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S.A.No.1391 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2023

CORAM

THE HON'BLE MR. JUSTICE V.LAKSHMINARAYANAN

S.A.No.1391 of 2007

and

M.P.No.1 of 2007

- 1.P.Kanna Gounder
- 2.Narayanan
- 3.Vadivel
- 4.Sakthivel

... Appellants

Vs.

P.Govindan (Deceased)
2.The District Collector,
Tiruvannamalai District,
Tiruvannamalai.

3.The Tahsildar,
Tiruvannamalai Taluk,
Tiruvannamalai District.

4.The President of Madhalambadi,
Village Panchayat Board,
Madhalambadi Village,
Nookambadi Post,
Tiruvannamalai Taluk.

- 5.Thenmozhi
- 6.Poomali
- 7.G.Elumalai



S.A.No.1391 of 2007

(R5 to R7 brought on record
as LR's of the deceased R1 vide order
of the Court dated 02.07.2015
made in M.P.No.1 of 2015 in S.A.No.1391 of 2007) ... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree of the Principal Subordinate Judge's Court at Tiruvannamalai dated 09.07.2007 in A.S.No.76 of 2006, confirming the Judgment and Decree of the Additional District Munsif Court at Tiruvannamalai dated 02.08.2006 in O.S.No.232 of 2004.

For Appellants : Mr.S.Mukunth
Senior Counsel
for Mr.N.Krishna Kumar

For Respondents : R1 - Died

Mr.B.Talim Nithi
Special Government Pleader (CS)
For R2 and R3

R4 - Mr.V.Durai Solaimalai

R5 to R7 - Mr.T.Dhanasekaran

JUDGMENT

This is a dispute between brothers. O.S.No.96 of 2001 on the file of the Subordinate Judge, Tiruvannamalai is a Suit for declaration of title and for injunction. The house property is situated at Survey No.1/67A,



Madhalampadi Village, Nookambadi Post, Tiruvannamalai Taluk and District.

2. There is no dispute with one Perama Gounder. Kanna Gounder, Ramasamy Gounder and P.Govindan formed a Hindu Joint Family. Perama Gounder's Joint Family had acquired several properties and purchased them in the name of its Karta, Perama Gounder. Pursuant to a panchayat on 05.09.1981, the Joint Family had divided the agricultural properties alone, leaving apart the house properties in the said document.

3. It was the case of the plaintiff that the panchayatars allotted one house to each of the members of the now divided Family. The Suit property fell to the share of the Govindan. The adjacent property fell to the share of the Kanna Gounder, the first defendant. The tiled house properties of Perama Gounder fell to his share and Ramasamy Gounder was given property bearing Door No.1/70. Record shows that these properties had been enjoyed by them separately after mutating Revenue Records, Electricity and Water Records from the concerned Authorities.



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4. As per, Ex.A3, the partition deed dated 05.09.1981, the properties allotted to Perama Gounder were to be enjoyed by him without the right of alienation. However, contrary to the said understanding, Perama Gounder alienated the property by way of a settlement deed in favour of his other sons excluding P.Govindan. Therefore, Govindan filed a Suit for partition. This Suit was decreed. The present Suit property was not the subject matter of the previous Suit. Taking advantage of the patta standing in the name of Perama Gounder, a testament / Will was executed on 05.08.1986, whereby Perama Gounder bequeathed the property in favour of Kanna Gounder.

5. Perama Gounder died some time in 1999. Taking advantage of the Will / Testimony, Kanna Gounder started to interfere with the possession of the property of his brother Govindan. Hence, the Suit.

6. Heard, Mr.S.Mukunth, learned Senior Counsel appearing for Mr.N.Krishna Kumar for Appellants. He would vehemently contend that as per Ex.A3, the following clause is found:

"இதில் காணாமல் எவர் பெயரில் எவ்வளவு



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சொத்துக்கள் இருந்தாலும் கொடுக்க வேண்டிய கடன்கள்
இருந்தாலும் அவை அவரவரைப் பொறுத்ததே"

7. According to him, this clause will show that Perama Gounder was the owner of the property as on 05.09.1981 and the said property not having been included in the partition deed, the title continues with the Perama Gounder and therefore, he could dispose it of to any one including Kanna Gounder, the first defendant.

8. Per contra, Mr.T.Dhanasekaran, learned counsel for the respondent Nos.5 to 7 would point out from the plaint that the house properties which are the subject matter of acquisition by the family were not included in the partition deed, on account of the fact, the stamp duty that will be payable on those properties would be high. Since the properties were orally partitioned in the presence of the panchayatars, the documents filed by him will show that the plaintiff enjoyed the property absolutely, even during the life time of the Perama Gounder.



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9. The defendants would admit after the partition, the properties bearing Door No.1/67A was enjoyed by Govindan, 1/67B was enjoyed by himself and 1/70 was enjoyed by other brother Ramasamy Gounder.

10. The tiled house was enjoyed by Perama Gounder and all of them in their exercise and their rights as owners had been paying electricity and water charges separately. He would also submit that the transfer of patta from Perama Gounder to Govindan took place during the life time of Perama Gounder and he did not object to it nearly 18 years till he died in the year 1999.

11. At the time of admission, the following questions of law were framed:

"1. Whether the Courts below are correct in law in decreeing the Suit on the basis that the defendants have not proved their contentions totally overlooking the principle that a plaintiff has to succeed on the strength of his case and not on the weakness of the defence?"

2. Are not the Courts below in error in not dismissing the Suit especially when they have accepted



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the genuineness of the Will and when the plaintiff has not proved the oral partition?"

12. As the case narrated to go to show that the question of Will / Testimony executed by the Perama Gounder is not the issue. Whether he had the right to bequeath the property which had been allotted in favour of his son, the plaintiff Govindan.

13. In so far as the other properties i.e., the tiled house, the property suit in Survey Nos.1/67B, 1/70, there is absolutely no dispute and the properties are being enjoyed individually by Ramasamy and Kanna Gounder.

14. I feel it may not be fair to single out Govindan alone and dismiss the Suit on the ground that Perama Gounder was the owner of four properties and still he had bequeathed property Suit in 1/67A alone. Therefore, the questions of law framed does not arise for consideration. On the contrary, I hold that both the Courts below are correct in finding. Perama Gounder did not have right, title and interest after 05.08.1981, the date of oral partition and allotment in the presence of the panchayatars.



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Being a concurrent finding of fact, I did not want to interfere with the same.

The Substantial Questions are answered against the Appellant and in favour of the respondents.

15. The Judgment and Decree in O.S.No.232 of 2004 dated 02.08.2006 on the file of the Additional District Munsif Court at Tiruvannamalai as confirmed in A.S.No.76 of 2006 dated 09.07.2007 on the file of the Principal Subordinate Judge at Tiruvannamalai stands confirmed

16. In the result, the Second Appeal is dismissed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

05.04.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
ab



S.A.No.1391 of 2020

To

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- 1.The Principal Subordinate Judge,
Tiruvannamalai.
- 2.The Additional District Munsif,
Tiruvannamalai.
3. The District Collector,
Tiruvannamalai District,
Tiruvannamalai.
- 4.The Tahsildar,
Tiruvannamalai Taluk,
Tiruvannamalai District.



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V.LAKSHMINARAYANAN. J.,

ab

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