

SUPREME COURT OF INDIA

L.Ponnayal @ Lakshmi

Vs.

Karuppannan (Dead) thr. L.R.Sengoda Gounder

C.A.No.9558-9559 of 2018

(S.A.Bobde and L.Nageswara Rao,JJ.,)

17.09.2018

JUDGMENT

L.Nageswara Rao,J.,

SLP(C)No.9811-12 of 2017

1. Leave granted.

2. The Appellant and her mother filed a Civil Suit for Partition and separate possession which was dismissed by the Subordinate Judge, Sankagiri. The High Court affirmed the judgment and decree of trial court. The Appellant filed a Review Application which was rejected by the High Court. Aggrieved by the judgment of the High Court in the first Appeal and the Review Application, the Appellant has approached this Court.

2. On 15th November, 2016, a request was made by the Appellant to discharge A. Lakshminarayanan, the learned Advocate-on-Record who filed the above Appeals. The said Advocate-on-Record was discharged and the matter was listed for further hearing. After several adjournments, notice was issued on 28th March, 2017 after condoning the delay of 2088 days in filing the Special Leave Petition against the judgment in first Appeal and 1405 days in filing the Special Leave Petition from the judgment in Review Application. As the Appellant in- person was conversant only in Tamil language, we requested Mrs. V. Mohna, Ld. Senior Advocate to appear for the Appellant in-person. Later, Mrs. V. Mohna, Ld. Senior Advocate informed us that the Appellant in-person is not willing to take her assistance. The Appellant in-person who was present in the Court on 4th September, 2018 requested that she does not want Mrs. V. Mohna to appear for her. We discharged Mrs. V. Mohna, Ld. Senior Counsel from the case. The Appellant in-person insisted on making submissions in Tamil language and she requested for a translator. We declined the request of the Appellant in-person who had not utilized the opportunity of having the services of a Senior Advocate who is well-versed with Tamil language. We gave opportunity to the parties to submit their written submissions, if any, within one week from 4th September, 2018 and reserved the matter for judgment.

3. Appavu Gounder had two sons namely Athappa Gounder and Karuppannan Gounder. Athappa Gounder was married to Kandayi (Plaintiff No.2). The Appellant (Plaintiff No.1) is the daughter of Athappa Gounder and Kandayi. Karuppannan is Defendant No.1 in the suit and his son Sengoda Gounder is Defendant No.2. Defendant No.3 Komarasamy Gounder is the purchaser of a part of 'A' schedule property. As per the plaint, there was a registered Partition Deed on 22nd April, 1948 between the branches of Appavu Gounder and Pavayee and the plaint 'A' schedule properties fell to the share of Appavu Gounder and his two sons. The Appellant along with her mother claimed a share in the 'A' schedule properties.

4. Hereinafter, the parties will be referred to as arrayed in the plaint in O.S. No.130 of 1987 before the Subordinate Judge, Sankagiri. The case of the Plaintiff No.1 is that she was the only surviving heir of Athappa Gounder who during his lifetime suffered from mental illness and was under the control of his father Appavu Gounder. Athappa Gounder was living with his brother Karuppannan after the death of his father. Due to the constant harassment of her husband, Plaintiff No.2 had no other alternative except to shift to her matrimonial home at Veppamarathupatti, Edappady. It was stated in the plaint that Defendant No.1, taking advantage of the lunacy of Athappa Gounder, created a Sale Deed dated 15th September, 1949 by which his properties were transferred to Defendant No.1. The Settlement Deed dated 6th December, 1958 executed by Appavu Gounder in favour of Defendant No.2- Sengoda Gounder was seriously disputed by the Plaintiffs. The sale of a portion of the 'A' schedule property to Defendant No.3 by registered Sale Deed dated 9th November, 1964 was illegal and void according to the Plaintiffs. The Plaintiffs further contended that a rig along with a support lorry which are shown as 'B' schedule property in the plaint were purchased by Defendant Nos. 1 and 2 from the income that was derived from 'A' schedule property. As the Defendant Nos. 1 and 2 were not agreeing for a partition as requested by the Plaintiffs, there was no other alternative except to file a suit.

5. Defendant No.1 filed a written statement in which it was stated that the registered Partition Deed dated 22nd April, 1948, the registered Sale Deed dated 15th September, 1949 and the registered Settlement Deed dated 6th December, 1958 are valid. The Defendant No.1 stated that there was severance of the joint family status more than 40 years ago and the Plaintiffs did not have any right to seek a fresh partition. The Defendant No.1 further stated that the suit was barred by limitation and not maintainable. The Defendant No.1 also raised a defense of adverse possession.

