



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.08.2017

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

A.S(MD)No.151 of 2013

and

M.P. (MD)No. 1 of 2014

Balumani

: Appellant/Plaintiff

Vs.

- 1.Samiyathal
- 2.R.Velumani
- 3.Rajeswari
- 4.The Regional Transport Officer,
Office of the Regional Transport Office,
Thanthonimalai Post,
Karur - 639 005.
- 5.The South Indian Bank Limited,
Town Lee Bazaar Branch,
represented by its Branch Manager.
- 6.Axis Bank Limited,
Door No.115-B, 1-A Ground Floor,
Serfanic Shopping Complex,
Omalur Main Road,
Salem-9.
Represented by its Branch Manager.
- 7.The Distrit Industries Centre,
Namakkal District,
Office at Namakkal,
represented by its General Manager.
- 8.Athanur Panchayat,
represented by its Executive Authority,
The Executive Officer,
Office at Athanur, Rasipuram Taluk,
Namakkal District.

: Respondents/Defendants

PRAYER: Appeal suit filed under Section 96 of the Civil Procedure Code, praying this Court to set aside the judgement and decree passed by the District Judge, Karur in O.S.No.56 of 2007, dated 13.09.2011.



2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed?

3. What other relief?

3. The learned counsel for the appellant would contend that insofar as 'B' and 'F' schedule property are concerned, the trial Court has committed an error in treating the properties as an ancestral one, absolutely devolving upon the father namely Rengasamy. The trial Court has failed to consider Ex.A2 in a correct prospective. Ex.A2 deals with two sets of partition. This deed speaks about partition, *inter-se*, grand-father of the appellant namely Rakkiyappa Gounder and his children and another one between the appellant, his father Late.Rengasamy Gounder and defendant No.2. Thus the partition indeed take place in the year 1991. This document is a registered one and therefore, the benefit conferred under Act 39 of 2005, cannot be extended in favour of defendant No.3. The learned counsel further submitted that on the same score, the mother of the appellant namely, defendant No.1 is also entitled for her share. It is further submitted that Schedule 'F' property is the amount deposited from the profits of 'B' schedule properties in pursuant to the decree granted earlier and therefore, based upon the decree to be granted by this Court insofar as 'B' Schedule property is concerned, the same also required to be modified accordingly. Though the grounds have been raised specially over C, E and H schedule of properties, the learned counsel would submit that this Court can pass appropriate orders based upon the evidence available.

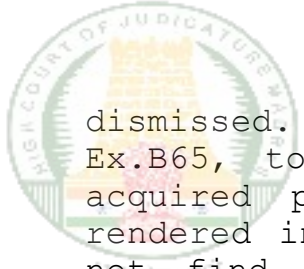
4. The learned counsel for the respondents 1 to 3 would submit that insofar as the Schedule C, E and H properties are concerned, those properties are purchased in the name of respondent No.2. Admittedly, he is working as Manager and he is an income-tax assessee. Thus, the trial Court has correctly dismissed the suit. It is for the appellant to prove that these properties have been purchased from the income of the joint family properties. Inasmuch as the appellant himself relied on 1991 registered partition deed, it is not open to him to contend contrary.

5. Considering the submissions made the following issues are framed for consideration:

1. *Is the judgement and decree of the trial Court in respect of C, E and H schedule properties are concerned, is liable to be reversed, holding that the properties have been purchased out of the income from the joint family properties?*

2. *Whether the appellant is entitled for 5/12th share along with defendant No.2, as against the defendants 1 and 3, who are entitled for 1/12th share, as contended?*

6. Insofar as the first point for consideration is concerned, we do not find any merit calling for any interference with the findings rendered by the trial Court, based upon which the suit was



dismissed. The trial Court has examined D.W.1 to D.W.5 and Ex.B1 to Ex.B65, to hold that 'C' and 'H' Schedule properties are self-acquired properties of the defendants. Similarly, the findings rendered in respect of 'E' Schedule property is concerned, we do not find any error. The trial Court has found that the said properties are available for partition, since it was already sold much prior to the suit.

7.The trial Court has considered the entire evidence available on record in this aspect. It has taken into consideration Ex.B22 and Ex.B23, which are documents to show that the second respondent borrowed money from one Iniya Murugan Finance in the year 2001. Ex.B32 to Ex.B65 are documents to show that the second respondent was running business. The fact that he was also working as Manager is not in dispute. Therefore, the evidence of D.W.1 to D.W.5 would also show that the second defendant has enough source of income to purchase 'C' schedule property in his name. Therefore, We do not find any error in the judgement and decree by the trial Court insofar as the C,E and H Schedule properties are concerned. The onus to prove his case is on the appellant, which he has not done so, to the satisfaction of the trial Court by examining evidence along with relevant documents. Accordingly, Issue No.1 is answered against the appellant. In fact, the learned counsel for the appellant submitted that the findings of the trial Court may not be termed as illegal.

8.Coming to the second issue raised, we find considerable force in the submission made. The trial Court has committed an error in not decreeing the suit by granting 5/12th share in favour of the appellant, after holding that Ex.A2 has been executed by the grand-father, father, plaintiff and his brother namely, the second defendant. As rightly submitted by the appellant, these documents not only speak about partition of shares between grand-father, his children and grand-children, but also speaks about the partition *inter-se*, the Plaintiff, his father late.Rengasamy and defendant No.2.The partition did take place in the year 2009.The partition took place as per the registered document. The trial Court has committed an error by treating the property as a joint family property. Once partition has taken place, then only the issue is as to the allotment of share, devolving upon Clause-I heirs, arising in pursuance to the death of Late.Rengasamy Gounder. In other words, the remaining extent granted in accordance with Ex.A2 which would automatically get vested on the plaintiff and second defendant. What is available for partition is the share allotted under Ex.A2 through the deceased Rengasamy Gounder. If this is taken into consideration, the appellant and second defendant are entitled to 5/12th share and defendants 1 and 3 are entitled to 1/12th share each. To that extent, the findings rendered by the trial Court, resulting in the decree for 1/4th share of the appellant requires interference. Accordingly, the same is set aside. Consequently, the plaintiff and the second defendant are granted 5/12 share each against defendants 1 and 3 1/12th share each in 'B' and 'F'



properties are concerned.

9. Accordingly, the Appeal Suit stands allowed in part, granting a decree of 5/12th share in favour of the appellant and second defendant and 1/12th share each for the defendants 1 and 3 in 'B' and 'F' Schedule properties. In other aspects, the Appeal Suit stands dismissed, confirming the judgement and decree of the trial Court. The parties are at liberty to file respective court fees for their shares in the final decree proceedings. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The District Judge,
Karur.

+1cc to Mr.B.SARAVANAN Advocate in SR. No. 75254

+1cc to Mr.R.PANDIVEL Advocate in SR. No. 75423

+1cc to Mr.M.BINDRAN Advocate in SR. No. 75404

VSN

JS/SKN.RSK/SAR.1/4.10.2017/5P-5C

JUDGMENT MADE IN

A.S (MD) No.151 of 2013

and

M.P. (MD) No. 1 of 2014

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