



A.S(MD)No.256 of 2021

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Reserved on: 31.01.2024

Pronounced on: 25 .03.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

A.S(MD)No.256 of 2021

and

CMP(MD) No.8748 of 2021

1. Kalaiarasi

2. Subbien

.. Appellants/2nd and 3rd defendants

*(The 2nd appellant become a major on 25.01.2016
filed this appeal suit without the power)*

.Vs.

1. Esakiammal

2. Malliga

3. Balammal

4. Shanmugathai

5. Petchimuthu

.. Respondents 1 to 4/Plaintiffs

.. 5th Respondent/1st Defendant

*(Cause title accepted vide court order
dated 23.09.2021 in CMP(MD) No.7816 of 2021)*

Prayer : This Appeal Suit has been filed under Section 96 of C.P.C.,
against the judgment and decree dated 21.07.2020 made in O.S.NO.
52 of 2011 on the file of the I Additional District Judge, Tirunelveli

For Appellants : Mr.S.Mani

For Respondent : Mr.G.Thalaimutharasu

JUDGMENT

This Appeal Suit has been filed as against the judgment and
decree passed in O.S. No. 52 of 2011 on the file of the I Additional



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District Judge, Tirunelveli, Wherein respondents 1 to 4 herein have filed a suit for the relief of partition and the same was decreed.

2.As against the decree and judgment passed by the trial Court, the second and third defendants have preferred this present appeal.

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Trial Court.

4. The gist of the plaint averments are as follows:

Originally the suit properties belongs to one Kannan @ Sudalaikan, S/o.Balaiya Thevar. The first scheduled property is residential house and second schedule property is agricultural land and the same was purchased by the said Kannan @ Sudalaikan through sale deed dated 12.07.2001. The said Kannan @ Sudalaikan died intestate on 23.06.2006 leaving behind his wife first plaintiff and his daughters 2 to 4 plaintiffs and first defendant as his legal heirs to succeed his estate. The plaintiffs and the first defendants are in joint possession and enjoyment of the suit property. The plaintiffs are entitled to 4/5 share and the first defendants is entitled



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to 1/5 share over the suit properties. The first defendant colluded with the second defendant sold the second schedule of the property on 30.06.2011 through sale deed. Based on that sale deed the second defendant attempted to interfere with the plaintiffs peaceful possession and enjoyment over the property. The plaintiffs 1 and 3 have plantained banana plantains in the second schedule of the property. The first defendants settled at Mumbai and even during the life time of his father itself had never raised any crops in the second schedule property. The second defendant along with their henchmen created a fence over the second schedule property .Thereafter the plaintiffs came to know that the first defendant executed sale deed in favour of the third defendant who is the minor son of the second defendant. Therefore he is also added as party. Hence the plaintiffs filed the suit for partition of their 4/5 share over the suit properties.

5. The brief averments of the written statement filed by the first defendant are as follows:

The suit is not maintainable either in law or on facts and the same is liable to be dismissed. The relationship of the parties and the nature of properties are admitted . It is denied that the plaintiffs are in joint possession with the defendants and they have 4/5



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shares over the property. Infact the plaintiffs have no right over the suit properties At any point of time during the life time of his father the first defendant left from the matrimonial home and stayed separately with another person. The defendants 2 to 4 are under the maintenance of the first defendant and he only performed marriage to them. Therefore the father of the first defendant during his life time in the presence of relatives and plaintiffs 2 to 4 orally relinquished the properties to him, thereafter the first defendant alone is in possession and enjoyment of the properties till 23.06.2006. The first defendant sold the property to third defendant through second defendant on 30.06.2011 and the possession was also given to them on the date of sale itself. The plaintiffs have no right over the property and thereby they are are not entitled to any share over the property.

6.The written statement filed second defendant are as follows.

