



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

A.S.(MD) No.167 of 2016 and
C.M.P. (MD) No.10781 of 2016

1.Pavunthai
2.Thiroupathiammal
3.Pathirakaliyammal
4.Raniammal

... Appellants/Plaintiffs

Vs.

1.R.Petchiammal
2.Thavamani
3.R.Ravichandran

... Respondents/Defendants

Prayer: Appeal Suit is filed under Section 96 of CPC against the judgment and decree dated 03.09.2013 made in O.S.No.199 of 2010 on the IV Additional District Judge, Madurai.

For Appellants : Mr.D.Sadiq Raja

1st Respondent : Died

For 2nd Respondent : Mr.Chidambarakumar Bharathi
for Mr.S.Natesh Raja

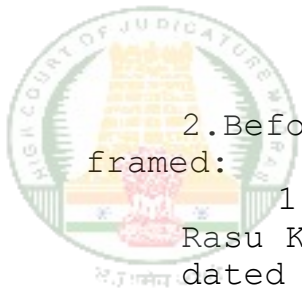
For 3rd Respondent : Mr.K.Hemakarthiskeyan

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J U D G M E N T

(Judgment of this Court was delivered M.M.SUNDRESH, J.)

The plaintiffs are the daughters of Defendant No.1 and thus sisters of defendants 2 and 3. It is the case of the defendants that by a registered deed of partition under Ex.B.1 dated 02.11.2000, the suit properties were divided between the defendants and father of the plaintiffs and defendants 2 and 3. As per the aforesaid document (Ex.B.1), defendants 2 and 3 got the entire suit properties with the life interest in favour of their parents. The plaintiffs while acknowledging the fact that the suit properties are ancestral properties, filed the suit for partition, after exchange of notices between the parties, seeking 4/7th share.



2. Before the trial Court, the following issues have been framed:

1) Whether the defendants 1 to 3 along with deceased Rasu Kurumba thevar entered in to registered partition deed dated 02.11.2000 is valid and binding on the plaintiffs?

2) Whether all the properties are brought for partition?

3) Whether proper court fee paid?

4) Whether the plaintiffs are entitled to 4/7 share in the suit property?

5) To what further relief the plaintiffs are entitled to?

3. The trial Court dismissed the suit on the ground that Ex.B.1 has not been put into challenge and the plaintiffs are not in possession and enjoyment with the defendants, apart from non-suiting them on the ground of non-payment of adequate court fees. Challenging the same, the present appeal suit has been filed.

4. The learned counsel appearing for the appellants would submit that even though the pleadings are to the effect that the properties are ancestral properties they are in fact joint family properties, as the properties stand in the name of the Kartha. It is for the defendants to prove the contrary. In as much as the appellants are not parties to the partition deed, there is no need to challenge it.

5. The learned counsel appearing for the respondents 2 and 3 would submit that the appellants have abdicated their right. Even according to the appellants the suit properties are joint family properties. But the plaintiffs are not joint family members. Admittedly the registered partition deed came into effect on 02.11.2000 i.e., prior to 20.12.2004. Hence, the rigour of Act 39 of 2005 would not come. Incidentally, the documents filed on behalf of the defendants would show that the said deed has been given effect to. Ex.B.2, 6, 8, 9 and 10 would clearly establish that the defendants are in possession as against the plaintiffs. In fact there is an admission in the plaint itself. Therefore, the appeal will have to be dismissed.

6. We have considered the rival submissions and perused the materials available on record.

7. The first question for consideration in this appeal is as to whether it is open to the appellants to contend that the suit properties are ancestral properties or joint family properties. The second question for consideration is on the effect of registered partition deed. The other issue to be considered is with respect of the possession.

8. We deem it fit to take all the issues together and dispose of the appeal.



9. Admittedly, the appellants have pleaded that the suit properties are joint family properties or ancestral properties. Therefore, it is not open to them to contend the contrary. Similarly, the factum of possession is also admitted. In such a scenario the document executed under Ex.B.1 cannot be questioned by the appellants. Once the properties are ancestral properties, it validates Ex.B.1, notwithstanding the fact that the appellants were not parties to it. As per Ex.B.1, the father of the appellants as well as 1st defendant have retained only life interest. Therefore, as a legal consequence the appellants cannot claim to be coparcener at the time of entering into partition deed under Ex.B.1. In such view of the matter they cannot take the benefit under Act 39 of 2005. The appellants themselves have admitted that they are not in possession. The aforesaid admission also would go to show that Ex.B.1 has been given effect to. Apart from that, Exs.B.1, 2 and 4 to 20 would clearly establish the fact that not only Ex.B.1 has been given effect to but also it is the defendants 2 and 3, who are in possession. From this, we are able to hold that appellants were aware of the execution of Ex.B.1. Thus, all the points raised are answered against the appellants as we do not find merits in the appeal.

10. In the result, the Appeal Suit stands dismissed. The judgment and decree of the IV Additional District Judge, Madurai dated 03.09.2013, made in O.S.No.199 of 2010 is confirmed. However, considering the relationship between the parties, the cost imposed by the trial Court is set aside. Consequently, connected Miscellaneous Petition is also dismissed. There is no order as to cost in this appeal suit.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar.

To
The IV Additional District Judge,
Madurai.

Copy to

The Section Officer, V.R. Section,
Madurai Bench of Madras High Court, Madurai.

+1CC to Mr.D.Sadiq Raja, Advocate, SR.No. 75581
+1CC to Mr.S.NateshRaja, Advocate, SR.No. 75812
+1CC to Mr.K.Hema Karthikeayan, Advocate, SR.No. 75650

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