



S.A.(MD)No.283 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Order Reserved On	Order Pronounced On
31.07.2024	05.11.2024

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THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.283 of 2023 and
C.M.P.(MD)No.6262 of 2023

A.Ramadass

...Appellant / Appellant /
1st Defendant

--Vs--

1.A.Sridharan

...1st Respondent /1st Respondent /
Plaintiff

2.G.Prema

...2nd Respondent/2nd Respondent /
2nd Defendant

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Decree and Judgment passed in A.S.No.3 of 2014 dated 03.06.2016 on the file of the Principal District Court at Tuticorin, by confirming the Judgement and Decree in O.S.No.60 of 2008 on the file of the Subordinate Judge, Thoothukudi dated 06.02.2013.

For Appellant : Mr.S.Sathya Ganesh
for Mr.M.Rajmohan
For R1 : Mr.M.P.Senthil
For R2 : Mr.R.Balakrishnan



JUDGMENT

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The present second appeal is filed by the 1st defendant against the judgment and decree dated 03.06.2016 passed in A.S.No.3 of 2014 on the file of Principal District Court, Tuticorin confirming the judgment and decree dated 06.02.2013 passed in O.S.No.60 of 2008 on the file of Sub Court, Tuticorin.

2. The plaintiff in the suit is the 1st respondent herein, the 1st defendant in the suit is the appellant herein and the 2nd defendant is the 2nd respondent herein. The suit is filed for partition claiming 1/3rd share in the schedule of properties.

3. The brief facts are that the suit scheduled properties are the ancestral properties of the joint family consisting of father namely, Arunjunai Muthu Nadar and two sons, i.e., Sridharan (plaintiff) and Ramadass (1st defendant) and the 2nd defendant daughter namely, Prema. The father died on 22.03.2002. When the father was alive, the parties had partitioned the family agricultural properties under the registered partition deed dated 05.10.1995. The suit properties consisting of two items were left undivided. The 2nd defendant / sister was married in the year 1968, hence, the 2nd defendant was not given any share in the said partition during the lifetime of her father. However, after the demise of the father on 22.03.2002, the 2nd defendant as a joint family member is entitle to equal share



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along with her brothers. Hence, the plaintiff and the defendants are coparceners and are entitled to 1/3rd share in the suit properties. The plaintiff was demanding partition from 2007 onwards, but the defendant was evading. In respect of the suit properties, disputes arose between the plaintiff and the defendants and the 1st defendant Ramadass had filed a civil suit in O.S.No.25 of 2002 on the file of District Munsif Court, Tiruchendur. The said suit was filed for permanent injunction restraining the Sridharan from interfering in the peaceful possession and enjoyment of the suit property of the said Ramadass. The Trial Court has held that the suit properties were joint family properties of the father and the 1st defendant Ramadass was in possession of the suit property and hence, the Trial Court granted the permanent injunction on 28.02.2003 and restrained the plaintiff Sridharan from forcibly dispossessing the properties from the said Ramadass. Aggrieved over the same, Sridharan had filed A.S.No.234 of 2003 and the same was dismissed. Further it was held that the 1st defendant Ramadass cannot claim suit properties, based on the unregistered Will, dated 07.11.2000, which was cancelled on 10.12.2001. Also, it was held that the settlement deed executed by the father is in suspicious circumstances and the father cannot settle the suit properties belonging to joint family properties. No appeal was preferred against the said judgment and the same had attained finality. Since the suit properties were not divided among the parties, the present partition suit is filed.



