

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.06.2017

PRONOUNCED ON : 23.06.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

C. S.No.159 of 2013

1. R.Rani
2. K.Ramani
3. P.Varadhaammal
4. B.Rukumani
5. N. Vadivammbal

...

Plaintiffs

Vs.

1. A.Velu
2. K.Karthikeyan
(Amended as per order
dated 01.10.2015 in
application No.6599 of 2015
on 12.10.2015)
3. V.Meera

...

Defendants

For Plaintiffs : Mr.V.V.Giridhar

For Defendants : Mr.P.B.Balaji

JUDGMENT

Suit for partition, declaration and permanent injunction.

2. The averments contained in the plaint are briefly stated as follows:

The plaintiffs and the first defendant are the daughters and son of Adhimulam and A.Jagadambal. The second defendant is the son of Kanniyappan, who is the second son of Adhimulam and A.Jagadambal, who died in the year 2002 leaving behind the second defendant as the sole surviving legal heir. The third defendant is the wife of the first defendant. The plaint A schedule property belonged to Jagadambal, the mother of the plaintiffs and the first defendant and the grandmother of the second defendant. The plaint B and C schedule properties originally belonged to Adhimulam, the father of the plaintiffs and the first defendant and grandfather of the second defendant and Adhimulam died intestate in the year 1972 leaving behind his wife and the plaintiffs and the first defendant as his legal heirs and Jagadambal also died intestate in the year 1983 leaving behind the plaintiffs and the first defendant and A.Kanniyappan, the father of the second defendant as her legal heirs. After the demise of Jagadambal and Adhimulam, the suit properties are being enjoyed by the plaintiffs and the first defendant and the second defendant's father, Kanniappan, subsequently died leaving the second defendant as his sole surviving legal heir. As the first defendant was living with

his family in the suit B & C schedule properties, the plaintiffs did not want to disturb them by seeking partition and hence, did not come forward with the plea of partition earlier. Now, the plaintiffs wanted to settle the suit properties in favour of their children and hence, sought partition and separate possession of their lawful share in the suit properties. However, the defendants had been giving evasive reply for not partitioning the suit properties and allotting the share, to which, the plaintiffs are entitled to. It has now come to the knowledge of the plaintiffs that the first defendant and the second defendant's father had partitioned the suit A schedule property amongst themselves without the knowledge and consent of the plaintiffs by way of deed of partition dated 23.03.1998 and the first defendant, by way of two settlement deeds dated 02.03.2000 and 30.03.2000 respectively, had settled the suit B & C schedule properties in favour of the third defendant without the knowledge and consent of the plaintiffs. The plaintiffs are not parties to the above said documents and hence, the above said documents are not binding upon them and the first defendant as well as the father of the second defendant have no right to divide or partition the suit A schedule property amongst themselves and the first defendant is not entitled to settle the suit B & C schedule properties in favour of the third defendant. Hence, the above mentioned partitioned deed and the

settlement deed are not binding on the plaintiffs and the same are to be declared as null and void. Gopal, who was born to Adhimulam through his first wife, was settled with a separate property and hence, he is not entitled to any share in respect of the suit properties and the said Gopal also had died leaving behind his legal heirs and they are also not entitled to claim any share in the suit properties. The plaintiffs, the first defendant and the second defendant are each entitled to 1/7th share in the suit properties and taking advantage of the above mentioned partition and settlement deeds, the defendants are attempting to disturb the possession and enjoyment of the plaintiffs in respect of the suit properties. The plaintiffs are in joint possession and enjoyment of the suit properties. In this connection, the plaintiffs have also preferred a police complaint against the first defendant. Further, the defendants are also attempting to encumber the suit properties without any right whatsoever. Hence, the plaintiffs are necessitated to file the suit for appropriate reliefs.

