

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :06.11.2019

PRONOUNCED ON:06.12.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

A.S.No.89 of 2013
and
M.P.No.1 of 2013

A.Karpagam (Died on 07.12.2010)
W/o M.Arunachalam

1. M.Arunachalam

2. A.Selvamani

[Name of the second appellant
deleted vide order of the Court
dated 17.12.2012 made in
M.P.No.3 of 2012 in
A.S.S.R.No.90255 of 2011] ... Appellants/Plaintiff

[Cause title accepted vide order
of Court dated 01.02.2012 made
in M.P.No.1 of 2012 in
A.S.S.R.No.90255 of 2011]

Vs.

1. V.Elango

2. Viji Elango ... Respondents/Defendants 1 & 2

Prayer:

First Appeal filed under Section 96 of C.P.C., against the judgment and Decree dated 11.11.2010 passed in O.S.No.115 of 2008 on the file of the III Additional District Judge, Puducherry.

For Appellant : Mr.V.Venkatasamy

For Respondent : No appearance

Set exparte vide order dated 06.11.2019

J U D G M E N T

Aggrieved over the judgment and decree dated 11.11.2010 passed in O.S.No.115 of 2008 on the file of the III Additional District Judge, Puducherry, the plaintiff has preferred the First Appeal.

2. For the sake convenience, the parties are referred to as per their rankings in the trial court.

3. Suit for partition and declaration.

4. The case of the plaintiff in brief is that in the partition deed effected on 14.03.1951, the plaintiff's father Vaithilinga Nattar @ Sambasiva Nattar got 15 items of properties towards his share in the serial numbers 30,31,39,40,64,65,66,73-77,81,82 and 88 as detailed in the abovesaid partition deed which are described in the plaint A schedule. After the abovesaid partition deed, Vaithilinga Nattar @ Sambasiva Nattar had donated 5 items of the properties out of the abovesaid 15 items which are described in the plaint B schedule in favour of his minor son Siraimeeta Vinayagar represented by his mother Pownambal by way of the Donation deed dated 14.03.1951 and by way of the abovesaid Donation deed Siraimeeta Vinayagar has been granted absolute right in respect of the properties settled. At the time of the execution of the abovesaid Donation deed, Vaithilinga Nattar @ Sambasiva Nattar had completely neglected and omitted his daughter Karpagam namely the plaintiff without allotting any property to her. Further, Vaithilinga Nattar @ Sambasiva Nattar and his son Siraimeeta Vinayagar had sold the other items of the properties obtained under the partition deed dated 14.03.1951 barring the properties donated to Siraimeeta Vinayagar under the Donation deed dated 14.03.1951. Vaithilinga Nattar @ Sambasiva Nattar died 45 years back leaving behind his son Siraimeeta Vinayagar and the plaintiff as his legal heirs and accordingly the plaintiff is entitled to equal share in the suit properties obtained by her father under the partition deed dated 14.03.1951. Siraimeeta Vinayagar died on 03.08.1989 leaving the first defendant as his sole legal heir. The Donation deed executed by Vaithilinga Nattar @ Sambasiva Nattar is against the customary Hindu Law prevailing in Pondicherry which prevents the owner of the properties from dispossessing of anything in excess of 1/8 share of the properties whether they are self acquired or ancestral, his children have got the right of Legitim and the owner is entitled to dispose of only 1/8th of his estate and the balance of 7/8th share called La-reserve with reference to which both the plaintiff and the first defendant are equally entitled to

half share. Further, out of the 5 items donated in favour of Siraimeeta Vinayagar both the plaintiff and the first defendant jointly sold two items by way of the sale deeds dated 15.09.1971 and 27.07.1971 and the same would only reveal that both the first defendant and the plaintiff have equal right in the properties covered under the Donation deed dated 14.03.1951. The plaintiff had been requested to divide and allot her share in the remaining properties available in the family described in the plaint C schedule and the plaintiff also issue various notices demanding partition. The first defendant sent a reply denying the right of partition. Hence, according to the plaintiff, she has been necessitated to lay the suit against the defendants for appropriate reliefs.

