



S.A.No.901 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.12.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.901 of 2023
&
C.M.P. No. 28842 of 2023

Mangalam

...Appellant

Vs.

1. Revathi

2. U.V.Balamurugan

3. Chenniappan

4. N.Arumugham

5. Jamuna

...Respondents



S.A.No.901 of 2023

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Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 19.07.2023 passed in A.S.No. 18 of 2018 on the file of the I Additional District Judge, Erode confirming the Judgement and Decree dated 11.09.2017 passed in O.S.No.307 of 2010 on the file of the II Additional Subordinate Judge, Erode.

For Appellant : Mr. V.Meenakshi Sundaram.

JUDGMENT

The 1st defendant in a suit for partition is the appellant before this Court. The facts which have led to the filing of the Second Appeal now under consideration for admission is herein below stated. For ease of understanding, the parties are referred to in the same litigative status as before the Trial Court.



S.A.No.901 of 2022

WEB COPY

2. The suit properties are situate at Erode. The plaintiff and the 1st defendant are sisters. The suit properties were allotted jointly in the names of the plaintiff and the 1st defendant under a compromise final decree passed on 19.04.2000 in O.S.No.103 of 2000 on the file of the District Munsif, Erode, which final decree had been registered on the file of the District Register Office under document No.2898 of 2000.

3. As per the terms of compromise, it is the contention of the plaintiff that she and the 1st defendant are entitled to the property in equal moieties. There was no partition between the parties and therefore the properties were being enjoyed in common. The plaintiff had demanded for partition by metes and bounds and to put her in possession. However, the 1st defendant was not amenable for partition and was putting it off under one pretext or the other.

4. A legal notice dated 19.08.2010 was issued calling upon the 1st defendant to effect partition. However, the 1st defendant had sent a



reply setting out false reasons. The other defendants are tenants who have been added as a formal parties. Therefore, the plaintiff has come forward with the suit in question.

5. The 1st defendant had filed a written statement setting out a novel defense that the properties were allotted to the plaintiff, the 1st defendant and their mother Lakshmi. The 1st defendant had also contended that the plaintiff had not complied with her part of the obligation under the compromise decree to pay a sum of Rs.22,500/- to their mother Lakshmi. On that basis, the plaintiff was not entitled to her half share in the suit property.

6. The 1st defendant had further contended that it is wrong to state that the property has been enjoyed in common by the plaintiff and the 1st defendant. The mother of the plaintiff and the 1st defendant, Lakshmi was receiving half share of the rents from defendants 2 to 4 for her livelihood. This defendant is receiving half share of rent from defendants 2 to 4 since she has complied with the compromise decree



in O.S.No.103 of 2000. Therefore, according to her the suit was not maintainable.

7. An additional written statement came to be filed in which it was submitted that the suit has not been properly valued and Court fee has not been properly paid since the value of the property was more than Rs.30,00,000/- on the date of the filing of the suit and the actual worth of the property is not less than Rs.1,69,44,000/-. However, the plaintiff has valued the same for Rs.3,00,000/-

8. Pending the suit, one Jamuna, who claimed to be the sister of the plaintiff and the 1st defendant has been impleaded as the 5th defendant and she had filed a written statement inter alia reiterating the contents raised by the 1st defendant that the plaintiff has not paid her share of the amount to their mother and since the amount had not been paid, the mother continued to have a right in the property and on her demise, she is entitled to the share of their mother. That apart, she had contended that the description of the property was wrong.



WEB COPY



S.A.No.901 of 2023

9. The Trial Court had framed the following issues:

“1. Whether the plaintiff is entitled to $\frac{1}{2}$ share over the suit property?

2. Whether the plaintiff is entitled to preliminary decree as prayed for?

3. To what other relief?”

10. An additional issue was framed on 27.12.2014, which reads as follows:

1. Whether the 5th defendant is entitled for $\frac{1}{3}$ rd share?

11. The plaintiff has been examined as P.W.1 and Ex.A.1 to Ex.A.4 were marked. On the side of the defendants, the 1st defendant was examined as D.W.1 and the 5th defendant was examined as D.W.2 and Ex.B.1 to Ex.B.14 were marked on their side.



S.A.No.901 of 2023

WEB COPY

12. The two contentions that have been canvassed by the defendants before the Trial Court was

(a) That the payment to the mother as contemplated under the compromise had not been complied with and therefore the plaintiff is not entitled to partition.

(b) The property description in the compromise decree and the property as it is situate now is totally different.

13. The Trial Court observed that the compromise decree clearly stipulated that the property in question was divided amongst the plaintiff and the 1st defendant herein who were the plaintiffs in that suit and the defendants therein who are the mother and the 5th defendant were entitled to a sum of Rs.45,000/- and the defendants were only entitled to receive the money and they had given up their claim in respect of the property.

14. With reference to description of the property, the learned



S.A.No.901 of 2023

Judge had observed that the property as it now stands was in existence even prior to the decree in O.S.No.103 of 2000. The non mentioning of the structure in compromise decree would not render the compromise decree null and void since defendant was also claiming under the same compromise decree. Therefore, the suit was dismissed. The Trial Court had also held that the 5th defendant was not entitled to the share.

