



S.A.Nos.123 & 124 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.Nos. 123 & 124 of 2018

S.A.No.123 of 2018

1.Chandrahasan

...Appellant

Vs.

N.Ramachandran (died)

1.Nandagopal

2.Navanarayanan

3.Rajakumari

4.Kasturi

5.Kolanji

6.Thailammal

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the learned Principal District Judge of Cuddalore dated 27.07.2015 and passed in AS.No.90 of 2012 dismissing the appeal confirming the judgment and decree of the learned Sub-ordinate Judge of Panruti dated 01.10.2012 and passed in O.S.No.24 of 1996.

For Appellant

: M/s.R.Gururaj

For Respondents 2 to 6

: Mr.V.Radhakrishnan
Senior Counsel
for M/s.S.Kadarkarai



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For Respondent 1 : Died

S.A.No.124 of 2018

Chandrasahana

...Appellant

Vs.

1.Nandagopal
2.Navanarayanan
...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the learned Principal District Judge of Cuddalore dated 27.07.2015 and passed in AS.No.91 of 2012 dismissing the appeal confirming the judgment and decree of the learned Sub-ordinate Judge of Panruti dated 01.10.2012 and passed in O.S.No.70 of 2005.

For Appellant : M/s.R.Gururaj

For Respondents 1 &2 : Mr.V.Radhakrishnan
Senior Counsel
for M/s.S.Kadarkarai

COMMON JUDGEMENT

S.A.No.123 of 2018 is arising out of suit for partition filed by the appellant/plaintiff in respect of 14 items of suit property. The suit was dismissed by the Trial Court and the findings of the Trial Court were affirmed by the First Appellate Court. Aggrieved by the same, the unsuccessful plaintiff has come up with S.A.No.123 of 2018.



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hatched a plan by inviting third defendant to file a collusive suit to set aside the settlement deeds executed by her in favour of first defendant. In the said suit, the first defendant conveniently remained exparte and suffered a collusive decree. The properties settled in favour of first defendant under the settlement deeds executed by Uchitham Ammal were subject matter of partition between plaintiff and first defendant dated 19.06.1978. Therefore, any decree obtained by Uchitham Ammal against first defendant collusively would not bind the appellant/plaintiff. Since there was some misunderstanding between plaintiff and first defendant regarding enjoyment of the suit properties, the appellant/plaintiff was constrained to file a suit for partition.

5. The respondents filed a written statement and resisted the suit mainly on the ground that items 5, 6 and 10 do not belong to the family and they were exclusive properties of third defendant. The third defendant settled the items 5, 6 and 10 in favour of first defendant. With regard to the other items of the suit properties, the first defendant contended that immediately after partition in which the suit properties were allotted to the share of plaintiff and first defendant, there was a oral partition between plaintiff and first defendant and the other items of suit properties were divided by metes and bounds and they have



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been enjoying respective shares allotted to them. In such circumstances, the second suit for partition was not maintainable.

6. The third defendant filed a separate written statement and contended that items 5, 6 and 10 were purchased by her and those items were her separate properties. It was further contended that taking advantage of the fact that she was living away from her husband, the first defendant managed to get two settlement deeds in his favour. Those settlement deeds were admitted. The third defendant filed a suit in O.S.No.44 of 1992 for a declaration that she was entitled to for a declaration of her title in respect of items 5, 6 and 10 and for recovery of possession and the said suit was decreed exparte in her favour and she had taken possession through Court. Thus, she claimed exclusive right over the items 5, 6 and 10 of the suit properties.

7. Before the Trial Court, the appellant/plaintiff was examined as P.W.1 and on behalf of the plaintiff, 10 documents were marked as Ex.A1 to Ex.A10. The first defendant was examined as D.W.1 and on behalf of respondents/defendants, 5 other witnesses were examined as D.W.2 to D.W.6. 62 documents were marked on behalf of the respondents as Ex.B1 to Ex.B62.



