

(2013) 07 MAD CK 0130

In the Madras High Court

Case No : SA (MD) No. 932 of 2010 and MP (MD) No's. 2 of 2009 and 1 of 2010

R. Srinivasan

APPELLANT

Vs

S. Sankarraj, S. Ramraj and S. Karuppasamy

RESPONDENT

Date of Decision : 16-07-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Evidence Act, 1872 — Section 114
Guardians and Wards Act, 1890 — Section 29, 31, 4A, 8
Hindu Minority and Guardianship Act, 1956 — Section 6, 8
Penal Code, 1860 (IPC) — Section 302

Citation : (2013) 07 MAD CK 0130

Hon'ble Judges : A. Selvam, J

Bench : Single Bench

Advocate : G.R. Swaminathan for D. Rajkumar, for the Appellant; S. Natarajan, for the Respondent

Final Decision : Dismissed

Judgement

A. Selvam, J.—Challenge in this Second Appeal is to the Judgment and decree dated 05.11.2007 passed in Appeal Suit No. 25 of 2007

by the Sub Court, Aruppukottai, wherein the Judgment and decree dated 19.02.2007 passed in Original Suit No. 66 of 2005 by the District

Munsif Court, Aruppukottai are reversed. The appellant herein as plaintiff has instituted Original Suit No. 66 of 2005 on the file of the trial Court

for the reliefs of declaration and perpetual injunction, wherein the respondents 1 and 2 has been shown as defendants.

2. The epitome of the averments made in the plaint are that the suit property is ancestrally belonged to be Sundara Reddiar and his son name is

Shanmugavel. The first defendant is the son of Shanmugavel. The second defendant is the maternal uncle of the first defendant. The said Sundara

Reddiar and his son have jointly sold the suit property in favour of one Krishnasamy by virtue of the sale deed dated 28.09.1995. In the sale deed dated 28.09.1995 the first defendant has been shown as minor, represented by his father, as guardian. On 27.01.2005 the plaintiff has purchased the suit property from the said Krishnasamy and since then he has been enjoying the same. In the suit property, the defendants are not having any manner of right, title and interest. Now the defendants have had made arrangements to disturb the peaceful possession and enjoyment of the plaintiff by way of denying his title over the suit property. Under the said circumstances, the present Suit has been instituted for the reliefs sought for in the plaint.

3. In the written statement filed on the side of the first defendant it is stated that it is false to aver that the suit property is ancestrally belonged to

Sundara Reddiar. The relationship mentioned in the plaint is correct. The suit property is originally belonged to one Sankarappa Reddiar and he

has been blessed with four daughters namely Muthakkammal, Punnakkammal, Sankaravadai Ammal and Muthalakkammal. Sundara Reddiar

mentioned in the plaint is the son of Punnakkammal. The said Sundara Reddiar has married Muthalakkammal. The original owner of the suit

property by name Sankarappa Reddiar has passed away. After his demise, his wife by name Podakammal and her daughters have succeeded the

estate of Sankarappa Reddiar. One of the daughters by name Punnakkammal has passed away leaving behind her son by name Sundara Reddiar.

The said Podakammal, Muthakkammal, Sundara Reddiar, Sankaravadai Ammal, Muthalakkammal have effected a partition, wherein 1 acre 31

cents of land has been allotted to the share of Muthakkammal and the remaining 1 acre 37 cents of land has been allotted to the share of

Muthalakkammal. The share allotted to Sundara Reddiar has already been sold away. The said Muthalakkammal has purchased 1 acre 31 cents

from Muthakkammal. The said Muthalakkammal has executed a settlement in respect of 64 cents in favour of the eldest son by name Subba

Reddiar. The property which situates immediately on the eastern side of 64 cents is the suit property. The son of Muthalakkammal by name

Shanmugavel has married one Kosalai. On 24.05.1973 the said Muthalakkammal has executed another settlement deed in favour of Shanmugavel

and Kosalai. The first defendant is their son. The said Shanmugavel and Kosalai have jointly executed a settlement deed in favour of the first

defendant on 27.05.1983 in respect of the suit property, wherein the said Muthalakkammal has been shown as guardian. The father of the first

defendant is in the habit of gambling, drinking etc., The said Sundara Reddiar is also an extravagant. Since the said Muthalakkammal has failed to

meet out the frequent demands of money made by her son by name Shanmugavel, he murdered her and due to that he has been awarded life

sentence. Since the settlement deed dated 27.05.1983 has been executed in favour of the first defendant, the first defendant has become absolute

owner of the suit property. The father of the first defendant has had no right to execute a sale deed in respect of the suit property in favour of

anybody and there is no merit in the Suit and the same deserves to be dismissed.

