

(2011) 02 MAD CK 0314
In the Madras High Court
Case No : O.S.A. No. 210 of 2007

S.P. Sankara Narayanan

APPELLANT

Vs

R. Prabhakaran and Others

RESPONDENT

Date of Decision : 28-02-2011

Acts Referred:

Citation : (2011) 02 MAD CK 0314

Hon'ble Judges : R. Banumathi, J;M.M. Sundresh, J

Bench : Division Bench

Advocate : S. Balasubramanian, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Sundresh, J.—This Appeal has been preferred by the unsuccessful Plaintiff, challenging the judgment and decree dated 03.12.2003, rendered in C.S. No. 632 of 1999.

The case of the Appellant/Plaintiff is as follows:

2. The suit property is a residential house. It was originally purchased by one Palanikumar Nadar on 20.09.1890 by a registered sale deed under Ex.P.2. The said Palanikumar Nadar died in the year 1893. He had two wives by name, Meenakshi Ammal and Vellaiammal. The Appellant is the great grant son of the deceased Palanikumar Nadar through his first wife, Meenakshi Ammal.

3. The first wife, Meenakshi Ammal mortgaged the property on 24.01.1894 in favour of Hindu Janopakara Saswatha Nidhi Limited. The said Nidhi Limited brought the suit property for sale in the public auction on 06.07.1918. The second wife of the deceased Palanikumar Nadar purchased the property in the public auction. Even though she had purchased the property, the entire transactions including the sale are void. Therefore, the entire property belongs to all the members of the family.

4. The Defendants 1 to 4 are the legal heirs through the second wife of the deceased Palanikumar Nadar. The Defendants 5 and 6 are the purchasers of the suit property made on 03.06.1993 from Defendants 2 to 4. Since the Appellant/Plaintiff is entitled for a half share of the suit property, the suit has been filed for partition and separate possession, for a declaration that the sale deeds dated 03.06.1993 are null and void and for a consequential permanent injunction, restraining the Defendants 5 and 6 from putting up construction over the suit property.

The case of Defendants 5 and 6 are as follows:

5. The Defendants 5 and 6 are the purchasers of the suit property from Defendants 2 to 4 by way of two registered sale deeds dated 03.06.1993 for valuable consideration. The said sale deeds have been confirmed by the first Defendant in the suit. The suit property was purchased by Vellaiammal from whom the Defendants 2 to 4 acquired their title. The Appellant after waiting for a period of more than 60 years has filed the suit claiming half share in the suit property. There is no basis for the claim of the Appellant and there is no cause of action for the suit. The suit is barred by limitation and therefore, they prayed for the dismissal of the suit.

6. Before the learned single Judge, the Appellant has examined himself as P.W.1. The Defendants 1 to 4 did not file any written statement and a written statement has been filed in favour of Defendants 5 and 6. The Trial Court has framed the following issues for consideration:

i. Whether the Plaintiff is entitled to claim 1/2 share in the plaint schedule property for all or any other reason stated in the 4 plaint?

ii. Whether the suit is barred by limitation?

iii. To what relief the Plaintiff is entitled?

7. The Trial Court on a consideration of the evidence available on record, coupled with the oral evidence found that the Appellant did not have any semblance of title inasmuch as the suit property was purchased by Vellaiammal from whom the Defendants 2 to 4 had acquired their title. The Trial Court has also relied upon Exs.P-9 and 10 to hold that the suit is liable to be dismissed. Regarding the issue No. 2, the Trial Court found that inasmuch as the Appellant became a major in the year 1948, the suit filed in the year 1995 and numbered in the year 1999 is hopelessly barred by limitation. Accordingly, the Trial Court has dismissed the suit on both the issues. Challenging the same, the Appellant has come forward to file the present appeal.

8. Mr. S. Balasubramanian, learned Counsel appearing for the Appellant submitted that, the Trial Court has not considered the evidence of P.W.1 and wrongly held that, the suit property is a self-acquired property of Vellaiammal. The family treated the suit property as a joint suit property and therefore, the Appellant is entitled to the share. It is further submitted that, the transfers made

by the Defendants 2 to 4 in favour of Defendants 5 and 6 are void ab initio and therefore, the suit will have to be decreed as prayed for by setting aside the judgment and decree of the Trial Court.

