



S.A.No.645 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.645 of 2021

and

C.M.P.Nos.13233 and 13234 of 2021

1. Rani
2. Bhoopalan
3. Poonkodi ... Appellants

Vs.

1. Veenilon
2. Nambi
3. Poongodi
4. The Sub Registrar
Natrampalli, Thirupathur Taluk
Vellore.
5. P.Boopathy ... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 16.07.2018 in A.S.No.15 of 2016 on the file of the III Additional District Court, Vellore, confirming the judgment and decree dated 23.04.2014 in O.S.No.133 of 2008 on the file of the Subordinate Court, Tirupattur.

For appellants : Mr.Kaushik N.Sharma



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For R1 to R3 : Mr.N.Jayakumar
For R4 : Mr.Tamilnidhi
Additional Government Pleader
For R5 : No appearance

JUDGMENT

The plaintiffs, who have been unsuccessful in both the Courts below, are the appellants before this Court.

2. The facts are briefly set out hereinbelow and the parties are referred in the same litigative status as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiffs have filed a suit for partition and separate possession of their 4/5th share in the suit schedule properties and permanent injunction restraining the defendants 1 to 4 from creating any sale deed on the basis of the sale agreement dated 17.03.2008.



2.2. The plaintiffs would contend that the suit properties are their ancestral properties. The 1st defendant is the husband of the 1st plaintiff and father of the plaintiffs 2 and 3. It is the case of the plaintiffs that the suit properties are the ancestral properties which were in the possession and enjoyment of the 1st defendant's father. On his death, the properties devolved on the 1st defendant and the plaintiffs were in possession and enjoyment of the joint family properties. There was no partition effected between the plaintiffs and the 1st defendant.

2.3. The plaintiff would further submit that the 1st defendant was not taking care of the family, having a concubine and was addicted to liquor. Despite several attempts, the 1st defendant was not inclined to mend his ways. Therefore, the plaintiffs demanded the partition of the suit properties and allotment of their respective shares in the suit properties.



2.4. The plaintiffs would submit that there was no partition in the family. While so, the first defendant appears to have entered into sale agreement dated 17.03.2008 in favour of the second defendant agreeing to sell the properties for a meagre amount. The plaintiffs would submit that the said agreement is not binding on them as they are not parties to the agreement since the same is executed for his illegal activities. Therefore, the plaintiffs have come forward with the suit in question.

2.5. The 1st defendant remained *ex parte* before the Trial Court. The 2nd defendant has filed a written statement which was adopted by the defendants 3 and 4 in which the 2nd defendant *inter alia* denied the allegations contained in the plaint. They sought for the dismissal of the suit. It is their contention that the 1st defendant was a Karta of the family and he was doing business separately. It is their contention that from and out of the income so earned, the properties comprised in Survey No.588/1C was purchased by the 1st defendant.



The 1st defendant has leased out the said properties to the 2nd defendant. The 1st defendant was unable to look after the suit schedule properties and maintain the same and the plaintiffs 2 and 3 were also not co-operating in the management of the properties by doing cultivation work. He had also incurred a lot of debts and in order to settle these debts, he had offered the sale of properties comprised in Survey No.588/1C to the 2nd defendant who has already taken lease of the properties.

2.6. On coming to know about the negotiation of sale, the debtors Vijayan and Krishnan, who owed a sum of Rs.1,90,000/-, created trouble. Therefore, the 1st defendant decided to sell all the properties to the 2nd defendant who was willing to clear all the debts of the 1st defendant. Accordingly, the properties were sold to the 2nd defendant by way of a registered sale deed dated 09.04.2008. After the 2nd defendant had cleared all the debts of the 1st defendant, he had adjusted a sum of Rs.30,000/- which was due to him. At the time of



purchase of the properties, the discharged pro-notes were handed over to the 1st defendant by the 2nd defendant.

2.7. It is the contention of the defendants 2 to 4 that the plaintiffs are very much in know of all these details and now, the 1st defendant and plaintiffs have colluded together to grab the properties from the 2nd defendant. The plaintiffs are denying the document only on account of the fact that the 2nd defendant had not obtained signature of any of the plaintiffs in the sale deed and therefore, the defendants sought to have the suit dismissed and contended that the sale is binding on the plaintiffs as the sale has been entered into only to discharge the debts of the family.

2.8. The 5th defendant had filed a written statement contending that the plaintiffs' suit was a false and fraudulent one and the 5th defendant is an unnecessary party to the proceedings. That apart, notice under Section 80 of C.P.C was not issued to him and hence, the



suit is liable to be dismissed on this ground. The 5th defendant would further submit that if a document which is properly stamped and properly valued is submitted for registration, he cannot deny registration of the document.

TRIAL COURT:

3. The Trial Court had framed the following issues.

- “1.வாதிகள் வழக்குரையில் கோரியபடி பாகப்பிவினை பெற உரிமை உடையவர்களா?
2. 5ம் பிரதிவாதி வழக்கிற்கு தேவையற்ற தரப்பினர் என்பது சரியா?
3. வழக்கிற்கு வழக்குமூலம் இல்லையென்பது சரியா?
4. வாதிகளுக்கு கிடைக்கக்கூடிய வேறு பரிகாரம் என்ன?”

4. The plaintiffs had examined 3 witnesses and marked Exs.A1 to A13. On the side of the defendants, the defendants had examined 3 witnesses and marked Exs.B1 to B6. After considering the



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evidence, the trial Court had dismissed the suit.

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LOWER APPELLATE COURT:

5. Challenging the said judgment and decree, the defendants had filed an appeal in A.S.No.15 of 2016 on the file of the III Additional District Court, Vellore. The learned Judge has concurred with the findings and the judgment of the Trial Court and dismissed the appeal.

6. Challenging the said judgment and decree, the plaintiffs are before this Court. This Court had ordered notice to the respondents.

7. Heard the learned counsel on either side and perused the materials available on record.

DISCUSSION:



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8. A perusal of the judgment of the Lower Appellate Court would indicate that the 2nd plaintiff, as P.W.1, has admitted that the suit properties which were claimed as their ancestral properties, are the properties of their great grandmother Periyakka. The plaintiffs' grandfather Muradan @ Ellapan was the only heir of their great grandmother. She had executed a settlement deed dated 22.02.1958 which is marked as Ex.A1, in and by which, she had settled her properties in the name of her son viz., Muradan @ Ellapan. Therefore, the suit properties were not ancestral as these properties were derived from a Hindu female.

9. That apart, under the settlement deed Ex.A1, Periyakka had given only a life interest to him and the absolute right was given to the children of Muradan @ Ellapan. The 1st defendant is the only son of Muradan @ Ellapan. Therefore, the suit properties are not ancestral properties, but, absolute properties of the 1st defendant. Both the Courts below have referred to the admission of P.W.1 to arrive at



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this conclusion. Therefore, the very basis upon which the plaintiffs have moved this Court does not exist. The allegations against the 1st defendant have not been proved.

10. That apart, the 1st defendant who has been portrayed as a villain is living in the same address as the plaintiff. Therefore, the contention of the plaintiffs that they were kept in dark about the sale is also unbelievable. The suit appears to be a collusive one filed by the plaintiffs at the behest of the 1st defendant. The plaintiffs have not made out a case for interference with the concurrent judgment and decree of the Courts below. Further, no substantial questions of law arises in the above second appeal.

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

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

10/12



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To

1. The III Additional District Judge, Vellore.
2. The Subordinate Judge, Tirupattur.
3. The Section Officer, V.R.Section, High Court, Madras.

P.T.ASHA, J.,

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