4. On the basis of the divergent pleadings raised on either side, the trial Court has framed necessary issues and after analysing both the oral and

documentary evidence has decreed the Suit as prayed for. Against the Judgment and decree passed by the trial Court, the defendants as appellants

have preferred Appeal Suit No. 25 of 2007 on the file of the first appellate Court.

5. The first appellate Court after hearing both sides and upon reappraising the evidence available on record has allowed the Appeal, whereby and

whereunder set aside the Judgment and decree passed by the trial Court and consequently dismissed the Suit. Against the Judgment and decree

passed by the first appellate Court, the present second appeal has been preferred at the instance of the plaintiff as appellant.

6. As agreed by the learned counsel appearing on either side, the present Second Appeal is disposed of on merits at the stage of admission.

7. On the side of the appellant/plaintiff the following substantial questions of law have been raised for consideration:

(a) Whether the lower appellate Court is right in reversing the well considered judgment and decree of the trial Court when the appellant has

purchased the property for a valuable consideration?

(b) Whether the lower appellate Court is right in holding that the 1st respondent had derived title from his predeceased grandmother even though

she died 7 years prior to the sale in favour of appellant's vendor?

(c) Whether the lower appellate Court is right in holding that the sale for the

benefit of the minor is not valid?

(d) Whether the lower appellate Court is right in not considering that the 1st respondent is not entitled to title over the suit property without filing a suit for the same?

(e) Whether the lower appellate Court is right in not considering that the 1st respondent's claim is barred by Limitation Act for claiming any right in the suit property?

(f) Whether the lower appellate Court is right in not considering Section 114 of Evidence Act by drawing adverse inference as held in 2007(3)

CTC 59?

8. On the side of the respondents/defendants an application under Order 41 Rule 27 of Code of Civil Procedure, 1908 has been filed in MP(MD)

No. 1 of 2010, wherein a certified copy of the Judgment rendered in Sessions Case No. 71 of 1990 on 19.07.1990; certified copy of the First

Information Report registered in Crime No. 64 of 1989 and certificate issued by Jail Authority have been filed. Considering the defence taken on

the side of the respondents/defendants and also considering that the documents filed along with MP(MD) No. 1 of 2010 are public documents,

MP(MD) No. 1 of 2010 is allowed and the documents mentioned therein have been marked as Exs. B11 to B13.

9. The definite stand taken on the side of the appellant/plaintiff is that the suit property is ancestrally belonged to one Sundara Reddiar. After his

demise, his son by name Shanmugavel has sold the suit property in favour of one Krishnasamy under a registered sale deed dated 28.09.1995 and

the plaintiff has purchased the same by virtue of the sale deed dated 27.01.2005 and since then he is in possession and enjoyment of the same and

since the defendants have had made arrangements to disturb the peaceful possession and enjoyment of the plaintiff by way of denying his title to the

suit property, the present Suit has been instituted for the reliefs sought for in the plaint.

10. The defence put forth on the side of the defendants is that the suit property is ancestrally belonged to Sankarappa Reddiar and her wife name

is Podakammal and both of them have been blessed with four daughters namely Muthakkammal, Punnakkammal, Sankaravadai Ammal and

Muthalakkammal. After the demise of Sankarappa Reddiar, a partition has been

effected, wherein the suit property and its adjoining properties have been allotted to the share of Muthalakkammal and she voluntarily executed a settlement deed in favour of his son by name Shanmugavel (father of the first defendant) and his wife Kosalai (mother of the first defendant) on 24.05.1973 and subsequently the said Shanmugavel and Kosalai have executed a settlement deed in respect of the suit property in favour of the first defendant on 27.05.1983, wherein the said Muthalakkammal has been shown as guardian of the first defendant and since then the suit property has become his absolute property and nobody is entitled to sell the same and further the father of the first defendant viz., Shanmugavel has had made frequent demands of money from his mother by name Muthalakkammal and since she refused to concede his demand, he murdered her and therefore, the sale effected by the said Shanmugavel is not valid and altogether the present Suit deserves to be dismissed.

11. The trial Court has decreed the Suit as prayed for. But the first appellate Court after considering the available on record has negatived the reliefs sought for in the Suit and ultimately dismissed the same.

