

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 20.06.2018	Date of Pronouncing Judgment 29.06.2018
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CORAM:

THE HONOURABLE MR.JUSTICE P. RAJAMANICKAM

S.A.No. 386 of 2001

1. Pichaipillai
2. Manickkam Ammal (Deceased)
[1st Appellant and sole respondent recorded
as LRs of deceased 2nd Appellant vide order
of court dated 04.02.2016 made in memo
dated 04.02.2016 in S.A.No.386 of 2001]

... Defendants/Respondents/
Appellants 2&3

Vs.

Sivasami Padayatchi

... Plaintiff/Appellant/
Respondent

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 12.04.1999 made in A.S.No.157 of 1994 on the file of the Subordinate Judge, Ariyalur, reversing the judgment and decree dated 29.07.1994 made in O.S.No.339 of 1992, on the file of the District Munsif Court at Jayamkondam.

For Appellant : Mr. P. Dinesh Kumar
for M/s. Sarvabhman Associates

For Respondent : M/s. S. Senthilnathan

J U D G M E N T

This second appeal has been filed by the appellants/defendants 2 and 3 against the judgment and decree passed by the Sub-Judge, Ariyalur, in A.S.No.157 of 1994 dated 12.04.1999 reversing the judgment and decree passed by the District Munsif, Jayamkondam, in O.S.No.339 of 1992, dated 29.07.1994.

2. The respondent herein has filed a suit in O.S.No.339 of 1992 on the file of the District Munsif, Jayamkondam, to declare that the defendants 1 and 3 are having only life interest in the suit properties and they have no right to create encumbrance in the suit properties and after their life time, the suit properties to be divided into two equal shares and one such share be allotted to him. During pendency of the said suit, the first defendant died. The learned District Munsif has dismissed the said suit by his judgment dated 29.07.1994. Feeling aggrieved, the respondent herein has filed an appeal in A.S.No.157 of 1994 on the file of the Sub-Judge, Ariyalur. The learned Sub-Judge by his judgment dated 12.04.1999 has allowed the said appeal and passed a preliminary decree as prayed for. Aggrieved by the same, the defendants 2 and 3 have preferred the present second appeal. For the sake of convenience, the parties are referred to as described before the trial Court.

3. The averments made in the plaint are briefly as follows:

The plaintiff and the second defendant are the sons of the defendants 1 and 3. The suit properties are their family properties. In respect of the said properties, in the year 1998, a family arrangement was made in the presence of Panchayatars. As per the said Panchayat, some of the properties were allotted to the plaintiff and they are mentioned in para 13 of the plaint. There is no dispute with regard to the said properties. Likewise, some of the properties were allotted to the second defendant. The suit properties were allotted to the defendants 1 and 3 and as per the said family arrangement, they can enjoy the suit properties till their life time without encumbering the same and after their life time, the suit properties have to be divided equally between the plaintiff and the second defendant. The said family arrangement was reduced into writing on 28.09.1998, in which all the parties and Panchayatars have signed. On 14.06.1990, the first defendant has sent a lawyer's notice admitting the execution of the family arrangement deed, however, he has stated that he is having right to alienate the suit properties. Denying the allegations made in the said notice, the plaintiff has sent a reply notice dated 21.06.1990. Thereafter, the first defendant has sent a rejoinder dated 27.06.1990 with false averments. Thereafter, the first defendant has executed a settlement deed dated 07.12.1990 in favour of the second defendant. In view of the aforesaid family arrangement, the first defendant is not entitled to alienate the suit property. The defendants are estopped from denying the rights of the plaintiff over the suit property. Hence the suit.

4. The averments made in the Written Statement filed by the first defendant and adopted by the defendants 2 and 3 are briefly as follows:

The first defendant had purchased several properties out of his own income. However, considering the fact that the plaintiff and the second defendant are the sons of the first defendant and also due to the atrocities committed by the plaintiff, a Panchayat was convened and as per the decision of the Panchayat, the properties were divided and allotted separately to the plaintiff and the defendants 1 and 2 and they have been enjoying the same from the date of the said partition. But the allegation that a family arrangement deed was executed is false. The alleged document is a created one. The allegation that the suit properties were allotted to the defendants 1 and 3 with a condition that they can enjoy the same till their life time without encumbering is false. The first defendant is the absolute owner of the suit properties. The plaintiff has not extended any help to the defendants 1 and 3. The second defendant alone taking care of the defendants 1 and 3 and hence the first defendant has executed a registered settlement deed in favour of the second defendant in respect of the suit properties on 07.12.1990. From that date onwards, the second defendant is in possession and enjoyment of the suit properties in which the plaintiff has no right. Therefore, the defendants prayed to dismiss the suit.

