



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.08.2018
DELIVERED ON : 21.08.2018

WEB COPY

CORAM :

THE HONOURABLE MR. JUSTICE C.V. KARTHIKEYAN

REV. APLC. (MD) No. 11 of 2018

in

A.S. (MD) No. 108 of 2006

Dhayalan ... Review Petitioner/4th Respondent

vs.

1. M. Sanjeevi ... 1st Respondent /Appellant
2. Leelavathi alias Lilly
3. Lakshmi
4. Rajendran ... Respondents 2 to 4/Respondents 1 to 3
5. Bhanumathi
6. Vinoth Kumar
7. Sivasankaran Chettiyar
8. Chellappan ... Respondents 5 to 8/Respondents 5 to 8

PRAYER: Review Application filed under Order 47 Rule-1 & 2 CPC r/w 114 of the Civil Procedure Code, to review the Judgment and Decree dated 29.06.2017 made in A.S. (MD) No. 108 of 2006, on the file of this Court.

Prayer in AS (MD). 108/ 2006 :

Appeal Suit is filed under section 96 of the code of civil procedure to set aside the Judgment and Decree dated 17.03.2006 made in OS.No.94/2004 on the file of Additional District Judge, (Fast Track Court-II), Madurai.

For Review Petitioner : Mr.A. Arumugam
For Respondent-1 : Mr.K. Suresh Kumar
For Respondents-2 to 6 : No Appearance

ORDER

This Review Application has been filed by the 4th respondent in A.S (MD) No.108 of 2006.

2.A.S (MD) No.108 of 2006 had come under consideration of this Court and Judgment was delivered on 29.06.2017. The said appeal had been filed to set aside the Judgment and Decree dated 17.03.2006 in O.S.No.94 of 2004 on the file of the learned Additional District Judge, (Fast Track Court-II), Madurai.



3. O.S. No.94 of 2004 had been filed by the plaintiff who was the appellant in A.S.(MD) No.108 of 2006 and the first respondent in Rev.Aplc (MD) No.11 of 2018 seeking a preliminary decree for partition and for separate possession of 1/3rd share in the suit 'A' schedule property and 1/7th share in the suit 'B' schedule property and for accounts with respect to suit 'C' and 'D' schedule and on such determination of accounts, for 1/7th share in 'C' and 'D' schedule and for costs.

4. The said Judgment and Decree came to be considered by this Court in A.S(MD) No.108 of 2006.

5. Along with the appeal, the appellant had also filed C.M.P.(MD) No.1941 of 2017 under Order XLI Rule 27 of Civil Procedure Code to receive 22 documents. It was his claim that he had been profitably employed in sale of breed dogs. He also stated that even when he was studying, he was doing part time business as a Video Cameraman and Photographer. He was working as a Supervisor in New Arya Bhavan Hotel. He also went to abroad namely, Singapore, Malaysia. He was also doing business as agent in Peerless Insurance Company. He had also sold his property on 18.10.1985 to one Saroja for a sale consideration of Rs.25,000/-. Therefore, he claimed that he had source of money to purchase the property.

6. This Court, on consideration of the arguments advanced and oral and documentary evidence had passed the following Judgment.

"18. In the result, the Appeal Suit was allowed in part to the extent mentioned below and the connected MP and CMP are closed:-

1. In so far as the impugned Judgment and decree in O.S.No.94 of 2004 dated 17.03.2006, on the file of Additional District Judge (Fast Track Court No.II), Madurai, granting 1/7th share in the A-schedule property to the appellant/plaintiff is concerned, it is modified and it is held that the appellant is entitled to an undivided 1/3 share in the 'A' schedule property.

2. In so far as the impugned judgment and decree that the appellant is liable to reimburse the first, second and sixth respondents to a sum of Rs.14,285.71/-and that he has to render accounts with respect to rent which he has received, the judgment and decree in O.S.No.94 of 2004 dated 17.03.2006, on the file of Additional District Judge; Fast Tract Court No.II; Madurai, is set aside.

3. In respect of directions with respect to schedule 'B' 'C' and 'D' are concerned, the impugned judgment and decree in C.S. No.94 of 2004 dated 17.03.2006, on the file of Additional District Judge (Fast Track Court No:II), Madurai, is confirmed.

