, cannot meddle with the possession of the plaintiffs, who are in possession of the property. If at all the defendant is aggrieved, his remedy is under the principles laid down u/s 44 of the Transfer of Property Act, 1882, which states,

"Where one of two or more co-owners of immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give, effect to the transfer, the transferor's right to joint possession or other common or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting at the date of the transfer, the share or interest so transferred."

The defendant not having resorted to the said remedy, is not entitled to interfere with the plaintiffs' possession and therefore, the plaintiffs are entitled to have an injunction against the defendant. In view of the above, the questions raised in this appeal are answered in the affirmative and held that the defendant and his vendor are precluded from making any claim, as their claim is barred by rule of Estoppel.

K. Gnanaprakasam, J.

22. In the result, the second appeal is allowed and the judgment and decree of the lower appellate court is set aside and the judgment and decree of the trial court is restored. No costs.