NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8103 OF 2011

Rengan Ambalam and Anr. .. Appellants

Versus

Sheik Dawood and Ors. .. Respondents

J U D G M E N T

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 02.07.2007 passed by the High Court of Madras in Second Appeal No. 1900 of 1991 by which the High Court has allowed the said appeal preferred by the original defendant Nos. 3 and 4 and has quashed and set aside the judgment and order passed by the learned First Appellate Court as well as the learned Trial Court decreeing the suit and consequently dismissing the suit, the original plaintiff and original defendant No. 2 have preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:

That appellant No. 1 herein – Rengan Ambalam instituted the suit against the original defendants before the learned Sub-Court, Pudukkottai, being O.S. No. 73 of 1987 praying for the partition claiming his 1/3rd share in the joint family properties and the possession thereon. It is required to be noted that the original defendant No. 1 was the father of the plaintiff and defendant No. 2 and therefore the plaintiff claimed that all of them have 1/3rd share in the joint family properties, more particularly, the suit "B" Schedule property. It was the case on behalf of the plaintiff that the suit property belonged to the grand-father of the plaintiff and defendant No. 2 and father of defendant No. 1-Kuppamuthu Ambalam. The said Kuppamathu Ambalam had five sons, including defendant No. 1. That, in a partition in the year 1966, amongst the five brothers the suit properties came to the share of defendant No. 1 Rengan Ambalam, father of the plaintiff and defendant No. 2. It was the case on behalf of the plaintiff that those properties were being enjoined in common by the plaintiff and defendant Nos. 1 and 2 and therefore all of them are entitled to 1/3rd share each. It was

also the case on behalf of the original plaintiff that his father-defendant No. 1 was acting adversely to the interest of the plaintiff and with a view to defeat the rights of the plaintiff, defendant No. 1-father mortgaged the suit "B" schedule properties for a sum of Rs.3,000/- in favour of one Subbaiya Nadar. According to the plaintiff, there was no necessity for mortgaging the suit properties. That the plaintiff objected to that mortgage. According to the plaintiff, despite his objections, thereafter the original defendant No. 1-father sold the suit "B" schedule properties in favour of defendant Nos. 3 and 4, as if the properties belonged to him himself and his brother's sons. It was the case on behalf of the plaintiff that in fact the property set out in schedule "B" is still in the possession and enjoyment of the plaintiff. According to the plaintiff, relying on his exclusive possession, the plaintiff caused a notice to his father and the mortgagee-Subbaiah Nadar that they should not trespass in the suit property. As the suit "B" schedule property was sold by defendant No. 1-father in favour of defendant Nos. 3 and 4, the plaintiff instituted the aforesaid suit for partition, possession and mesne profits. It was also the case on behalf of the plaintiff that

as he is not signatory to the sale deed in favour of defendant Nos. 3 and 4, the said sale deed is not binding on him.

2.1 The suit was resisted by defendant Nos. 3 and 4 by filing the written statement. It is required to be noted that during the pendency of the suit, the original defendant No.1-father died and, therefore, he could not be examined before the Trial Court and therefore the suit was resisted by defendant Nos. 3 and 4 to protect his rights under the sale deed which was executed by defendant No. 1 during his lifetime. It was the case on behalf of defendant Nos. 3 and 4 that the plaintiff was not in possession and/or enjoyment of the suit property. Defendant No. 1- father and family manager was managing the properties till his death. That defendant No. 1's family was joint and undivided continuously. That defendant No. 1-father and Manager of the family, was managing the family with great difficulty by obtaining the loans and therefore, "B" schedule property was mortgaged by defendant No. 1 to Subbaiah Nadar. That the suit property was mortgaged due to the legal necessity. That the sale of the "B" schedule property to defendant Nos. 3 and 4 was necessitated on account of the insistence of Subbaiah Nadar-mortgagee. That Subbaiah Nadar allowed defendant No. 1 to harvest the crops in

"B" schedule property, for which a portion of the produce was paid towards interest. Thereafter, Subbaiah Nadar wanted return of his money from defendant No. 1, defendant No. 1 has no other alternative except selling the property to defendant Nos. 3 and 4. Therefore, to pay the mortgaged money and release the mortgage and to pay other dues/loans, defendant No. 1 sold the property to defendant Nos. 3 and 4. Therefore, it was the case on behalf of defendant Nos. 3 that the suit "B" schedule property was sold by defendant No. 1 as a Manager of the joint family and due to the legal necessity. Therefore, it was prayed to dismiss the suit.

