



S.A.No.903 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2024

CORUM

THE HONOURABLE MRS.JUSTICE N.MALA

S.A.No.903 of 2021

1. Radha
2. Rukmani

... appellants

Vs.

1. Sekar
2. Mani
3. Valarmathi
4. R.V.Prakash
5. N.Murugesan
6. N.Arumugam
7. Valli Ammal
8. Lalitha

... Respondents

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure Code, 1908 praying to set aside the Judgment and Decree in A.S.No.62 of 2018 passed by the Principal District Judge, Tiruvannamalai dated 06.01.2021, which confirmed the Judgment and Decree in O.S.No.39 of 2008 passed by the Additional Subordinate Judge at Tiruvannamalai, dated 27.11.2017 and allow this Second Appeal.

For Appellants : M/s.Suseela Devi
For R4 : M/s.P.G.Thiyagu (Caveator)



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S.A.No.903 of 2021

JUDGMENT

The plaintiffs in the Suit are the appellants in the Second Appeal.
The Second Appeal is filed against the concurrent Judgments of the Courts below.

2. The parties will be referred to as per their litigative rank in the Trial Court.

The facts of the case are as follows:-

3. The case of the plaintiffs is that one Narayanasamy married Amirthammal as per the Hindu Rites and Customs and through her begot the defendants 5 to 7. The said Amirthammal died on 1958. After the demise of Amirthammal, Narayanasamy married the 1st plaintiff and through her he begot the plaintiffs 2 and 3 (appellants herein) and the defendants 1 to 3.

4. According to the plaintiffs the suit property was purchased by Narayanasamy out of the income earned from his laundry business. The said Narayanasamy allotted some other properties to his children born through the first



S.A.No.903 of 2021

wife, leaving the suit property to the plaintiffs and the defendants 1 to 3.

Narayanasamy died intestate on 09.07.1975 leaving the plaintiffs and the defendants 1 to 3 to succeed to the suit property. After the demise of Narayanasamy, the plaintiffs and the defendants 1 to 3 were in joint possession and enjoyment of the suit property as co-owners and co-sharers and hence they were entitled to 1/6th share each. The plaintiffs stated that the defendants 1 and 2 executed a Sale Deed dated 02.08.2024, with respect to the entire suit property including the shares of the plaintiffs in favour of one Ranganathan, who is the husband of the 3rd defendant. The plaintiffs stated that the defendants 1 and 2 had no right to alienate their shares to the said Ranganathan. The plaintiffs further stated that the said Ranganathan sold the property to the 4th defendant vide Sale Deed dated 28.06.2007. According to the plaintiffs neither Ranganathan nor the 4th defendant were in possession of the suit property. However, as the 4th defendant was trying to interfere with their peaceful possession and enjoyment of the suit property, the plaintiffs were constrained to file the Suit for partition and separate possession of their 3/6th share in the suit property.



S.A.No.903 of 2021

5. The defendants 1 and 2 remained *ex-parte* and the Suit was contested by the defendants 3 and 4.

6. The 3rd and 4th defendants filed Written Statement.

7. The 3rd defendant stated that the said Narayanasamy developed illicit relationship with the first plaintiff and through her he begot the plaintiffs 2 and 3 and the defendants 1 to 3. The 3rd defendant stated that the said Narayanasamy during the subsistence of his relationship with the 1st plaintiff developed illicit relationship with one Kannammal, who was none other than the sister of Amirthammal (1st wife) and through her he begot two children viz., Lalitha and Vasantha. The 3rd defendant further stated that the plaintiffs did not whisper about the said legal heirs of Narayanasamy viz., Lalitha and Vasantha, even though it was brought to their knowledge in the reply notice dated 08.03.2008. The 3rd defendant further stated that except the children born to Narayanasamy and his first wife Amirthammal, all other children were illegitimate children of Narayanasamy. The 3rd defendant further stated that even during the lifetime of Narayanasamy, he orally allotted the suit houses and the landed properties situated



S.A.No.903 of 2021

at Su.Valavetti Village, Tiruvannamalai Taluk in favour of his male heirs and illegitimate wife Kannammal. According to the 3rd defendant, in terms of the oral allotment the suit houses were allotted to the sons of Narayanasamy, i.e., the defendants 1, 2, 5 and 6 jointly. The 3rd defendant further stated that on 05.05.1993, the defendants 5 and 6 sold their 1/2 share in the suit property to the defendants 1 & 2 under a registered Sale Deed and from the date of purchase, the defendants 1 & 2 were in exclusive possession of the suit houses. The 3rd defendant further stated that the defendants 1 and 2 ran into various debts and therefore they sold the suit property for valuable consideration to one Ranganathan on 02.08.2004, who is the husband of the 3rd defendant. Thereafter, the third defendant's husband Ranganathan sold the property to the 4th defendant vide registered Sale Deed dated 28.06.2007.

