

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAM

A.S.NO.333 OF 2010

C.Govindasamy

.. Appellant/1st Respondent

Versus

1. C.Rangasamy

..1st Respondent/Plaintiff

2. Samudra Devi

3. Indirani

.. Respondents 2&3/Defendants 2&3

Prayer: This Appeal is filed under Section 96 of Civil Procedure Code praying to set aside the Judgment and Decree of the learned First Additional District Judge, Erode in O.S.No.124 of 2007 dated 23.09.2008.

For Appellant : Mr.S.Kaithamalai Kumaran
for A.K.Kumaraswamy

For 1st Respondent : Mr.S.V.Jayaraman
Senior Counsel
for Mr.N.Srinivasan

For RR2 & 3 : No Appearance

JUDGMENT

The first defendant, who suffered a decree for partition and separate possession in the suit in O.S.No.124 of 2007 is the appellant. The suit was filed seeking partition and separate possession of the plaintiff's half share. The plaintiff had contended that he had purchased an undivided half share in the suit properties under a registered sale deed dated 03.02.2006 for a valid consideration of Rs.3,10,000/- from S.R.Chinnasamy Gounder, who is the father of the defendants. It is also a case of the plaintiff that, upon said purchase, the revenue records were also mutated and his name was included as a joint owner. From then on, the plaintiff has been paying a kist and he has been enjoying the property jointly with the said S.R.Chinnasamy Gounder. Since the joint enjoyment with the first defendant, who is the son of S.R.Chinnasamy Gounder was not conducive, the plaintiff filed the suit for partition and separate possession of his share. Originally, the suit was filed against the first defendant alone and subsequently, the second and third defendants, who are daughters of the said S.R.Chinnasamy Gounder were impleaded in the suit.

2.The first defendant filed a written statement claiming that his father had leased out the properties to him for a yearly lease amount of Rs.5,000/- due to his old age. He had also paid his father a sum of Rs.1,50,000/- towards advance under the said lease agreement. He would also claim that the entire properties are in his possession and his father S.R.Chinnasamy Gounder has no right to execute the sale deed. It the further contention of the first defendant that the sale deed dated 03.02.2006 is a fabricated document. It is also claimed that the second and third defendants being the daughters of S.R.Chinnasamy Gounder would also be entitled for the share in the ancestral properties in view of the introduction of Hindu Succession Marriage Act 39 of 2005. As such, the vendor-S.R.Chinnasamy Gounder did not have the right to execute the sale deed for half share in the property. On the above allegations, the first defendant sought for dismissal of the suit.

3.The second defendant had remained ex-parte. However, the third defendant had appeared through counsel and filed a separate written statement. She would deny the purchase and claimed that she had demanded partition and the first defendant had refused to come forward to effect an amicable partition. She claimed that, her father S.R.Chinnasamy Gounder is entitled to 1/4th share alone. However, the third defendant did not chose to let in any evidence on her side. On the above pleadings, the learned I Additional District Judge, Erode, framed the following issues:

1. Whether the plaintiff is entitled to the relief of partition and separate possession as prayed for in the suit?

2. Whether the suit is bad in non-joinder of parties?

3. Whether the defendant is in possession of the suit properties as a lessee under the plaintiff's vendor?

4.I have heard Mr.S.Kaithamalai Kumaran, learned counsel appearing on behalf of the plaintiff and Mr.S.V.Jayaraman, learned Senior Counsel appearing on behalf the respondents.

5.Though, originally the daughters of S.R.Chinnasamy Gounder, namely second and third defendants were not parties, they are subsequently impleaded in the suit. As such, the issue relating to non-joinder of necessary parties does not survive.

6.It was further contended that, S.R.Chinnasamy Gounder had a sister by name Angammal and she should have been impleaded. But the partition deed between S.R.Chinnasamy Gounder and his vendor dated 07.06.1964 would itself reveal that the said Angammal had relinquished her rights as early as

on 02.07.1992, therefore, the claim that Angammal as necessary party was also over ruled by the learned Judge.

7.The Trial Court found that the claim of the first defendant that his father has leased out his share of the properties to him and that he was in possession of the entire properties has not been proved by proper documentary or oral evidence. Upon the said finding, the learned I Additional District Judge, Erode rejected the said plea.

8.As regards the claim based on the Hindu Succession (Amendment) Act 39 of 2005, the learned I Additional District Judge, Erode found that the second and the third defendants are the attestators to the sale deed dated 03.02.2006. The second defendant having remained ex-parte and the third defendant having filed written statement having not chosen to contest the suit are estopped from claiming any share in the suit properties.

9.On the above conclusions, the learned Trial Judge, decreed the suit for partition granted half share to the plaintiff. Aggrieved by the said decree, the first defendant alone has preferred this appeal. The following points arise for consideration in this appeal:

1. Whether the first defendant has established the case of alleged lease in his favour?

2. Whether the Trial Court was right in granting a decree for half share to the plaintiff despite the Hindu Succession Amendment Act 39 of 2005 having coming into force prior to the alienation by S.R.Chinnasamy Gounder?

