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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 23.06.2017

Delivered on: 20.07.2017

CORAM

THE HONOURABLE MR. JUSTICE A. SELVAM

and

THE HONOURABLE MR. JUSTICE N. AUTHINATHAN

Appeal Suit (M.D.) Nos.3 and 34 of 2014

and

M.P.Nos.1 & 2 of 2014

1.K.Alagimeenal
2.K.Kalaiselvi
3.K.Maheswari
4.K.Bhuvaneswari
5.K.Parameswari
6.K.Visalakshi
7.K.Thilagam

... Appellants in
both the Appeal Suits

Vs

B.Chandravadana .. Respondent in A.S(MD).No.34 of 2014
and 1st Respondent in A.S.(MD)No.3 of 2014

Miss.B.Parimalam .. 2nd Respondent in AS(MD)No.3 of 2014

Prayer:- Appeal suits filed against the judgment and decrees passed in O.S.No.199 of 2009 and 100 of 2010, dated 16.08.2013, by the I Additional District Court, Madurai.

For Appellants : Ms.N.Krishnaveni, Sr.counsel for
Mr.Niranjana S.Kumar in both A.S.

For Respondents : Mr.K.Srinivasan, Sr.counsel for
Mr.N.S.Ponnaiah in both A.S.

COMMON JUDGMENT

(Judgment of the Court was delivered by A.SELVAM, J.)

These appeal suits have been preferred against the common judgment and decrees dated 16.08.2013, passed in O.S.Nos.199 of 1999 and 100 of 2010, by the I Additional District Court, Madurai.

2. A.S.(MD)No.3 of 2014: The appellants herein, as plaintiffs, have instituted O.S.No.199 of 1999, on the file of the
services, https://hcservices.ecourts.gov.in/hcservices/ court, praying to pass a preliminary decree of partition, wherein, the present respondents have been arrayed as defendants.



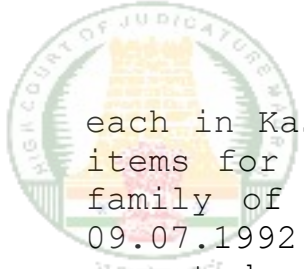
3. A.S.(MD)No.34 of 2014: The respondent herein, as plaintiff, has instituted O.S.No.100 of 2010, on the file of the trial Court for the relief of perpetual injunction, wherein, the present appellants have been arrayed as defendants.

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4.The nubble of averments made in the plaint filed in O.S.No.199 of 1999 can be stated like thus:

The plaintiffs are the daughters of one Kasithevar. The husband of the first defendant by name, Balasubramanian, is the son of the said Kasithevar. The plaintiffs, Kasithevar and the said Balasubramanian have constituted a Hindu joint family. The suit properties are the ancestral properties. The plaintiffs, Kasithevar and the said Balasubramanian have enjoyed the suit properties as coparceners. The plaintiffs and their brother Balasubramanian got married during the life time of their father. Even though the plaintiffs are residing in their respective matrimonial homes, the suit properties have remained undivided. Under the said circumstances, Kasithevar has passed away on 5.11.2001, leaving behind him the plaintiffs and their brother Balasubramanian. After the demise of Kasithevar, the plaintiffs and the said Balasubramanian have enjoyed the suit properties as coparceners. Since the said Balasubramanian is the only male member and as 'Karthi' of joint family, the plaintiffs have permitted him to transfer patta and other Revenue records in his name. The said Balasubramanian has passed away on 30.08.2009. The second defendant is the daughter of the first defendant. After the demise of Balasubramanian, the defendants 1 and 2 have changed their attitude. In fact, the defendants 1 and 2 have acted against the interest of the plaintiffs. Under the said circumstances, on 29.09.2009, the plaintiffs have jointly issued a legal notice to the defendants. After receipt of the same, they have given a false reply notice dated 14.10.2009. Since the plaintiffs are the coparceners and since the suit properties are the joint family properties, the plaintiffs are collectively entitled to get seven shares in the suit properties. Under the said circumstances, the present suit has been instituted for the relief sought therein.

