

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.12.2017

PRONOUNCED ON : 10.01.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1606 of 2002

1. L.Keerthika
2. Minor L.Indumathi,
3. Minor L.Karthik
(Minors are represented by
next friend and mother L.Jayamani)

(Declared the 1st appellant as major
and discharge the guardian L.Jayamani
from the guardianship vide order
of the Court dated 17.09.2002
made in CMP No.13258/2002) ... Appellants/Plaintiff

Vs.

1. The State of Tamil Nadu,
rep. by the District Collector,
Erode District,
Having office at Collectorate,
Perundurai road, Erode-11.

2. The Commercial Tax Officer,
Commercial Taxes,
Brough Road, Circle,
Erode-1, in Erode Town

3. C.Longappan,

4. P.Chinnappa gounder.

... Respondents/defendants

Prayer: Second Appeal filed under Section 100 of Civil
Procedure Code, against the judgment and decree dated 16.11.2001
made in A.S.No.102 of 2001, on the file of the Principal
District Court Erode, reversing the judgment and decree dated
31.8.2000 made in O.S. No.5 of 1995, on the file of the
Principal District Munsif Court, Erode.

For Appellants

: Mr.N.Manokaran

For Respondent

Nos. 1 & 2

: Mr. T.Jayaramaraj,

Government Advocate (CS)

For Respondent

Nos. 3 & 4

: No appearance

JUDGMENT

This second appeal is directed against the judgment and decree dated 16.11.2001, passed in A.S.No.102 of 2001, on the file of the Principal District Court, Erode, reversing the judgment and decree dated 31.8.2000, passed in O.S. No.5 of 1995, on the file of the Principal District Munsif Court, Erode.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and permanent injunction.

4. The case of the plaintiffs, in brief, is that the suit properties are the ancestral properties of the plaintiffs and the third defendant is their father and he has no interest in the welfare of the family and doing speculative business and thereby, got indebted to various persons and failed to protect the interest of the family and accordingly, at the intervention of the panchayatdars, an oral partition was effected in the family properties of the parties and accordingly, the plaintiff A schedule properties were allotted to the plaintiffs and the plaintiff B schedule properties were allotted to the fourth defendant and his wife, giving life interest to them and thereafter absolutely to the plaintiffs and subsequently, the parties had entered into a partition list recognising the oral partition already been effected amongst themselves and according to the plaintiffs, they learnt that the defendants 1 and 2 had initiated action against the third defendants for recovery of the sales tax by attaching the suit properties. However, the defendants 1 and 2 are not entitled to proceed against the suit properties as the same did not belong to the third defendant and as the said properties had been allotted to the plaintiffs as above stated, it is contended that the plaintiffs have been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants 1 and 2, in brief, is that in connection with the business run by the third defendant in waste papers and scrap material, he fell in arrears of sales tax for three years 1987-88, 1988-89 and 1989-90 and accordingly, became liable to pay the same and as the properties described in the suit belong to the third defendant and accordingly, the defendants 1 and 2 have initiated proceedings under the Revenue Recovery Act against the said properties for the collection of the tax arrears levied on the third defendant and therefore, their contention is that the oral partition pleaded by the plaintiffs is not true and hence, the claim of the plaintiffs that the suit properties has been allotted to them in the oral partition is false and they have also challenged the case of the

plaintiffs that the oral partition had been subsequently recorded in the partition list entered into amongst the parties concerned and therefore, contended that the plaintiffs are not entitled to obtain the reliefs claimed in the plaint.

6. In support of the plaintiffs' case PWs 1 and 2 were examined and Exs.A1 to A4 were marked. On the side of the defendants DW1 was examined and Ex.B1 was marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to decree the suit as prayed for. On appeal, the first appellate Court set-aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the defendants 1 and 2, dismissed the suit laid by the plaintiffs. Assailing the same, the present second appeal has come to be laid.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

1. Whether Ex.A1 dated 04.06.1989 requires registration as per Section 17 (1) (b) of the registration Act, 1908?

2. Whether the findings of the first appellate Court is correct in law in holding that Ex.A1 creates an interest in immovable property "in praesenti" in favour of the parties in view of the law laid down in A.C.Lakshmipathy vs. A.M.Chakrapani Reddiar (AIR 2001 Madras 135)? and

3. Whether Ex.A1 is a partition deed or partition list referring to an earlier oral partition which parties intended to be only a record of earlier partition?