9. The facts involved in the present case on hand are not in dispute. It is the admitted fact that the suit property originally belonged to Palanikumar Nadar, by way of a registered sale deed dated 20.09.1890 under Ex.P.2. Thereafter, Palanikumar Nadar died in the year 1893. His first wife Meenakshi Ammal died in the year 1914. It is also not in dispute that under Ex.P.3, the deceased Meenakshi Ammal mortgaged the suit property in favour of Hindu Janopakara Saswatha Nidhi Limited on 24.01.1894. The said Nidhi Limited brought the suit property for sale in the public auction on the failure of the deceased Meenakshi Ammal to redeem the mortgaged money. Therefore, under Ex.P.4 the sale deed was executed in pursuant to the public auction in favour of Vellaiammal. It is no doubt true that Vellaiammal was also the wife of the deceased Palanikumar Nadar. However, it is seen that, under Ex.P-4 she has purchased the suit property by way of an outright sale.

10. It is also to be noted that Meenakshi Ammal died in the year 1914 itself, which is much prior to the sale deed effected in favour of Vellaiammal. In pursuant to the said sale deed, another sale deed was executed under Ex.P.9 by the first Defendant, Ramaya Nadar and his minor sons in favour of his father Srinivasa Nadar on 05.07.1950. The said document also refers to the fact that there was a partition earlier between Srinivasa Nadar and Ramaya Nadar on 07.05.1947 through which, the first Defendant Ramaya Nadar and his sons got the suit property. Therefore, under Ex.P.10, a registered settlement deed dated 14.07.1950 was executed by Srinivasa Nadar in favour of his son Ramaya Nadar, the first Defendant and his sons. The settlement deed was executed not only to the suit property but also other properties.

11. The above said facts would clearly establish the fact that as early as on 31.10.1918, the suit property was purchased by Vellaiammal by registered sale deed through public auction. Thereafter, it was inherited by the first Defendant and his sons who sold it in favour of his father, who in turn executed a settlement deed back to his son and grand children by registered documents. The Defendants 2 to 4 being the sons of the first Defendant executed the sale deed in favour of Defendants 5 and 6. It is to be seen that the Appellant did not dispute the factor of the sale effected in favour of Vellaiammal under Ex.P-4 dated 31.10.1918.

12. The Appellant being P.W.1 has categorically admitted in his cross examination that he is making his claim only on the basis as a co-sharer and not on the basis of inheritance. The claim has been made by the Appellant on the ground that, after the purchase of the suit property by Vellaiammal, both her family and the family of the deceased Meenakshi Ammal have been living jointly in the suit property. There is absolutely no evidence in support of the claim of the Appellant. Even assuming that both families have been living together, the same cannot be

a ground to claim a share in the suit property. Therefore, considering the fact that, the suit property has been purchased by Vellaiammal under Ex.P-4 on 31.10.1918 and both her husband Palanikumar Nadar and his first wife Meenakshi Ammal died prior to the same, there is absolutely no basis for the claim made by the Appellant. Therefore, we do not find any reason to interfere with the findings rendered by the learned single Judge on issue No. 1.

13. Regarding the issue No. 2, it is seen that, the Appellant became a major in the year 1948 itself and he got married in the year 1957. There is absolutely no explanation forthcoming from the Appellant for not making his claim till 1995 - during which time the suit was filed. There is also no explanation for the basis upon which the claim has been made towards the half share of the suit property, considering the fact that three other female heirs of Meenakshi Ammal are also available. There is also no evidence to show that, the Appellant has been living in the suit property. The Appellant was also aware of the subsequent documents executed under Exs.A-9 and 10. Hence, the Trial Court has rightly found that, the suit laid by the Appellant was highly belated.

14. Therefore, on a consideration of the materials available on record and after going through the judgment rendered by the learned single Judge, we do not find any merit in the Appeal and accordingly, the same is dismissed. No costs.