8. The 3rd defendant further stated that apart from the suit property the defendants 1 and 2 were allotted landed property at Su.Valavetti Village by the said Narayanasamy and that they sold their share to the husband of the 3rd defendant vide registered Sale Deed dated 17.11.1997. So also, the son of Narayanasamy born through his first wife viz., N.Murugesan, the 5th defendant



S.A.No.903 of 2021

sold his share of the property at Su.Valavetti Village to the 3rd defendant's husband, Ranganathan, vide registered Sale Deed dated 03.05.1993. Likewise, another son of Narayanasamy born through his first wife viz., N.Arumugam, the 6th defendant also sold his share in the property in Su.Valavetti Village to the 3rd defendant's husband vide registered Sale Deed dated 24.01.1997. In pursuance to the aforesaid Sale Deeds, the 3rd defendant and her husband Ranganathan were in exclusive possession and enjoyment of the entire suit property. The 3rd defendant further stated that the plaintiffs had no right or title over the suit property and that the suit was liable to be dismissed for non-joinder of necessary parties.

9. The 4th defendant reiterated the averments made by the 3rd defendant. The 4th defendant stated that Sale Deed executed by the third defendant's husband, Ranganathan, in his favour vide registered Sale Deed dated 28.06.2007, was for valid consideration. In pursuance of the same he had taken possession of the property and had been enjoying the same as of right. The 4th defendant filed Additional Written Statement stating that the Suit was bad for non-joinder of necessary parties, i.e., the children of the Narayanasamy through his first wife Amirthammal and the third wife Kannammal.



S.A.No.903 of 2021

WEB COPY

10. Before the Trial Court, the 3rd plaintiff examined herself as PW1 and marked Ex.A1 to A4 in support of her case. The 3rd defendant examined herself as DW1 and the 4th defendant examined himself as DW2. The defendants marked Ex.B1 to B17 in support of their case.

11. After hearing both sides, the Trial Court framed the following issues:-

“7. Based on the above pleadings, the following issues are framed for trial:-

- 1) தாவா சொத்தில் வாதிகளுக்கு 12/30 பாகம் உரிமை உள்ளதா?
- 2) 02.08.2004ல் 1,2 பிரதிவாதிகள் தாவா சொத்தை ரங்கநாதன் என்பவருக்கு கொடுத்த கிரயம் வாதிகளின் பாகத்தைப் பொறுத்து செல்லத்தக்கதில்லையா?
- 3) 02.06.2007ல் 4ம் பிரதிபாதி, ரங்கநாதன் என்பவரிடமிருந்து பெற்ற கிரயப்பத்திரத்தின் அடிப்படையில் தாவா சொத்து முழுவதிலும் 4ம் பிரதிவாதி உரிமை கோர முடியாதா?
- 4) உரிய தரப்பினர்களை சேர்க்காத காரணத்தால் தாவா பாதிக்கத்தக்கதா?
- 5) வாதிகள் கோரியபடி பரிகாரம் பெற தகுதியானவர்கள்தானா? ”



S.A.No.903 of 2021

WEB COPY

12. The Trial Court found that the suit was not maintainable as there was already a partition between the sons of Narayanasamy in the year 1983 itself. The Trial Court on the basis of Ex.B1, Ex.B3, Ex.B4 and Ex.B5 and the evidence of PW1 held that the suit properties were partitioned even during the lifetime of Narayanasamy (late). The Trial Court found that Sale Deed executed vide Ex.B9 and Ex.B10 by Ranganathan, the husband of the 3rd defendant in favour of the 4th defendant were valid and binding on the plaintiffs. The Trial Court found that non-impleadment of Vasantha, who was the legal heir of Narayanasamy born through Kannammal was fatal to the Suit. On such findings the Trial Court non suited the plaintiffs.

13. The Lower Appellate Court confirmed the Judgment and Decree of the Trial Court on its finding that the suit properties purchased by the defendants 1 & 2 vide Ex.B1 were their self acquired property, that the sale of the same by the defendants 1 and 2 in favour of the husband of the 3rd defendant and the further sale by the 3rd defendant's husband in favour of the 4th defendant were valid. The Lower Appellate Court relying on Ex.B1 to Ex.B5 and concluded that the suit



S.A.No.903 of 2021

property and the other properties were already partitioned. The Lower Appellate Court further found that the Suit was bad for non-joinder of necessary parties. The Lower Appellate Court hence dismissed the appeal.

14. Aggrieved by the confirming Judgment of the Lower Appellate Court, the plaintiffs have filed the Second Appeal.

15. The learned counsel for the appellants submitted that the Courts below erred in rejecting the plaintiffs Suit for partition on a misconception and misappreciation of the evidence on record. The counsel further submitted that the findings of the Court's below that the Suit is bad for non-joinder of necessary parties and bad for partial partition was erroneous. The counsel for the Respondent submitted that the Court's below having rendered concurrent findings on facts, the same should not be interfered in Second Appeal filed under Section 100 of Code of Civil Procedure.

16. I have heard both the learned counsels and I have perused the materials placed on record.



S.A.No.903 of 2021

WEB COPY

17. The Second Appeal was not admitted and is listed under the caption “Adjourned Admission”. The 4th Respondent has entered appearance as “Caveator”.

