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A.S.(MD)No.134 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

A.S.(MD)No.134 of 2020

and

C.M.P.(MD)Nos.4691, 4692 of 2020 and 8064 of 2024

1.Ramaiah
2.Malaisamy
3.Rakku
4.Rajendran
5.Boopathi
6.Kamaleshwari
7.Vennila

...Appellants

Vs.

1.Seethai @ Seethaiyammal
2.M.Lakshmi
3.Ramamoorthi

...Respondents

PRAYER: This Appeal Suit filed under Section 96 read with Order 41 of C.P.C., against the judgment and decree, dated 13.12.2019, made in O.S.No.32 of 2016 on the file of the Principal District Judge, Sivagangai.

For Appellants : Mr.M.Thirunavukkarasu

For R1 : Mr.M.Kannan

For R2 : Mr.R.Suriyanarayanan

For R3 : Mr.R.Mathavaselvam



JUDGMENT

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The appeal is preferred against the judgment and decree passed in O.S.No.32 of 2016 on the file of the Principal District Court, Sivagangai. The plaintiff in the suit is the respondent herein and the defendant in the suit is the appellant herein.

2. The suit is filed for partition for $1/3^{\text{rd}}$ share each and allot $2/3^{\text{rd}}$ share to the plaintiff. The brief facts are that the plaintiff's father Kannan had married the 1st wife Kathammal and the 1st wife died within few years after giving birth to son namely Ramanathan. Thereafter the father Kannan had married the 2nd wife namely Arumugam and the plaintiff is the only daughter to the 2nd wife. The plaintiff's father died on 23.03.1991 and the plaintiff's mother (the 2nd wife of the Kannan) died in the year 1996. The said Ramanathan had two wives, the 1st wife namely Ramayee had one son namely Ramiah who is the 1st defendant in the suit. The 2nd wife of Ramanathan namely Sangu Pillai @ Chillu Kunjaram had seven children who are defendants 2 to 8. The said Ramanathan predeceased Kannan who died in the year 1984.

3. The contention of the plaintiff is that the father Kannan had purchased the suit properties through sale deed and hence it is the self-acquired property of the



father. Based on the sale deed, patta was issued to him, he was paying tax and was in possession and enjoyment of the property until his life time. Further the father Kannan during his life time had settled some of the properties through documents to his legal heirs. After the demise of Kannan, the suit schedule properties were in joint possession and enjoyment of the plaintiff, plaintiff's mother and the legal heirs of the said Ramanathan and they were enjoying jointly. The said legal heirs of Ramanathan are entitled to 1/3rd share, the plaintiff's mother is entitled to 1/3rd share and the plaintiff is entitled to 1/3rd share. The plaintiff's mother died in the year 1996, hence the plaintiff is entitled to 2/3rd shares. In the suit properties agricultural activities could not be carried on due to insufficient rains for the past several years. However, when there was rain, the plaintiff intended to carry on the agricultural activities but the plaintiff was shocked to see some third parties were taking the sand from the land, on enquiry the plaintiff came to know that the defendants had sold the properties to the 9th defendant. The defendants had sold the plaintiff's 2/3rd shares, which the defendants have no right at all. Hence the suit for partition claiming 2/3rd shares.

4. The defendants 1 to 8 had filed written statement wherein the defendants admit the relationship of the plaintiff and the defendants and also admit the suit



properties are owned by Kannan and Kannan is the father of the plaintiff and grandfather of the defendants 1 to 8. The contention of the defendants is that from the income of the joint family (**pothu kootu varumanam type in Tamil**) the plaintiff's marriage was conducted after giving sufficient jewels and srithana in the year 1977. The said Ramanathan, father of the defendants 1 to 8 died in the year 1984. After the demise of the said Ramanathan there was dispute between the legal heirs of the Kannan i.e. among the plaintiff and defendants 1 to 8. Hence the said Kannan had partitioned the properties and allotted the plaintiff's share to the plaintiff and allotted the defendants share to the defendants 1 to 8. Since the plaintiff being a female heir, in order to avoid any disputes in future, especially to protect the plaintiff from any disputes that would be raised by the defendants against the plaintiff, the said allotted share was given to the plaintiff through settlement deed dated 14.06.1985 and the plaintiff had changed patta in her name. The properties allotted to the legal heirs of the said Ramanathan was allotted to the defendants 1 to 8 and the same stands in the name of the sons of the Ramanathan i.e. defendants 1,2,4 and 5, and daughters of Ramanathan was not given any share. The above facts are known to the plaintiff, but had filed the suit by averring false averments. Already there was a partition among the plaintiff and the defendants and hence the present partition suit is not maintainable. The defendants deny the other averments especially the averment



that the plaintiff and her mother was in enjoyment of the property, plaintiff is entitled to 2/3rd of the property etc. are denied as false and prayed to dismiss the suit.