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8. The Trial Court, after taking into consideration the sale deed in the name of Uchitham Ammal, third defendant and the decree passed in the earlier suit filed by her in O.S.No.670 of 1991 marked as Ex.A6 and O.S.No.441 of 1992 marked as Ex.A10, came to the conclusion that items 5, 6 and 10 were separate properties of Uchitham Ammal and as such, the plaintiff was not entitled to maintain a suit for partition in respect of those properties. As far as other items of the suit properties were concerned, the Trial Court, based on admission of appellant as P.W.1 that the other suit properties were partitioned orally between plaintiff and first defendant and he had been in possession and enjoyment of the 1/2 of the suit properties, dismissed the suit on the ground that suit for partition would not lie when there was earlier oral partition between plaintiff and first defendant.

9. Aggrieved by the same, the appellant preferred two first appeals in A.S.No.90 of 2012 and A.S.No.91 of 2012 on the file of Principal District Judge, Cuddalore. The First Appellate Court concurred with the findings of the Trial Court and dismissed the first appeals. Aggrieved by the concurrent findings



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against him, the appellant has come by way of second appeal.

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10. The learned counsel for the appellant submitted that under Ex.A1, partition deed, the suit properties were jointly allotted to the share of plaintiff and first defendant and hence, the respondents are not entitled to deny the plaintiff's 1/2 share in the suit properties. The learned counsel further submitted that earlier suits O.S.No.670 of 1991 and O.S.No.441 of 1992 filed by third defendant against first defendant was not binding on the appellant when he was not arrayed as a party in the earlier suits. Therefore, the judgment and decree passed by the Courts below based on the findings in the earlier suits to which the appellant was not a party is liable to be set aside.

11. It is seen from Ex.B17 and Ex.B18, the suit items 5, 6, and 10 were purchased in the name of third defendant, Uchitham Ammal. It is the case of the plaintiff that father of the plaintiff and first defendant purchased the properties in the name of third defendant, Uchitham Ammal. However, there is no evidence available on record to support the said contention of the appellant except the interested testimony of P.W.1. When a registered sale deed stands in the name of third defendant, female member of the family, the same shall be presumed to be



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her property unless there is a concrete evidence available on record to show that consideration for the same was paid by father of the parties. Therefore, based on Ex.B17 and Ex.B18, both the Courts below rightly came to the conclusion that Uchitham Ammal, third defendant was the owner of items 5, 6 and 10 of the suit properties. It is also seen from records that third defendant executed two settlement deeds dated 01.06.1966 and 31.10.1970 under Ex.B19 and Ex.B20 in favour of first defendant. However, those settlement deeds were cancelled in a suit filed by third defendant under Ex.A6. Subsequently, third defendant filed a suit for declaration of her title and recovery of possession against first defendant and the same was decreed. In pursuance of the said decree, third defendant had taken possession of the property namely items 5, 6 and 10 through Court. The appellant herein claiming himself in joint possession of the said items of property, failed to object for delivery of said items in favour of 3rd defendant, when the possession of items 5, 6 and 10 were taken by Uchitham Ammal (D3) through Court. The tax receipts filed by the respondent as Ex.B30 to Ex.B55 clearly proves that Uchitham Ammal continued to pay tax to Government in respect of those properties.

12. Though, there is some force in the argument of the learned counsel for



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the appellant that decree obtained by third defendant against first defendant would not bind him, as seen from Ex.17 and Ex.18, Uchitham Ammal purchased items 5, 6 and 10 by way of registered sale deed in her name. The subsequent suit filed by her for setting aside settlement deeds, declaration of her title, recovery of possession etc., though not inter parties, it will have some evidentiary value. The failure of appellant to raise any objection when possession of item 5, 6 and 10 were taken by 3rd defendant, creates serious doubt about his claim as if he is in joint possession of said items. The tax receipts in name of 3rd defendant clearly proves she has been in effective control of said items. In such circumstances, the findings reached by the Courts below that Uchitham Ammal was exclusive owner of items 5, 6 and 10 is based on the evidence available on record and the same requires no interference by this Court.