5. The second defendant is the wife of the first defendant and both the defendants have resisted the plaintiff's suit by filing separate written statements contending that the plaintiff's suit is not maintainable either in law or on facts and even prior to the filing of the suit, the first defendant in his capacity as the owner of the plaint C schedule properties had settled the same in favour of his wife namely the second defendant by way of a registered settlement deed dated 27.02.2008 and it is only the second defendant following the same is in the possession and enjoyment of the plaint C schedule properties. The plaintiff is not in the possession and enjoyment of the said properties and cannot claim to be in the joint possession of the same. The plaintiff got married in September 1978 and settled with her husband at Madras and therefore the plaintiff cannot claim to be in constructive or in joint possession of the suit properties along with the defendants. The Court fees paid by the plaintiff is incorrect. The first defendant's grandfather Vaithilinga Nattar @ Sambasiva Nattar had bequeathed the plaint B schedule properties in favour of his son Siraimeeta Vinayagar by way of the Donation deed dated 14.03.1951. Therefore there has been no existence of any joint family nature and the plaintiff is not the co-owner of the plaint C schedule properties as claimed in the plaint. The remaining properties covered in the partition deed dated 14.03.1951 had been subsequently sold exclusively by Vaithilinga Nattar @ Sambasiva Nattar and the claim of the plaintiff that both Vaithilinga Nattar @ Sambasiva Nattar and Siraimeeta Vinayagar had jointly sold the same is false. The plaintiff was not even born at the time of execution of the Donation deed dated 14.03.1951.

6. The plaintiff has no locus standi to file the suit, if the plaintiff's suit is barred by limitation. If at all the plaintiff was aggrieved by the Donation Deed dated 14.03.1951, she ought to have challenged the same as per law either on attaining majority or within the time limit described thereof. The plaintiff cannot seek the remedy under the doctrine of right

of Legitim after lapse of 57 years. The plaintiff is not a French citizen or any other category listed under French Code Civil. The claim of the plaintiff is that she is entitled to half share in the reserve of 7/8th share is false. The French law is not applicable to the parties and therefore the plaintiff's suit is liable to be dismissed.

7. On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial court for consideration.

- i. Whether the suit is maintainable?
- ii. Whether the suit is under valued for the purpose of court fee?
- iii. Whether there is any valid cause of action for this suit?
- iv. Whether the suit is barred by limitation?
- v. Whether the plaintiff is entitled for partition?
- vi. Whether the plaintiff is entitled for judgment and decree?
- vii. To what other relief the parties are entitled to?

8. In support of the plaintiff's case, P.W.1 was examined. Exs.A1 to A16 were marked. On the side of the defendants, D.Ws.1 and 2 were examined. Exs.B1 to B14 were marked.

9. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the plaintiff's suit with costs. Impugning the same, the present First Appeal has been preferred by the plaintiff.

10. The following points arise for determination in the First Appeal:

- i. Whether the plaintiff's suit is legally sustainable without seeking any challenge to the Donation deed dated 14.03.1951?
- ii. Whether the plaintiff's suit is barred by limitation?
- iii. Whether the plaintiff is entitled to obtain partition and separate possession of 7/16th share in the plaint C schedule properties as claimed in the plaint?
- iv. Whether the plaintiff is entitled to the relief of declaration as regards the settlement deed dated 27.02.2008?
- v. To what relief the plaintiff/appellant is entitled to?
- vi. To what relief the defendants are entitled to?

Point Nos.1 to 4:

11. The relationship between the parties is not in dispute. Vaithilinga Nattar @ Sambasiva Nattar is the father. The first defendant's father Siraimeeta Vinayagar is the son and the

plaintiff is the daughter of Vaithilinga Nattar @ Sambasiva Nattar. The parties are not in dispute that by way of the partition deed dated 14.03.1951 Vaithilinga Nattar @ Sambasiva Nattar had been allotted 15 items of the properties towards his share more fully described in the plaint A schedule . The certified copy of the abovesaid partition deed has been marked as Ex.A1 and the translation copy of the same has been marked as Ex.A2. It is found that on the same date ie., on 14.03.1951, Vaithilinga Nattar @ Sambasiva Nattar had donated 5 items of the properties out of the abovesaid 15 items, in faovur of his son Siraimeeta Vinayagar namely the first defendant's father. They are more fully described in the plaint B schedule and the certified copy of the abovesaid Donation deed has been marked as Ex.A3 and the translation copy of the same has been marked as Ex.A4. It is found that by virtue of Ex.A3 Donation deed, it is only the first defendant's father Siraimeeta Vinayagar who would be entitled to claim right over the plaint B schedule properties. The grievance of the plaintiff is that her father had not allotted any share in her favour at the time of the execution of the Donation deed Ex.A3. It is also found that the remaining items of the properties which Vaithilinga Nattar @ Sambasiva Nattar had obtained under Ex.A1 partition deed had been alienated. It is also noted that out of the 5 items of the properties ie., the plaint B schedule properties, two items of the properties had been alienated by the plaintiff and the first defendant jointly by way of the sale deeds dated 15.09.1971 and 27.07.1971. The certified copies of the abovesaid sale deeds are marked as Exs.A8 and A9. As rightly pointed out and held by the trial court, there is a clear mention of the Donation deed namely Ex.A3 in the abovesaid sale transactions marked as Exs.A8 and A9. It is thus found that the case of the plaintiff that she is not aware of the Donation deed Ex.A3 is false when it is seen that the plaintiff, as above pointed out, is fully aware of the Donation deed Ex.A3 effected in favour of Siraimeeta Vinayagar by her father Vaithilinga Nattar @ Sambasiva Nattar.