3. The averments contained in the written statement filed by the defendants are as follows:-

The suit is not maintainable either in law or on facts. The suit is

ill conceived and the description of the second defendant as Karthi and not as Karthikeyan is incorrect and the suit is liable to be dismissed for misjoinder. The relationship between the parties is admitted. It is false to state that the suit A schedule property originally belonged to Jagadambal and that B & C schedule properties originally belonged to Adhimulam. It is false to state that the plaintiffs are in possession and enjoyment of the suit properties. The plaintiffs have no right over the suit properties and court fees paid by the plaintiffs is incorrect. The plaintiffs are not entitled to any share in the suit properties. It is false to state that the plaintiffs had not sought for partition at the earliest since the first defendant was residing in the suit B & C schedule properties along with his family. Inasmuch as the plaintiffs have no right in the suit schedule properties, they did not choose to seek partition at the first place. The suit properties are not liable to be partitioned. It is false to state that the plaintiffs demanded partition of the suit properties from the defendants. It is false to state that the plaintiffs are not aware of the partition deed and settlement deeds referred to in the plaint. The plaintiffs are fully aware of the said documents and with an ulterior motive, have come forward with a false suit. It is true that Gopal, the son of Adhimulam born through his first wife, was settled with the separate property and only on account of the same, he did not evince

interest to claim any partition in the suit properties. In any event, the plaintiffs ought to have impleaded the legal heirs of the said deceased Gopal in the suit and hence, the suit is bad for non-joinder of proper and necessary parties. The plaintiffs are all married before 1989 and the suit properties being ancestral properties, the plaintiffs being the married daughters, are not entitled to any share in the same. It is only the defendants, who are entitled to the suit properties and hence, the partition deed dated 23.03.1998 and the settlement deeds dated 02.03.2000 and 30.03.2000 are valid and binding on the plaintiffs. It is false to state that the defendants are attempting to disturb the joint possession and enjoyment of the plaintiffs in respect of the suit properties. The suit is liable to be dismissed.

4. On the basis of the pleadings set out above, the following issues are framed for determination.

" 1. whether the suit properties are joint family properties?

2. Whether the plaintiffs are entitled to 1/7th share each in the suit schedule properties?

3. Whether the partition deed dated 02.03.1998 is valid?

4. Whether the settlement deed

dated 02.03.2000 and 30.03.2000 are valid and binding on the plaintiffs?

5. Whether the Court fees paid is correct?

6. Whether the suit is bad for mis-joinder of second defendant?

7. Whether the suit is bad for non-joinder of necessary parties?

8. To what other reliefs, the parties are entitled to?

5. In support of the plaintiffs' case, PW1 has been examined and Exs.P1 to 9 have been marked and in support of the defendants' case, DW1 has been examined and no documentary evidence has been marked.

6. Issue Nos. 1 to 4

The plaintiffs and the first defendant and the deceased A.Kanniappan are the daughters and sons of Adhimulam and Jagadambal. The second defendant is the son of the deceased A.Kanniappan. The third defendant is the wife of the first defendant. Adhimulam had another son by name Gopal through his first wife and the said Gopal had died leaving behind his wife and children as his surviving legal heirs. As regards the abovesaid relationship and

position, the parties are not in dispute.

7. The suit has been laid by the plaintiffs mainly for the relief of partition and also for the reliefs of declaration and permanent injunction. It is the specific case of the plaintiffs that the plaint A schedule property originally belonged to their mother Jagadambal. Further, it is the specific case of the plaintiffs that the plaint B & C schedule properties originally belonged to their father Adhimulam. Thus, according to the plaintiffs, after the demise of Adhimulam and Jagadambal in the year 1972 and 1983 respectively leaving behind the plaintiffs and the defendants 1 & 2 as their legal heirs, the plaintiffs are entitled to 1/7th share each in the suit properties and according to the plaintiffs, inasmuch the defendants have not come forward and acceded to the case of the plaintiffs for effecting partition of the suit properties, they have been necessitated to institute the suit.

8. Further, according to the case of the plaintiffs, without their knowledge and consent, the first defendant and the deceased A.Kanniappan had effected partition in respect of the plaint A

schedule property on 23.03.1998 by way of registered partition deed and further, according to them, without their knowledge and consent, the first defendant had executed the settlement deeds dated 02.03.2000 and 30.03.2000 in respect of the plaint B & C schedule properties in favour of his wife viz., the third defendant and as according to the plaintiffs, the suit properties belonged to Jagadambal and Adhimulam as pleaded the above said partition deed and settlement deeds are not valid and binding on the plaintiffs and hence, they are to be declared as null and void and hence, according to the plaintiffs, they have also sought the relief of declaration as regards the above said deeds.

