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A.S.No.577 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.06.2023

Pronounced on : 02.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE C. KUMARAPPAN

A.S.No.577 of 2008

and

M.P.Nos.1 of 2008 & 1 of 2012

1.M.Krishnakumar

2.M.Sulochana

... Appellants

Vs.

1.Raja

2.Selvan @ Selvaraj (died)

3.Kaliammal

4.Lakshmi @ Ramayee

5.Kaliammal

6.Ramsamy

7.Kaliannan

8.Vangili

9.K.S.Krishnan

10.Madhesawaran

11.V.Radha

12.E.Krishnan

13.E.Duraisamy

14.Sathyannarayanan



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- 15.V.Raman
- 16.V.Lakshmanan
- 17.Etti Gounder
- 18.Ponnusamy
- 19.Kandhasamy
- 20.Menaka
- 21.C.Periasamy
- 22.P.Chinnappan
- 23.R.Arunagiri
- 24.Chandra
- 25.Sridharan
- 26.Sadanantham
- 27.A.Kanthimathi
- 28.A.Periasamy
- 29.P.Kuppusamy
- 30.P.Chandrasekaran
- 31.P.Mani
- 32.K.Kaliammal
- 33.K.Kaliammal
- 34.Palaniappa Gounder
- 35.Arthanaripalaniappan
- 36.Selvaraj
- 37.Dhanalakshmi
- 38.E.Krishnan
- 39.J.Jeevareka
- 40.J.Balaji
- 41.M.Vijayalakshmi
- 42.K.Jeeva
- 43.P.Nagalakshmi
- 44.Chinnasamy
- 45.N.S.Palanivelu
- 46.Venkatarama Chettiar
- 47.G.Sridharan
- 48.E.Srinivasan
- 49.Muthusamy
- 50.A.Pappal



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- 51.A.M.Raja
- 52.Kaliammal Velusamy
- 53.Periannan
- 54.Palaniappan
- 55.V.K.Muthusamy
- 56.S.Kannaian
- 57.K.Mohan
- 58.Kalarani
- 59.Siva kumar
- 60.G.Vijaya
- 61.B.Vijaya
- 62.K.Thangammal
- 63.Dharmaraj
- 64.Thiyagarajan
- 65.Subbiah
- 66.Devaki
- 67.Krishnan
- 68.Bhanumathi
- 69.Subramaniam
- 70.Dr.S.Perumal
- 71.Selvan
- 72.K.Ramasamy
- 73.S.Sulochana
- 74.Kanakaraj
- 75.M.Hanifa
- 76.P.Chinnasamy
- 77.S.Malar
- 78.Namakkal Finance,
Main Road, Opp : Chengalaneer Pillayar Koil,
Namakkal Town.
- 79.Namakkal Municipality,
Represented by its Commissioner,
Namakkal.
- 80.Rajasekaran
- 81.R.Chandrasekaran
- 82.Pavayammal



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83.M.Periasamy

84.V.Sekaran

85.Ramsamy

86.Nallammal

87.R.Chellappan

88.R.Veerappan

89.R.Vangili

90.R.Palanisamy

91.K.Ramasamy

92.Pappayammal

93.K.Asokan

Managing Partner,

AC LMR Cinema, Door No.178/26E,

Kalaivani Nagar, Mohanur Road,

Namakkal Town, Namakkal Tk. & District.

94.K.Asokan

95.L.Mohanarangan

96.L.Chinna Gounder

97.Lakshmi Selvaraj

98.Rajini

99.Guhapriya

... Respondents

*[RR 93 to 96 impleaded as party respondents
vide order of Court dated 22.12.2011 made
in M.P.No.1 of 2011 in A.S.No.577 of 2008]*

*[R2 died, RR 97 to 99 are brought on record
as LRs of deceased 2nd respondent Selvan @
Selvaraj, vide order of Court dated 01.11.2022
made in C.M.P.Nos.1, 2 and 3 of 2013 in
A.S.No.577 of 2008]*

Prayer : Appeal Suit filed under Section 96 of Code of Civil Procedure against the judgment and decree dated 11.12.2007 in O.S.No.8 of 2004 on the file of the Additional District Court (Fast Track Court), Namakkal.



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For Appellants : Mr.T.Murugamanickam, Senior Counsel
for Mr.M.S.Ramprasad
For R1 : Mr.R.Thirugnanam
for Mr.C.H.Pandian
R2 : Died (steps taken)
R3 to R80, R82 to R84,
R86 to R92 : No appearance
R81 : Out of station
For R85 : Mr.T.Dhanyakumar
For R93 to R96 : Mr.V.K.Vijayaraghavan
For R97 to R99 : Mr.V.S.Malola Narasimhan

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

The plaintiffs in the suit in O.S.No.8 of 2004 on the file of the Additional District Court (Fast Track Court), Namakkal, are the appellants in the above Appeal.