12. The learned counsel appearing for the appellant/plaintiff has advanced the following arguments so as to supplant the Judgment and decree passed by the first appellate Court.

(a) Even if the suit property is the separate property of the first defendant, the same has been sold by his father/natural guardian during his minority without obtaining necessary permission from the concerned Court and therefore, the sale in question is nothing but voidable and since the sale in question is nothing but voidable, as per Article 60 of the Limitation Act, 1963, the first defendant ought to have set aside the same within a period of three years from the date of attaining his majority. But he has not done it and the first appellate Court has failed to look into the same.

(b) The suit property has been initially purchased by one Krishnasamy by virtue of the sale deed dated 28.09.1995 and on the side of the appellant/plaintiff various documents have been filed and the trial Court has rightly decreed the Suit. But the first appellate Court has erroneously dismissed the same and therefore, the Judgment and decree passed by the first appellate Court are liable to be interfered with.

13. The learned counsel appearing for the respondents/defendants has emphatically and also repeatedly contended to the effect that the suit property is not ancestrally belonged to Sundara Reddiar and the same is originally belonged to Sankarappa Reddiar and his wife by name Podakammal and after his demise a partition has been effected amongst his four daughters, wherein the suit property and some other properties have been allotted to the share of Muthalakkammal who is none other than the paternal grandmother of the first defendant and the said Muthalakkammal has executed a settlement deed in favour of the father of the first defendant viz., Shanmugavel and his mother by name Kosalai on 24.05.1973 and subsequently the parents of the first defendant have executed a settlement deed dated 27.05.1983 in favour of the first defendant, wherein the said Muthalakkammal has been shown as his guardian. The father of the first defendant has failed to look after the then minor viz., the first defendant and further, by virtue of the settlement deed dated 27.05.1983 the first defendant has become absolute owner of the suit property and since the father of the first defendant viz., Shanmugavel has failed to look after welfare of the then minor viz., the first defendant and since he murdered his mother by name Muthalakkammal, he is totally incompetent to act as natural guardian of the then minor viz., the first defendant and therefore, the sale effected by him as well as his father viz., Sundara Reddiar on 28.09.1995 is nothing but void and the trial Court without considering the events which have had happened in the family of the said Shanmugavel and also his incorrigible attitude, has erroneously decreed the Suit. But the first appellate Court after evaluating the available evidence on record properly, has rightly dismissed the same and therefore, the Judgment and decree passed by the first appellate Court cannot be assailed.

14. Before considering the divergent submissions made on either side, the Court has to narrate the following documents and also position of law.

15. The specific contention put forth on the side of the appellant/plaintiff is that the suit property is ancestrally belonged to Sundara Reddiar and in fact the entire plaint proceeds on that basis. But to prove the same, no document has been filed. By way of repudiating the said contention, on the side of the respondents/defendants, certain documents have been filed. The paternal grandmother of the first defendant by name Muthalakkammal

has executed a settlement deed dated 24.05.1973 in favour of her son Shanmugavel and his wife Kosalai and subsequently both of them have executed a settlement deed dated 27.05.1983 in favour of the first defendant. The sale deed alleged to have been executed by Sundara Reddiar in favour of Krishnasamy has been marked as Ex. A1 and the sale deed alleged to have been executed by the said Krishnasamy in favour of the plaintiff has been marked as Ex. A2. The settlement deeds dated 27.05.1983 and 24.05.1973 have been marked as Exs. B3 and B4. The only legal point and also substantial question of law raised on the side of the appellant/plaintiff is as to whether the claim of the first defendant is barred by limitation.

16. The entire argument put forth on the side of the appellant/plaintiff is that even assuming that the suit property is the separate property of the first defendant, his father as natural guardian has executed Ex. A1 in favour of Krishnasamy without obtaining necessary permission from the concerned Court and therefore, the said transaction is voidable and the same should be set aside within a period of three years from the date of attaining majority of the first defendant.

17. It has already been pointed out that the suit property is not the ancestral property of Sundara Reddiar and the same is the separate property of Muthalakkammal and after execution of Ex. B3, settlement deed dated 27.05.1983, the first defendant has become its absolute owner.

18. It is an admitted fact that Ex. A1 has been executed by the father of the first defendant viz., Shanmugavel and his father by name Sundara Reddiar in favour of Krishnasamy on 28.09.1995. Before executing Ex. A1, necessary permission from the competent Court has not been obtained.

