
(2000) 08 MAD CK 0104
In the Madras High Court
Case No : S.A.No.403 of 1989

Saroja Ammal

APPELLANT

Vs

Ameena Ammal and 4 others

RESPONDENT

Date of Decision : 14-08-2000

Acts Referred:

Transfer of Property Act, 1882 — Section 43

Citation : (2000) 3 CTC 521

Hon'ble Judges : K. Sampath, J

Bench : Single Bench

Advocate : Mr. V. Ragupathy, Mr. K.N. Pandian, for the Appellant; Mrs. K.N. Nalini Shree for Mr. S. Viswanathan, for the Respondent

Judgement

K. Sampath, J.

1. The third respondent in O.S. No.276 of 1981 on the file of the Principal District Munsif, Thirutharaipoondi, is the appellant in the second appeal. Respondents 1 to 3 herein fled the said suit against respondents 4 and 5 herein and the appellant for partition and separate possession of their 21/40 share in the plaint schedule properties, for mesne profits and for costs alleging as follows:-

The suit properties belonged to one Musthafa Maracair, husband of the fourth respondent and father of the other respondents they being the daughters of the said Musthafa through the fourth respondent herein, who was the second wife of Musthafa and the fifth respondent being the son of Musthafa through his first wife. Musthafa died in 1974. Respondents 1 to 3 became entitled to each 7/40 share, the fourth respondent to 5/40 share and the fifth respondent 14/40 share. The fourth respondent did not take proper case of respondent 1 to 3 compelling them to seek the protection of their maternal uncle through whom they had filed the suit. The fifth respondent had one Vanjoor Maracair as his power agent. As per his advice the fourth respondent and the fifth respondent sold away suit schedule 1 item to the appellant on 4.8.1975 for a grossly inadequate price of Rs. 11,000, though the property was worth Rs. 50,000. The fourth respondent

under Mohammedan Law had no legal right to represent respondent 1 to 3 as the guardian and to deal with the property. The sale by the fourth respondent in favour of respondents 1 to 3 was therefore invalid. The sale was also not for any necessity. The fourth respondent also did not buy any other property from out of the sale proceeds of the schedule property, though it was so recited in the sale deed. The sale had been gone through on the ill-advice of the fifth respondent's Power of Attorney Holder and the sale would not bind the share of respondents 1 to 3. They caused a notice to be issued to the appellant on 8.1.1980, to which there was reply on behalf of the appellant on 13.1.1980 containing unacceptable and false reasons. Even otherwise, it could not be stated that the appellant had purchased the property bona fide without notice of the rights of respondents 1 to 3. The suit was therefore filed.

2. Respondents 4 and 5 remained ex parte. The appellant resisted the suit contending inter alia as follows:

It was not true to say that the suit schedule I property was worth Rs. 50,000. It had been purchased by the appellant for proper consideration. It was also not at the instance or advice of the agent of the fifth respondent that the property was sold. It was only the fourth respondent, who was taking care of respondents 1 to 3. She did not have any personal income. It was false to say that the paternal uncle of respondents 1 to 3 was taking care of them. There was not enough income from the lands left behind by Musthafa Maracair. This compelled the fourth respondent to incur debts and she had to sell the suit schedule item 1. The sale itself was for benefit of respondents 1 to 3 and it would bind them. After purchase by her, the appellant had improved the same by spending about Rs. 20,000. She had planted 60 coconut saplings, 10 cashew, 6 mango, 5 guava, 2 lime and 3 bamboo clusters.

Even conceding without admitting that respondents 1 to 3 had any share in schedule item I, they were liable to pay the expenses incurred by the appellant in improving the property. The other properties set out in the schedule had been given as security for the suit sale. In any event, in equity the schedule 1 property consisting of 51 cents could be allotted to the share of respondents 4 and 5. Proper Court fee had not been paid.