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4. The 1st defendant had filed written statement denying the suit property is joint family property and further stated it is also false to state that the partition deed, dated 05.08.1995, is only for agricultural lands alone. As far as a 2nd defendant is concerned, she was married in the year 1968 by giving sufficient stridhana and also granted several & sufficient gifts and she is not entitled to any share in the suit property. Further, the 2nd defendant after marriage from the year 1968 she never demanded any partition. Hence, the present suit is filed by the plaintiff and the 2nd defendant to deny the rights of the 1st defendant. In O.S.No.25 of 2002, the case of Sridharan was different. The said Sridharan had created false documents, had kidnapped the father inspite of the father's ill health and forcibly taken the properties. Hence, the 1st defendant filed the suit in O.S.No.25 of 2002. In the said suit, Sridharan's plea was rejected by the Courts. In both the suits and as well as in the appeal, the said Sridharan had lost the case. Hence, the present suit is filed to harass the 1st defendant. The Plaintiff Sidharan is residing in Mumbai and he is doing lending business and collecting huge interest for the same. Through such income, he had constructed a house in Mumbai and he is well off. But the 1st defendant Ramadass is struggling with the agricultural lands. The present suit is filed with ill motive. The suit property was not enjoyed jointly by the parties. The suit properties exclusively belonged to the 1st defendant Ramadass. Right from the father's period, the suit property was enjoyed by the



said Ramadass. In the year 1991, the suit property was given to the 1st defendant through oral partition but the plaintiff dislodged the family and interfered in the peaceful death of the father by indulging in illegal activities. The 1st defendant is in exclusive possession from the year 1991 onwards. Hence, the plaintiff cannot claim partition, after the demise of the father in the year 2002. Hence, he prays to dismiss the suit.

5. The 2nd defendant has filed a separate written statement stating that the suit for partition is true and all the parties are entitled to 1/3rd share. The 2nd defendant has paid the Court fee applicable for her share.

6. After considering the pleadings, evidence and deposition of the parties, the suit was allowed. Aggrieved over the same, the 1st defendant Ramadass preferred an appeal and the same was dismissed. Aggrieved over the same, the present second appeal is preferred on the following substantial questions of law:

“(i) Whether the co-sharer entitled to challenge the oral family partition after the oral partition given effect to by taking possession and enjoyment of the property allotted to a sharer?”

“(ii) Whether the Will dated 07.11.2000 executed by the father is executable when the cancellation of Will and Settlement Deed are under suspicious circumstances?”



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7. The plaintiff and the 1st defendant had admitted the fact that there was a registered partition deed dated 05.10.1995 among the plaintiff Sridharan, 1st defendant Ramadass and their father Arunjunai Muthu Nadar. It is also admitted that the suit property was not included in the said partition. The contention of the plaintiff is that the since the same is not included, the suit property ought to be partition among the plaintiff Sridharan, 1st defendant Ramadass and the 2nd defendant Prema (daughter of Arunjunai Muthu Nadar), but the contention of the 1st defendant is that the suit property was already partitioned through oral partition during 1991. The 1st defendant had relied on the cross examination of the plaintiff Sridharan in another suit in O.S.No.25 of 2002 wherein he had admitted there was oral partition in the year 1991 and had also stated that after the order passed in the Revenue Court and some changes were effected in the partition. The relevant portion is extracted hereunder:

“பம்பாயில் வேலை பார்த்தேன். பம்பாயில் பாதுகாவல் அதிகாரியாக வேலை பார்த்தேன். அதன்பின் சொந்தமாக வியாபாரம் செய்தேன். தொழில் செய்யும் போது நஷ்டம் அடைந்ததால், ஊருக்கு வந்து சொத்துக்களை அடமானம் வைத்தேன். எனது அம்மா 1991-ல் இறந்தார். எனது அம்மா இறந்த போது எனது மனைவி ஊரிலிருந்து எனக்கு போன் பண்ணினார். எனது மனைவி அம்மன்புரத்தில் வாதியின் வீட்டிலிருந்தார். 2 வருடகாலமாக எனது அம்மாவிற்கு கேன்சர் நோய் இருந்தது. சென்னையில் வைத்து எனது அம்மாவிற்கு சிகிச்சை பண்ணும் போது தெரிய வந்தது. எனது அம்மாவின் உடலை புதைத்தோம் ஈமக்கிரியைகள் வாதி தான் என் தாய்க்கு செய்தார். நான் மொட்டை போடவில்லை. குடும்ப வழக்கின் படி மூத்தவர் தான் செய்ய வேண்டும். புதைப்பது குடும்ப வழக்கம் இல்லை.