2.The appellants filed the suit in O.S.No.8 of 2004 for partition of their 12/48 share in all the suit properties with reference to good and bad



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soil and for consequential reliefs. The suit properties consist of 11 Items.

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3.The case of the appellants as pleaded in the plaint is that the suit properties are the joint family properties of the grandfather of 1st plaintiff Sri Kittu Gounder and that the 1st plaintiff, who is the grandson of Sri Kittu Gounder through his son Sri Mani, is a coparcener. It is the specific case of the appellants that the suit properties are being enjoyed in common without any partition by division or status. The 1st plaintiff is the son of Sri Mani, who is one of the sons of Sri Kittu Gounder. The 2nd plaintiff, by name Smt.Sulochana, is the mother of 1st plaintiff. Since the 1st plaintiff was a minor at the time of suit, he was represented by his mother, the 2nd plaintiff.

4.Defendants 1 and 2 are the other two sons of Late Sri Kittu Gounder and 3rd defendant is the wife of Sri Kittu Gounder. It is the case of 1st plaintiff that his father Sri Mani died intestate on 15.09.1990 under mysterious circumstances. It is his further case that Sri Kittu Gounder and his three sons, including the father of 1st plaintiff, are entitled to $\frac{1}{4}$ share in all the suit properties and that the 1st plaintiff also acquired his $\frac{1}{8}$ share by birth as a coparcener. It is the case of plaintiff that Sri Kittu Gounder died



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intestate in or about 09.01.1988 and on his death, his undivided $\frac{1}{4}$ share devolved on his three sons and his widow, the 3rd defendant. The plaintiffs, being the son and widow of Sri Mani, claim that they are entitled to $\frac{3}{16}$ share of Sri Mani, which devolved on plaintiffs and the 3rd defendant under Section 8 of the Hindu Succession Act, 1956. 1st plaintiff claimed $\frac{1}{8}$ share as a coparcener and $\frac{1}{48}$ as one of three heirs of $\frac{1}{8}$ th share of his father.

5.It is the specific case of appellants that father of 1st plaintiff was leading a wayward life and was addicted to drinks and hence, he deserted and abandoned his wife and child willfully to lead an immoral life with another lady. Though it is admitted that several alienations have been made in favour of defendants 4 to 87, it is contended by the appellants that the alienations are not binding on the 1st appellant, as he was not even *eo nomine* party to any of the alienations effected either by defendants 1 and 2 or by Sri Kittu Gounder or by the father of 1st appellant in favour of defendants 4 to 87. Defendants 88 to 92 are impleaded as the heirs of one Ramasamy, yet another alienee. The appellants filed a suit earlier for partition in O.S.No.109 of 1988 on the file of Additional District Court



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(Fast Track Court), Namakkal, and later, withdrew the suit with a liberty to file a fresh suit after impleading all the alienees.

6.It is the case of appellants that a portion of Item 2 of plaint schedule, measuring an extent of 5.1 Acres, was settled in favour of 1st plaintiff's father Sri Mani by a registered document dated 25.06.1966. It is also stated that, on the death of father of 1st appellant, the appellants are entitled to the properties covered under the settlement deed in entirety. In respect of the property covered by the settlement deed, it is stated that a separate suit has been filed in O.S.No.180 of 1990 before the same Court.

7.While referring to settlement deeds executed by Sri Kittu Gounder in favour of his two sons namely defendants 1 and 2, the plaintiffs have admitted that the properties covered under those settlement deeds are not included in the suit and the plaintiffs concede that they do not claim any share in the properties covered under those settlement deeds executed by Sri Kittu Gounder in favour defendants 1 and 2. The plaintiffs further state that the defendants 1 and 2 exploited the father of 1st plaintiff and fraudulently



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obtained his signature in certain documents when he was in a drunken mood.

8.The suit was contested by defendants 1 and 2 and the alienees. The written statement filed by 1st defendant was adopted by defendants 2 and 3 in the suit.