2.2 The learned Trial Court framed the following issued:

1. Whether the plaintiff is entitled to get the relief of partition as asked for by him in the plaint?
2. Whether the plaintiff has got right to ask for reliefs relating to 'B' schedule property?
3. Whether the sale with regard to 'B' schedule property on 27.02.1983 would bind on the plaintiff?
4. Whether the plaintiff is in possession of the 'B' schedule property?

5. In case if the plaintiff is entitled to get the relief of partition, whether it would be just to allot the 'B' schedule property to the 1st defendant and thereby allow his vendees to get them?
6. Whether the partition would be effected as asked for by the plaintiff only after settle for the maintenance of the family female members, their marriage expenses, and family loans?
7. To what other reliefs is the plaintiff entitled to?

2.3 On behalf of the plaintiff, he himself stepped into the witness box. On behalf of defendant Nos. 3 and 4, defendant No. 3 stepped into the witness box as P.W.1. The documentary evidence were placed on record through the aforesaid witnesses which include the original mortgage deed; notice given by the plaintiff; reply to the notice of the plaintiff given by defendant No. 1 and the sale deed executed by defendant No. 1 in favour of defendant Nos. 3 and 4. That, on appreciation of evidence, the learned Trial Court decreed the suit and held that the plaintiff has 1/3rd share in "B" schedule property. The learned Trial Court also held that as the plaintiff is not signatory to the sale deed, the same is not binding on him. The appeal filed by defendant Nos.

3 and 4 before the learned First Appellate Court came to be dismissed. The original defendant Nos. 3 and 4-purchsers filed the second appeal before the High Court and by the impugned judgment and order, the High Court has allowed the second appeal and has quashed and set aside the judgment and decree passed by the learned Trial Court, confirmed by the learned First Appellate Court and consequently has dismissed the suit. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the original plaintiff and original defendant No. 2 have preferred the present appeal.

3. Shri R. Venkataramani, learned Senior Advocate has appeared on behalf of the appellants and Shri Vikas Singh, learned Advocate has appeared on behalf of the respondents.

3.1 Shri Venkataramani, learned counsel appearing on behalf of the appellants has vehemently submitted that, in the facts and circumstances of the case, the High Court has committed a grave error in allowing the Second Appeal and quashing and setting aside the concurrent findings of fact recorded by both the Courts below. It is vehemently submitted by the learned counsel appearing on behalf of the appellants that, in the present case, the High Court has not exercised its jurisdiction in conformation

with the provisions of Section 100 of the CPC. It is submitted that after framing the substantial questions of law, which are also inappropriately framed, the High Court has merely undertaken the factual enquiry not warranted by Section 100 CPC. Relying upon the recent decision of this Court in the case of ***Gurnam Singh v. Lehna Singh*** (2019) SCC Online SC 374, it is prayed to allow the present appeal.