9. It is not in dispute that in connection with the business run by the third defendant, as he had become liable to pay the sales tax arrears, proceedings had been initiated against the suit properties by the defendants 1 and 2 under the Revenue Recovery Act. The plaintiffs are the children of the third defendant. The fourth defendant is the father of the third defendant and the grandfather of the plaintiffs. Claiming that the suit properties are their family properties and contending that the third defendant is not interested in the welfare of the family and therefore, it is stated that the family members had effected an oral partition in the presence of the panchayatdars and according to the plaintiffs, the suit A schedule properties were allotted to them and the suit B schedule properties were allotted to the fourth defendant and

his wife towards their life interest and thereafter absolutely to the plaintiffs and therefore, it is their contention that the defendants 1 and 2 are not entitled to proceed against the suit properties, on the footing that the same belongs to the third defendants for the collection of the sale tax arrears unpaid by him, in connection with his business. The defendants 1 and 2 have thrown the challenge as regards the claim of the plaintiffs that an oral partition took place in the family wherein the suit properties had been allotted to the plaintiffs as claimed by them. The defendants have also impugned the partition list projected by the plaintiff as having been entered into by the parties concerned for recognising the oral partition effected between them with reference to the suit properties.

10. The plaintiffs have claimed that the properties of the family were partitioned in the first week of Chitthirai, 1998, orally, in the presence of the panchayatdars and accordingly, the suit properties were allotted to them as above claimed by them. It is their further case that on 04.06.1989, the said oral partition was entered into the partition list evidencing the division of the properties and the above said partition list has come to be marked as Ex.A1. According to the plaintiffs, Ex.A1 is a document which does not require registration, as per Section 17 (1)(b) of the Registration Act, as it is only a document evidencing the factum of oral partition, which had already taken place and therefore, the first appellate Court is in error in holding that Ex.A1 is unacceptable for want of registration.

11. Inasmuch as the defendants 1 and 2 have thrown a challenge to the claim of the plaintiffs that the family members had effected oral partition as regards the family properties, it is for the plaintiffs to establish that they had orally partitioned the family properties as claimed by them. Though the plaintiffs would claim that an oral partition had been effected in the first week of Chitthirai 1988, strangely, it is seen that no material as such has been placed to hold that thereafter the parties had been separately enjoying the allotted properties as their own. As rightly found by the first appellate Court, other than the two kist receipts marked as Exs.A2 and A3 which had emanated a few months prior to the institution of the suit, no other record has been placed by the plaintiffs to establish that the family properties had been allotted to them in the alleged oral partition and thereafter, it is only the plaintiffs, who had been enjoying the same as the absolute owners thereof. In such circumstances, as rightly found by the first appellate Court, the documents marked as Exs. A2 and A3 would be of no use to sustain the case of the plaintiffs as regards their plea of oral partition. Other than Exs.A2 and A3, the only document placed by the plaintiffs is the

partition list marked as Ex.A1.