5.In the written statement filed on the side of the defendants it is averred that the relationship mentioned in the plaint is correct. It is true that Kasithevar has passed away on 05.11.2001 and Balasubramanian has passed away on 30.08.2009, leaving behind him the defendants as his legal heirs. During the life time of Kasithevar, the entire suit properties have been divided by way of partition and the shares of the plaintiffs have also been apportioned. The said Kasithevar has married two wives. The first plaintiff is the daughter of the first wife, whereas, the remaining plaintiffs and the husband of the first defendant are the children born through second wife by name Jothi. Except the first plaintiff, the remaining plaintiffs are given 25 cents



each in Kasithottam. The first plaintiff has been given the other items for her share. As per earlier partition taken place in the family of Kasithevar, a Partition List has come into effect on 09.07.1992. In respect of share of Kasithevar, he voluntarily executed a Will, dated 28.10.1990, in favour of the husband of the first defendant and the same has come into force after his demise on 05.11.2001. The plaintiffs are not having partible interest in the suit properties and there is no merit in the suit and the same deserves to be dismissed.

6.The material averments made in the plaint filed in O.S.No.100 of 2010 are that the suit properties are situate in Thirupparankundram, Panchayath, Madurai South Taluk, Madurai District. The suit properties are ancestral as well as self-acquired properties of the husband of the plaintiff, by name, Balasubramanian and his father by name Kasithevar. The said Kasithevar has passed away on 05.11.2001, leaving behind him his only son Balasubramanian and the defendants 1 to 7 herein. During the life time of Kasithevar and his son Balasubramanian, a family arrangement has been made and settled some properties to the defendants 1 to 7 and subsequently, on 09.07.1992, a Partition List has come into effect. The said Kasithevar has voluntarily executed a Will dated 28.10.1990 in favour of his son Balasubramanian. After his demise on 05.11.2001, the same has come into effect. The defendants 1 to 7 have given a legal notice dated 29.09.2009, wherein they made a false claim over the suit properties. The suit properties are the absolute properties of the plaintiff. Since the defendants have made attempt to interfere with the peaceful possession and enjoyment of the plaintiff in the suit properties, the present suit has been instituted for the relief of perpetual injunction.

7.In the written statement filed on the side of the defendants, the averments made in the plaint filed in O.S.No.199 of 2009 are reiterated and ultimately prayed to dismiss O.S.No.100 of 2010.

8.On the basis of rival pleadings raised on either side, the trial Court has framed necessary issues and after perpending both oral and documentary evidence, has dismissed O.S.No.199 of 2009 and decreed O.S.No.100 of 2010, by way of passing a common judgment. Against the common judgment passed by the trial Court, these Appeal Suits have been preferred.

9.Before contemplating the rival submissions made on either side, it would be more useful to narrate the relationship between <https://hdservices.courts.gov.in/bcservices/> It is an admitted fact that the plaintiffs in O.S.No.199 of 2009 and husband of the first defendant, by name, Balasubramanian are the children of one Kasithevar. He married



two wives. The first plaintiff is a daughter born through first wife, whereas the remaining plaintiffs and the said Balasubramanian are the children born through second wife.

10. In the plaint filed in O.S.No.199 of 2009, it is averred to the effect that all the suit properties are joint family properties; the said Kasithevar has passed away on 05.11.2001, whereas, the said Balasubramanian has passed away on 30.08.2009 and during their life times, no partition has been effected amongst sharers. Under the said circumstances, the plaintiffs are each having 1/8th share in all the suit properties. Since after the demise of Balasubramanian, the attitude of the defendants has become otherwise and under the said circumstances, a legal notice has been issued and after receipt of the same, the defendants have given a false reply notice and therefore, the present suit has been instituted for the relief of partition.

11. The defence put forth on the side of the defendants in O.S.No.199 of 2009 is that even during the life time of Kasithevar, a family arrangement has been made, wherein certain properties have been given to the plaintiffs and in recognition of such family arrangement, a partition deed has come into existence betwixt Kasithevar and Balasubramanian and the said Kasithevar, during his life time, voluntarily executed a Will in favour of his only son Balasubramanian and since Kasithevar has passed away on 05.11.2001, the same has come into effect and further the said Balasubramanian has passed away on 30.08.2009 and now the defendants, as his legal heirs, are enjoying the suit properties as absolute owners and in which, the plaintiffs are not having any partible interest and therefore, O.S.No.199 of 2009 is liable to be dismissed.