18. The undisputed facts are that the 1st plaintiff is the second wife of one Narayanasamy and the plaintiffs 2 and 3 and the defendants 1 and 3 are the daughters and sons born to the 1st plaintiff. The said Narayanasamy through his first wife begot three children viz., the defendants 5 to 7. Narayanasamy had another wife by name Kannammal, who was none other than the sister of the 1st wife Amirthammal, and through her he begot two daughters and one of them was impleaded as the 8th defendant.

19. The Plaintiffs claim that the first wife's children were allotted some other properties and the suit property was left by Narayanasamy to be enjoyed by the plaintiffs and the defendants 1 to 3. But the defendants claim that Narayanasamy even during his lifetime orally allotted his entire properties including the suit property to his male heirs. It is the defendants 1 to 3's further



S.A.No.903 of 2021

case that the defendant's 1 and 2 purchased the share of defendants 5 and 6 vide Sale Deed dated 05.05.1983 under Ex.B1, that the defendants 1 and 2 in pursuance of the aforesaid sale in their favour became absolute owners of the entire property that the defendants 1 & 2 as absolute owners sold the property to the 3rd defendants husband vide Ex.B9 dated 02.08.2004 and thereafter the husband of the 3rd defendant sold the same to the 4th defendant vide Ex.B10 dated 28.06.2007. It is to be seen if the claim of the defendants that the suit property and other properties were orally allotted to the male heirs of Narayanasamy is correct or not. In this regard, the evidence of PW1 (3rd plaintiff) is very relevant. PW1 states as follows:-

“வாளாவெட்டியுள்ள நிலத்தையும், வீட்டையும் நாராயணசாமி உயிருடன் இருக்கும்போதே, தன் ஆண் வாரிசுக்கு பாகம் பிரித்து கொடுத்து விட்டார் என்றால் சரிதான். அந்த நிலத்தையும், வீட்டையும் ஆண்வாரிசுகள்தான் அனுபவித்து வந்தனர் என்று கூறியுள்ளார்.

Further P.W.1 admitted as follows:-

அமிர்தம்மாளின் தங்கை பெயர் கண்ணம்மாள். கண்ணம்மாள் மூலமாக என் தந்தைக்கு இரண்டு மகள்கள் பிறந்தனர். அவர்களின் பெயர் லலிதா, வசந்தா என்றால் சரிதான் என்று கூறியுள்ளார்.”



S.A.No.903 of 2021

WEB COPY

20. It is well settled that admissions are best evidence. Therefore from the evidence of the plaintiff it is clear that the suit property and other properties were allotted to the male heirs by Narayanasamy during his lifetime. The evidence of PW1 coupled with the recitals in Ex.B1 clearly establish that the suit property was partitioned even during the lifetime of Narayanasamy and that the defendants 1 and 2 became entitled to the entire property by purchasing the share of the defendants 5 and 6. The plaintiffs case that the suit property was not partitioned and they were entitled to 1/6th share each cannot be accepted in the light of the admission of PW1 and the recitals in Ex.B1 dated 05.05.1983. The plaintiffs have failed to establish their case and therefore, I find no compelling reasons to interfere with the findings of facts of the Courts below.

21. It is seen that even under the Reply Notice, the defendants brought to the notice of the plaintiffs that the said Narayanasamy had another wife by name Kannammal, who was none other than the sister of 1st wife Narayanasamy and through her Narayanasamy begot two daughters viz., Vasantha and Lalitha. Even in the Written Statement, the defendants had specifically stated that the Suit was



S.A.No.903 of 2021

bad for non-joinder of necessary parties and that the legal heirs of Kannammal as also Amirthammal were not included. The plaintiffs though impleaded the legal heirs of Amirthammal failed to implead Vasantha, the other legal heir of Kannammal. In my view therefore, the Courts below under the circumstances were right in holding that the suit was bad for non-joinder of necessary party also.

22. I find absolutely no hard pressed reasons to interfere with concurrent findings of the Courts below. From the above discussions, I find that absolutely no substantial questions of law arise for consideration in the second appeal. The Hon'ble Supreme Court in the case of ***Kirpa Ram (D) Tr.Lrs. vs. Surender Deo Gaur*** reported in ***2021 (3) SCC 57***, following the Judgment in the case of ***Ashok Rangnath Magar vs. Shrikant Govindrao Sangvikar*** reported in ***2015 (16) SCC 763*** held that the second appeal can be dismissed without even formulating the substantial question of law, if it is satisfied that no substantial question of law is involved in the appeal.



S.A.No.903 of 2021

WEB COPY

23.On a comprehensive appreciation of the entire materials, I find that the questions raised are questions of fact only and in the absence of any substantial questions of law, the Second Appeal cannot be entertained and hence, Second Appeal is dismissed at the admission stage itself. No costs.

24.07.2024.

Index:Yes/No

Speaking order:Yes/No

Neutral Citation:Yes/No

rgm



S.A.No.903 of 2021

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- To
1. The Additional Subordinate Judge,
Tiruvannamalai,
Tiruvannamalai District.
 2. The Principal District Judge,
Tiruvannamalai,
Tiruvannamalai District.



WEB COPY



S.A.No.903 of 2021

N.MALA, J.
rgm

S.A.No.903 of 2021

24.07.2024