3.2 It is further submitted by the learned counsel appearing on behalf of the appellants that, in the present case, both the Courts below - the learned Trial Court as well as the First Appellate Court - specifically gave the concurrent findings, which are as under:

i) the mortgage debt created by the father in 1981 and the sale deed executed in 1983 to discharge the mortgage debt cannot be considered as antecedent debt. A debt to become antecedent debt it should be antecedent in fact as well as in time.

ii) it is created for the purpose of defeating the petitioner's right/share in the suit property at the instigation of the D.W.3, Alagappan who is inimical towards the petitioner.

iii) the Ex. A-16, sale deed dated 27-2-83 is without adequate consideration and such sale not a valid one

because an agreement for sale of the same suit property was entered in which it was agreed to sell at Rs.10,500/-. Ex. A-49, Sale agreement dated 1-10-82 in favour of one Ramalingam.

iv) the purchasers are not bonafide purchasers since admittedly they are family friends who are well aware of the dispute and purchased the property knowing fully well about the dispute between the father and son regarding the suit property.

v) Perusal of Ex. A-11 dated 10-4-81 police complaint makes it clear that there was a division in status between the plaintiff and his father. FIR is evident to show that there is divisional status of joint family and hence father cannot act as a manager.

vi) it is clear from the recital of the sale deed that the plaintiff's father has not executed the sale deed in a capacity as manager of the joint family. The 2nd cross appellant was a minor at the time of executing the sale deed.

vii) the suit property was purchased from the persons who are not having right over the property.

viii) the Hon'ble High Court failed to appreciate that the adult members of the family are well within their rights in saying that no part of the family property could be parted with or agreed to be parted with by the manager on the ground of alleged benefit to the

family without consulting them. The alienation of the joint family property in this case was bad.

It is submitted that as the aforesaid findings were recorded by the Courts below on appreciation of evidence and therefore the High Court in exercise of powers under Section 100 CPC is not justified in reversing those findings which were on appreciation of evidence on record.

3.3 It is further submitted by the learned counsel appearing on behalf of the appellants that, even otherwise, in the facts and circumstances of the case, it cannot be said that the initial mortgage by defendant No. 1 and thereafter the sale deed executed by defendant No. 1 in favour of defendant Nos. 3 an 4 was due to the legal necessity and/or to pay the "antecedent debt". It is submitted that, in the present case, the mortgage debt was created by the father in 1981 and the sale deed was executed in 1983 to discharge the mortgage debt and, therefore, it cannot be considered as "antecedent debt". It is submitted that as per the settled law, "antecedent debt" means antecedent in fact as well as in time i.e. that the debt must be truly independent of and not part of the transactions impeached. In support of his

submissions, learned counsel appearing on behalf of the appellants has relied upon the following decisions of this Court:

> ***Narain Prasad and Another vs. Sarnam Singh and Another***, 44 I.A. 168
> ***Suraj Bunsi Koer vs. Sheo Proshad Singh and others,*** 6 I.A. 88
> ***Chet Ram and Others vs. Ram Singh and Others***, 49 I.A. 228
> ***Brij Narain vs. Mangla Prasad and Others***, 51 I.A. 129
> ***Sahu Ram Chandra and Another vs. Bhup Singh and Anohter***, 44 I.A. 126
> ***Panchaiti Akhara Udasi Nirwani vs. Surajpal Singh***, A.I.R. (32) 1945 PC 1

3.4 It is further submitted by the learned counsel appearing on behalf of the appellants that the High Court failed to appreciate that there was a disruption of the joint family status and the coparcener did not exist, following a decision in status of joint family well before the mortgage or sale since the first appellant demanded partition of the suit property from his father and also send a legal notice opposing the mortgage of the suit property to Subbaiah Nadar and further the first appellant gave a protest petition to the Joint Sub-Registrar I, Pudukottai informing that his father is taking steps to sell the suit property and requested not to register any sale of the suit property and thus it is clearly established that there was an unequivocal declaration on the part

of the appellant to remain separate from his father and thus there was severance of the joint family status between the first appellant and his father. It is submitted that, in such circumstances, defendant No. 1 had no right to mortgage the joint family property as he no longer continued to be the manager the Hindu joint family. It is submitted that the High Court has failed to appreciate that it is well settled law as held by this Court as well as the Privy Council that for a severance in status all that is required is a communication to other members of the joint family of an unequivocal intention to separate.