12. As adverted to earlier, after considering the available evidence on record, the trial Court has dismissed O.S.No.199 of 2009 and decreed O.S.No.100 of 2010 as prayed for.

13. The learned Senior counsel appearing for the appellants in both the Appeal Suits has contended to the effect that the specific case of the plaintiffs in O.S.No.199 of 2009 is that all the suit properties are joint family properties of Kasithevar, his son Balasubramanian and the plaintiffs and so far no partition has taken place by metes and bounds and the specific defence put forth on the side of the defendants in O.S.No.199 of 2009 is that even during the life time of both Kasithevar and Balasubramanian, a partition has taken place and in recognition of the said partition, a List of Partition has been executed on 09.07.1992 and further in respect of the share of Kasithevar, he executed a Will dated 28.01.1990 and the trial Court, without considering the available evidence on record in respect of documents relied upon by the defendants, has erroneously dismissed O.S.No.199 of 2009



and erroneously decreed O.S.No.100 of 2010 and therefore, the common judgment passed by the trial Court is liable to be set aside.

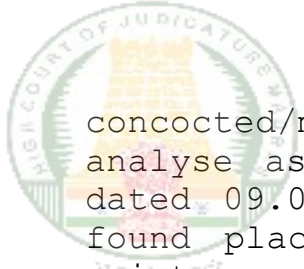
14.Per contra, the learned Senior counsel appearing for the respondents in both the appeals has also equally contended to the effect that during the life time of Kasithevar and his son Balasubramanian, a family arrangement has been made, wherein, certain properties have been given to the plaintiffs in O.S.No.199 of 2009 and subsequently, a partition deed has come into existence on 05.07.1988 and thereafter, a List of Partition has been executed on 09.07.1992. The said Kasithevar has voluntarily executed a Will dated 28.10.1990 in favour of his only son and after his demise, the same has come into effect and now the plaintiffs in O.S.No.199 of 2009 are not having any partible interest over the suit properties. The trial Court, after considering vital documents filed on the side of the defendants, has rightly dismissed O.S.No.199 of 2009 and rightly decreed O.S.No.100 of 2010 and therefore, the common judgment passed by the trial Court is not liable to be set aside.

15.The only point that arises for consideration in both the Appeal Suits is as to whether the plaintiffs in O.S.No.199 of 2009 are having right of partition in the suit properties?

16.The consistent case put forth on the side of the defendants in O.S.No.199 of 2009 is that already a family arrangement has been made betwixt Kasithevar, his son Balasubramanian and his daughters viz., the plaintiffs and thereafter, a Partition Deed has come into effect on 05.07.1988 and a List of Partition has also been executed on 09.07.1992 and in respect of the share of Kasithevar, he voluntarily executed a Will dated 28.10.1990. On the side of the defendants, the List of Partition dated 09.07.1992 has been marked as Ex.B2; the Partition Deed, dated 05.07.1988, has been marked as Ex.B3 and the Will, alleged to have been executed by Kasithevar on 28.10.1990, has been marked as Ex.B6.

17.Even though on the side of the plaintiffs and defendants various documents have been filed, for the purpose of clinching the issue involved in the present lis, the documents mentioned supra are very much essential. Under the said circumstances, the Court has to meticulously analyse as to whether the documents mentioned supra have been duly proved on the side of the defendants in O.S.No.199 of 2009.

18.The consistent argument put forth on the side of the appellants in both the Appeal Suits is that the documents mentioned supra are nothing but a concocted documents. Since on the side of the appellants it has been specifically contended to the effect that the documents mentioned supra are nothing but

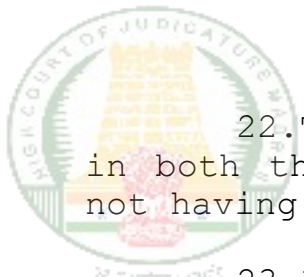


concocted/manipulated documents, the Court has to meticulously analyse as to its genuineness. Ex.B2, is a List of Partition, dated 09.07.1992, wherein, the signatures of the plaintiffs are found place. Ex.B3, is a Partition Deed, which has come into existence in between Kasithevar and his son Balasubramanian, wherein, the 'A' schedule properties have been allotted to the share of Balasubramanian and one Sriniammal. Likewise, 'B' schedule properties have been allotted to the share of Kasithevar. Ex.B6 is a registered Will, alleged to have been executed by the said Kasithevar, in favour of his only son Balasubramanian.

