



A.S.No.499 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.11.2023
Pronounced on	31. 01.2024

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

A.S.No.499 of 2016
and C.M.P.No.11169 of 2016

Amsaveni

... Appellant/Plaintiff

Versus

R.Parvathi Ammal (Died)

1.A.Jeevarathinam
2.Yasodha @ Velmani
3.Hemalatha @ Pushpa
4.AYuvaraj

... Respondents/Defendants

Prayer : The Appeal Suit is filed under Section 96 of Code of Civil Procedure, against the judgment and decree dated 21.12.2015 made in O.S.No.250 of 2010 on the file of the learned II Additional District and Sessions Court, Salem.

For Appellant : Mr.S.Kaithamalai Kumaran



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For R1 to r4 : Mr.N.Manokaran
JUDGMENT

This Appeal Suit is preferred as against the judgment and decree passed in O.S.No.250 of 2010 dated 21.12.2015 on the file of the learned II Additional District and Sessions Court, Salem.

2. The appellant is the plaintiff in O.S.No.250 of 2010 on the file of the II Additional District and Sessions Court, Salem. The Plaintiff filed the above suit for partition claiming 21/25 share in the suit property.

3. According to the plaintiff, the plaintiff is the daughter of one deceased Rangasamy Chettiar and the 1st defendant herein. The deceased Rangasamy Chettiar married Sampoorna Ammal before his marrying the 1st defendant. The said Sampoorna Ammal died issueless. The said Rangasamy Chettiar had two sons and two daughters namely Annamalai, Janaki Ramar and a female child who died within 15 days from her birth, and the plaintiff herein. The deceased Ranganamy Chettiyar lived with his family jointly. During the life time of Rangasamy Chettiar he was doing weaving business



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and purchased various properties under registered sale deeds dated

26.10.1955 and 07.05.1944 in his name to an extent of 7265 sq.ft. The said

properties were enjoyed and possessed by Rangasamy Chettiar till his death

along with family members, jointly. The said Rangasamy Chettiar died on

15.08.1972 leaving behind his legal heirs to succeed his properties. On

04.02.1986, one of the sons of Rangasamy Chettiar, namely Janaki Ramar,

died leaving behind the 1st defendant/his mother and wife as his legal heirs.

The wife of Janaki Ramar remarried one Mohan and started living with

him. Therefore, the 1st defendant became the sole legal heir of Janaki Ramar.

The elder son of Rangasamy Chettiar, namely Annamalai, who is the

husband of the 2nd defendant and father of the 5th defendant, borrowed

money from various persons and incurred a huge debt for which Court

proceedings were initiated against them and properties of Rangasamy

Chettiar stood as security for the loan incurred by him. In the meantime the

said Annamalai died on 20.01.1990. His legal heirs namely the defendants 2

to 5 and other members of joint family, in order to clear the debts of

Annamalai, sold 915 sq. feet of Rangasamy Chettiar's property in favour of

one Ragava Chettiar for Rs.90,000/- on 13.11.1991. On the same day, they



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sold another portion to an extent of 905 and ½ square feet in favour of one