9. Further, according to the case of the plaintiffs, they are in joint possession and enjoyment of the suit properties and inasmuch as the defendants, without any authority or legal entitlement, attempted to disturb their joint possession and enjoyment of the suit properties and further, attempted to encumber the suit properties, thereby to deprive the plaintiffs of their lawful shares, it is the case of the plaintiffs that they have been necessitated to claim the relief of permanent injunction as against the defendants with reference to the same.

10. The defendants have stoutly denied the case of the plaintiffs that the suit properties originally belonged to Jagadambal and Adhimulam as put forth in the plaint. It is the specific case of the defendants that the suit properties are the ancestral properties and accordingly, it is the case of the defendants that inasmuch as the suit properties had already been partitioned amongst the co-parceners to the knowledge of the plaintiffs and further, the plaintiffs had already been given in marriage well before 1989, according to them, the plaintiffs cannot lay any claim of partition in respect of the suit properties and hence, the suit is liable to be dismissed.

11. Further, the defendants have also taken a plea that the plaintiffs are not in joint possession and enjoyment of the suit properties and hence, the suit is not properly valid and the Court fees paid by the plaintiffs is incorrect. The defendants have also taken a plea that the suit is bad for misjoinder of the second defendant in giving his name wrongly and the suit is bad for non-joinder of necessary parties.

12. Inasmuch as the defendants have set out a defence that the suit properties do not originally belong to Jagadambal and Adhimulam as pleaded by the plaintiffs and they are the ancestral properties, it is

for the plaintiffs to establish, as pleaded that the suit properties originally belonged to their mother and father respectively as contended by them. In this connection, the fourth plaintiff, examined as PW1 on behalf of the plaintiffs, though during the course of chief examination, had reiterated her case as stated in the plaint, during the course of cross examination, had admitted that the plaint A schedule property is the ancestral property and further, during the course of cross examination, she has also set up a new plea that the plaint A schedule property had been purchased only by her father Adhimulam as benami in the name of her mother Jagadambal. But, she would claim that she does not remember during which period her father had purchased the plaint A schedule property in the name of her mother. In any event, it has been admitted by her that the suit A schedule property is only the ancestral property of her family. As regards the plaintiffs' case that the plaint B & C schedule properties belonged to their father, it has been admitted by PW1 that as regards the abovesaid case of the plaintiffs, there is no title deed. Even as regards the case of the plaintiffs that the plaint A schedule property belonged to Jagadambal, no document is forthcoming. Therefore, it is evident that the case of the plaintiffs that the plaint A schedule property and the plaint B & C schedule properties belonged to their mother and father respectively has no legs to stand, inasmuch as

there is no material to substantiate the same. On the other hand, as rightly put forth by the defendants, it has been specifically admitted by PW1 that the plaint A schedule property is the ancestral property. That apart, even in the alleged police complaint said to have been given by the plaintiffs against the first defendant marked as Ex.P5, it has been specifically admitted that the plaint A schedule property is the ancestral property. Therefore, when the plaintiffs have not placed any material to show that the plaint A Schedule property is the property of Jagadambal, their mother and on the other hand, when it has been admitted during the course of evidence that the plaint A schedule property is the ancestral property and the same is also reiterated in Ex.P5, further, when in the partition deed dated 23.03.1998 marked as Ex.P1, it has been specifically recited that the plaint A schedule property is the ancestral property, it is clear that the plaintiffs have come forward with a false case that the plaint A schedule property belonged to their mother Jagadambal. On the other hand, as rightly put forth by the defendants, it is found that the plaint A schedule property is the ancestral property of the defendants.

13. In the light of the above position, it is evident that the plaint A schedule property being the ancestral property, accordingly, the first defendant and his deceased brother A.Kanniappan had

partitioned the same by way of a partition deed dated 23.03.1998 marked as Ex.P1 and in such view of the matter, it is found that when the plaintiffs having been married prior to the cut of date as provided under the Hindu Succession Act and the plaint A schedule property being the ancestral property, it is found that the plaintiffs' suit for partition in respect of the plaint A schedule property cannot be entertained.

