



S.A.No.164 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **13.03.2024**

CORAM

THE HONOURABLE Ms. JUSTICE **P.T.ASHA**

S.A.No.164 of 2024

and

C.M.P.No.5657 of 2024

M.Muniammal

... Appellant

-Vs-

1. Kandasamy
2. Elumalai
3. Arumugham
4. Udhyakumar

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure Code, 1908, to set aside the judgement and decree dated 06.12.2023 made in A.S.No.01 of 2021 on the file of the Court of the learned Subordinate Judge, Arani, Tiruvannamalai District, by reversing the judgement and decree dated 15.04.2016 made in O.S.No.217 of 2007 on the file of the Court of the learned District Munsif, Arani, Tiruvannamalai District.

For appellant

: Mr.G.Venkatesan

JUDGMENT

The plaintiff is the appellant before this Court.



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2. The facts which have given rise to the filing of this second appeal are briefly set out hereinbelow and the parties are referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiff had filed a suit in O.S.No.217 of 2007 on the file of the learned District Munsif Court, Arani, seeking a declaration that she is the absolute owner of the suit property and for a permanent injunction restraining the defendants, their men and agents, from in any manner, interfering with her peaceful possession and enjoyment of the suit property.

2.2. It is the case of the plaintiff that the property originally belonged to the joint family of Subburaya Mudaliyar and his five sons viz., Muniappa Mudaliyar, Nataraja Mudaliyar, Ilayaperumal Mudaliyar, Thirunavukkarasu and Arumugha Mudaliyar. They had partitioned their entire family properties under a partition deed dated



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29.07.1971. Under this partition deed, 1.32 cents in S.No.380/1A was jointly allotted to Nataraja Mudaliyar, Ilayaperumal Mudaliyar and Thirunavukkarasu, each being entitled to 0.44 cents. Likewise, Muniyappa Mudaliyar had been allotted 0.44 cents in S.No.380/4.

2.3. It is the case of the plaintiff that since Nataraja Mudaliyar, Ilayaperumal Mudaliyar and Thirunavukkarasu had refused to accept an equal share in the family debts, a family arrangement was made on 05.08.1971 and the extent of 1.32 cents in S.No.380/1A was divided into 4 equal shares each measuring 0.33 cents and Muniyappa Mudaliyar got the 4th portion of 0.33 cents along with Nataraja Mudaliyar, Ilayaperumal Mudaliyar and Thirunavukkarasu and it was arranged that Muniyappa Mudaliyar would discharge the excess ratio of family debts.

2.4. The plaintiff would contend that the koor chit was executed on 05.08.1971 which was signed by all the parties and this



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koor chit is with the first defendant. Contrary to the partition that had been effected under the koor chit dated 05.08.1971, Nataraja Mudaliyar, who was allotted 0.33 cents, sold 0.44 cents to Muniyappan under a sale deed dated 20.05.1975. Likewise, Thirunavukkarasu who was allotted 0.33 cents out of an extent of 1.32 cents in S.No.380/1 with the following boundaries.

On the North by Ilayaperumal's Dry lands;

On the South by hill;

On the East by Ramamoorthy's Dry lands; and

On the West by Hill.

had sold this to Ilayaperumal Mudaliyar under a sale deed dated 19.07.1976 and the boundaries mentioned therein was “North of your Dry lands”. The said Thirunavukkarasu had, therefore, sold his entire property and had not retained any share in his name.

2.5. Likewise, Ilayaperumal Mudaliyar was allotted 0.33 cents as per koor chit. However, he had alienated an extent of 0.77



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cents; (0.44 cents belonging to him in S.No.380/1 and 0.33 cents purchased by him under sale deed dated 19.07.1976 executed by Thirunavukkarasu) to Muniyappan under a sale deed dated 27.01.1980. The said Muniyappan Mudaliyar had also got the patta transferred in his name.

2.6. It is the contention of Muniyappa Mudaliyar that after 27.01.1980 ie., after the sale executed by Ilayaperumal Mudaliyar, he became the absolute owner of the entire extent of 1.32 cents in S.No.380/1. He has also planted Thailam trees in the property and thereafter, on 26.09.2005, he had executed a settlement deed in favour of the plaintiff and the plaintiff had taken possession of the same and is in enjoyment of the suit property. The first defendant is none else than the brother of the husband of the plaintiff. Therefore, she would contend that from 27.01.1980, they have been in possession and enjoyment of the property and therefore, perfected title over the same.



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2.7. It is their contention that the first defendant who had no right, title or interest to the suit property is taking steps to interfere with the plaintiff's peaceful possession and enjoyment of the suit property and was attempting to cut down the Thailam trees. It is the case of the plaintiff that after the sale deed dated 19.07.1976 executed by the first defendant in favour of Muniyappan Mudaliyar, the first defendant has no right in the suit property. Therefore, the plaintiff had come forward with the suit in question.

2.8. The written statement filed by the first defendant was adopted by the 3rd and 4th defendants, in and by which, the defendants had admitted the partition of the property under the partition deed dated 29.07.1971. It is his contention that after partition, the parties have been enjoying their respective shares allotted to them under the deed. He had specifically denied the division that is sought to be projected by the plaintiff through koor chit dated 05.08.1971. The defendants would deny that the extent of



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land enjoyed has been reduced from 0.44 cents to 0.33 cents and that the plaintiff's husband Muniyappan Mudaliyar had got right to the extent of 0.33 cents.