5. The Trial Court had framed the issue whether the suit properties are absolute properties of the plaintiff's father Kannan, whether the plaintiff is entitled to relief of partition and to what other relief. The Trial Court had come to the conclusion that the that the suit properties are self-acquired property of Kannan, the defendant had not raised the plea of joint family and hence the plaintiff is entitled to partition. On perusal of the pleadings, it is seen both the plaintiff and the defendants had admitted that the properties belong to Kannan. The plaintiff had stated that after the demise of Kannan the suit properties were enjoyed by the plaintiff, plaintiff's mother and the defendants as "jointly". If so, the revenue records ought to have been in the name of the plaintiff's mother being the wife of Kannan. It is pertinent to state that the plaintiff's mother died in the year 1996. But there is no pleading by the plaintiff that the revenue records were changed in the name of the plaintiff's mother. Also, there is no pleading that the revenue records were changed to the name of the plaintiff and the defendants and joint patta was issued to them. Further the plaintiff had not produced any revenue records to show that the property was enjoyed by the plaintiff, plaintiff's mother along with the defendants jointly. The said Kannan died on



23.03.1991, thereafter the revenue records was not changed in the name of the plaintiff's mother until her demise in the year 1996. Thereafter also the revenue records were not changed in the name of the plaintiff and defendants jointly. Hence, the plea that the suit properties was enjoyed jointly by the plaintiff, plaintiff's mother and defendants has not been substantiated, hence the claim of the plaintiff is incorrect.

6. On the other hand, the defendants had stated in the written statement that the plaintiff was married in the year 1977, she was given jewels and sridhana from the joint family income only. But the Trial Court had held that the defendant had not pleaded that the suit properties are jointly family property except for the sentence "the jewels and sridhana was given from the joint family income". When the defendant had pleaded that the jewels and sridhana was paid from the joint family income, then there is a plea of joint family properties, hence the said statement cannot be simply brushed aside. Therefore, this Court is of the considered opinion that the Trial Court had erred in rendered a finding that the defendants had not claimed the suit properties are joint family.

7. The further plea of the defendants is that their father Ramanathan died in the



year 1984 and there was a dispute among the plaintiff and the defendants, hence the said Kannan had divided the properties. Also stated that the plaintiff being a female heir, in order to avoid any disputes in future, especially to protect the plaintiff from any disputes that would be raised by the defendants against the plaintiff, the said allotted share was given to the plaintiff through settlement deed dated 14.06.1985 and thereafter the plaintiff had changed patta in her name. This plaintiff has also admitted the said settlement and the same was marked as Ex.A5 and Ex.B1. On perusal of the said settlement deed, it is seen four properties were allotted to the plaintiff namely S.No.38/3 (vacant house plot), S.No.36/11 (40 cents), S.No.6/4 (one acre 62 cents) and in S.No.7/5 (one acre 56 cents). It is also seen that the plaintiff was granted four properties and the defendants (for four male descendants alone) were granted 13 properties including the S.No.89/3, hence the same would amount to partition of properties. The Trial Court had held that the said plea of the defendants is not acceptable since in the settlement deed it has not been stated that there was partition of properties but it only states during the marriage inadequate sridhana was given and hence the present settlement. If the settlement contains dispute among the plaintiff and defendants and the partition, then a question would arise, when there was partition, the settlement is unnecessary, the veracity of the settlement would be questionable and there would be cloud over it. The Trial Court ought to have



ascertain by comparing the other records whether there was partition or not. The defendants had produced the computer patta which are marked as Ex.B2, B3, B4 and B5 issued to the defendants wherein the names of the male children of the Ramanathan alone is available. But the Trial Court had disbelieved the said documents and held that the patta stand in the names of the few persons and not all the legal heirs and the same is not believable. This Court is of the considered opinion that the approach of the Trial Court is incorrect. The patta stands in the name of the sons of the Ramanathan and the Trial Court ought to have taken the date of such partition. The partition is in the year 1984, which is on the same year where the said Ramanathan died. Since the grandfather Kannan does not want his daughter (the plaintiff) and the grandchildren (the defendants 1 to 8) to raise any disputes, had amicably divided the properties among the plaintiff and the defendants. During 1984 the daughters were not considered for partition, hence the grandfather had left out the granddaughters for partition but considered to give the properties to the daughter. Hence the reasoning of the Trial Court is absurd. Further the contention of the defendants is acceptable based on the sequence of the events, the defendants father died in the year 1984, there was a dispute among the plaintiff and the defendants in the year 1984, the settlement is executed in the year 1985. If there was inadequate sridhana then the father would have given it in one or two years of the marriage, the