6. The trial court framed the following issues for consideration:

- " 1. The partition deed came into existence on 22.04.1948 binds the plaintiffs?
2. Whether the plaintiff has got right to object the settlement deed dated 6.12.1958?
3. Whether the plaintiffs' have got right to object the sale deed executed by 3rd defendants husband in favour of 1st Defendant's name on 15.9.1949?
4. Whether the suit is barred by limitations?

5. Regarding the 'A' Schedule property whether 1,2 defendants have got adverse possessions?

6. Whether the plaintiffs are entitled to partition, separate possession, mense profits?

7. What other Reliefs? "

7. After a detailed consideration of the evidence on- record and the submissions that were made by both the sides, the trial court dismissed the suit. The trial court observed that the Plaintiffs are bound by the Partition Deed dated 22nd April, 1948, that they have no right to question the Sale Deed dated 15th September, 1949 executed by the husband of Plaintiff No.2 in favour of Defendant No.1 and the Settlement Deed dated 6th December, 1958 executed by Appavu Gounder in favour of Defendant No.2. The trial court further decided that the suit was barred by limitation and Defendant Nos. 1 and 2 acquired title over the schedule properties in the Plaint by way of adverse possession.

8. The High Court framed the following issues for consideration:

" i The plaintiffs are bound by the partition deed dated 22.4.1948;

ii. The plaintiffs have no right to question the settlement deed dated 6.12.1958 executed by the Appavu Gounder in favour of the second defendant;

iii. The plaintiffs have no right to question the sale deed dated 15.9.1949 executed by the husband of the second plaintiff in favour of the first defendant;

iv. The suit barred by limitation;

v. The defendants 1 and 2 preferred the title by adverse possession; and

vi. The plaintiffs are not entitled to the reliefs as prayed for by them. "

9. The High Court rejected the contention of the Plaintiffs that they are not bound by the Partition Deed dated 22nd April, 1948. The High Court found that properties allotted to Appavu Gounder and his two sons were described in the 'B' schedule to the Partition Deed date 22nd April, 1948 which was marked as exhibit-A1 in the suit. The aforesaid 'B' schedule properties were described as 'A' schedule properties in the suit filed by the Plaintiffs. The High Court proceeded to hold that there was no evidence that was adduced by the Plaintiffs to support the contention that the Partition Deed dated 22nd April, 1948 was not binding on them. Appavu Gounder settled his share of the properties allotted to him in the Partition Deed dated 22nd April, 1948 in favour of his Grandson i.e. Defendant No.2 by a Settlement Deed dated 6th December, 1958. According to the High Court, the Plaintiffs did not have any right to challenge the said Settlement Deed.

10. The contention of the Plaintiffs that the Sale Deed executed by Athappa Gounder on 15th September, 1949 was not binding on them was also not accepted by the High Court. While dealing with this point, the High Court referred to a Compromise Decree that was passed in O.S. No.18 of 1953 which was filed by the Plaintiffs against Athappa Gounder, Karuppattan Gounder and Appavu Gounder before the Sub-Judge, Salem. In O.S. No.18 of 1953 the Plaintiffs, claimed maintenance, recovery of arrears of maintenance from 1st July, 1949 upto the date of the suit, recovery of jewellery and cancellation of the Sale Deed dated 15th September, 1949 executed by Athappa Gounder in favour of Defendant No.1 in O.S. No.130 of 1987. The High Court took notice of the averments made in O.S. No.18 of 1953 by the Plaintiffs to the effect that Athappa ill-treated his wife and daughter i.e. the Plaintiffs-herein and forced them out of the house and refused to maintain them. It was the case of the Plaintiffs in O.S. No.18 of 1953 that the Sale Deed dated 15th September, 1949 was brought into existence only for the purpose of defeating their claim over the property. The terms of compromise were to the effect that the Defendants in O.S. No.18 of 1953 shall convey the entire properties specified in the schedule therein in favour of Plaintiff No.2 on deposit of Rs.6,000/- within a period of six months. In the event of registration of the said Sale Deed, Plaintiff No.2 would not have any right to claim maintenance against the Defendants-therein. In the event of Plaintiff No.2 not depositing the amount of Rs.6,000/- within the stipulated time, she would forfeit maintenance due to her and Plaintiff No.1. Plaintiffs shall be entitled only to future maintenance at the rate of Rs.10/- for Plaintiff No.2 and Rs.5/- for Plaintiff No.1 until her marriage and Rs.500/- for the marriage expenses of Plaintiff No.1. There is no dispute that Plaintiff No.2 did not deposit Rs.6,000/- as per the terms of the compromise within the stipulated time. On the basis of the above discussion, the High Court concluded that the Plaintiffs lost their right to challenge the Sale Deed dated 15th September, 1949. The High Court, further, held that the said Sale Deed which was challenged in the year 1953 by filing the O.S. No. 18 of 1953 cannot be the subject matter of another challenge after a lapse of over 30 years. The High Court, thus, approved the judgment of the trial court that the suit is barred by limitation. The contention of the Plaintiffs that the Defendants took advantage of the mental illness of Athappa Gounder and manipulated the documents in their favour was also not accepted by the High Court. The High Court referred to the suit filed by the Plaintiffs in O.S. No.18 of 1953 in which they did not even whisper about the mental illness of Athappa Gounder. The conclusion of the trial court regarding adverse possession in favour of the Defendants was also upheld by the High Court in view of the peculiar facts of the case.