5. Based on the aforesaid pleadings, the learned District Munsif has framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined himself as PW1 and also examined two more witnesses as PW2 and PW3. He has marked Exs.A1 to A8 as exhibits. On the side of the defendants, the defendants 2 and 3 were examined as DW1 and DW2 and one Chokkalingam was examined as DW3. They have marked one document as Ex.B1.

6. The learned District Munsif, after considering the materials placed before him, has dismissed the suit. Aggrieved by the same, the plaintiff has filed an appeal in A.S.No.157 of 1994 on the file of the Sub-Judge, Ariyalur. The learned Sub-Judge has allowed the said appeal and passed preliminary decree as prayed for. As against the same, the defendants 2 and 3 have preferred the present second appeal.

7. At the time of admitting this second appeal, this Court has formulated the following substantial questions of law.-

"1. Whether the lower appellate court is correct in law in acting upon Ex.A8 which is inadmissible in evidence in as much as it is neither stamped nor registered?"

"2. Whether the lower appellate court is correct in law in granting a decree outside the pleading and the relief prayed for by the respondent?"

8. During pendency of the second appeal, the second appellant/third defendant died. Since the first appellant/second defendant and the respondent/plaintiff are her sons (legal representatives) and they are already on record, the second appeal is not abated due to the death of the second appellant.

9. The learned counsel for the appellants has submitted that the First Appellate Court failed to see that Ex.A8 dated 28.09.1988 is a document which has divided the suit properties in presenti and therefore, the document was required to be registered under the Indian Registration Act, 1908, and without such registration it cannot be acted upon. He further submitted that the learned Sub-Judge failed to see that no decree can be granted outside the pleadings of the respective parties and it is incumbent upon the court only to find the case that is pleaded and in the instant case, the learned Sub-Judge has granted a preliminary decree for partition which has not been even prayed for by the plaintiff. He further submitted that even assuming without admitting that only a life estate has been granted and any alienation by the limited owner would be valid during their life time and therefore there cannot be a decree for partition in the present suit. He further submitted that the learned Sub-Judge erred in coming to the conclusion that the mother is not entitled to any right totally misconstruing the recitals in Ex.A8. In support of the aforesaid contentions, he relied upon the following decisions.-

(i) Bhagwan Das and others v. Girja Shanker and another, reported in 2000 (4) A.W.C. 3341 (S.C.).

(ii) M. Chinnappan (deceased) and others v. M. Ranganathan and another, reported in 2017 (2) CTC 359.

(iii) A. Raja Bhoopathi (Died) and others v. A. Vivekanandan, reported in 2017 (3) CTC 163.

10. The learned counsel for the respondent, on the contrary, contended that in the written statement, the first defendant has admitted a Panchayat was convened and the properties were divided and allotted to the plaintiff and the defendants 1 and 2. He further submitted that in the lawyer's notice (Ex.A2) and also in the rejoinder (Ex.A6), the first defendant has categorically admitted that on 28.09.1988 the family properties were divided in the presence of Panchayatars and he has also admitted that a family arrangement deed was executed and therefore, it is not open to the first defendant to deny the execution of family arrangement deed (Ex.A8). He further submitted that the recitals of Ex.A8 would clearly show that the properties were divided orally and only thereafter, the said document was executed. He further submitted that only in pursuance of the said family arrangement deed, the plaintiff and

the second defendant were allotted certain properties and in respect of the same there is no dispute. He further submitted that as per the said Ex.A8 family arrangement, the defendants 1 and 3 are entitled to enjoy the suit properties till their life time and after their death, the suit properties have to be divided equally between the plaintiff and the second defendant and therefore, the first defendant is not entitled to execute a settlement deed (Ex.B1) in favour of the second defendant. He further submitted that even assuming that only through Ex.A8 partition was effected and the same can be looked into for collateral purpose of division in status and also for considering the nature and character of the possession. In support of his contentions he relied upon the decision in Venkatasubramaniya Chettiar (Died) and Others v. Perumal Chettiar and Others, reported in 2012 (3) CTC 160.