Soundarajan for a valid consideration of Rs.90,000/- to meet out the debts of

Annamalai Chettiar and his legal heirs. The 1st Defendant and 1st wife of

Rangasamy Chettiar namely Sampoorna Ammal lived separately and were

doing small work of threading the cotton used for weaving. On 14.09.1992,

the legal heirs of Rangasamy Chettiar and the legal heirs of deceased

Annamalai and Janaki Ramar executed a sale deed in favour of Selvaraj to an

extent of 1245 sq.ft. in the properties of Rangasamy Chettiar's for valid

consideration of Rs.90,000/- and it was the last sale made by the joint family

of Rangasamy Chettiar. The legal heirs of the Rangasamy Chettiar were in

joint possession and enjoyment of the remaining property. After few years

Sampoorna Ammal died on 28.10.1994. The 1st defendant, who is the wife

of Rangasamy Chettiar, was living separately without any income and she

was starving for food, shelter and clothing. The remaining properties of

Rangasamy Chettiar, was let out for monthly rent by the defendants 2 to 5

and the said rent was received by them without sharing with other legal heirs

including the plaintiff. On many occasions the plaintiff demanded the

defendants 2 to 5 to share the rent received by them to which the plaintiff is



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entitled to. The plaintiff had also given 28 Sovereigns of gold for settling the debts borrowed by Annamalai. The said Annamalai Chettiar also promised to return the jewels during his life time to the plaintiff. Since he died suddenly without making any arrangement to the plaintiff, his legal heirs failed to return the jewels inspite of repeated demands. In the month of January 2010, the plaintiff demanded to effect partition of the schedule properties. The 1st defendant being head of the family came forward to effect an amicable partition, to divide the suit properties into 5 share and decided to allot one such share to the plaintiff in the presence of close relatives. But the defendants 2 to 5 failed to come forward to effect partition along with other legal heirs. Hence, the plaintiff issued a legal notice on 21.10.2010 demanding partition. The 1st defendant received the notice on 22.10.2010. Whereas, the defendants 3 to 5 refused to receive the legal notice. The 2nd defendant, even after receipt of the legal notice, failed to reply or come forward to effect partition. The 1st defendant in her reply notice expressed her willingness for effecting amicable partition by meets and bounds. Since the defendants 2 to 5 were attempting to alienate the suit property, the plaintiff was constrained to file the above suit for partition.



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4. On the other hand, the 1st defendant, in the written statement filed by her, expressed her willingness for partition as claimed by the plaintiff. Whereas, the defendants 2 to 5, in their written statement, contend that the plaintiff do not have 5/25 share in the suit property, there is no cause of action for filing the suit and that the suit property is not properly valued. Their further contention is apart from that, they sold remaining properties on 06.12.1992 in the presence of panchayat members as per Section 14 of Panchayat Act 1940. The written panchayat deed was executed on 23.12.1992 in which the 1st wife of Rangasamy Chettiar namely Sampoorana Ammal and the defendants 1 and 2 affixed their finger print and also signed the above document. Moreover, the plaintiff and the defendants 2 to 5 accepted the panchayat decision and till date no action has been taken by the panchayat. Moreover, in the said panchayat, it was decided that 1200 sq. feet house property to be allotted to the plaintiff after the demise of the 1st wife Sampoorana Ammal and the 1st defendant, who is the mother of the plaintiff. The plaintiff also accepted the decision taken by the panchayat and signed the above document. According to the panchayat decision, the plaintiff and

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her mother, the 1st defendant herein, are in enjoyment of the said property and have also leased out a portion of the said house property allotted in their favour. According to the panchayat decision, except the above property the plaintiff has no share in any other property belonging to the family. The plaintiff suppressed the above facts and filed a suit for partition with ulterior motive in collusion with the 1st defendant. As per the decision made in panchayat on 23.12.1992 the plaintiff and defendants 1 to 5 are in enjoyment of remaining properties of Rangasamy Chettiar, except the properties mentioned in the panchayat deed. There is no other property belonging to the family of defendants 1 to 5. Hence, they prayed to dismiss the suit.

5.The trial Court based on the above plaintiff framed the following issues:

- "1). தாவா சொத்துக்கள் வாதி மற்றும் பிரதிவாதிக்கு பாத்தியப்பட்ட பொது குடும்ப சொத்துக்களா?
- 2) வாதிக்கு தாவா சொத்தில் 5/25 பாகம் கிடைக்கத்தக்கதா?
- 3) வாதிக்கு வழக்குரையில் கேட்டபடி பாகப்பிரிவினை கிடைக்கத்தக்கதா?
- 4) வேறு என்ன பரிகாரம்?