13. As far as other items of the suit properties are concerned, the appellant, when he was examined as P.W.1 clearly admitted that there was a oral partition between him and first defendant and he had been in possession and enjoyment of 1/2 of the suit properties allotted to him. He also admitted that items 5, 6 and 10 were purchased by Uchitham Ammal. The relevant portion of his evidence reads as follows:-



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"இந்த வழக்கு தாக்கல் செய்துள்ள தாவா சொத்துக்களில் அனைத்திலும் உள்ள பாதி பாகத்தை நான் அனுபவித்து வருகிறேன். எனக்கும் 1-ம் பிரதிவாதிக்கும் வாய்மொழியாக பாகம் பிரித்துக் கொண்டோம். வழக்கு 4-வது அயிட்டத்தில் உள்ள 1 ஏக்கர் 72 செண்டில் நான் பாதியும் என் அண்ணன் 1-ம் பிரதிவாதி பாதியாகவும் அனுபவித்து வருகிறோம். 3-ம் பிரதிவாதி உச்சிதம் அம்மாளை நோணாங்குப்பத்தில் திருமணம் செய்துகொடுத்தார்கள். அவர் என்னுடைய அத்தை. அந்த நோணாங்குப்பம் கிராமம் முழுவதையும் என்எல்சி நிறுவனத்தார் நிலத்தை கைப்பற்றிக் கொண்டார்கள் என்றால் சரிதான். அவ்வாறு என்எல்சி நிறுவனத்தார் நோணாங்குப்பம் கிராமத்தை கைப்பற்றிக் கொண்டவுடன் உச்சிதம்மாள் என் அத்தை மேலிருப்பு கிராமத்தில் வந்து குடியேறிவிட்டார்கள் என்றால் சரிதான். தாவா 5, 6, 10 அயிட்டங்களை பொருத்து 3-ம் பிரதிவாதி உச்சிதம்மாளால் கிரயம் பெறப்பட்ட சொத்து என்றால் சரிதான். அந்த சொத்தை என் தந்தைதான் கிரயம் என் அத்தைபேரில் வாங்கிக் கொடுத்தார். மேற்படி சொத்துக்களைப் பொருத்து என் தந்தை 3-ம் பிரதிவாதியான என் அத்தைப்பேருக்கும் கிரயம் வாங்கிக் கொடுக்கவில்லை 3-ம் பிரதிவாதி திருமணம் செய்துக் கொடுத்த நோணாங்குப்பம் கிராமத்தை என்எல்சி



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அந்த கிராமத்தை எடுத்துக்கொண்டதால் என்எல்சி நிறுவனத்தார் எடுத்துக்கொண்டு பணம் கொடுத்தார்கள் என்றால் சரிதான். தாவா 7-வது அயிட்டி சொத்து 1 ஏக்கர் 8 செண்டிலும் நானும் 1-ம் பிரதிவாதியும் பாதி பாதியாக அனுபவித்து வருகிறோம். நானும் 1-ம் பிரதிவாதியும் தாவா சொத்துக்களை பாதி பாதி பாகமாக 1978-ம் ஆண்டில் பிரித்துக் கொண்டு அது முதல் அனுபவித்து வருகிறோம் "

14. A reading of the above evidence of P.W.1 would clearly indicate that there was a oral partition between appellant and first defendant subsequent to the registered partition marked as Ex.A1 and they have been in possession and enjoyment of the properties allotted to their share. When appellant himself as P.W.1 clearly admitted the suit properties were divided between him and first defendant and they had been in possession of their respective 1/2 share from the year 1978, the Courts below rightly found that the suit for partition filed by appellant was not maintainable. The said conclusion reached by the Courts below is based on well pronounced admission of the appellant as P.W.1.

15. I do not find any perversity in the factual conclusions reached by the Courts below and consequently, the second appeals are deserved to be dismissed as it does not involve any substantial question of law.



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16. Accordingly, both the second appeals are dismissed.

a) by affirming the judgment and decree passed in A.S.No.90 of 2012 and A.S.No. 91 of 2012 on the file of Principal District Judge, Cuddalore dated 27.07.2015 confirming the judgment and decree passed in O.S.No.24 of 1996 and O.S.No. 70 of 2005 on the file of the learned Sub-ordinate Judge, Panruti dated 01.10.2012.

b)In the above facts and circumstances of the case, there will be no order as to costs.

13.12.2023

Index : Yes
Internet : Yes
Neutral Citation Case : Yes
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To

- 1.The Principal District Judge, Cuddalore.
- 2.The Sub-ordinate Judge, Panruti.



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