9.While admitting that the father of 1st plaintiff died on 15.09.1990, the allegation that 1st plaintiff's father died under mysterious circumstances was specifically denied by defendants 1 to 3. It is specifically denied that the suit properties are joint family properties of Sri Kittu Gounder and his sons. It is stated in the written statement that the suit properties are not joint family properties, but the properties of Sri Kittu Gounder, who acquired the properties on his own without the aid of any joint family property. Therefore, the defendants disputed the 1st plaintiff's right by birth as alleged. Though defendants 1 to 3 admitted that Sri Kittu Gounder died on 09.01.1988, they pleaded that he left three separate Wills in respect of his



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properties and as absolute owner of suit properties, Sri Kittu Gounder is entitled to execute the Wills or settlement deeds. While admitting that Sri Kittu Gounder had bequeathed certain properties in favour of 1st plaintiff's father, it is contended that the 1st plaintiff's father was only given life interest and that therefore, the plaintiffs cannot succeed to the properties without any right. It is also stated that the alienations were made only to discharge the debts borrowed by Sri Kittu Gounder for the development of his properties and that the plaintiff and other members were joined in the execution of sale deeds as insisted by purchasers. It is further contended that the 1st plaintiff, having no right or title or interest in any of the properties of Sri Kittu Gounder, was not made a party, even *eo nomine*, as he has no *locus standi* to challenge any of the alienations made in favour of defendants 4 to 87 or Sri Ramasamy. Defendants have also relied upon three separate Wills dated 11.10.1982, 03.02.1987 and 20.12.1987 and claimed absolute right.

10.The trial Court framed the following issues on the basis of pleadings :



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- “1.தாவாச் சொத்துக்கள் கிட்டுக்கவுண்டர் மற்றும் அவர் ஆண் மக்களின் கூட்டுக் குடும்ப சொத்துக்களா அல்லது கிட்டுக் கவுண்டரின் தனிச் சொத்துக்களா ?
- 2.கிட்டுக்கவுண்டரால் எழுதிக் கொடுக்கப்பட்ட பத்திரங்கள் செட்டில்மெண்டா அல்லது உயிலா ?
- 3.அவைகள் உயில்களாயின் அவை சட்டப்படி அமுலில் உள்ளனவா ?
- 4.தாவா சொத்துக்களைப் பொறுத்து ஏற்பட்ட பராதீனங்கள் வாதிகளை கட்டுப்படுத்துமா ?
- 5.கிரயம் பெற்ற பிரதிவாதிகள் நல்ல எண்ணத்துடன் துகை செலுத்தி கிரயம் பெற்றுள்ளனரா ?
- 6.கிரயதாரர்களுக்கு equity படி பரிகாரம் கிடைக்கக்கூடியதா?
- 7.வாதிகளும் 1 முதல் 3 பிரதிவாதிகளும் பிராதில் கண்டபடி பாகம் அடைய அருகரா ?
- 8.வாதிகளுக்கு பாகப்பிரிவினைக்கு முதல்நிலை தீர்ப்பாணை கிடைக்கத்தக்கதா ?
- 9.வாதிகளுக்கு கிடைக்க வேண்டிய பரிகாரம் யாது? ”

11.On the first issue, the trial Court held that the suit properties are not joint family properties of Sri Kittu Gounder and his sons, but the



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separate properties of Sri Kittu Gounder. On the second issue, the trial Court held that the settlement deeds alleged to have been executed by Sri Kittu Gounder in favour of his sons were to be treated as Wills and that the recitals of the documents meant only to prevent alienations. The trial Court came to the conclusion that the settlement deeds executed were to be operative after the lifetime of testator and hence they should be taken as Wills. Thus, the documents Exs.A10, A11 and A12 were held to be Wills. The trial Court then, without even a discussion about the evidence in relation to proof of Wills, came to the conclusion that the alleged Wills marked under Exs.B3, B4 and B7 are *bona fide* Wills. In view of the specific findings on the issues relating to the proof of Wills and the decision of the trial Court on the other issues, the suit was dismissed by the trial Court.

12. Aggrieved by the judgment and decree of the trial Court dismissing the suit, the plaintiffs in the suit have preferred the above Appeal.



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13.Learned Senior Counsel appearing for the appellants submitted that the trial Court disposed of the suit by a non-speaking judgment without referring to any document or material evidence which are necessary. Learned Senior Counsel then contended that the defendants, who are claiming under the Wills under Exs.B3, B4 and B7, have not proved the Wills in the manner known to law and that the unregistered Wills relied upon by the defendants have been casually held to be proved without any discussion by the trial Court. Learned Senior Counsel submitted that the trial Court ought to have considered the evidence with reference to each Will and thereafter, rendered a finding on appreciation of evidence of attesting witnesses. Referring to the fact that the Wills are unnatural and surrounded by suspicious circumstances, learned Senior Counsel submitted that the trial Court has not even discussed the issue regarding the genuineness of the Wills. When none of the suspicious circumstances is explained or dispelled by the defendants on whom the burden of proof lies, the learned Senior Counsel submitted that the trial Court has disposed of the suit summarily without considering the documents or evidence in a proper



perspective.