11. The case of the plaintiff is that in the year 1988, a Panchayat was convened and as per the decision of the said Panchayat, the family properties were divided and some of the properties were allotted to him and some of the properties were allotted to his brother (2nd Defendant) and the suit properties were allotted to the defendants 1 and 3 with life interest and after their death, the suit properties should be divided between himself and the second defendant equally. In the written statement, the first defendant has admitted that as per the decision of the Panchayat, the properties were divided between the plaintiff and the defendants 1 and 2 and they were enjoying the same separately. However, he denied the execution of family arrangement deed.

12. During pendency of the suit, the first defendant died. During trial the plaintiff has produced the notice which was sent by the first defendant through his advocate dated 14.06.1990 and marked as Ex.A2. In the said notice, the first defendant has admitted that the family properties were divided in the presence of Panchayatars on 28.09.1988 and a partition chit (Family arrangement deed) was executed. In the rejoinder (Ex.A6) also, he admitted the execution of the partition chit (Family arrangement deed) and the said original deed is with one Panneerselvam. The second defendant while examining himself as DW1 has admitted the oral partition. He also admitted in his cross-examination that his father has sent Ex.A2 notice. He has admitted that his signature is found in Ex.A8. However, he has stated that his signature was obtained in a blank paper and the same was subsequently filled up as Ex.A8. But the said plea was not taken in the written statement. Therefore, it has to be presumed that the second defendant has signed in Ex.A8 only after the same was written.

13. The recitals in Ex.A8 would show that as per the decision of the Panchayat, the properties were divided and only thereafter, the said document was executed. As already pointed out that the first defendant has categorically admitted in Ex.A2 notice about the execution of the partition chit. According to the plaintiff, the said partition chit is the family arrangement and the same has been marked as Ex.A8. As per Ex.A8, the suit properties were allotted to the defendants 1 and 3 with life interest and after their death, the said properties to be divided between the plaintiff and the second defendant.

14. According to the learned counsel for the appellant/second defendant, since Ex.A8 was not stamped and registered it is not admissible in evidence. In the decisions cited by the learned counsel for the first appellant/second defendant it was held that an unregistered partition deed is not admissible in evidence. In the decision cited by the learned counsel for the respondent, it was held that the partition deed, though not registered can be looked into for collateral purpose of division in status and also for considering the nature and character of the possession. In this case as already stated that the partition was not effected under Ex.A8. As admitted by the defendants, properties were divided by oral partition. Only thereafter Ex.A8 was executed. Hence, the decisions cited by the learned counsel for the appellants will not be applicable to the facts of this case. As held in Venkata Subramaniya Chettiar (died) and others Vs. Perumal Chettiar and Others (supra) Ex.A8 can be looked into for collateral purpose of division in status and possession.

15. Further at this juncture, it would be relevant to refer the decision in Kale and others v. The Deputy Director of Consolidation and others, AIR 1976 SC 807, wherein, three Judge Bench of the Hon'ble Supreme Court in para 38 has observed as follows:

"38....Assuming, however, that the said document was compulsorily registrable the Courts have generally held that a family arrangement being binding on the parties to it would operate as an estoppel by preventing the parties after having taken advantage under the arrangement to resile from the same or try to revoke it. This principle has been established by several decisions of this Court as also of the Privy Council."

16. In the instant case, as per the family arrangement the second defendant also got certain properties. So, in view of the aforesaid decision of the Hon'ble Supreme Court, the second defendant, after having taken advantage under the family arrangement, is estopped from saying that the said family arrangement will not bind upon him. Likewise, the said family

arrangement would bind upon the defendants 1 and 3 also. As per the said family arrangement only life interest was given to them in respect of the suit properties. Hence, the first defendant has no right to execute the settlement deed in favour of the second defendant.