3.5 It is further submitted by the learned counsel appearing on behalf of the appellants that, in the present case, the father acquired the property from his father and therefore the suit property was an ancestral joint family property. It is submitted that admittedly there was no partition thereafter. It is submitted that as held by this Court in the case of ***Kalyani (dead) by LRs v. Narayanan*** AIR 1980 SC 1173, to constitute a partition all that is necessary is a definite and unequivocal indication of intention by a member of a joint family to separate himself from the family. It is submitted that, as held, the partition in one sense is a severance of joint status and coparcener of a

coparcenary is entitled to claim it as a matter of his individual volition.

3.6 Making the above submissions and relying upon the above decisions, it is vehemently submitted that the sale deed in favour of defendant Nos. 3 and 4 cannot be said to be to pay "antecedent debt". He submitted that even neither in the mortgage deed nor in the sale deed it was specifically stated that the mortgage deed/sale deed has been executed by the father as a manager of the joint family and for and on behalf of the joint family. It is submitted that therefore, as rightly held by the Courts below, the sale deed was no binding on the plaintiff and/or the right of the plaintiff to claim the partition and his 1/3rd share could not have been taken away and/or affected.

3.7 Making the above submissions, it is prayed to allow the present appeal and quash and set aside the impugned judgment and order passed by the High Court and to restore the judgment and decree passed by the learned Trial Court and confirmed by the leaned First Appellate Court.

4. While opposing the present appeal, Shri Vikas Singh, learned Advocate appearing on behalf of the respondents-original defendant Nos. 3 and 4 has relied upon the documentary

evidence on record, more particularly, mortgage deed, lease deed and sale deed and has vehemently submitted that all the three aforesaid documents were executed by the father-defendant No. 1 for a legal necessity and to clear the debts of the family. It is submitted that once that is so, thereafter, the plaintiff had no right to claim the partition of the property which was already sold to clear the "antecedent debts". It is submitted that, therefore, where it was found that the findings recorded by the Courts below were perverse and contrary to the law, the High Court, in the present case, is justified in interfering with the findings recorded by the Courts below and has rightly allowed the appeal. It is submitted that the High Court has framed and answered the substantial questions of law. It is submitted that while answering the substantial questions of law, the High Court is bound to touch the evidence on record. It is submitted that merely because while answering the substantial questions of law, the evidence is discussed, it cannot be said that the High Court has exceeded in its jurisdiction not vested in it under Section 100 CPC. It is submitted, therefore, in the facts and circumstances of the case, no interference is called for by this Court.

4.1 Making the above submissions, it is prayed to dismiss the present appeal.

5. Heard learned Counsel appearing on behalf of the respective parties at length. We have considered in depth the impugned judgment and order passed by the High Court as well as the judgment and order passed by the Trial Court and the First Appellate Court. We have also considered the evidences on record – both oral and documentary.

5.1 That the original plaintiff instituted the suit for partition of the suit properties claiming 1/3rd share. The suit "B" scheduled property was sold by defendant No. 1-father of the plaintiff in favour of defendant Nos. 3 and 4. It was the case on behalf of defendants (except defendant No. 2) that the suit "B" schedule property was sold by the father during his lifetime to pay the "antecedent debt". The learned Trial Court as well as the learned First Appellate Court did not accept that the "B" schedule property was sold for the legal necessity and/or to repay the "antecedent debt" and, therefore, it was held that the sale deed in favour of defendant Nos. 3 and 4 was not binding on the plaintiff and consequently decreed the suit. The High Court, on appreciation of evidence and after considering the substantial

questions of law, has allowed the appeal and set aside the judgment and decree passed by the learned Trial Court, confirmed by the learned First Appellate Court by holding that the "B" schedule property was sold by original defendant No. 1-father during his lifetime to clear/pay/repay the "antecedent debt". Therefore, the short question which is posed for consideration of this Court is whether, in the facts and circumstances of the case, can it be said that the sale deed executed by original defendant No. 1 in favour of defendant Nos. 3 and 4 was due to the legal necessity and/or to pay the "antecedent debt"?