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எங்கள் குடும்பத்தில் உள்ளவர்களை யாராவது எறிப்பார்களா என்றால் காசி நாடாரை பம்பாயில் வைத்து எரித்தார்கள். எரிக்கும் கடகாட்டில் கல்லறைகள் இல்லை. கிறிஸ்தவர்கள் அடக்கம் செய்வார்கள். என் தாய் இறந்த பிறகு எனது உடன்பிறந்த சகோதரி சடங்கு செய்தார். திருமாங்கல்யத்திற்கு தவிர மற்றவைகளை அக்காவிடம் கொடுத்தோம். திருமாங்கல்யத்தை வாதியும் நானும் பங்கு வைத்துக் கொண்டோம். பாத்திரங்களை எனக்கு பாதி வாதிக்கு பாதியாக பங்கிட்டுக் கொண்டோம். எனது அம்மா உபயோகப்படுத்தின துணிகளை எனது சகோதரி கொண்டு சென்றார். அப்பொழுது வாய்மொழியாக சொத்தை பங்கிட்டுக் கொண்டோம். அம்மன்புரத்திலுள்ள சொத்தை வாதியும் நானும் அனுபவித்துக் கொள்ள வேண்டும் என்றும் வீரமாணிக்கத்திலுள்ள சொத்தை எனது தகப்பனார் அனுபவித்துக் கொள்ள வேண்டும் என்றும் பிரித்துக் கொண்டோம். அம்மன்புரம் குருந்தாவினை தோட்டத்தை எனது தகப்பனாருக்கு ஒதுக்கப்பட்டது. எனது தகப்பனாருக்கும் வாதிக்கும் எனக்கும் பிரிவினை செய்து 3 பகுதியாக கொடுத்து தனித் தனியாக கொடுக்கப்பட்டது.”

Even though the plaintiff had stated that based on the order passed in the revenue court order changes were made in the oral partition, then registered partition was executed, but had not stated what are the changes. However, the fact remains there was oral partition. The contention of the 1st defendant that the suit property was not mentioned in the partition since the same is the family dwelling house wherein the grandfather had resided, then the father along with the entire family was residing, now the 1st defendant along with his family is residing. It is seen that the suit property was not mentioned in the registered partition, which means as regard to the suit property there was oral partition only and in the said oral partition the



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suit property was allotted to the father and the parties have agreed and acted upon the same. Hence, based on such oral partition the father had executed the unregistered Will dated 03.11.2000 and registered Will dated 07.11.2000 bequeathing the suit property to the 1st defendant Ramadass. Therefore, the first substantial question of law that the co-sharer cannot challenge the oral partition is held in favour of the 1st defendant and against the plaintiff.

8. On perusing both the wills it is seen that the contents are more or less similar except for few lines. While considering the injunction suit in O.S.No.25 of 2002, the Trial Court had elaborately considered the Will and had held that the suit property is ancestral property belongs to the grandfather Vayanaperumal. The said Vayanaperumal had purchased the suit property vide two sale deeds dated 21.08.1919 and patta was issued in his name and the said documents are marked as Ex.A.34 and 35 (sale deeds) and Ex.A.36 (patta) in O.S.No.25 of 2002. The said Vayanaperumal and his brother Periya Nadar had executed partitioned deed dated 06.05.1922, the suit property was allotted to the said Vayanaperumal, thereafter he had submitted application to Tahsildar for patta change, then had paid property tax. Further, the father Arunjunai Muthu Nadar had paid property tax from 1961 onwards. Hence it is evident that there existed building during Vayanaperumal period itself and parties had admitted the same is the suit property.



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The said partition deed dated 06.05.1922 and the said application are marked as Ex.A37 and Ex.A38 respectively. Hence the Trial Court had come to the conclusion that the building was put up by Vayanaperumal and the said building is in existence after the sale deed dated 21.08.1919 and prior to 1961 (in this year only property tax receipt was issued in the name of Arunjunai Muthu Nadar).