19. At this juncture, the Court has to look into Section 8 of the Hindu Minority and Guardianship Act, 1956 (32 of 1956) and the same reads as follows:

Powers of natural guardian.-(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

- (2) The natural guardian shall not, without the previous permission of the Court,-
- (a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or
 - (b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.
- (3) any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section(2), is voidable at the instance of the minor or any person claiming under him.
- (4) No Court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor.
- (5) The Guardians and Wards Act, 1890 shall apply to and in respect of an application for obtaining the permission of the Court under sub-section (2) in all respects as if it were an application for obtaining the permission of the Court u/s 29 of that Act, and in particular-
- (a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4-A thereof;
 - (b) the Court shall observe the procedure and have the powers specified in sub-sections(2), (3) and (4) of section 31 of that Act; and
 - (c) an appeal shall lie from an order of the Court refusing permission to the natural guardian to do any of the acts mentioned in sub-section(2) of this section to the Court to which appeals ordinarily lie from the decisions of that Court.
- (6) In this section, ""Court"" means the City Civil Court or a District Court or a Court empowered u/s 4-A of the Guardians and Wards Act, 1890, within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such Court, means the Court within the local limits of whose jurisdiction any portion of the property is situate.
20. As per sub-section 3 of Section 8 of the said Act, if any disposal of immovable property has been made by natural guardian without obtaining prior permission from the competent Court, the transaction is nothing but voidable.

21. Section 60 of the Limitation Act 1963 reads as follows:

To set aside a transfer of property made by the guardian of a ward -

22. The learned counsel appearing for the appellant/plaintiff has advanced his argument only on the basis of the said Sections of law. But the

argument put forth on the side of the respondents/defendants is entirely different. As expounded earlier, the main argument put forth on the side of

the respondents/defendants is that since the father of the first defendant has had led wavered life, he ceased to be a natural guardian of the first

defendant and therefore, he is totally incompetent to execute Ex. A1 in favour of Krishnasamy in respect of the suit property.

23. It is an admitted fact that in Ex. B3 the executant/maternal grandmother of the first defendant by name Muthalakkammal has been shown as

guardian of the first defendant.

24. It is also equally an admitted fact that the father of the first defendant viz., Shanmugavel has murdered his mother by name Muthalakkammal.

The Judgment passed in Sessions Case No. 71 of 1990 by the Principal District and Sessions Court, Ramanathapuram at Madurai has been

marked as Ex. B11 and a certified copy of the First Information Report has been marked as Ex. B12. In Sessions Case No. 71 of 1990 the said

Shanmugavel has been shown as sole accused and he has been found guilty u/s 302 of the Indian Penal Code and sentenced to undergo

imprisonment for life. The deceased Muthalakkammal herself has given the First Information Report, wherein it has been clearly stated that her

grand-daughter has been given in marriage to her son viz., Shamugavel and both of them have been blessed with the first defendant herein and after

some time they are living separately and the said Shamugavel has used to make frequent demand of money from Muthalakkammal and on the date

of occurrence, he demanded Rs. 1,000/- and since the said Muthalakkammal has refused to give the same, the said Shamugavel has attacked on

her person by using deadly weapon and thereby caused fatal injuries. In Sessions Case No. 71 of 1990, wife of the accused/mother of the first

defendant by name Kosalai has been examined as PW2. In fact, the District and Sessions Court has extracted her evidence to the effect that her

husband is in the habit of taking drinks and in fact he has had wavered life. Considering the fact that in Ex. B3 the said Muthalakkammal has been

shown as guardian of the first defendant and also considering that she has been murdered by her son by name Shanmugavel (father of the first

defendant) and also considering the evidence given by his wife Kosalai in Sessions Case No. 71 of 1990 coupled with the allegations made in the

First Information Report, there is no incertitude in coming to a conclusion that the said Shanmugavel is nothing but a fuddler and he used to make

frequent demand of money from his mother and further the then minor viz., the first defendant has not been under his care and custody.

25. The Principal District and Sessions Court, Ramanathapuram at Madurai has rendered its Judgment in Sessions Case No. 71 of 1990 on

19.07.1990. It is seen from Ex. B13 that the said Shanmugavel has been released on bail from 28.07.1993 to 28.01.2001. Ex. A1 has come into

existence on 28.09.1995, during the period in which the said Shanmugavel has had enjoyed bail. In Ex. A1, it has been simply shown that the said

Shanmugavel has acted as guardian of the first defendant, since he is his father.