6. To answer the aforesaid question, few documentary evidences which ultimately led to the sale of the property by defendant No. 1 in favour of defendant Nos. 3 and 4 are required to be considered.

6.1 The suit "B" schedule property was mortgaged on 26.02.1981 and a simple mortgage deed was executed for a sum of Rs.3,000/-. In the document Exh. B-2, it is specifically mentioned that Rs.3,000/- was received by the mortgager-father of the plaintiff-original defendant No. 1 as a simple mortgage loan for their family expenses. That, on the very day, a lease deed

was executed in favour of the mortgagee (Exh. B-4). From the document produced at Exh. B-6, it appears that a further sum of Rs.1,000/- was received by the father as an additional loan amount/additional lease amount. The mortgage deed was opposed by the plaintiff by notice dated 11.09.1981. However, in the reply to the notice by the father dated 16.10.1981, it was specifically stated that he was striving hard to maintain himself, his wife and two unmarried daughters, one young daughter and another boy. It was also stated that he was aged coupled with stone-deafness. It was further stated that the plaintiff has failed to take care of the family members and he has no money and therefore for the benefit of the family and in the interest of the family, he has executed Varthamanan in lieu of the interest for the mortgage. That, thereafter, defendant No. 1-father sold the suit property in favour of defendant Nos. 3 and 4 in the year 1983 for a sale consideration of Rs.6,700/-. In the sale deed itself, it is specifically mentioned that, out of the sale consideration of Rs.6,700/-, a sum of Rs.3,000/- having been paid to the vendors to settle the loan by mortgaging the schedule property by the 3rd vendor and for redemption of the sum mortgaged. It was further stated that the balance consideration i.e. Rs.3,700/- has been

paid. That the sale deed executed in favour of defendant Nos. 3 and 4 by original defendant No. 1-father can be said to be to clear/pay the "antecedent debt" and for the legal necessity of the family members. Therefore, in the facts and circumstances of the case, we are of the firm opinion that no error has been committed by the High Court in holding that the sale deed executed by original defendant No. 1 in favour of defendant Nos. 3 and 4 was for a legal necessity and to pay the "antecedent debt". From the evidence on record, it appears that the sale deed executed in the year 1983 has a direct connection with the mortgage to repay the mortgage money and to repay the further loan of Rs.1,000/-. Therefore, in the facts and circumstances of the case, the decisions relied upon by the learned counsel appearing on behalf of the appellants shall not be applicable to the facts of the case on hand.

7. Now so far as the submission made on behalf of the appellants that in exercise of powers under Section 100 CPC, the High Court ought not to have interfered with the findings of fact recorded by both the Courts below and ought not have re-appreciated the entire evidence of record is concerned, from the impugned judgment and order passed by the High Court and in

the facts and circumstances of the case, we are of the opinion that the High Court has not exceeded in its jurisdiction while deciding the appeal under Section 100 CPC. The High Court has framed and answered the substantial questions of law referred to in paragraph 7 of the impugned Judgment and Order. The questions of law framed by the High Court are Substantial Questions of Law, more particularly question No. 1. While answering the aforesaid question of law, when the High Court has discussed the evidence, it cannot be said that the High Court has re-appreciated the entire evidence of record. Many a times, while deciding/answering the Substantial Question of Law, the evidence on record is required to be discussed and/or considered. But, by that itself, it cannot be said that it is a re-appreciation of the entire evidence on record, as sought to be contended on behalf of the appellants.

8. In view of the above and for the reasons stated above, we see no reason to interfere with the impugned judgment and order passed by the High Court dated 02.07.2007. We are in complete agreement with the view taken by the High Court. Under the circumstances, the present appeal fails and the same deserves to be dismissed and is accordingly dismissed. No costs.

.....J.
[L. NAGESWARA RAO]

NEW DELHI,
MAY 09, 2019.

.....J.
[M.R. SHAH]