11. We have perused the written submissions filed by the Appellant in-person. The Appellant has relied upon the Partition Deed dated 6th December, 1937 and the Deed of Settlement dated 6th August 1942. According to the Appellant, the Deed of Partition dated 6th December, 1937 was entered into between her grandfather late Shri Appavu Gounder and his two sons late Shri Karunappanan Gounder (Defendant No.1) and late Shri Athappa Gounder. The Deed of Settlement dated 6th August 1942 executed by her father Athappa Gounder in favour of her grandfather Appavu Gounder showed the inability of Athappa Gounder to cultivate his land. According to the said Settlement Deed dated 6.8.1942, the property should be handed over to the legal heirs of Athappa Gounder. As the said two documents were neither part of the pleadings in the Suit nor was an issue framed regarding the said documents, we are afraid that we cannot adjudicate on the issues pertaining to the said

documents. Civil Suits are decided on the basis of pleadings and the issues framed and the parties to the Suit cannot be permitted to travel beyond the pleadings¹.

12. The dispute raised by the Appellant pertains to her right to partition of ancestral properties that fell to the share of her father late Athappa Gounder pursuant to the registered Partition Deed dated 22nd April 1948. The Plaintiffs prayed for division of the suit properties on the basis of the registered Partition Deed dated 22nd April 1948. The Appellant cannot be permitted to contend that the Plaintiffs are not bound by the Partition Deed dated 22nd April 1948 when the foundation for the claim of the Plaintiffs is the said Partition Deed.

13. The registered Sale Deed dated 15th September 1949 executed by Athappa Gounder in favour of Defendant No.1 is challenged on the ground that there was no necessity for Athappa Gounder to take loans from third parties. The Appellant further stated in the written submissions that the Compromise Decree in O.S. No. 18 of 1953 cannot preclude her from challenging the Sale Deed dated 15th September 1949. There is no dispute that the Sale Deed dated 15th September 1949 was challenged in O.S. No. 18 of 1953. The Plaintiff No.2 did not comply with the condition of the Compromise Decree regarding the deposit of Rs.6000/- within the stipulated time whereafter she was entitled for transfer of property in her favour. The High Court held that the Appellant has lost her right to question the Sale Deed dated 15th September 1949 again, that too, after an inordinate delay. As such, the Suit filed in 1987 was barred by limitation. The High Court rejected the submissions of the Appellant that Athappa Gounder was of unsound mind and the Defendant No.1 took advantage and manipulated the Sale Deed dated. 15th September 1949. We are in agreement with the findings of the High Court.

14. What remains to be seen is whether the Settlement Deed dated 6th December 1958 executed by Appavu Gounder in favour of Defendant No.2 is valid and binding on the Appellants. There is no evidence adduced by the Appellant to prove the contrary. The High Court is right in its conclusion that Appavu Gounder had a right to settle the property that fell to his share in the Partition Deed dated 22nd April 1948 in favour of his grandson.

15. For the aforementioned reasons, we see no reason to interfere with the judgments of the High Court. Accordingly, the Appeals are dismissed.

Judgment Referred.

¹(1987) 2 SCC 0555 – *Ram Swarup Gupta v. Bishun Narain Inter College and AIR 1956 SC 0231- J.K. Iron & Steel Co. Ltd. v. Mazdoor Union*