12. Even as per the decision relied upon by the plaintiffs' counsel (1976) 3 SCC 119 (Kale and others Vs. Deputy Director of Consolidation and others), it is found that a mere memorandum/ partition list prepared evidencing the family arrangement of the parties effecting partition would not require registration. It is seen that for establishing that such a family arrangement had taken place bonafide between the parties concerned, the parties should establish the same by showing that a fair and equitable division or allotment of properties had been made between the various members of the family and the said family arrangement is not induced by any fraud, coercion or undue influence and only on the establishment of the above said essentials, the plaintiffs could be saved from the rigours of registration of the partition list projected by them. So far as this case is concerned, it is found that according to the plaintiffs, in the oral partition, the suit properties had been allotted to them absolutely, though it is stated that life interest had been given to the fourth defendant and his wife as regards the B schedule properties. It is found to be strange that the third defendant, who is the son of the fourth defendant and the father of the plaintiffs had not been allotted any item of the family properties in the oral partition. No reason whatsoever has been averred for the same. On the other hand, the partition list marked as Ex.A1 would go to show that the third defendant had been paid a sum of Rs.50,000/- in lieu of any share in the family properties. At the foremost, there is no material placed to hold that the family was possessed of a cash of Rs.50,000/- at the relevant point of time so as to allot the same to the third defendant in lieu of any share of the family properties. With reference to the same, no material is forth coming. When as per the decision above referred to, the family arrangement effected and pleaded by the plaintiffs should be a fair and equitable division of the allotment of the properties between the various members of the family to say that the third defendant had been allotted only a sum of Rs.50,000/- in lieu of any share in the family properties appears to be strange and unacceptable. As above seen, there is no material to show that the family was possessed of the said cash at the relevant point of time. It is found that to the knowledge of the third defendant, he had left sales tax arrears unpaid in connection with the business run by him. It is therefore obvious that the third defendant is fully aware of the initiation of the proceedings against him by the defendants 1 and 2 under the Revenue Recovery Act. Now according to the plaintiffs, inasmuch as the third defendant was not looking after the welfare of the family and leading a speculative business one way or the other, it is their contention that the family had resolved to divide the family properties. If that be

the case, it is found that the third defendant would not have been a consenting party to the family arrangement, particularly, when he has not been allotted any share in the family properties and only given cash. On the other hand, from the evidence adduced by the plaintiffs in this matter, it is found that it is only the third defendant, who had initiated the alleged partition proposal and accordingly, also took an active part in the alleged oral partition. This would only go to show that the claim of the plaintiffs that the third defendant has no interest to safe guard the welfare of the family as such, is found to be false and unacceptable. If really the third defendant had completely ignored the family one way or the other and leading a speculative life as putforth by the plaintiffs, the third defendant would not have been satisfied merely by the allotment of a petty cash in lieu of any share of the family properties. This by itself leads to a strange suspicion in the claim of the plaintiffs about the oral partition of the family properties as putforth in the plaint. As rightly found by the first appellate Court, it is found that the plea of oral partition has been projected by the plaintiffs only to thwart the proceedings initiated by the defendants 1 and 2 against the suit properties for the collection of the sales tax arrears levied on the third defendant, with reference to the business run by him. Accordingly, in order to save the suit properties from the said action, it is found that the plaintiffs have designed the plea of oral partition and accordingly, subsequent to the same, in order to create the record with reference to the alleged oral partition, has prepared the partition list, Ex.A1, as if, it only recognises the earlier partition and it does not create any interest by itself. Accordingly, it is seen that the plaintiffs had created the said document with the help of their henchmen such as PW2 and PW2, being their neighbour and accordingly, as found by the first appellate Court, he being an obliging witness and hence, his evidence cannot be safely relied upon.

13. One of the essential elements for accepting the oral partition as well as the partition list entered into between the parties subsequent thereto is that it should not be a fraudulent act. However, in so far as this case is concerned, it is seen that only with a view to safe guard the suit properties from the action of defendants 1 and 2, the plaintiffs have projected the plea of partition and also had come forward with the partition list marked as Ex.A1. However, when the plaintiffs have failed to establish that really a partition had taken place between the family members and in the said partition, the suit properties had come to be allotted to them, as claimed by them and when with reference to the same, there is no material forth coming on the part of the plaintiffs, it is seen that the first appellate Court had accordingly held that Ex.A1, partition deed, has been

concocted by the plaintiffs collusively to stifle the action initiated by the defendants 1 and 2 against the suit properties for the recovery of the sales tax arrears levied on the third defendant, in connection with the business run by him. Therefore, the first appellate Court had rightly held that the Courts could not be a party to such illegal acts done by the plaintiffs and accordingly, rightly negatived the reliefs sought for by the plaintiffs as prayed for.