19.As mentioned in many places, the specific case of the plaintiffs in O.S.No.199 of 2009 is that with regard to suit properties, no partition has taken place even after the demise of Kasithevar and Balasubramanian. The consistent defence put forth on the side of the defendants is that already a family arrangement has been made, wherein certain properties have been allotted to the share of the plaintiffs and in respect of the remaining properties, a partition deed has come into existence on 05.07.1988 between the said Kasithevar and Balasubramanian. In respect of the properties allotted to the share of Kasithevar, he voluntarily executed Ex.B6, the Will dated 28.10.1990, in favour of his only son.

20.As mentioned supra, in the Partition List, wherein the signatures of the plaintiffs are found place, has been marked as Ex.B2. But there is no specific denial with regard to Ex.B2 on the side of the plaintiffs. Of course, it is true that the properties mentioned in Ex.B2 stand in the name of Jothi, second wife of Kasithevar. The specific contention of the defendants is that a family arrangement has been made. Considering the specific stand taken on the side of the defendants and also considering the fact that no denial has been made in respect of Ex.B2, this Court is of the view that already a family arrangement has been made in respect of the family properties of Kasithevar.

21.The learned Senior counsel appearing for the appellants in both the Appeal Suits, has vehemently attacked Exs.B3 and B6. Ex.B3 is nothing but a Partition Deed, dated 05.07.1988, wherein it is mentioned that a partition has taken place on 09.05.1988 by metes and bounds between Kasithevar and his son Balasubramanian. Further it is stated in Ex.B3 that in pursuance of the said partition, each sharer has been put in separate possession of properties allotted to his/her share. Therefore, even though the nomenclature of Ex.B3 is mentioned as 'Partition Deed', on the basis of recitals found therein, the Court can easily come to a conclusion that Ex.B3 is nothing but a 'Partition List'. Ex.B3 contains two stamp papers, one stamp paper is dated 06.04.1988 and another stamp paper is dated 05.04.1988.



22.The learned Senior counsel appearing for the appellants in both the appeals has pointed out that the scribe of Ex.B3 is not having proper licence on the date of execution of Ex.B3.

23.In fact, it is mentioned in Ex.B3 that the said scribe has obtained licence even in the year 1984 and subsequently renewed on 10.1.1989. Even assuming without conceding that on the date of execution of Ex.B3, the concerned scribe is not having licence, the Court cannot ignore nor eschew the recitals found in Ex.B3. Further, on the side of the plaintiffs there is no specific denial with regard to signatures of Kasithevar and Balasubramanian found in Ex.B3. Under the said circumstances, the Court can easily come to a conclusion that Ex.B3 is a genuine document.

24.As mentioned supra, Ex.B6 is a Will dated 28.10.1990, alleged to have been executed by Kasithevar in favour of his only son Balasubramanian. It is true that the trial Court has erroneously observed to the effect that Ex.B6 has to be proved by the plaintiffs. Since Ex.B6 has been executed by Kasithevar in favour of his only son Balasubramanian, its due execution as well as attestation have to be proved only by the defendants.

25.For the purpose of proving Ex.B6, one of the attestors by name, Swaminathan, has been examined as D.W.2 and his specific evidence is that Ex.B6 has been executed by Kasithevar and he put his signature as one of the attestors. Further he would say in his evidence that the husband of the second plaintiff, viz., Chandran, has also put his signature. If really Ex.B6 is a concocted document, definitely, the husband of the second plaintiff, viz., Chandran, would not have put his signature as one of the attestors. On the basis of the evidence given by D.W.2, the Court can easily come to a conclusion that Ex.B6 has also been duly proved on the side of the defendants.

26.The entire plaint filed in O.S.No.199 of 2009 proceeds on the basis that the plaintiffs are the coparceners of erstwhile Hindu Joint family and therefore, they are entitled to get partition as prayed therein.

27.On the side of the plaintiffs, the first plaintiff has been examined as P.W.1. During the course of cross-examination, she stated to the effect that her marriage and the marriage of other plaintiffs have taken place on different dates.