15. Aggrieved by the said Judgement and Decree, the 1st defendant had preferred an appeal in A.S.No.18 of 2008 on the file of the I Additional District Judge, Erode. The 5th defendant has not sought to challenge the decree in O.S.No.307 of 2010.

16. The learned Judge on considering the evidence on record confirmed the Judgement and Decree of the Trial Court and dismissed the appeal.

17. The 1st defendant had filed an application for receiving and



marking additional documents. The document which is sought to be marked was the old blue print of the construction approved by the Erode Municipality on 04.01.1978, signed by the Licenced Building Surveyor of Erode. The plaintiff had objected to the reception of this additional document at the belated stage of appeal.

18. The learned Appellate Judge on considering evidence had confirmed the Judgement passed by the learned II Additional Sub Judge, Erode in O.S.No.307 of 2010 and dismissed the appeal. The interlocutory application for receiving additional document was also dismissed.

19. Challenging this concurrent Judgement, the 1st defendant has preferred the above Second Appeal.

20. Mr. V.Meenakshi Sundaram, learned counsel appearing on behalf of the appellant would once again raise the very same objection that has been raised in the Trial Court, namely,



S.A.No.901 of 2023

(a) *The plaintiff has not performed her part of the obligation under the compromise decree by paying her share of the amount to their mother.*

(b) *The defendants in the suit O.S.No.103 of 2000 are the 5th defendant herein and the mother of plaintiff, the 1st defendant and the 5th defendant, one Lakshmi and that the property contained in the compromise in the suit O.S.No.103 of 2000 and the present suit was totally different.*

(c) *That the property has not been properly valued and Court fee has not been paid.*

21. As regards the first contention that the plaintiff has not complied with her part of the obligation under the compromise decree and therefore she is not entitled to the partition cannot be countenanced for the reason that the terms of the compromise would read as follows:

“பாகப்பிரிவினைக்கான சமரச தீர்ப்பாணை

1) தாவாச் சொத்துக்களை வாதிகள் சர்வ
சுதந்திரமாய் அடைந்து அனுபவித்துக் கொள்ள



S.A.No.901 of 2022

WEB COPY

வேண்டியது என்று உத்தரவிடப்படுகிறது.

2)தாவாச் சொத்துக்களில் பிரதிவாதிகள் அவர்கள் பாகத்திற்காக வாதிகளிடமிருந்து ரூ.45,000/- பெற்றுக் கொண்டபடியால் தாவாச் சொத்துக்களில் பிரதிவாதிகளுக்கு எவ்வித உரிமையும் பாத்தியமும் சம்பந்தமும் பின் தொடர்ச்சியும் இல்லை என்று உத்தரவிடப்படுகிறது.

3)இத்துடன் இணைக்கப்பட்டுள்ள சமரச மனு இ.ம.எண்.409/2000 இந்த இறுதிநிலைத் தீர்ப்பாணையின் ஒரு பாகமாக அமையத்தக்கது என்றும் உத்தரவிடப்படுகிறது.

4)செலவுத் தொகை இல்லை.

5)இந்த இறுதிநிலை தீர்ப்பாணை ரூ.2400/- முதிப்புள்ள நீதித்துறை சாரா முத்திரைத் தாளில் வறையப்பட்டுள்ளது.

22. A reading of clause 1 clearly and categorically state that the plaintiffs were equally entitled to the suit properties on the date of the compromise decree itself. Class 2 as it reads would denote that the sum of Rs.45,000/- has been received by the defendants and that they have clearly and categorically admitted that they have no right, title or interest in the suit properties.



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23. Even assuming that the amount has not been paid by the plaintiff the remedy available to the defendants in that suit was to file a suit for execution. Further, the decree does not contemplate a default clause on the contrary it clearly holds that the defendants therein have no right, title or interest on the suit properties effective the date of decree. Interestingly, in the written statement that has been filed by the 1st defendant, she has clearly and categorically stated that the mother has been receiving the plaintiff's share of the rents from the tenants though such an arrangement was not contemplated under the decree and even going by this statement the mother should have received much more than what was decreed to her.

24. As regards the contention that the suit has not been properly valued and the Court fee not paid, no issue has been framed in this regard and the same has also not been canvassed seriously by the defendants.



S.A.No.901 of 2023

WEB COPY

25. With reference to the contention that the property described in the suit O.S.No.103 of 2000 and the property that is described in the present suit are two different properties has been dealt with by the Trial Court. The Trial Court has in a tabular form described the properties to show the similarity and I see no reason to disagree with the finding, more particularly when it is not the case of the defendants that not a different superstructure exists on site.

26. Both the Courts below have extensively dealt with all the issues and passed a well considered order and I see no reasons to hold otherwise. Therefore, the Second Appeal stands dismissed. Consequently, the connected Civil Miscellaneous Petition is closed. No cost.

21.12.2023

Index : Yes/No
Internet : Yes/No
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WEB COPY



S.A.No.901 of 2023

To

- 1.The I Additional District Judge,
Erode.
- 2.The II Additional Subordinate Judge,
Erode.



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S.A.No.901 of 2023

P.T. ASHA, J,

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S.A.No. 901 of 2023

21.12.2023