



S.A.(MD) No.487 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A.(MD) No.487 of 2023
and
C.M.P.(MD) No.11762 of 2023

P.Rajendran

..Appellant

Vs.

1.P.Rajakumar

2.P.Rajan

3.P.Rajalakshmi

4.P.Sivakami

...Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree in A.S.No.47 of 2016 on the file of the Additional District Court, Fast Track, Nagercoil, dated 19.09.2022 confirming the judgment and decree made in O.S.No.147 of 2009 on the file of the 1st Additional Subordinate Court, Nagercoil, dated 27.04.2016.

For Appellant

: Mr.C.Sankar Prakash

For R1

: Mr.V.Meenakshi Sundaram

For R2 to R4

: Mr.R.Murugan



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JUDGMENT

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Challenging the judgment in A.S.No.47 of 2016 on the file of the learned Additional District and Sessions Judge (FTC), Nagercoil in O.S.No.147 of 2009 on the file of the I Additional Subordinate Judge, Nagercoil, this second appeal is filed.

2.The first respondent/plaintiff filed a suit claiming partition in respect of the suit properties. The case of the plaintiff is that the plaintiff and the defendants 1 to 3 are the children of 4th defendant and the deceased Paramarthalingam. The plaintiff's father, Paramarthalingam died on 12.02.2004. The plaintiff and the defendants are Hindus and are governed by Hindu Succession Act. Item Nos.1 to 4 of the suit properties are the ancestral properties of the deceased Paramarthalingam. He got these properties through the registered partition deed dated 23.08.1956. Item Nos.5 to 10 of the suit properties are the self acquired properties of the deceased Paramarthalingam. The plaintiff by birth had derived 1/5th share over Item Nos.1 to 4 of the suit properties and the defendants 1 to 3 have 3/5th share in these properties. The second defendant was married on 05.05.1982 and the third defendant was married on 10.07.1991. They also entitled to claim share in item Nos.1 to 4 of the suit property. In item Nos.5 to 10 of the suit properties, the plaintiff and the defendants 1 to 4 are entitled to 1/5th share each. There is a bore well and a Well and electricity in the name of the plaintiff's



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father. The Well is situated in S.No.452/7 at Madhusoothanapuram Village, in item No.5 of the suit property. The plaintiff is entitled for 1/5th share in the Well and the site. In the said circumstances, the suit was filed for partition.

3.The first defendant filed a written statement stating that the suit properties were partitioned even when his father was alive on 18.05.2002. The terms of partition were recorded in a note book, in which the plaintiff and the first defendant signed. Partition had taken place in the presence of the maternal uncles, Rajagopal and Thanga Nadar. Since the girl children were married with Sridhanam, they were not given any properties in the partition. The second defendant was married in 1982. The first defendant paid Rs.5,000/- to the second defendant on 07.12.1985 and another sum of Rs.7,000/- in 1986. He had also paid her money, when she purchased the property in S.No.452.

4.As per this partition, the plaintiff and the first defendant are enjoying the suit properties. Along with the father, the first defendant spent money during the marriage of defendants 2 and 3. He spent Rs.85,000/- at the time of marriage of Rajalakshmi. He spent Rs.10,000/- for medical expenses of his father. He had settled the loan of Rs.10,000/- in the name of his father in 1994. The plaintiff and the first defendant are enjoying the suit properties as per the partition dated 18.05.2002. Since already there was a partition, the suit is not maintainable.



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5.In the additional written statement, it is stated that the first defendant started cycle hiring shop at Konam and earned lot of income. He gave the entire income to his father. Item Nos.5 to 10 of the suit properties were acquired by the father with the contribution from the first defendant. He had not married till the marriage of his sisters and employment of his brother. He purchased 20 sovereigns of gold for the second defendant. He gave Rs.15,000/- and utensils at the time of the marriage of the second defendant. Rajalakshmi was given 25 sovereigns of gold and Rs.85,000/- and other utensils. During the first child birth of the defendants 2 and 3 also, the first defendant met at the cost with his earnings. Plaintiff was educated to M.E., and then to Ph.D., only by the contribution made by the first defendant. Plaintiff had not contributed any money towards family. After employment, he went away from the family and set up his own family. The plaintiff and the first defendant had been enjoying the property as per the partition deed dated 18.05.2002. Thus, he prays for dismissal of the suit.

6.During the trial, P.W1 was examined. Ex.A1 and Ex.A2 were marked. D.W1 to D.W5 were examined and the signatures of P.W1 in document dated 18.05.2002 were marked as Ex.B1 and Ex.B2.