4. However, in view of the relationship among the parties, the parties have to bear their own costs. "



7. This Judgment is sought to be reviewed in this Review Application. The main issues that will have to be decided in the appeal and in the Review Petition are as follows:

1. Whether it can be held that the 'A' schedule property was purchased for the benefit of all the family members, though the Sale Deed was in the names of the plaintiff and the third and fourth defendants ?
2. Whether the review applicant can maintain the Review Application even though his interests have not been prejudiced by the Judgment in question?.
3. Whether the Judgment under review is to be interfered with?

The issues answered :

8. For the sake of convenience the contesting parties shall be referred to as Plaintiff and 4th defendant. It is to be noted that the plaintiff is actually the 1st respondent in the Review Application and Appellant in the Appeal suits. The 4th defendant is the Review Applicant and 4th respondent in the Appeal Suit.

9. The plaintiff and the defendants in the suit are the legal heirs of Late.Murugan. Among the properties left behind by late.Murugan, the property described as 'A' schedule in the plaint is as follows:

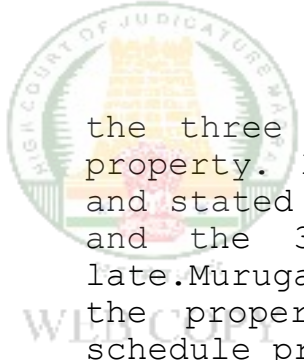
'A' SCHEDULE

Madurai District, Tallakulam Sub District, Madurai North Taluk, Tallakulam Village, Old Natham Road in the eastern row R.S. No.229/2A out of 1 acre 02 cents which is converted into plots out of which plot No.14 and 15 measuring 7 cents 8 square feet which is situate within the following four boundaries:

North by : 20 width Eastwest Road
East by : plot No.16 house site
South by : plot Nos.12 and 13 are belongs to K.C.Joseph house and site.
West by : Old Natham Road and Thiruvalluvar Colony.

Within which the house site measure eastwest on the northern side and southern side is 60 feet and North-South on the east and west is 51 feet totally measuring 3060 square feet and there is house building bearing Door No.95 with all its appurtenances.

10. This property had been purchased in the names of the plaintiff M. Sanjeevi and the 4th defendant Dhayalan and the 3rd defendant Rajendran by a sale deed dated 24.11.1985. The plaintiffs on the strength of the fact that the sale deed reflect the names of



the three purchasers had sought 1/3 undivided share in the said property. However, the 4th defendant seriously contested this case and stated that eventhough document was in the name of the plaintiff and the 3rd and 4th defendants, it was actually purchased by late.Murugan who had given the total consideration for purchase of the property. Consequently, he claimed 1/7 share in the 'A' schedule property.

11. The learned trial Judge had granted a decree for 1/7 share with respect to the said property. However, in the appeal the said finding was reversed and undivided share was granted to each one of the plaintiff and 3rd and 4th defendants.

12. In the appeal, this Court had relied on Section 92 of the Indian Evidence Act and stated that the oral evidence of D.W.1 (the 4th defendant and the Review Applicant) cannot be accepted and therefore reversed the finding and granted 1/3 undivided share in the said property. This finding has been assailed in the review application. In the review application it had been stated that the finding has to be revisited by this Court. Even at the outset, this Court is unable to compressed the prejudice caused to the Review Applicant. His share has been increased from 1/7th to 1/3rd in the 'A' schedule property. The affected defendants have not filed appeal against the finding of this Court and have actually been arrayed as respondents in the Review Application.

13. Mr.A. Arumugan, the learned counsel for the 4th defendant who appeared for the review applicant submitted that the circumstances surrounding the purchase of the property should have been considered to examine who are the real owners of the property. The learned counsel further submitted that the 'A' schedule property was purchased by his father in the name of plaintiff and 3rd defendant and himself for the benefit of entire family members. If that be the case the other family members who have been denied a share on the judgment under review should have protested against the finding denying them their share. They have not done so. The learned counsel also stated that the plaintiff had admitted that the 3rd and 4th defendants had stated that the property had been purchased only by their father. It must be mentioned that the onus is on the party who puts forth a contention to prove it. In the present case, proof must be of such nature that it overturns the covenants in a registered Sale Deed. It must also be mentioned that the Sale Deed is dated 24.11.1985, and none of the other family members have questioned it or sought a share in the said property. Moreever, in the grounds of seeking review, the 4th defendant had not raised any issue regarding the interpretation of Section 92 of the Indian Evidence Act.