10. Point No.1: It is an admitted case of the parties that the suit properties were allotted to S.R.Chinnasamy only through a partition deed dated 07.06.1964. The fact that S.R.Chinnasamy was in possession and enjoyment of the property till he sold the half share to the plaintiff, is also not seriously disputed, though, the first defendant would claim that he is in possession of the entire properties. The execution of the sale deed dated 03.02.2006 is also not seriously disputed by the first defendant. The first defendant would claim that he suspects the execution of the sale deed. He has not taken any steps to prove that the sale deed is a fabricated document as alleged by him. In order to deny the claim of the plaintiff over the suit property, it is

incumbent on the first defendant to prove the lease pleaded by him. Apart from producing the sale deed, the plaintiff has also produced exhibits A3, A4 and A5, which go a long way to show that soon after the execution of the sale deed, the plaintiff had got the revenue records mutated in his name and the electricity service connection has also been transferred in his favour. The first defendant in his evidence would state that he came to know about the sale deed only after the suit and the fact, that his sisters had attested the sale deed. He would also claim that he came to know about the transfer of the revenue records in the name of the plaintiff only subsequently. He would also admit that he had not taken any steps to challenge such transfers. During further cross examination, the first defendant had deposed that he was objecting to the sale of the common properties only. DW2, who has been examined in the side of the first defendant claims to be the cousin of the first defendant. In his cross examination, he admitted that the father of the first defendant has sold his half share to the plaintiff. This evidence would belie the case of the first defendant regarding the alleged lease. Therefore, I see no reason to differ with the findings of the Trial Court on the validity of the alleged lease.

11. Point No.2: The first defendant have also raised a legal issue, that upon introduction of Hindu Succession (Amendment) Act 39 of 2005, the second and third defendants would also become co-parceners and as such the deceased S.R.Chinnasamy Gounder would be entitled only to 1/4th share. It is a case of the first defendant that the sale in excess of 1/4th share is bad. As already stated, the second and third defendants namely, the daughters of S.R.Chinnasamy are the attesting witnesses to the sale deed dated 03.02.2006 in favour of the plaintiff. The second defendant had remained ex-parte. The third defendant had filed written statement. However, she had not chosen to contest the suit further. The Trial Court had decreed the suit on the ground that the second and third defendants were estopped from claiming a share since they are the attestators to the sale deed in favour of the plaintiff. The second and third defendants, who are actually aggrieved persons have not preferred an appeal against the judgment and decree of the Trial Court. Therefore, the plaintiff cannot be considered to be an aggrieved person in view of the fact that, the Trial Court has only granted a decree for half share, which has been sold by S.R.Chinnasamy to the plaintiff. Therefore, the finding of the Trial Court that the second and third defendants cannot claim a share on the basis of Hindu Succession Amendment Act 39 of 2005 is also bound to be confirmed.

12.In fine, the appeal is dismissed confirming the Judgment and decree of the Trial Court. Considering the fact that the first defendant alone resisted the suit for partition, the parties are directed to bear their own costs in the appeal.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

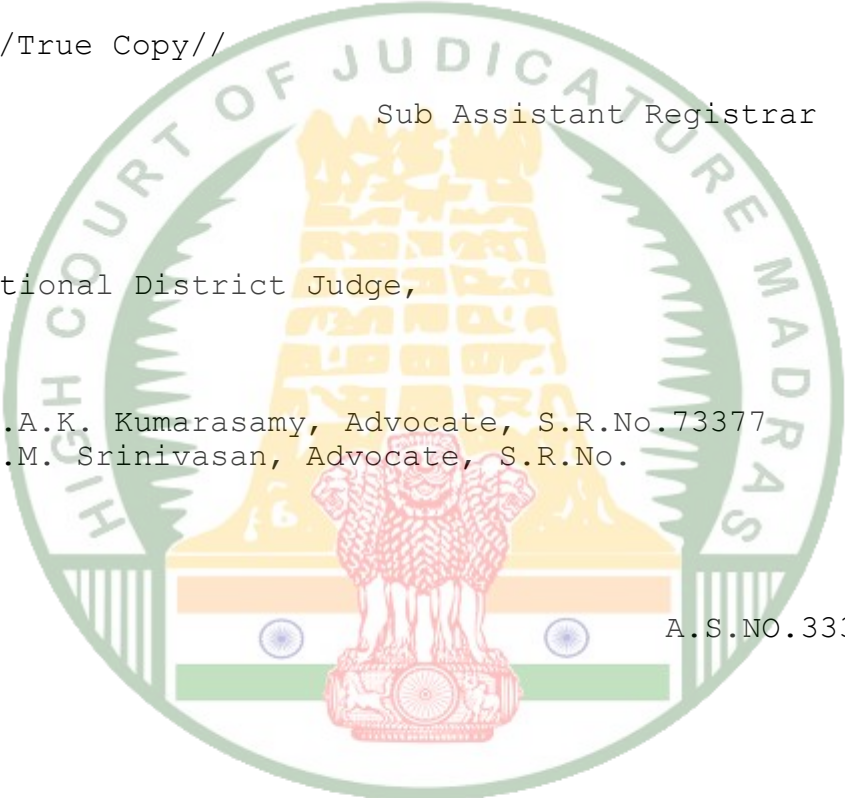
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To

The I Additional District Judge,
Erode.

+1cc to Mr.A.K. Kumarasamy, Advocate, S.R.No.73377
+1cc to Mr.M. Srinivasan, Advocate, S.R.No.

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