17. In the plaint, the plaintiff has asked to declare that the defendants 1 and 3 are entitled to enjoy the suit properties only till their life time and they have no right to alienate the suit properties and after their life time the suit properties to be divided into two equal shares and one such share be allotted to the plaintiff. But the first appellate court has granted preliminary decree for partition even during the life time of the third defendant. Hence, in the appeal memorandum one of the substantial questions of law was raised as "whether the lower appellate court is correct in law in granting a decree outside the pleading and the relief prayed for by the respondent. During pendency of the second appeal, the third defendant died. Now there is no bar for dividing the suit properties in between the first appellant/2nd defendant and the respondent/plaintiff. Hence, the said substantial question of law has become infructuous.

18. For the aforesaid reasons, this Court is of the view that the first appellate Court has rightly come to the conclusion that as per the decision of the Panchayatars, the family properties were divided orally and only thereafter Ex.A8 family arrangement deed was executed and hence the same is admissible in evidence. The evidence on record would clearly establish that the said Ex.A8 was acted upon and the properties were allotted between the parties and as such, the defendants are estopped from challenging the said family arrangement deed. Accordingly, the substantial questions of law are answered against the appellants.

19. In the result, the second appeal is dismissed. No cost.

Sd/-

Assistant Registrar (CS V)

//True copy//

Sub Assistant Registrar

msm

To

1.The Subordinate Judge,
Ariyalur.

2.The District Munsif Judge,
Jayamkondam.

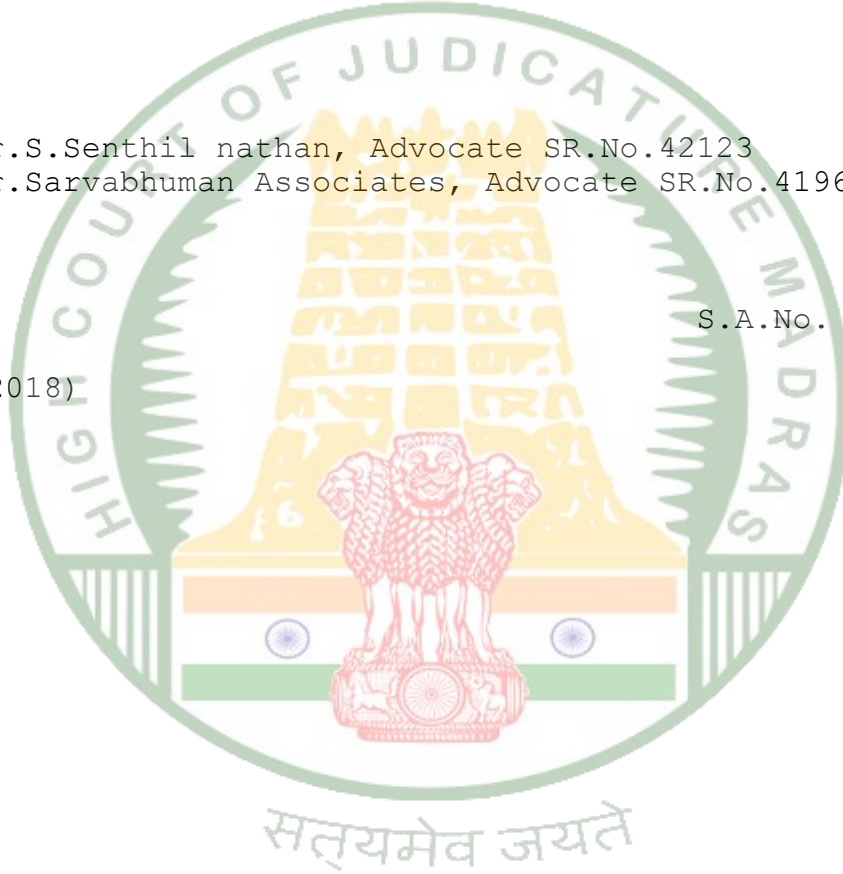
Copy TO

The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.S.Senthil nathan, Advocate SR.No.42123
+1cc to Mr.Sarvabhuman Associates, Advocate SR.No.41968

S.A.No. 386 of 2001

RJ(CO)
GN(31/07/2018)



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