3. On the basis of the pleadings, the learned District Munsif framed the necessary issues and found that the main could not be upheld, but then the appellant would be entitled to have this item allotted to the share of respondents 4 and 5 in equity. The learned District Munsif, in the absence of proper material, did not accept the case of the appellant that she had effected improvement by spending over Rs. 20,000. The learned District Munsif further observed that the Counsel for respondents 1 to 3 did not object to equity being granted as prayed for by the appellant. The appellant filed appeal in A.S.No.53 of 1983 before the Subordinate Judge not only did not accept the case of the appellant that she had effected improvement to the tune of Rs. 20,000 and more, but further held that the appellant had taken the other properties as security that it had therefore to

be concluded that the sale in her favour was not a bona fide transaction and that therefore she was not entitled to equity. As regards the improvements, the learned subordinate Judge held that it was not necessary at this stage to give a decision as to whether improvements had indeed been effected. So holding the learned District Judge conferred the decision of the trial Court for the further reasons given by him in the judgment.

4. It is as against this the present second appeal has been filed and at the time of admission, the following substantial question of law framed for decision in the second appeal:

Whether the lower Appellate Court is in right in holding that the appellant is not entitled to have the suit property allotted towards the share of respondents 4 and 5 herein for being given to the appellant herein?

5. Mr.V. Ragupathy, learned Counsel for the appellant, submitted that the total extent of the properties subject matter of the present suit is 2.01 acres and admittedly respondents 4 and 5 were 19/40 sharers and their share in terms of extent would come to nearly 1 acre and there should not be any difficulty in equity being granted in favour of the appellant by a direction to allot the schedule I item to the share of respondents 4 and 5. If that is done, it would be totally unnecessary to go into the question as to whether any improvements had been effected as claimed by the appellant. We may here itself note that respondents 1 to 3 did not file any independent appeal or cross appeal challenging the decision of the trial Court granting equity in favour of the appellant.

6. The learned counsel appearing for the contesting respondents viz., respondents 1 to 3 submitted that the sale in favour of the appellant was a void document. The fourth respondent had no legal right to represent respondents 1 to 3. She could not sell even for necessity under Muslims Law and that the lower appellate Court was perfectly justified in holding that the appellant had not made out a case for the schedule. Item I being allotted to the share of respondents 4 and 5.

7. The short question for consideration in the second appeal is as to whether the appellant would be entitled to the equity, that is to say, whether the property purchased by her could be allotted to the share of respondents 4 and 5. What is put against her by the lower Appellate Court is that she had known about the want of any legal right on the part of the fourth respondent to represent respondents 1 to 3 under Muslim Law, as otherwise she would not have got the other properties as security for the sale in her favour. The learned Subordinate Judge, in my view, ought not to have much of this fact. He has overlooked that the properties which were offered as security, are the other properties of Musthafa Maracair. Even otherwise, there was absolutely nothing to show that merely because an person wanted some security in respect of the properties purchased by him or by her, it would show that the said person was wanting in

bona fide. These are common occurrences and the purchaser taken what, according to him, would be proper precautions when ultimately any problem arose with regard to the title, to the properties subject matter of the sale. The reasoning by the learned Subordinate Judge for holding that the appellant was lacking in good faith and bona fides does not at all appeal to me. It has already been noticed that before the trial court the learned counsel for respondent 1 to 3 had not objected to the property subject matter of sale in favor of the appellant being allotted to the share of respondents 4 and 5 in equity. The learned Subordinate Judge had taken it on himself to find that the appellant was not entitled to any equity. In fact, by filing the appeal before the lower Appellate Court, the appellant was worse off. I fail to see why equity should be refused to the appellant. Respondents 4 and 5 remained ex parte throughout. The sale was in the year 1975 and the plaintiffs apparently had been set up by them and the suit came to be filed in 1981.

8. It is stated in P.Ramanatha Aiyar's Law Lexicon as follows:

Justice and Equity are intrinsically the same, but, in the technical sense, equity is the moral redressing of what is legal, where, owing to the imperfection of human laws, what is legal is to exactly just. The Court of equity is also sometimes styled a Court of justice. All that the law declares is just. It belongs to equity to temper the rigour of its decrees."

As observed by Grotius,

" the correction of what wherein the law, by reason of its universality, is deficient,.... Equity will not suffer a wrong to be without a remedy."

9. As already observed, the lower appellate court was clearly in error in refusing equity in favour of the appellant, particularly when it had not been raised as a point of contention on behalf of respondents 1 to 3 even before the trial court.

10. In view of the discussion above, the appellant is entitled to succeed. The substantial question of law raised for decision is answered in favour of the appellant. The second appeal will stand allowed. The judgment and the decree of the lower Appellate Court are set aside and those of the trial court granting equity in favour of the appellant are restored. There will be no order as to costs.