The suit is not maintainable either in law or on facts and the same is liable to be dismissed. limine. The plaintiffs have not come to this Court with clean hands. The relationship between the parties are admitted. The father of the first defendant during his life time in the presence of 2 to 4 plaintiffs orally partitioned the properties and



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allotted the property to the first defendant. The first plaintiff was living with another man for the past so many years. The first defendant alone was in possession and enjoyment from 23.03.2006. Since the property was allotted to the first defendant through oral partition the plaintiffs have no right over the property. The revenue records also stands in the name of the first defendant. Whiles, on 30.06.2011 this defendant purchased the property and she has been in possession and enjoyment of the property. She purchased the property for good and valuable consideration therefore she is a *bonafide* purchaser. The plaintiffs are not entitled to any share over the suit property, therefore the suit is liable to be dismissed.

7. Based on the above said pleadings and hearing both sides, the trial Court has framed the following issues:

- 1) வாதிகள் பிரதில் கோரியுள்ளபடி பிராது தபசில் சொத்துக்களில் அவர்களுக்குரிள பங்கை பொறுத்து முதல் நிலை தீர்ப்பாணை பெறத்தக்கவர்களா?
- 2) வாதிகள் பிரதில் கோரியுள்ளபடி நிரந்திர உறுத்துக்கட்டளை பரிகாரம் பெறத்தக்கவர்களா?
- 3) பிராது தபசில் சொத்துக்கள் 1ம் பிரதிவாதிக்கு வாய்மொழி பாக பிரிவணைப்படி பாத்தியப்பட்டு என்று கூறுவது சரியா?
- 4) 2ம் பிரதிவாதி பெயரில் உள்ள கிரையம் வாதிகளை கட்டுப்படுத்துமா?
- 5) வாதிகளுக்கு கிடைக்க கூடிய இதர பரிகாரம் என்ன?



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Additional Issues

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பிராது தபசில் சொத்துக்களை 1ம் பிரதிவாதியினட தகப்பனார், 1ம் பிரதிவாதிக்கு இஷ்டமான வாய்மொழி விடுதலை செய்து கொடுத்துவிட்டதாகவும் அந்த இஷ்டமான விடுதலை 23.06.2006 நாளிலேயே செயலுக்கும் வந்துவிட்டது என்றும் 1ம் பிரதிவாதி கூறுவது சரியா?

8.Before the trial Court on the side of plaintiff, P.W.1 was examined and documents Ex.A1 to A7 were marked. On the side of the defendants D.W.1 to D.W 3 were examined and four documents were marked as Ex.B.1 to B4.

9. After considering the evidences adduced on both sides the trial Court decreed the suit in favour of the plaintiff and dimised the suit in respect of relif of permanent injunction. As against the decree granted for partition the defendants 2 and 3 have preferred this appeal on the following grounds

Grounds of Appeal

1) the judgment of the lower court is against law, weight of evidence and probabilities of the case

2) It is submitted that the second appellant/3rd defendant was a minor at the time of institution of the suit and during the time of trial But the trial Court did not appoint a court guardin to conduct



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the proceedings. As such the judgment and decree has to be set aside and remanded to the trial Court for a fresh consideration.

3)The lower court ought to have held that the plaintiffs are not entitled for partition as they claimed. The 1st respondent/1st plaintiff divorced the said deceased Sudalaikan under the customary law and she married another man. The facts completely ignored by the trial Court. The second respondent/1st plaintiff did not enter into the witnesses box to rebuttal evidence of defendants.

4) The lower court failed to notice that marriage and all the connected expenses are incurred by the first respondent/1st defendant who is the brother of the respondents 3 to 4 herein

5) The lower court ought not to have held that the second respondents 2 to 5 are entitled for any relief in the suit

6) The findings of the lower court that the customary divorce between the second respondent/1st plaintiff is not proved is wrong?

7) The trial Court ought to have held that the first respondent/first defendant is enjoying the suit schedule properties as an exclusive owner for more than 20 years. As such the first respondent/1st defendant is perfected his title by a way of ouster

8) The respondents 3 to 5 are not entitled for partition of the suit schedule properties as all of them are given in marriage very long back before year 1989.so, they are not entitled for any share in



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the suit schedule property under law.

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9) The lower court ought to held that the oral family arrangment projected by the first respondent/1st defendant in Ex.B.1 is a true and genuine one

10) The Court fee paid by the respondents 2 to 5 by way of joint possession is very wrong. The respondents 2 to 5 are bound to pay the court fee under Section 37(1) of Tamil Nadu Court Fee Act.