marriage of the plaintiff is in the year 1977, but the settlement is in the year 1985, which is on the same year where the said Ramananthan died. Interestingly the properties were divided almost equally, the plaintiff has got four properties, all the four male descendants had got 13 properties. Therefore, this Court is of the considered opinion that the plea of the defendants are supported by the documents and sequence is acceptable.

8. The plea of the defendants is further substantiated by the additional documents filed in the C.M.P.(MD)No.8064 of 2024, wherein the defendants had produced the adangal for various pasali years and the details are stated in the tabulation below:

S.No.	Pasali year	Calendar year
1	1393	1983
2	1394	1984
3	1396	1986
4	1397	1987
5	1398	1988
6	1400	1990
7	1401	1991

The plaintiff had filed counter in C.M.P.(MD)No.8064 of 2024 objecting to receive the additional evidence, wherein it is stated that the defendant had filed the said



petition and had stated misleading facts. The plaintiff had never stated that the suit properties belong to the plaintiff's grandfather. On perusal of the affidavit filed by the defendant it is seen that the defendant is trying to prove that the S.No.89/3 was originally belongs to Kannan, after partition the same was allotted to Ramanathan, thereafter the 1st defendant along with other defendants sold the said land in S.No. 89/3 to a third party vide Sale Deed dated 06.05.1987. As alleged by the plaintiff the defendant had not stated that the land belongs to plaintiff's grandfather. Of course, the plaintiff's father name and the plaintiff's grandfather's name are one and the same i.e. Kannan. But the defendant has not stated that the land belongs to the plaintiff's grandfather, hence the said contention is rejected.

9. The next contention of the plaintiff is already answered supra, wherein this Court had already held that the property never went to the plaintiff's mother since prior to the demise of plaintiff's mother there was partition. If the claim of the plaintiff is genuine then the revenue documents would have been mutated in the name of the plaintiff's mother, plaintiff and the defendants and joint patta would have been issued. The plaintiff had not produced any such joint patta. But in the present case the revenue documents only show the names of Kannan, thereafter it stands in the name of the defendants (four sons alone).



10. The next contention of the plaintiff is that the defendant is pleading ouster from the joint family and joint possession, but the defendant had not pleaded the same in the written statement and the same is being raised for the first time in the appeal. This Court is of the considered opinion in first appeal the defendants have right to raise additional plea. But in the present case the defendants had raised the said plea in the written statement, wherein the defendant had stated that the plaintiff was married and left the house with jewels and sridhana and the same was adorned to her from the joint income of the family properties. Even though the word ouster was not used in the written statement the sum and substance of the aforesaid plea is ouster. Further the defendants had raised the said plea in the grounds of appeal. Therefore, the objections of the plaintiff for this plea ought to be rejected. Further this Court is of the considered opinion that the settlement of property in the name of the plaintiff would amount to ouster and hence the plaintiff is not having any right to claim partition in the suit properties.

11. The next plea of the plaintiff is that in the additional documents of adangal, the pasali years are not mentioned. On perusal of the same, it is seen the same is mentioned on the top of the documents, wherein it starts with the pasali year and the same is extracted hereunder:



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“1393-ஆம் பசலியில் சிவகங்கை மாவட்டம் மானாமதுரை வட்டம் மேலநெடுர் கிராமத்தில் வருடவாரி புலவாரி கைப்பற்று சாகுபடி அடங்கல் கணக்கு ”

12. The plaintiff had attacked the sale deed dated 06.05.1987 and submitted that the alleged sale was not mentioned anywhere by the defendants. Further the alleged partition is not mentioned in the said sale deed. On perusing the said sale deed, it is seen the defendants had mentioned in the document that the property is ancestral property of the defendants and the same is obtained through partition and the relevant portion is extracted hereunder:

