



S.A.No.27 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.27 of 2021
and C.M.P.No.644 of 2021

1. R.Chinnavan @ Govindhan
2. Ganesan
3. Gowri
4. Periapappa

...Appellants

Vs

1. Murugan
2. Manivel
3. Srinivasan
4. Sathiya
5. Shanthi

...Respondents

Prayer: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree passed in A.S.No.13 of 2018 on the file of the Principal District Judge, Dharmapuri dated 14.08.2019 confirming the decree and judgment passed in O.S.No.297 of 2012 on the file of the Sub Court, Dharmapuri dated 18.12.2017.



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For Appellants : Mr.R.Vasudevan

For Respondents
1 to 5 : Mr.K.Venkateswaran

JUDGMENT

The unsuccessful defendants before the Courts below have filed the above second appeal.

2. The facts are briefly set out herein below and the parties are referred to in the same litigative status as before the trial Court.

3. The plaintiffs had filed the suit O.S.No.297 of 2012 on the file of the Subordinate Court, Dharmapuri for declaration that the Gift deed dated 16.11.2006 executed by the first defendant in favour of the fourth defendant as null and void and for partition and separate possession of the suit schedule properties.



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4. The sum and substance of the plaintiffs' case is that the suit properties are the ancestral properties of one Raman who is the paternal grandfather of plaintiffs, the father of defendants 1 to 3 and the father-in-law of the fourth defendant. The defendants would contend that the said Raman died intestate leaving behind him surviving his four sons, the father of the plaintiffs, Perumal and defendants 1 to 3. The plaintiffs would submit that their father, Perumal had also passed away and therefore, they became entitled to their father's share. The first defendant had attempted to take over the entire property for which purpose he had created a settlement deed in favour of his wife, the fourth defendant on 16.11.2006. The settlement deed is a void document in as much as the first defendant did not have the right to settle the suit property over which the plaintiffs and other defendants had a right in favour of his wife. Therefore, the plaintiffs have come forward with the suit in question.



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5. The first defendant had filed a written statement which was adopted by defendants 2 and 4. They had come forward with the contention that 30 years ago, the plaintiffs' father, Perumal was in need of money, as he was involved in a criminal case in respect of which a complaint had been filed. Therefore, the properties were partitioned and the said Perumal was given his share. Thereafter, each of the sharers have been in possession and enjoyment of their respective shares and in exercise of his rights as the owner, the first defendant had settled the property in favour of the fourth defendant. Therefore, he sought to have the suit dismsised.

6. The trial Court had framed the following issues:

1. வழக்கில் வாதி 1/4 பாகத்தினை அடைந்து சுவாதீன

அனுபவத்தில் உள்ளாரா?

2. 16.11.2006 தேதியில் 1ம் பிரதிவாதி 4ம் பிரதிவாதி

பெயரில்

ஏற்படுத்திய

செட்டில்மெண்ட்

ஆவணம்



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செல்லத்தக்கதல்ல என விளம்புகை செய்யப்படவேண்டுமா?

3.தாவா சொத்துக்கள் வாதிகளின் பொது சுவாதீன

அனுபவத்தில் உள்ளதா?

4. தாவா சொத்துக்கள் இந்நீதிமன்ற

ஆள்வரைக்குட்பட்டுள்ளதா?

5. வாதிகளுக்கு கிடைக்கத்தக்க இதர பரிகாரங்கள்

யாவை?

7. The first plaintiff had examined himself as P.W1 and marked Exs.A1 to A7. On the side of the defendants, the first defendant had examined himself as D.W1 and one Venkataraman and Singaveralan was examined as D.Ws.2 and 3. Exs.B1 to B8 were marked on the side of the defendants. The third party documents were marked as Y1 to Y4.

8. The learned Subordinate Judge, Dharmapuri on considering the



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evidence on record had proceeded to allow the suit. Aggrieved by the said judgment and decree, the defendants had filed A.S.No.13 of 2018 on the file of the Principal District Court, Dharmapuri. The learned District Judge, on considering the evidence had held that the defendants had not proved the contention that there is an oral partition. They had also not proved their contention that the oral partition had been occasioned on account of the father of the plaintiffs', Perumal being involved in a criminal case. That apart, the revenue records continue to be in the joint names of the plaintiffs' father and his brothers. The Court had also taken note of the fact that the Sale Deed was executed on 15.06.1978 jointly by the said Perumal, the father of the plaintiffs and defendants 1 to 3 which would clearly show that the properties continue to be enjoyed in common. Even the first defendant has described the property as his ancestral property in the settlement deed executed by him in favour of his wife, the fourth defendant under Ex.B3. Therefore, the learned Judge had proceeded to dismiss the



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appeal. With reference to the issue of limitation that had been raised by the defendants, the learned judge observed that the starting point for limitation was the date on which the lease deed was executed. In the instant case, the plaintiffs' contention is that the suit has been filed as soon as they had come to know about the settlement deed dated 16.11.2006. Therefore, the suit is not hit by limitation. Further, the first defendant had executed a settlement deed in favour of his wife in respect of a joint family property to which he does not have an exclusive right. Therefore, the gift deed was invalid. It is challenging this judgment and decree that the defendants are before this Court.