10. The learned counsel appearing for the appellant would contend that the suit property originally belongs to the husband of first respondent and father of the respondents 2 to 5. The first respondent not lived with her husband and she was residing with another man for so many years and the fifth respondent only took care of the family. During the life time of his father Kannan @ Sudaikan while he was in bedridden he called the defendants and his daughters 2 to 4 and the panchaytars and orally partitioned the properties to the fifth respondent/first defendant and thereby he was in possession and enjoyment of the properties from 23.06.2006. Thereafter the fifth respondent/first respondent exeucted a sale deed dated 12.07.2011 in favour of the second appellant through first appellant. The fifth respondent/first defendant was in exclusive possession and enjoyment of the properties and thereby these



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appellant/defendants 2 and 3 have purchased the suit properties from the fifth respondent/first defendant for good and valuable consideration and after the sale deed they are in exclusive possession and enjoyment of the suit properties. In this context on the side of defendants they have D.W.1 to 3 and marked exhibits B.1 to B.4. But the trial court without considering the evidences erroneously decreed the suit in respect of partition and correctly dismissed the relief of permanent injunction. At the time of filing of suit the third defendants i.e., second appellant herein was not represented by any guardian and court also not appointed Court guardian to conduct the trial proceedings thereby the entire trial is vitiated. Therefore the decree and judgement passed by the trial Court are liable to be set aside by allowing this appeal.

11. The learned counsel appearing for the respondent would contend that the respondents 1 to 4 have filed a suit for partition and permanent injunction as against the appellants and the fifth respondent herein. The 5th respondent herein is the only son to his parents and the defendants 2 to 4 and plaintiffs 2 to 4 are sisters of the fifth respondent/first defendant. Originally the properties belong to one Kannan @ Sudalakan who is the husband of the first respondent/ first plaintiff and father of 2 to 4 respondents / 2 to 4



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defendants and fifth respondent/first plaintiff. The said Kannan died intestate on 23.06.2006 leaving behind the plaintiffs and the first defendant as legal heirs. The first defendant has taken plea that the properties were orally granted to him and thereby he was in exclusive possession of the properties and he sold the property to the second and third defendants on 30.07.2011 but the trial Court after elaborate discussion considering the evidence granted for the relief of partition by holding that the alleged oral grant of the father of the first defendant is not valid in the eye of law. The second appellant/third defendant was minor at the time of institution of the suit and he was represented through his mother first appellant/second defendant. Initially the suit was filed against the defendants 1 and 2 and the third defendant represented through her guardian mother and thereafter the plaint was amended on 04.09.2013 and the third defendant minor was represented through his mother/guardian therefore the minor was represented and thereby the trial Court also correctly decreed the suit in respect of partition, hence the present appeal is liable to be dismissed.

12. This Court heard both sides and upon hearing both sides and perusing the records and the judgment of the trial Court, the points for determination in this appeal are



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1) Whether the second appellant/ third defendant while he was minor in the trial Court whether the minor was properly represented through guardian ?

2)Whether the respondents 1 to 4/ plaintiffs are entitled to the relief of partiton over suit properties?

3)Whether the appel has to be allowed or not?

4)To what relief the appellants are entitled to?

Point No.1

13. In this case the main contention of the second appellant is that at the time of filing suit he was minor and no proper representation in the suit and thereby the entire trial proceedings are vitiated and the decree and judgment passed by the trial Court are liable to be set aside. This Court had perused the records and on perual of the records it is observed that intially the case was filed by the plaintiff as against the defendants 1 and 2 i.e., first appellant in this appeal and thereafter the 3rd plaintiff minor Subeen herein was impleaded as per the order passed in IA 2/2013. At that time the minor 3rd defendant was represented by his mother as guardian. This is also reflected in the amended plaint dated 04.09.2013. Thereafter again the plaint was amended and the second and third defendants i.e. appellants herein have representated through their power agent one Jeyakumar and thereafter the plaint was amended