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19. மேற்கண்ட எழுவினாக்கள் இன்று 21.12.2015ம் தேதி கீழ்க்கண்டவாறு மாற்றி அழைக்கப்படுகிறது:

1. வாதிக்கு தாவா சொத்தில் 21/25 பாகம் கிடைக்கத்தக்கதா?
2. தாவா சொத்தில் வாதிக்கு வழக்குரையில் கோரியது போல் முதல்நிலை பரிகாரம் கிடைக்கத்தக்கதா?
3. தாவா சொத்தை எவ்வித வில்லங்கமும் ஏற்படுத்தக்கூடாது என்று நிலையுறுத்துக்கட்டளை பரிகாரம் கிடைக்கத்தக்கதா?
4. வேறு என்ன பரிகாரம்?'

6.The trial Court, on appreciating the materials on record and the arguments advanced by the respective counsel for the parties, held that:

"இந்த விசயங்கள் அனைத்தையும் தெரிவிக்காமல் வாதி இந்த வழக்கை தாக்கல் செய்துள்ள காரணத்தினால் அவருக்கு தாவா சொத்தில் எவ்வித பாகமும் கிடைக்கத்தக்கதல்ல என்றும் முதல்நிலை பாகாரமும் கிடைக்கத்தக்கதல்ல என்றும் இந்நீதிமன்றம் முடிவு செய்து அவ்வாறே மேற்கண்ட 1,2 எழுவினாக்களுக்கு தீர்வுகொள்கிறது."



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7. Aggrieved by this, the present appeal is preferred by the plaintiff.

8. According to the plaintiff, the trial Court erred in dismissing the suit based on Exs.B1 and B2 and failed to appreciate the contents of the written statement filed by the defendants 2 to 5 who admitted that the plaintiff is entitled for the particular property. The learned counsel appearing for the appellant would submit that Exs.B.1 (Panchayat Muchilika) and B.2 (Panchayat award) is not valid under the eye of law and it has been passed by the panchayat which has no legal sanctity. Exs.B1 and B.2 (Panchayat award) are neither registered document nor an Act. Therefore, the same cannot be looked into for any purpose much less for partition. He would further submit that the suit properties are the self acquired property of the Rangasamy Chettiar who died intestate and therefore, the plaintiff as the daughter of Rangasamy Chettiar is entitled to a share. He would further submit that under Exs.B1 and B2 there is no piece of evidence to substantiate the claim of the defendants that the plaintiff had given up her rights in the suit properties. The trial Court erroneously



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approved the decision made in the panchayat which is not valid under law and dismissed the suit erroneously which calls for interference.

9.On the other hand, the learned counsel appearing for the respondent/defendants 2 to 5 would submit that the plaintiff failed to disclose all the relevant and material documents with a view to obtain advantage, which amounts to fraud. The plaintiff filed the above suit for partition without disclosing a deed of release executed by her relinquishing her rights in the suit property. Therefore, the trial Court, upon considering the above facts rightly dismissed the suit which warrants no interference. To support their contention, the learned counsel for the respondents has relied upon the decision case reported in *1994 1 SCC 1*, in which it is held that non disclosure of relevant and material document with a view to obtain advantage amounts to fraud. The learned counsel would submit that the above cited case is squarely applicable to the present facts and circumstances of this case. In this case also, the plaintiff without disclosing Ex.B1 and B.2 documents filed the above suit for partition amounts to fraud.



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10. Based on the above submissions made by the respective counsel for the parties, the following points for consideration arises:

1. Whether Exs.B1 and B2 is valid under eye of law?

2. Whether the plaintiff relinquished all her rights in the suit except the property allotted to her under the panchayat deed executed on 23.12.1992?

Point Nos. 1 & 2:

11. It is not in dispute that the plaintiff is the daughter of the deceased Rangasamy Chettiar and the 1st defendant is the wife of Rangasamy Chettiar and the other defendants are the legal heirs of the deceased Annamalai Chettiar and Janaki Ramar, who are the sons of the Rangasamy Chettiyar. It is also not in dispute that one Sampoorana Ammal who is the 1st wife of the deceased Rangasamy Chettiar died on 28.10.1994 it is also not in dispute that the wife of the deceased Janaki Ramar remarried one Mohan and is