9. After holding the suit property as ancestral property, the Trial Court had held that the father had no right to execute the will for the ancestral property. But it is seen that the property belongs to Vayanaperumal. The said Vayanaperumal had two sons namely Arunjunai Muthu Nadar and Periya Nadar and they had executed partition deed dated 06.05.1922 marked as Ex.A37 in O.S.No.25 of 2002 and the suit property was allotted to the Arunjunai Muthu Nadar. Hence after the said partition, the suit property would have lost its character as ancestral property and it would become Arunjunai Muthu Nadar's individual property. But this fact was not dealt with by the Trial Court in O.S.No.25 of 2002. Therefore, this Court comes to the conclusion that the suit property had lost its character as "ancestral" in nature and it had become individual property in the hands of Arunjunai Muthu Nadar and he had every right to execute Will.

10. Now the question would be whether the said registered Will dated



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07.11.2000 marked as Ex.B7 in the present suit can be relied on, when the same was cancelled vide cancellation deed dated 10.12.2001 marked as Ex.A13 in the present suit. It is seen that there were some disputes between the father and the two sons. On perusal of the letter written by the plaintiff Sridharan to his father, letters written by father to the plaintiff Sridharan and the Will executed by the father, which are marked as Ex.B2, Ex.B5, Ex.B6 and Ex.B7 in the present suit, it is seen that the plaintiff left his village in the year 1973 and was residing in Mumbai from 1976. The father had provided capital to the plaintiff Sridharan to start his business, he had granted money to purchase land for putting up house, had helped by providing some amount to put up his residential house. In the unregistered Will it is seen that the father had given house plot in Melaputhukudi Village to the plaintiff Sridharan and also provided monetary support to put up house in the said place. Since the plaintiff Sridharan was provided with house at Mumbai and Melaputhukudi, hence the father had thought it fit to give the present family residential house to the 1st defendant Ramadass and had executed the said Will 07.11.2000 thereby bequeathed the suit property. Thereafter, when there was financial crisis, the said Ramadass had intended to sell an agricultural land, which was purchased by the plaintiff Sridharan. And he had stated in the aforesaid letter that his intention is to save the family property and it should not go into the hands of third person. Further the father had insisted in the letter to provide monetary



support to him for his medical expenses and also help him to construct a temple.

When the plaintiff Sridharan had purchased the aforesaid land, he had felt that further monetary support to the father would not be possible, hence there was resistance from the plaintiff. Thereafter the plaintiff had decided to take the father along with him to Mumbai rather than paying money to the father, which plan was resisted by the 1st defendant. After elders' advice the plaintiff was permitted to take the father along with him with a condition, if the father dies at Mumbai the body ought to be brought to the village for his final rites.

11. Here the contention of the plaintiff is that before going to Mumbai the father cancelled the Will dated 07.08.2001, but the contention of the 1st defendant is that the plaintiff had forced the father to do so and the father was not in proper mental condition. In O.S.No.25 of 2002, the Trial Court had considered this issue whether the execution of settlement deed in favour of the plaintiff is genuine and had held that the said settlement deed was executed in suspicious circumstances. It is seen that the plaintiff had come to the village one week prior to the execution of settlement deed, then the father had cancelled the Will on 10.12.2001 and then executed the Settlement Deed on 12.12.2001 and had left to Mumbai on 12.12.2002 after signing the letter dated 12.12.2002 accepting to bring the body of the father in case if the father dies. Further it is seen that the letter dated



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08.10.2001 marked as Ex.B6, indicates that the father was not in good condition to write a letter. Infact the said letter was dictated by the father and written by someone. And the said letter is accepted by both the parties that the father had written the said letter. Further in the revenue court proceedings itself, it was held that the father was not in good health and the 1st defendant had marked the doctor's certificate issued to prove the father was not maintaining good health and he is taking care of the father. It is under these circumstances the plaintiff had intended to take the father along with him to Mumbai. From this it is evident that the father is not in good health on 10.12.2001, 12.12.2001, while that being so, the father would not have intended to cancel the Will and would not have intended to execute settlement in favour of the plaintiff. Further the letters written by the father is not indicating that the 1st defendant had failed to provide food to the father, it only indicates a support for his medical expenses due to financial status of the 1st defendant. Further the plaintiff had not submitted any evidence to prove that the 1st defendant had failed to provide food to the father. The fact remains that the father was living all these years with the 1st defendant Ramadass, except for the financial crisis, the father had not stated any allegation against the 1st defendant. The 1st defendant was indebted by borrowing various loans and the father had insisted the plaintiff for monetary support, which the plaintiff had felt burdensome, hence it is his decision to take the father to Mumbai. Therefore, this