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on 12.06.2015. Thereafter the record shows that the minor attained majority on 25.01.2016. Thereafter the suit was decreed on 21.07.2020 i.e after the minor attaining majority, therefore from the above it is clear that the minor 3rd defendant was duly represented before the trial Court, thereby the contention of the appellants that the minor was not represented properly is not acceptable. The learned counsel appearing for the respondents 1 to 4 has relied judgment of this Court in the case of **P.Suresh Vs R.Rengasamy and others in S.A.No.224 of 2007**. On careful perusal of the above said judgment it is clear that if the interest of the minor was ably defended by the natural guardian then guardian was not formally appointed by the Court and the decree passed against him is not void. In the case on hand also the minor was duly represented through his guardian mother and thereafter he was represented through power agent and after four years from the date of attaining majority the decree was passed by the trial Court. There is no any objection raised before the trial Court in respect of the alleged non representation of minor through guardian and now at the appellate stage they have taken the new plea. Therefore the contention of the appellant in this regard is not acceptable and this Court holds that the minor was duly represented through guardian. Thus the point is answered.



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Point No.2

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14. The plaintiffs have filed the suit for the relief of partition and permanent injunction. The partition suit was decreed by passing preliminary decree of 4/5 share of the plaintiff and the relief in respect of permanent injunction was dismissed. As against the dismissal of relief of permanent injunction no appeal was filed by the plaintiffs and the present appeal is filed by the defendants 2 and 3 as against the decree granted for partition. It is admitted fact that the property originally belongs to one Kannan @ Sudalaikan and the plaintiffs and the first defendant are the legal heirs of said Kannan, therefore all the legal heirs are equally entitled to the share of the properties of Kannan @Sudalaikan. According to the first defendants the Kannan @ Sudalaikan during his life time orally given the properties to him and thereby he is in possession and enjoyment of the properties and thereafter he sold the properties to defendants 2 and 3 who are the appellants herein on 30.06.2011. To substantiate the claim of the defendants he examined D.W.1 to D.W.3 and documents were marked as Ex.B.1 to B4. The contention of the first respondent that his father has orally granted to the properties to the first defendant is not acceptable and the same is not valid in accordance with law. It is admitted that there is no documents executed by the kannan in favour of the first defendant.



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The oral grant is not valid. The appellants/defendants 2 and 3 are admitted that they are the legal heirs of the deceased Kannan therefore the plaintiffs being the legal heirs of the deceased Kannan @ Sudalaikan and the first defendant are equally entitled to suit properties. The first defendant is only entitled to 1/5 share over the properties and thereby he could alienate the property to an extent of 1/5 share only. Therefore the appellants each are only entitled to 1/5 share over the property and the respondents 1 to 4/ plaintiffs 1 to 4 are entitled to 4/5 share over the property. Therefore the plaintiffs are entitled to 4/5 share over the suit property. Thus the point is answered.

Point No.3

15. The respondents 1 to 4 /plaintiffs have filed for partition and permanent injunction before the trial Court and the trial Court has dismissed the suit in respect of the relief of permanent injunction and there is no appeal filed by the plaintiffs and now the second and third defendants who are the purchasers of the property from the first defendant have filed this appeal. Before the trial Court on the side of plaintiff, P.W.1 was examined and documents Ex.A1 to A7 were marked. On the side of the defendants D.W.1 to D.W 3 were examined and documents were marked as Ex.B.1 to B4. The trial Court after evaluating the oral and documentary



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evidence decreed the suit in respect of partition and dismissed the suit in respect of permanent injunction. The trial Court in its judgment elaborately discussed about the rights of the parties and there is no dispute in respect of relationship of the parties and the defendants has taken plea of oral relinquishment and the same has not been proved by the defendants and the said oral relinquishment is not valid in the eye of law and thereby the trial Court correctly granted partition to the plaintiffs. Therefore the decree and judgment passed by the trial Court are reasoned one and warrants no interference. Thus the point is answered.

16. Therefore as discussed supra, this Court is of the opinion that the present appeal has no merits and deserves to be dismissed.

17. In the result, the appeal suit stands dismissed confirming the decree and judgment of the trial Court in O.S.NO.52 of 2011 on the file of the I Additional District Judge, Tirunelveli. No costs. Consequently connected miscellaneous petition stands closed.

25.03.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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WEB COPY **To:**

1. The I Additional District Judge, Tirunelveli
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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