9. Mr.R.Vasudevan, learned counsel for the appellants would base his contention on the fact that suit properties had already been partitioned and the suit for declaring the settlement deed as null and void is belated and barred by limitation. He would submit that the factum of the partition is proved from the very documents filed by the



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plaintiffs which would show that the revenue records are standing in the name of defendants 1 and 2, which will clearly show that the plaintiffs had knowledge about the settlement deed. He would submit that the settlement deed had been executed in the year 2006 and it is rather strange that the plaintiffs who lives in the same area were unaware about the settlement deed particularly when the defendants have been exercising their separate right to the properties. He would submit that the very premise on which the plaintiffs had come to Court that the properties are joint family properties is itself a fallacy, since the partition had taken place even during the life time of Perumal. He would contend that both the Courts below have erred in dismissing the defendants' contention.

10. Per contra, Mr.K.Venkateswaran, learned counsel appearing for the respondents/plaintiffs would submit that it is an admitted fact that the properties are ancestral properties and this is evident from the



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perusal of Ex.B3-Settlement Deed where the first defendant himself has described the property as an ancestral property. Further, the plea of oral partition has not been proved by the defendants, though it is their contention in their written statement that 30 years prior to the filing of the suit, the property had been orally partitioned. As regards the contention that the suit is barred by limitation, the learned counsel for the plaintiffs would submit that the suit has been filed without delay. He would further submit that the plaintiffs had come to learn about the execution of the settlement deed in the year 2012 and they immediately issued a legal notice to the defendants calling upon them to effect the partition and cancel the gift deed and followed it up with the suit in the very same year. He would contend that the limitation has to be calculated from the date of knowledge.

11. Heard the learned counsel on either side and perused the



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materials available on record.

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12. The second appeal has not been admitted and this Court had directed only notice to the respondents.

13. The only two grounds on which the judgment and decree is challenged are as follows:

(a) *The property has lost its character as an ancestral property since an oral partition has taken place among the children of Raman.*

(b) *The suit for declaring the settlement deed as null and void is barred by limitation.*

14. As regards the first contention on the oral partition, Ex.A8 is



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the Sale Deed, which has been executed on 15.06.1978. This document has been executed not only by the deceased Raman and Perumal but also by defendants 1 and 2. D.W1, who is the first defendant, has admitted the above fact in his cross examination. He has stated as follows:

“சர்வே எண்.42/1 இல் ஒரு பகுதியை என் அப்பா மற்றும் என் அண்ணன் பெருமாள் உயிரோடு இருந்த காலத்தில் 15.06.1978 ஆம் தேதியில் முனியகவுண்டர் குமாரர் காவேரி என்பவருக்கு கிரயம் கொடுத்துவிட்டார் என்றால், சரிதான். அந்த கிரயத்தில் சான்றிட்ட நகல் என்னிடம் காட்டப்படுவது தான். அது வா.சா.ஆ.8 ஆகும். என் தகப்பனர் ராமன், சித்தப்பா லெட்சுமணன், என் அண்ணன் பெருமாள், நான் மற்றும் கணேசன் ஆகியோர் மேற்படி கிரய பத்திரத்தில் கையொப்பம் போட்டுள்ளோம் என்றால் சரிதான்.”

(Though Ex.A8 has been marked it does not feature in the list of exhibits in the judgement of the trial Court)



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Therefore, it is clearly evident that the plea of oral partition is taken as an afterthought. The learned counsel for the defendants had contended that the documents filed on the side of the defendants would itself prove the oral partition as the revenue records are standing in the name of defendants 1 and 2. I am unable to accept this argument since these documents are all of the year 2012, which is the year when the plaintiffs states that they have come to know about the settlement deed. The plaintiffs have filed these documents only to show that the defendants have created records in respect of the joint family properties. Therefore, these documents would not, by any stretch of imagination, give an absolute right to the defendants. Therefore, the first point that has been urged by the learned counsel for the defendants has to necessarily be rejected and it has been rightly rejected by the Courts below.

15. With regard to the issue of limitation, the plaintiffs have clearly and categorically contended that they had come to learn about



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the settlement deed only in the year 2012 and without losing any further time, they have come forward with the suit in question. The plea of oral partition having failed, the property therefore belongs to all all the children of Raman and the plaintiffs are entitled to a share of their father's property. The argument regarding the limitation also fails. Therefore, the appellants/defendants have not made out any case to interfere with the judgment and decree of the Courts below. That apart, no substantial questions of law arise in the above second appeal. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

27.02.2024

Index: Yes/No
Speaking order/non-speaking order
srn

To

1. The Principal District Court, Dharmapuri

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2. The Sub Court, Dharmapuri
3. The Section Officer, V.R.Section, High Court, Madras.



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P.T.ASHA, J.,

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