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living with him. It is also not in dispute that certain properties of Rangasamy Chettiar were alienated. The plaintiff filed the above suit for her respective share in the remaining properties of the deceased Rangasamy Chettiar. Whereas, the specific contention of the defendants 1, 2 to 5 is that on 23.12.1992 panchayat deed was executed in the presence of the plaintiff and the defendants in which a house property of 1500 sq feet was allotted to the share of the plaintiff which was accepted by her, and thereby, relinquishing all her rights in the other properties. Therefore, the plaintiff has no share in the suit properties. It is also stated by the defendants 2 to 5 that the said property would come to the enjoyment and possession of the plaintiff only after the death of the 1st wife Sampoorna Ammal and the 1st defendant herein. It is stated that the same was accepted by the plaintiff and was signed by her.

12. According to the defendants, from the date of the execution of the panchayat deed, i.e., on 23.12.1992, plaintiff and the defendants 1, 2 to 5 are in possession and enjoyment of the properties. The defendants 2 to 5 would submit that the said panchayat deed was executed in pursuant to the

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Panchayat Act 1940 and the same were marked as Exs.B1 and B.2 (Panchayat award). The plaintiff had also signed in the above panchayat deed. Though, the plaintiff failed to mention about the panchayat and the execution of the panchayat deed in her evidence, during arguments, it is submitted that the said panchayat decision is not binding on the plaintiff for the reason that Exs.B.1 (Panchayat Muchilika) and B.2 (Panchayat award) were not registered. According to them, any relinquishment is made with respect of immovable properties, the same should be registered.

13.Firstly, it has to be seen whether any such panchayat had taken place. D.W.5 evidence would establish that there was a panchayat on 06.12.1992 in the presence of 13 members and he had signed in Ex.B.1 (Panchayat Muchilika). D.W.5 further deposed that a sum of Rs.10,000/-, received as rental advance, was deposited in the name of Sampoorana Ammal and Parvathi Ammal and that the house property situated in door No.34 was decided to be given to the plaintiff after the life time of Sampoorana Ammal and Parvathi Ammal. The above said arrangement was reduced into writing in which the parties have signed. D.W.7 who is another attester in Ex.B2 -



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(panchayat deed), deposited about the panchayat which took place between the plaintiff and the defendant and also deposited about the execution of Ex.B1 (Panchayat Muchilika) and Ex.B2 (Panchayat Award). The plaintiff failed to disprove the fact about the amount that had been deposited in the name of Sampoorana ammal in the Urban Co-operative Bank at Salem, for which the plaintiff stood as nominee. D.W.4 deposed that a notice under Ex.B8 was issued to Sampoorana Ammal informing about the maturity of the deposited amount and after the demise of Sampoorana Ammal the said amount was settled in favour of the plaintiff, who in turn deposited the said amount in her name and the deposit receipt is marked as Ex.C.2. This fact was not disproved by the plaintiff. Therefore, from the evidences of D.W.4, D.W.6 and the documentary evidence marked as Ex.B.8, Exs.C1 and C.2, it is understood that the decision taken by the panchayat was acted upon. The plaintiff, without disclosing the above facts, filed the above suit for partition. Moreover, the plaintiff failed to establish that the signatures found in Exs.B.1(Panchayat Muchilika) and B.2 (Panchayat Award) do not belong to the plaintiff. Therefore, the trial Court has come to a right conclusion that the plaintiff is not entitled to any share in the suit property. As rightly



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pointed out by the learned counsel appearing for the plaintiff and defendants, since she, without disclosing the above facts about relinquishing her rights, filed the above suit for partition, it amounts to fraud. Accordingly the judgment and decree dated 21.12.2015 passed in O.S.No.250 of 2010 on the file of the learned II Additional District and Sessions Court, Salem, is confirmed.

14.In the result, the appeal suit is dismissed. No cost.

31.01.2024

vsn

Index:Yes/No

Speaking Order : Yes/No

To

1.The II Additional District and Sessions Judge, Salem.



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K.GOVINDARAJAN THILAKAVADI,J.

vsn

PRE- DELIVERY JUDGEMENT MADE IN

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