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14. On the other hand, learned counsel appearing for the 1st respondent, though submitted that substantial evidence is let in by the defendants to sustain the findings of the trial Court, is unable to convince this Court that the judgment of trial Court is one where application of mind by the Judge is evident or gathered from the way in which the conclusions are reached.

15. It is a fundamental principle that every decision of a Court should rest on the basis of appreciation of evidence that are relevant for the decision on every issue. The decisions cannot be based on mere suspicion or surmises without any legal ground. The omission to consider the evidence in the light of pleadings is a defect that affects not only the quality of judgment, but also the requirements of a valid judgment. On the facts of this case, this Court finds that the trial Court has rendered a finding as to the character of the settlement deeds without referring to the recitals of the documents, that are essential to determine whether a document is a Will or



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settlement deed.

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16.It is a mandatory requirement under Section 68 of Evidence Act that execution of a Will should be proved by examining the attestors in terms of Section 68 of the Evidence Act. The execution and due attestation should also satisfy the requirement under Section 63(3) of Indian Succession Act, 1925. Apart from due execution of the document, it is also the burden of propounder to dispel all the suspicious circumstances. It is useful to refer to Para Nos.16 and 17 of the judgment of trial Court, where the documents Exs.B3, B4 and B7 were considered :

“16.இந்நிலையில் வாதிகள் தரப்பு வழக்கறிஞர் வாதுரையும் பி.சா.ஆ.3, 4, 7 ஆகியவற்றிற்கு ஏற்புடைய வாதுரையாக அமையவில்லை. ஏனெனில் பி.சா.ஆ.3, 4, 7 ஆகியவைகள் சாட்சிய சட்டப்படி முறையாகவே பிரதிவாதிகள் தரப்பில் நிரூபிக்கப்பட்டுள்ளது என தீர்மானித்து முடிவு செய்கிறேன்.

17.இந்நிலையில் கிட்டுக்கவுண்டரால் எழுதிக் கொடுக்கப்பட்ட பி.சா.ஆ.3, 4, 7 ஆகியவைகள் உயில்கள்



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தான் எனவும் அவைகள் சட்டப்படி அமுலில் உள்ளது
எனவும் செல்லத்தக்கதுதான் எனவும் பிரதிவாதிகளுக்கு
சாதகமாகவும் வாதிகளுக்கு பாதகமாகவும் தீர்வு
செய்கிறேன்.”

Similarly, Issues 2 and 3 framed by the trial Court also have been answered without reference to the specific pleading or evidence on either side. In other words, the findings of the trial Court are not based on appreciation of evidence but on surmises without a discussion.

17.However, this Court is unable to find any specific ground attacking the finding of the trial Court as to the character of the properties as self-acquired of Sri Kittu Gounder. Except the findings of the trial Court on the first issue holding that the suit properties are the separate properties of Sri Kittu Gounder, this Court is unable to sustain any of the findings of the trial Court in the absence of any discussion or reference to documents or evidence adduced by both sides. Therefore, this Court finds that it is a fit case where the appeal should be allowed and remitted to the trial Court for fresh consideration of Issues 2 to 8 in accordance with law. Learned



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counsel appearing for the respondents have no objection for remanding the matter to the trial Court.

18.As a result, the findings of the trial Court on Issue No.1 is confirmed. However, the findings of the trial Court on the other issues are set aside and the matter is remitted to the trial Court to decide Issue Nos. 2 to 8 already framed, on merits and in accordance with law, after referring to the pleadings and evidence on either side. Accordingly, this Appeal is partly allowed and the judgment and decree of the trial Court is set aside to the extent indicated above. The matter is remitted to the trial Court for fresh consideration in accordance with law as indicated above on the basis of evidence already on record. However, the respondents 93 to 96 who have now been impleaded in this appeal are permitted to raise their plea and the trial also can be expanded to consider their plea in the manner known to law. Both parties shall lead evidence on the plea and claim of respondents 93 to 96 independently. If it is necessary that the predecessor-in-interest of the respondents 93 to 96 are also to be impleaded, the parties are at liberty to file appropriate application and it is open to the trial Court to consider the



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same independently after hearing both sides. No costs. Consequently, connected miscellaneous petitions are closed.

19.It is made clear that parties are not permitted to lead further evidence on other issues. The parties shall appear before the trial Court on 24.08.2023. Registry is directed to send back the original records to the trial Court, forthwith.

(S.S.S.R., J.) (C.K., J.)
02.08.2023

Index : Yes / No
Neutral Citation : Yes / No
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To

1.The Additional District Judge,
Fast Track Court,
Namakkal.

2.The Section Officer,
VR Section, High Court,
Chennai.

| *with a direction to return*
| *the records to the Court below,*
| *forthwith*



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S.S. SUNDAR, J.
and
C.KUMARAPPAN, J.

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Judgment in
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