14. Section 92 of the Indian Evidence Act is as follows:

"Exclusion of evidence of oral agreement.-When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a



document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms".

15. The provision is very clear that no amount of oral evidence can be admitted in the face of a covenant written down in a documents. In Ex.P.1, it had been very clearly stated that the property had been purchased by the plaintiff and the 3rd and 4th defendants. That was the reason why this Court reversed the finding of the trial Court which had granted partition and separate possession to the extent of 1/7th undivided share. The written statement of the 3rd and 4th defendants cannot be considered as an admission against the document. As a matter of fact, the 3rd defendant Rajendran had not come to the Court to give evidence with respect to the circumstances surrounding for the purchase of the property. If the property had been purchased for the benefit of the entire family members, then all the three persons in whose names the property had been purchased should say in one voice that the property was actually purchased for the benefit of the family. The other family members should also state so. However in this case the plaintiff and the 3rd defendant have not stated so. The other defendants have not stated so. The plaintiff has denied that the property was purchased for the benefit of the family. The 3rd defendant had not given any evidence in this regard.

16. Consequently, I am not prepared to accept the contention that the finding in A.S.(MD) No.108 of 2006 has to be revisited with respect to the 'A' schedule property.

17. The review application has also been filed with respect to the fact that for redemption of mortgage the equities will have to be worked out only at the time of the Execution Petition and Court fees need not be paid for working out the equities.

18. This Court in the Judgment under review had stated as follows in para-12,

"At the outset, it is to be stated that the respondents 1 to 6, in their written statements have not paid any court fees, towards their claim of partition and separate possession. They can pay necessary court fees during final decree proceedings. The respondents 1, 2 and 6, however, have also not paid any court fees towards their claim towards payment of Rs.1,00,000/-by them, towards discharge of loan received by I.Murugan. They have also not paid any court fees for the direction to the appellant to render accounts. Consequently, in so far as the decree that the appellant was liable to reimburse the first, second and sixth respondents to a sum of Rs.14,285.71/- and that he has to render accounts with respect to rent which he has received, cannot



stand scrutiny in the eye of law. On this short ground namely 'no court fees, no relief', with respect to the said directions of the trial Court, the judgment and decree to that extent is liable to be set aside".

19. This reasoning of the Court had been challenged by Mr.A.Arumugam who had stated that Court fees can be paid only at the time of the final decree when the equities are worked out. However, it is seen that even in the trial Court with respect to the said issue the finding is as follows:

"Hence this Court holds that the plaintiff and 3, 4 and 5th defendant are liable to pay each Rs.14,285.71/- to the 1st, 2nd and 6th defendants towards the reimbursement of loan".

20. It is seen that even in the trial Court, the plaintiff, 3rd, 4th and 5th defendants were directed to pay a sum of Rs.14,285.71/-to the 1st, 2nd and 6th defendants.

21. The review petition had been filed by the 4th defendant. There was an obligation on the 4th defendant to pay the amount as directed by the trial Court. However, in the appeal that portion of the order has also been set aside. The review petitioner can only speak for himself. The other defendants have not filed any review or appeal as against the judgment of this Court in A.S.(MD) No.108 of 2006.

22. Consequently, even on that ground I am not able to convince myself to grant any relief to the review petitioner.

23. In view of the above discussion, I hold with respect to Issue-1 that when the Sale Deed of 'A' schedule property is in the names of the plaintiff, 3rd and 4th defendants, it cannot be held that it was purchased for the benefit of the other family members, particularly when the other family members have not questioned this fact or asserted their rights, if any, from the year 1985. With respect to issue-2, I hold that since the Review applicant's rights have not been prejudiced by the judgement under review, he cannot maintain the Review Application. With respect to issue-3, I hold that no grounds have been made to review the judgment of their Court dated 29.06.2017, in A.S(MD) No.108 of 2006.

24. In the result, the review petition is dismissed. No Costs.

Sd/-

Assistant Registrar (CS-III)

/True Copy/



To
The Additional District Judge,
Fast Track Court No.II
Madurai.

Copy to:
The Section Officer,
VR.Section
Madurai Bench Of Madras High Court,
Madurai(2Copies)

+1cC to Mr.K.Muthumalai, Advocate in Sr.No.79416.

KSA
DS SKN RSK SAR-1 :21.08.2018: 7P/5C

Pre-Delivery Order in
REV.APLC.(MD)No.11/2018

21.08.2018