“1987 ம் ஆண்டு பத்திர எண்: 956, கிரைய பத்திரம்

ரூபாய் 5,500 க்கு கிரயம், அங்காடி மதிப்பு ரூபாய் 6,800. 1987 ஆம் ஆண்டு மே மாதம் ஆறாம் தேதிக்கு பிரபவ ஆண்டு சித்திரை மாதம் 23ஆம் தேதி பசம்பொன் முத்துராமலிங்கம் மாவட்டம், மானாமதுரை வட்டம், அம்பலசேரி கிராமத்தில் வசிக்கும் துளசி அவர்கள் குமாரர் விவசாயம் கா.அழகு அவர்களுக்கு மேற்படி யூரில் வசிக்கும் விவசாய ஜீவனதாரர்களான ராமநாதன் மகன் ரா.ராமையா தனக்காகவும் தன் மைனர் மக்கள் அய்யங்காலை 1, மணிமேகலை 2, பரமேஸ்வரி 3, பேர்களுக்கு பிதா கார்டியனுமாயும் 1, மேற்படியார் சகோதரர்கள் ரா.மலைச்சாமி 2, ரா.ராஜேந்திரன் 3, நாங்கள் எழுதிக் கொடுத்த கிரைய பத்திரம் எங்களுக்கு பூர்வீக பாத்தியமானதும் பாகத்துக்கு கிடைத்ததும் பட்டா தாக்கீதுடன் எங்கள் தனித்த பாத்தியமாய் எவ்வித வில்லங்கமும் இல்லாமல் எங்கள் அனுபவத்திலிருந்து வரும் அடியில் கண்ட நஞ்சை நிலத்தை எங்கள் குடும்பர்தமாய் மேற்படி மைனர்களை



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கட்டுப்படுத்தி நாங்கள் தங்களுக்கு கிரயம் செய்து கொடுத்து தொகை பெற்றுக் கொண்டது ரூபாய் 5500. இந்த ரூபாய் ஐய்யாயிரத்தி ஐநூறு மேற்படி மைனர்கள் உட்பட எங்கள் குடும்பர்தமாய் குடும்ப முன்னேற்ற செலவுக்காக நாங்கள் தங்களிடம் ரொக்கம் வாங்கியதால் அடிக் கண்ட நஞ்சை நிலத்தை தாங்கள் இது முதல் சர்வ சுதந்திர பாத்தியத்துடன் அடைந்தும் உங்கள் சந்ததி பரம்பரையாய் தானாதி விநியோக விற்கிறயங்களுக்கு யோக்கியமாக என்றென்றைக்கும் இஷ்டப்படி கிரைய பாக்கியமாய் ஆண்டு அனுபவித்துக் கொள்வீர்கள் ஆகும்.”

13. Therefore, the claim of the plaintiff that the sale deed has not mentioned about any previous partition is false. Of course, the defendant had not pleaded about the sale deed in the written statement and in the grounds of appeal. The defendants had explained his affidavit since the sale is long back i.e. in the year 1987, the defendant had thought it is not necessary. This Court is of the considered opinion that the said reason is acceptable for the sole reason that the plaintiff had sought partition after a lapse of more than 25 years from the date death of the father Kannan who died in the year 1991. Further the defendants had acted on the partition effected in the year 1984 and had sold the said property 1987, that too during the life time of the said Kannan, which is crucial. Even though the plaintiff had pleaded that she is not aware of the sale deed, the sale deed is executed during the life time of the father Kannan and hence the said contention of the plaintiff that she is not aware of the said



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sale has no value at all and hence the same is rejected.

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14. Further the plaintiff had stated in the plaint that “the father Kannan during his life time had settled some of the properties through documents **to his legal heirs**”. The plaintiff is not stating that the properties were settled to her alone but stated to his legal heirs, which means the said Kannan (father of the plaintiff and grandfather of defendants) had settled in properties to plaintiff and also to the defendants. Hence the partition is admitted by the plaintiff. Consequently the plaintiff is not entitled to second partition and the suit is liable to be dismissed.

15. For the reasons stated supra, this Court is allowing the C.M.P.(MD)No. 8064 of 2024 and the additional documents are taken on file and the same is marked in “B” series.

- i. The extract of “A” Register as Ex.B.8,
- ii. The adangal consisting for seven pasali years for various survey numbers as Ex.B.9 to 19
- iii. Sale Deed dated 06.05.1987 as Ex.B.20.



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16. For the reasons stated supra, this Court is allowing the Appeal Suit and impugned judgment and decree are set aside and the suit in O.S.No.32 of 2016 is dismissed. No Costs. C.M.P.(MD)No. 8064 of 2024 is allowed and C.M.P.(MD)Nos. 4691, 4692 of 2020 are closed.

18.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes

Tmg

To

- 1.Principal District Judge, Sivagangai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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