14. As regards the plaint B & C properties, it is the case of the plaintiffs that they originally belonged to their father Adhimulam. However, as adverted to earlier, even with reference to the said case of the plaintiffs, there is no document. On the other hand, it is the specific case of the defendants that the above said properties also are their ancestral properties. In this connection, even according to the plaintiffs, the first defendant had settled the plaint B & C schedule property in favour of his wife viz., the third defendant under Exs.P2

and 3 respectively. A perusal of Exs.P2 & 3 would go to show that the above mentioned plaint B & C schedule properties, also being ancestral properties, it is found that the co-parceners of the family had effected partition amongst themselves by way of koor-chit and accordingly, it is found that the same had come to be allotted to the

first defendant and consequently, claiming title to the said suit properties, it is found that the first defendant had settled the same in favour of his wife viz., the third defendant. The plaintiffs have come forward with the case that the plaint B & C schedule properties belonged absolutely to their father Adhimulam and when with reference to the same, there is no material forthcoming and on the other hand, when the available material shows the division of the above said properties as ancestral properties by the male members by way of koorchit and subsequently, settlement of the same by the first defendant in favour of the third defendant would cumulatively go to show that, as put forth by the defendants, the plaint B & C properties are also the ancestral properties of the defendants.

15. The case of the defendants that the suit properties are the ancestral properties also get fortified by another factor. As seen above, it is admitted that Gopal is the son of Adhimulam through his first wife. It is also admitted by the plaintiffs that Gopal had been settled with another property and hence, even according to the plaintiffs, they had not impleaded the legal representatives of the said Gopal, since deceased, in the present partition suit. The fact that Gopal had been settled with another property is also not disputed by the defendants. It is the specific case of the defendants that even the property settled in favour of the deceased Gopal is the ancestral

property of the family. This has been clearly spoken to by the first defendant examined as DW1. Not even a suggestion has been put to him, by the plaintiffs, as regards the above fact, denying the same. Accordingly, it is found that inasmuch as Gopal had been allotted one of the items of the ancestral properties belonging to the family, he has not been included in the partition effected under Ex.P1 and accordingly, it is found that the other two sons viz., the first defendant and A.Kanniappan had effected the said partition amongst themselves.

16. The plaintiffs' counsel contended that the plaintiffs have filed property tax receipt, EB Card and receipts and from the same, the Court should accept the case of the plaintiffs that the properties belonged to Jagadambal and Adhimulam as put forth by them. However, the above said documents are not title documents and therefore, no safe reliance could be placed on them to hold that the plaint schedule properties belonged to Jagadambal and Adhimulam as projected by the plaintiffs. Further, the case of the plaintiffs also cannot be accepted on the basis of the joint patta marked as Ex.P8. As rightly put forth by the defendants' counsel, Ex.P8 has come into existence after the institution of the suit. That apart, it cannot also

be characterized as a title deed. In such view of the matter, Ex-P8 also would not serve or be useful to uphold the case of the plaintiffs. Other than the above said documents, no other valid and reliable documents, has been placed by the plaintiffs to countenance their claim.

17. The plaintiffs have coming forward with the case claiming the relief of partition on a particular footing and when that case of the plaintiffs is not substantiated by acceptable material and on the other hand, when during the course of evidence, the plaintiffs have projected a different case, other than that what had been pleaded and when there is no material on the side of the plaintiffs to buttress their case and on the other hand, when it is found that the suit properties are the ancestral properties as put forth by the defendants and when the documents projected in the case, point to the above position as discussed above, it is found that the case of the plaintiffs that they also have a share in the suit properties as such cannot be accepted and hence, the projected case of the plaintiffs that they are each entitled to 1/7 share in the suit properties as such cannot be countenanced.

18. However, it is argued by the plaintiffs' counsel that as

regards the case of the defendants with reference to the koor chit etc. as recited in Exs.P2 & 3, there is no document forthcoming and hence, the plaintiffs' case should be accepted. However, when it is found that the plaintiffs have failed to establish their entitlement to claim share in the suit properties on the footing that they belonged to their parents absolutely and on the other hand, when it is found that the suit properties are the ancestral properties of the defendants and accordingly, the same had also been admitted by the plaintiffs as pointed out above, and accordingly, when the defendants and the other male members of the family have effected partition and further, dealt with the suit properties as their own as put forth in Exs.P1 to 3 and when Exs.P1 to 3 are also found to be effected to the knowledge of the plaintiffs, it is found that the plaintiffs have come forward with the false case claiming that the relief of partition on the plea that the properties belonged to their parents absolutely. The very fact that the plaintiffs have not come forward with the case of partition at the earliest would only go to show that they are very much aware of the documents viz., the partition deed and settlement deeds marked as Exs.P1 to 3 much earlier. Accordingly, it is admitted by the plaintiffs themselves that inasmuch as the first defendant and his family had been residing in the plaint B & C schedule properties for a long time, they had not come forward with the claim of partition. This would only