2.9. The first defendant would deny the fact that there were family debts and they had not agreed to share the same which prompted the preparation of the koor chit and reallocation of the properties. The first defendant would submit that he is entitled to 0.44 cents under the partition deed dated 29.07.1971 and out of this 0.44 cents, he had alienated only 0.33 cents to Ilayaperumal Mudaliyar under the sale deed dated 29.07.1976 and had retained an extent of 0.11 cents in S.No.380/1A which is adjacent to poramboke land on north east. The first defendant is in enjoyment of the extent of 0.11 cents. The first defendant would also submit that he is in possession of the adjacent lands in S.No.380/1A.

2.10. The first defendant would further submit that it was the



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very same extent that was alienated by the said Ilayaperumal Mudaliyar to Muniyappan Mudaliyar. Muniyappan Mudaliyar is attempting to grab the property by claiming under the koor chit dated 05.08.1971. The defendants would submit that the plaintiff and her husband have joined hands to usurp the suit property which belongs to the first defendant. Therefore, they sought for the dismissal of the suit with compensatory costs.

TRIAL COURT:

3. The Trial Court had framed the following issues.

“1.வாதி தாவாவில் கோரியபடி தாவா சொத்து வாதிக்கு பாத்தியப்பட்டது என விளம்புகை பரிகாரம் பெறத்தக்கதா?

2.வாதி கோரியபடி நிரந்தர உறுத்துக் கட்டளை பரிகாரம் கிடைக்கத்தக்கதா?

3.வாதிக்கு கிடைக்கும் வேறு பரிகாரம் என்ன?”

4. The plaintiff had examined herself as P.W.1 and marked Exs.A1 to A20. The defendants who had filed a written statement



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had not let in any evidence either oral or documentary. However, the Trial Court dismissed the suit.

LOWER APPELLATE COURT:

5. Aggrieved by the same, the plaintiff had filed an appeal. The Lower Appellate Court has also considered the evidence on record and after perusing the judgment and decree of the Trial Court, had partly allowed the appeal.

6. Aggrieved by the said judgment and decree, the plaintiff is before this Court. The matter is listed for admission.

7. Heard the learned counsel for the appellant and perused the materials available on record.

DISCUSSION:

8. The plaintiff has filed a suit for the reliefs stated *supra*



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on the ground that the suit property had been settled in her favour by her husband under a deed dated 26.09.2005 – Ex.A5. She would contend that she is entitled to the entire extent on the basis of the fact that although there was a registered partition deed under Ex.A1 dated 29.07.1971, wherein, Nataraja Mudaliyar, Ilayaperumal Mudaliyar and Thirunavukkarasu were each allotted an extent of 0.44 cents and likewise, Muniyappa Mudaliyar had been allotted 0.44 cents in S.No.380/4. Thereafter, in the month of August 1971 ie., on 05.08.1971, a koor chit was entered into among the said Nataraja Mudaliyar, Ilayaperumal Mudaliyar and Thirunavukkarasu along with the plaintiff's husband, Muniyappa Mudaliyar since the defendants were not ready to share the family debts. Therefore, Muniyappa Mudaliyar took it upon himself to discharge the family debts and for doing so, the property comprised in S.No.380/1 was once again reallocated to the share of Nataraja Mudaliyar, Ilayaperumal Mudaliyar and Thirunavukkarasu reducing 0.11 cents from 0.44 cents allotted to them and these 0.11 cents from the



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aforesaid persons had been allotted to the share of Muniyappa Mudaliyar ie., 0.33 cents.

9. The plaintiff would submit that Nataraja Mudaliyar, after the execution of koor chit, had proceeded to sell the 0.44 cents to Muniyappa Mudaliyar and likewise, Ilayaperumal Mudaliyar had purchased 0.33 cents from Thirunavukkarasu and that together with his 0.44 cents was sold to Muniyappa Mudaliyar, thereby, by reason of these sales, Muniyappa Mudaliyar becomes entitled to an extent of 1.21 acres. In addition to this extent, Muniyappa Mudaliyar was already allotted an extent of 0.33 cents under the koor chit dated 05.08.1971. Therefore, the plaintiff would submit that Muniyappa Mudaliyar is entitled to an extent of 1.32 cents and this property has been totally settled on the plaintiff.

10. However, the koor chit has been denied by the first defendant who clearly claims that they have been enjoying the



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property as per the partition deed dated 29.07.1971, thereby, contending that Nataraja Mudaliyar, Ilayaperumal Mudaliyar and Thirunavukkarasu were enjoying the entire extent of 0.44 cents. Muniyappa Mudaliyar had himself purchased 0.44 cents from Nataraja Mudaliyar and Ilayaperumal Mudaliyar, though it is the contention of the plaintiff that even prior to the sale in favour of her husband Muniyappa Mudaliyar, the partition had taken place under the koor chit. This would clearly go to show that the family arrangement under the koor chit as pleaded by the plaintiff, had not taken place at all and the plaintiff is attempting to usurp the extent of 0.11 cents, which has been retained by the first defendant.

11. The Trial Court has rightly considered the evidence on record and dismissed the suit. The Lower Appellate Court has however, taken into consideration, the fact that with reference to the extent of 1.21 acres, the plaintiff has been able to prove her right on the basis of the sale deed Exs.A2, A3 and A4.



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12. Therefore, I see no reason to interfere with these well-considered judgments of both the Courts below and further, the appellant has not made out any substantial question of law and is only pleading for this Court to re-consider the evidence afresh, which has been considered by the Courts below and judgments were pronounced.

Accordingly, this second appeal stands dismissed.
Consequently, connected C.M.P. stands closed. No costs.

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Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
ssa

To

- 1.The Sub Judge, Civil Judge (Senior Division), Arani.
- 2.The District Munsif, Civil Judge (Junior Division), Arani.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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P.T.ASHA, J.,

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