7.On going through the oral and documentary evidence, the learned trial Judge found that the plaintiff was entitled for share as claimed in the suit and thus,



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decreed the suit passing the preliminary decree. In the appeal by the first defendant, the learned first appellate Judge confirmed the judgment of the trial Court and dismissed the appeal. This second appeal is filed challenging the judgment of the first appellate Court.

8.At the time of admission of this second appeal, the following substantial questions of law were framed:-

“1.When the plaintiff specifically admits his signature in Exs.B1 and B2, is it not the burden on the plaintiff to prove that the signature was obtained by coercion and whether the shifting of the burden on the 1st defendant by the Courts below is not erroneous in law?

2.When the plaintiff has admitted the execution of the partition/family arrangement and the same was proved by the deposition of witnesses who were the uncle of the plaintiff and the first defendant, whether the Court below is correct in taking a different stand by not accepting the above partition/family arrangement?

3.Whether a partition/family arrangement which was reduced into writing in a note book mentioning about the dividing of properties among the plaintiff and the first defendant and signed by the parties to the same requires compulsory registration?”



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9.The learned counsel appearing for the appellant drew the attention of this Court to the document dated 18.05.2002 said to have been executed between the plaintiff and the first defendant claiming that there was an oral partition and in pursuance of the oral partition, this document had been executed between the plaintiff and the first defendant. This document and the evidence of P.Ws., according to the learned counsel for the appellant, clearly establish the fact that there was an oral partition between the family members, especially the plaintiff and the first defendant and in accordance thereto, they have been enjoying their respective share allotted to them in the said oral partition. It is his further submission that this document was not considered by the Courts below and therefore, this second appeal is filed.

10.In response to this submission, the learned counsel for the first respondent/plaintiff submitted that the document alleged to have been executed evidencing the partition dated 18.05.2002 was not marked at all. Only the signature of the plaintiff was marked as Ex.B1 and Ex.B2. Therefore, the first defendant cannot seek any claim on the basis of this document.

11.The learned counsel for the respondents 2 to 4 had also taken a similar position with regard to the document said to have been executed on 18.05.2002. Since the second appeal lies within a narrow campus as to whether



the first defendant can claim any right on the basis of the document dated 18.05.2002, it is necessary to discuss this document in detail. The reading of this document shows that the recitals are made thus:

“வீட்டிற்கு தெனற்றமுனை வினையில் 5 அடி பாதை
வடக்கற்ற நீக்கி மீதியுள்ளதில் கிழக்கனைய பாதை
வீடும் வீட்டடியும் தாய் தந்தை காலத்திற்குப்பின் இருவரும்
சமமாக பங்கிட்டுக் கொள்ளலாம் அல்லது விற்று ஆளுக்கு பாதியாக
எடுத்துக் கொள்ளவும்.
பெற்றோர்களுக்கு ஆளுக்கு ரூ.25,000/- பாங்கில் டெபாசிட்
செய்து கொள்ள வேண்டியது (3 மாதத்திற்குள்)
நடுத்தட்டில் உள்ள ஒற்றி ரூ.20,000/-மும் 3 மாதங்களுக்குள்
குமார் கொடுத்து அடமானத்தை ஒழிப்பித்து விட வேண்டும்.”

12.The bare reading of this document clearly indicates that through this document, rights in respect of immovable properties have been created *in praesenti*. Therefore, it requires to be registered. This document is not registered and therefore, this document is not admissible in evidence. Precisely for that reason, the learned trial Judge had not marked this document, but only marked the signatures of the plaintiff as Ex.B1 and Ex.B2. Mere marking of the signatures of the plaintiff as Ex.B1 and Ex.B2, though he admitted his signature in this document, will not make this document legal and admissible.



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13. Even as per the recitals in the written statement, it is seen that the partition had been entered on 18.05.2002 and that was reduced into writing. As already stated, since it is not registered when creating right *in preasenti*, it cannot be relied for any purpose. Admittedly, the plaintiff and the defendants 1 to 3 are siblings. The fourth defendant is the mother. All are entitled for shares in the suit properties. They are not parties to this document. For that reason also, this document cannot be relied to exclude them from claiming right in the suit property. Thus, this Court finds that the Courts below have rightly decreed the suit and the judgments of the Courts below do not require any reconsideration.

14. Since the document dated 18.05.2022 is not registered, it cannot be admitted in evidence, even if it is admitted by plaintiff. On the basis of this document, no right flows to anybody. Accordingly, substantial questions of law 1 to 3 are answered.

15. In the result, the judgments of the Courts below are confirmed and the second appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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To

- 1.The Additional District Judge,
Fast Track, Nagercoil.
- 2.The 1st Additional Subordinate Judge,
Nagercoil
- 3.The Section Officer (2 Copies),
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G.CHANDRASEKHARAN, J.

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