14. The counsel for the plaintiffs in support of his contention also relied upon the decisions reported in 2005-1-LW.343 (1. R.Deivanai Ammal (Died) 2. M.K.Ramalingam Vs. G.Meenakshi Ammal and 2 others), (2015) 16 SCC 787 (Yellapu uma maheswari and another Vs. Buddha jagadheeswararao and others). The principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the case at hand. As per the decision of the Apex Court above stated, it is found that Ex.A1 not being properly stamped, it is found that the same cannot be received in evidence under the Stamp Act, even for a collateral purpose and such being the position, it is found that Ex.A1 cannot be pressed into service for holding the plea of oral partition in any manner.

15. In the light of the above discussions, when the plaintiffs have failed to establish the factum of oral partition as put forth by them, it is found that the first appellate Court has accordingly rejected the partition list marked as Ex.A1, said to have been entered into between the parties for recognising the alleged oral partition and accordingly, the first appellate Court has rightly disbelieved the case of the plaintiffs that the suit properties had been allotted to them in the alleged partition. The substantial questions of law formulated in this second appeal are accordingly answered.

16. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any is closed.

Sd/-

Assistant Registrar (CS VI)

//True copy//

Sub Assistant Registrar

sli

To

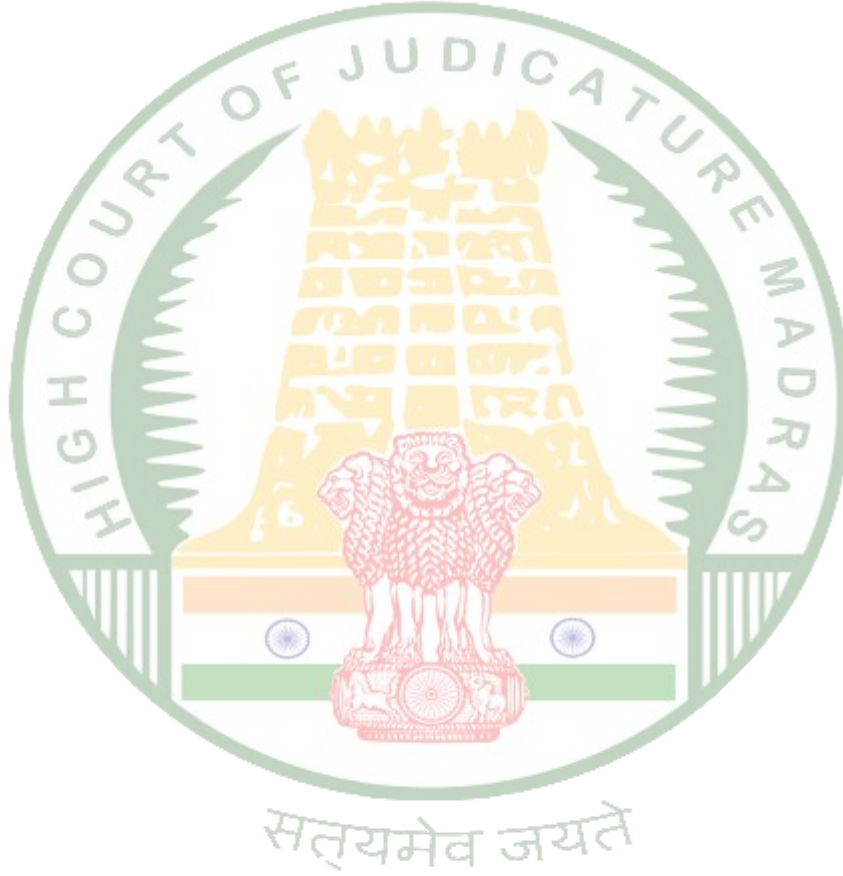
1. The Principal District Judge, Erode.
2. The Principal District Munsif, Erode.

+1cc to Mr.N.Manoharan, Advocate SR.No.2557

+1cc to Government Pleader SR.No.2164

S. A.No.1606 of 2002

CNR (CO)
GN (04/04/2018)



WEB COPY