28.At this juncture, it would be apropos to look into Section 6 of the Hindu Succession Act, 1956 and the same reads as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

"6. Devolution of interest in coparcenary property - (1) On and from the commencement of the



Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,-

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this subsection shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

29. Even a cursory look of the said provision it is made clear that as per Hindu Succession (Amendment) Act, 2005, in a Hindu Joint family, governed by the Mitakshara law, the daughter of a coparcener by birth becomes a coparcener in her own right in the same manner as the son. But on the basis of proviso clause, if any disposition or alienation including any partition or testamentary disposition of property, which has taken place before 20.12.2004, the provision of Section 6 of the Act, would not affect the same.

30. In the instant case, the specific contention of the plaintiffs in O.S.No.199 of 2009 is that so far no partition has taken place. It has already been discussed in detail and found that in the family of deceased Kasithevar, his son Balasubramanian and plaintiffs, a family arrangement has been made, wherein some properties have been given to the plaintiffs and with regard to remaining family properties, a partition has already taken place betwixt Kasithevar and his son Balasubramanian and in recognition of the same, Ex.B3 has come into existence. Further, the said Kasithevar has executed a Will (Ex.B6) in favour of his only son, viz., Balasubramanian, out of his own volition. On the side of the defendants in O.S.No.199 of 2009, the vital documents mentioned supra have been clearly proved. Therefore, it is quite clear that as per proviso clause of Section 6 of the Hindu Succession Act, 1956, the earlier provision of the said Section would not affect the partition, which has already taken place.

31. Further it is pertinent to note that in the plaint filed in O.S.No.199 of 2009, no specific averments are found place with



regard to date of marriage of each plaintiff. Since there is no specific pleading with regard to date of marriage of each plaintiff, the Court cannot accept the evidence given by P.W.1 during the course of cross-examination with regard to date of her marriage and also marriage of other plaintiffs.

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32.It is an archaic principle of law that any amount of evidence without sufficient pleadings is of no use.

33.As animadverted to earlier, absolutely there is no pleading with regard to dates of marriages of the plaintiffs. Under the said circumstances, even as per the provision of Section 6 of the said Act, the Court cannot come to a conclusion that the plaintiffs are the coparceners as mentioned in the said Section.

34.Before parting with these appeals, the Court would like to sum up the following aspects:

(i)The plaint filed in O.S.No.199 of 2009 is totally bereft of particulars with regard to dates of marriages of the plaintiffs.

(ii)On the side of the defendants, it has been clearly established to the effect that already a partition has taken place.

By way of eschewing the vital defects found in O.S.No.199 of 2009, the Court cannot pass a preliminary decree of partition in favour of the plaintiffs.

35.The first defendant in O.S.No.199 of 2009 has instituted O.S.No.100 of 2010 on the file of the trial Court for the relief of permanent injunction. It has already been discussed in detail that on the side of the defendants in O.S.No.199 of 2009, abundant/acceptable/trust worthy evidence is available for the purpose of proving partition and also for the purpose of Ex.B6, the Will. Since all the properties found in O.S.No.100 of 2010 are the absolute properties of deceased Balasubramanian, the plaintiff in O.S.No.100 of 2010 is in possession and enjoyment of the same. Under the said circumstances, the relief of perpetual injunction sought therein can easily be granted in favour of the plaintiff.

36.It has already been pointed out that on the basis of vital documents filed on the side of the defendants in O.S.No.199 of 2009, it has been clinchingly established that already a partition has taken place in respect of suit properties. Since already a partition has taken place, the plaintiffs are not having any semblance of right of partition.

<https://hcservices.ecourts.gov.in/hcservices/>

37.The trial Court, after considering the available evidence on record, has rightly dismissed O.S.No.199 of 2009 and



rightly decreed O.S.No.100 of 2010. In view of the discussion made earlier, this Court has not found any error or illegality in the common judgment passed by the trial Court and altogether, these appeals are liable to be dismissed.

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In fine, these Appeal Suits are dismissed without cost. The common judgment and decrees passed by the trial Court in O.S.No.199 of 2009 and 100 of 2010 are confirmed. Connected miscellaneous petitions are dismissed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub-Assistant Registrar

To

The I Additional District Judge,
Madurai.

+2ccs to Mr.N.s.Ponnaiah, Advocate, SR.Nos.66846 and 66847

msk

RL/4C/10P/KK/SAR2/22/8/2017

Judgment in
Appeal Suit Nos.3 and 34
of 2014

20.07.2017