go to show that inasmuch as the suit properties had been already partitioned by the male members, they being the ancestral properties and accordingly, dealt by them as discussed above, the plaintiffs being aware of the same, had not made any resistance to the above said actions of the defendants and had also not evinced interest to claim partition at the earliest. Only thereafter, it is found that the plaintiffs, for the reasons best known to them, had come forward with the present suit on a particular set of cause of action and when the said case of the plaintiffs is not substantiated by accepting reliable materials, on the other hand, as found above, the plaintiffs having set up a different case during the course of evidence and accordingly, it is found that as rightly put forth by the defendants, the plaintiffs being totally unaware or feigning to be unaware of the nature and character of the suit properties and hence, they have come forward with the false case, despite having knowledge of Exs.P1 to 3 much earlier.

19. In the light of the above discussions, I hold that the suit properties are the ancestral properties as pleaded by the defendants. I further hold that the partition deed dated 23.03.1998 is valid and binding upon the plaintiffs. I further hold that the settlement deeds

dated 02.03.2000 and 30.03.2000 are valid and binding on the plaintiffs. I therefore hold that the plaintiffs are not entitled to claim partition in respect of the suit properties as pleaded and accordingly, I hold that the plaintiffs are not entitled to claim $1/7^{\text{th}}$ share each in the suit schedule properties. Accordingly, issues 1 to 4 are answered.

20. Issues No.6

Originally the second defendant's name has been given as K.Karthi by the plaintiffs. Subsequently, the same had been amended and his name has been given as K.Karthikeyan. Inasmuch as the second defendant's name has been given as K.Karthi initially, the defendants have taken a plea in the written statement that the suit is bad for misjoinder of the second defendant. However, inasmuch as the above said mistake had been rectified by way of amendment and the second defendant's name has been correctly given, the plea of the defendants that the suit is bad for misjoinder of the second defendant

cannot be accepted. I therefore hold that the suit is not bad for misjoinder of the second defendant, whose name has been correctly described in plaint by way of amendment and accordingly, issue No.2 is answered in favour of the plaintiffs.

21. Issue No.7

The defendants have also taken a plea that the suit is bad for non-joinder of the legal heirs of the deceased Gopal, the son of Adhimulam through his first wife. However, when Gopal had been settled with another item of the ancestral properties and he has also not been roped in the partition effected under Ex.P1 and also in the koor chit as recited in Exs.P2 and 3, it is found that Gopal had left the family long back and accordingly, it is found that Gopal and his legal heirs are left out of consideration by the family members as regards their further acts when they had been dealing with the suit properties. In such view of the matter, the plea now taken by the defendants that the suit is bad for non-joinder of the legal heirs of the deceased Gopal as such cannot be accepted and therefore, I hold that the suit is not bad for non-joinder of necessary parties. Accordingly, issue No.7 is answered.

22. Issue No.5.

The plaintiffs have laid the suit for partition based upon their case that they are also in joint possession and enjoyment of the suit properties and accordingly they had valued the suit under Section 37

(2) of the Tamil Nadu Court Fees and Suits Valuation Act and paid the necessary Court fees. On the other hand, according to the defendants, the plaintiffs have no right to claim partition and they are not in joint possession and enjoyment of the suit properties and hence, the suit is not properly valued and the court fees paid by the plaintiffs is incorrect. Considering the defence put forth by the defendants and in the light of the reasons given to issues 1 to 4, it is found that the plaintiffs have no right to claim partition of the suit properties and it is also found that the suit properties being the ancestral properties had already been dealt with by the male members i.e. the defendants and accordingly, the defendants are enjoying their respective shares as such. In such view of the matter, the case of the plaintiffs that they are in joint possession and enjoyment of the suit properties as such cannot be accepted. Hence, as rightly pleaded by the defendants, the plaint has not been properly valued as regards the plea of partition and accordingly, it is found that the Court fees paid by the plaintiffs is incorrect. Issue No.5 is answered accordingly.

Issue No.8

The suit is dismissed with costs.

Index : Yes/No
Internet: Yes/No
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T.RAVINDRAN,J.

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Pre-delivery Judgment made
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