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Court is of the considered opinion that the father was not inclined to go to Mumbai and he was not intended to cancel the Will, hence the cancellation of Will and execution of Settlement Deed are under suspicious circumstances. Infact in O.S.No.25 of 2002, the Trial Court had held that the said cancellation deed and the settlement deed was executed in suspicious circumstances. And the said finding had upheld by the appellate court, therefore the said finding is confirmed and had attained finality. Again, this Court is also confirming the cancellation of Will and execution of Settlement Deed are under suspicious circumstances. Then it ought to be held that the Will dated 07.11.2000 is intact and the same had come into effect on demise of father on 22.03.2002. The plaintiff and the 1st defendant had admitted the execution of the said Will, hence it ought to be concluded that the Will is executed by the father and the same is genuine and the same is proved as per law. Therefore, the second substantial question of law is answered that the Will dated 07.11.2000 is executable since the cancellation of Will and Settlement Deed are under suspicious circumstances and the same is answered in favour of the 1st defendant and against plaintiff.

12. However, it is seen that the Trial Court in O.S.No.60 of 2008 as well as in O.S.No.25 of 2002 had held that the suit property is ancestral property and hence the father has no right to execute the Will and therefore both the sons and



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daughter are coparceners and they are entitled to 1/3rd share. It is pertinent to state that the Courts below had not held that the Will is not proved, it only held the father had no right to execute the Will because of the ancestral nature of the property. But this Court had held that the suit properties are ancestral, when it was in the hands of Veyanaperumal, the grandfather of the parties herein. But when the same was partitioned between the sons of Veyanaperumal namely Arunjunai Muthu Nadar and his brother Periyannadar, then the suit properties would lose its character as ancestral property and would become individual property. Therefore, the suit property would be the individual property of Arunjunai Muthu Nadar and not ancestral property. Consequently, the 1st defendant would be entitled to the suit property through the Will dated 07.11.2000.

13. Now the right of the 2nd defendant, the daughter of Arunjunai Muthu Nadar ought to be determined. This Court had upheld the Will dated 07.11.2000 as valid. Then as per “*Vineetha Sharma -vs- Rakesh Sharma* reported in **2020 (9) SCC 1** the daughter is not entitled to any share. The section 6 was amended vide the Hindu Succession (Amendment) Act 2005 with effect from 09.09.2005 and in the amendment the daughters were considered as coparcener along with the sons. However, any disposition, partition or testamentary disposition prior to the cutoff date i.e. 20.12.2004 are saved. In the present case Will was executed on



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07.11.2000, the father died on 22.03.2002, then the Will had come into effect from 22.03.2002, which is prior to the cutoff date of 20.12.2004. Therefore, the Will dated 07.11.2000 comes under the saving clause, consequently the 2nd defendant daughter is not entitled to any share in the suit property. The Courts below without any discussion about the facts of the case and without any discussion about women share as per the amendment and Vineetha Sharma's case had simply held since the 2nd defendant is contesting the case by paying appropriate court fees for her share, hence she is entitled to the share. The said reasoning is perverse and absurd.

14. Both the substantial questions of law are answered in favour of the 1st defendant and against the plaintiff & 2nd defendant. Therefore, the second appeal is allowed and the Judgment and Decree passed in A.S.No.3 of 2014 dated 03.06.2016 on the file of the Principal District Court at Tuticorin, by confirming the Judgement and Decree passed in O.S.No.60 of 2008 on the file of the Sub Court, Thoothukudi dated 06.02.2013 is set aside. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes / No
NCC : Yes / No
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TO:

- 1.Principal District Court,
Tuticorin.
2. Subordinate Judge, Thoothukudi.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Judgment made in
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Dated:
05.11.2024