26. The learned counsel appearing for the respondents/defendants has befittingly drawn the attention of the Court to the following decisions:

(i) The first and foremost decision is reported i Jijabai Vithalrao Gajre Vs. Pathankhan and Others, wherein the Hon"ble Apex Court has held that

father though alive not taking any interest in minor and as good as non-existent - Mother can be treated as natural guardian.

(b) In Ms. Githa Hariharan and Another Vs. Reserve Bank of India and Another, , Larger Bench of the Hon"ble Apex Court has held that

moreover when Ss. 4 and 6 of Hindu Minority and Guardianship Act, 1956 are construed harmoniously the word "after" can be understood to

mean "in the absence of, thereby referring to father"s absence from the care of the minor"s property or person for any reason whatsoever.

27. From close reading of the said decisions, it is easily discernible to the effect that as per section 6 of the Hindu Minority and Charitable

Endowments Act, natural guardian of a Hindu minor is only his or her father and after him, mother can act as a natural guardian. But at the same

time, if the father has failed to look after the interest of minor or if the father has fallen out with the mother, in that context, mother can act as a

natural guardian.

28. In the instant case, it has already been expounded to the effect that the

father of the first defendant viz., Shanmugavel is nothing but a fuddler and even he has gone to the extent of murdering his mother for a paltry sum of Rs. 1,000/-. Further in Ex. B3, he has not been appointed as guardian of the then minor viz., first defendant. Per contra, the deceased Muthalakkammal/paternal grandmother of the first defendant has been appointed as guardian. The mother of the first defendant in the present case has been examined as DW3 and her specific evidence is that her husband viz., Shanmugavel has not at all looked after the welfare of the then minor viz., the first defendant. The second defendant is her brother and both of them have brought up the first defendant. In order to controvert the evidence given by DW3, no acceptable evidence has been adduced on the side of the appellant/plaintiff, except filing of Exs. A1 and A2. If really, the said Shanmugavel has looked after the interest of the then minor viz., the first defendant and if really Ex. A1 has come into existence for the welfare or betterment of the first defendant, definitely the plaintiff would have chosen to examine him by way of taking out a commission since he is in duress. But nothing has been done.

29. On the side of the defendants exponential evidence has been let in so as to prove that the said Shanmugavel has not brought up the first defendant and the first defendant has been under the care and custody of the deceased Muthalakkammal and his mother by name Kosalai, DW3.

Since the father of the first defendant viz., Shanmugavel has failed to look after the first defendant and since he has been in the habit of leading a dissipated life, he cannot act as a natural guardian and as per the decisions referred to supra, the natural guardian of the then minor viz., the first defendant is only his mother who has been examined as DW3.

30. It has already been pointed out that Ex. A1 has been executed by the alleged natural guardian of the then minor viz., first defendant. It has also already been discussed in detail that the father of the first defendant cannot act as his natural guardian and further on the side of the appellant/plaintiff, it has not been established to the effect that the sale in question has been effected for the benefit of the first defendant. Therefore, it is needless to say that Ex. A1 is nothing but a void document. Since Ex. A1 is nothing but a void document, the sale deed which stands in the name of the plaintiff has also equally become void.

31. At the risk of repetition, the Court would like to point out that the entire contentions put forth on the side of the appellant/plaintiff is based upon the nature of transaction created under Ex. A1 and also the period of limitation prescribed under Article 60 of the Limitation Act 1963. It has already been elaborately dealt with about the conduct of the father of the first defendant and ultimately concluded to the effect that he cannot act as his natural guardian and further, the sale made under Ex. A1 is nothing but void. Since the sale made under Ex. A1 is nothing but void, period of limitation prescribed under Article 60 of the Limitation Act, 1963 does not affect the tangible interest as well as title of the first defendant over the suit property. Therefore, viewing from any angle, the contentions put forth on the side of the appellant/plaintiff are not having merit, whereas, the arguments put forth on the side of the respondents/defendants are really having subsisting force and all the substantial questions of law raised on the side of the appellant/plaintiff are not factually and legally sustainable and altogether the present Second Appeal deserves to be dismissed. In fine, this Second Appeal deserves dismissal and accordingly is dismissed without cost at the stage of admission. The Judgment and decree passed in Appeal Suit No. 25 of 2007 by the Sub Court, Aruppukottai are confirmed. The documents filed in MP(MD) No. 1 of 2010 are marked hereunder

EX. B11.. Certified Copy of Judgment rendered in S.C. No. 71/1990 dated 19.07.1990

EX. B12.. Certified copy of First Information Report in Crime No. 64 of 1989

EX. B13.. Certificate issued by Jail Authority