12. From the materials placed on record, it is found that even prior to the institution of the suit by the plaintiff, the first defendant had settled the remaining properties obtained by him by way of Ex.A2 Donation deed in favour of his wife namely the second defendant on 27.02.2008, the certified copy of which has been marked as Ex.A15. It is only the settlement deed dated 27.02.2008 which is being challenged by the plaintiff. The plaintiff has not challenged the Donation deed effected by her father in favour of Siraimeeta Vinayagar on 14.03.1951 marked as Ex.A3.

13. From the materials placed on record, it is seen that after the marriage in 1970, the plaintiff has settled at Madras

with her husband. The plaintiff has not placed any material whatsoever to establish her claim of joint possession of the plaint C schedule properties, the subject matter of the suit. As rightly held by the trial court, when even to the knowledge of the plaintiff, her father had settled the plaintiff B schedule properties in favour of her brother Siraimeeta Vinayagar and the plaintiff has not taken any pleas to challenge the same and also the plaintiff is found to be fully aware of the said deed and also accepting the same, had joined along with the first defendant in alienating the 2 items of the properties covered under the Donation deed by way of Exs.A8 and A9, all put together, only go to show that the plaintiff had accepted the Donation deed dated 14.03.1951 marked as Ex.A3. Accordingly, it is seen that the plaintiff has also not challenged the Donation deed Ex.A3 in the manner known to law.

14. The main argument that has been projected by the plaintiff is that as per the customary Hindu Law prevailing in Pondicherry, the owner of the properties is not entitled to donate more than 1/8 share and therefore according to her, as regards the 7/8 share of the plaint C schedule properties, she is entitled to half share ie., 7/16 share and accordingly, claiming partition of the abovesaid share, the plaintiff has levied the present suit. The defendant has challenged the abovesaid claim of the plaintiff. According to the defendants, the parties are not governed by the customary law prevailing in Pondicherry. Other than the vague plea that the parties are governed by the customary law prevailing in Pondicherry, no material worth acceptance has been placed by the plaintiff to hold that the parties are governed by the customary law prevailing in Podicherry. As rightly pointed out by the trial court, it is found that the plaintiff had been focusing before the trial court by claiming the reliefs only under the Hindu Succession Act. Be that as it may, when the trial court has analysed the abovesaid issues following the textual reference of Hon'ble Thiru.Justice. David Annoussamy and found that the plaintiff would not be entitled to invoke the right of legitim in respect of the properties belonging to her father as per the customary Hindu Law prevailing in Pondicherry and also following the decision reported in 2002 (3) LW 669 [Krishnamoorthy Gounder Vs. Sitarama Gounder and others], rightly determined that it is only his son who has the right of legitim in the property of father and accordingly declined the relief of partition sought for by the plaintiff in respect of the plaint C schedule properties. Furthermore, as abovenoted, the plaintiff has not placed any material to evidence that the parties are governed by the customary law prevailing in Pondicherry. Be that as it may, when it is seen that the plaintiff claims partition in respect of the properties covered under Ex.A3 Donation deed and when the plaintiff is found to be fully aware of the abovesaid deed right from the date of its execution and the plaintiff is also aware

of the same by being a party to the sale transactions covered under Exs.A8 and A9, in such view of the matter, when the plaintiff has not taken any steps to challenge the Donation deed for more than 57 years from the date of the execution of the same or for more than 37 years from the date of the execution of the sale transactions marked as Exs.A8 and A9 and when no relief of declaration had been sought for by the plaintiff as regards the Donation deed marked as Ex.A3 or for the cancellation of the same in any manner known to law and when it is further noted that as per Article 2262 of French Code Civil, the Limitation period is only 30 years and when the plaintiff is also found to be not in the joint possession and enjoyment of the plaint C schedule properties and on the other hand, from the materials placed on record marked as Exs.B1 to B8, it is found that it is only the second defendant who has been in the exclusive possession and enjoyment of the plaint C schedule properties by obtaining patta, paying taxes, electricity bill, by paying loan, house tax etc., and also dealing with the plaint C schedule properties as her own, all put together, the trial court is found to be justified in not granting the reliefs prayed for by the plaintiff. The trial court has rightly held that without putting forth any challenge to the Donation deed Ex.A3, the plaintiff is not entitled to seek the relief of declaration as regards the settlement deed dated 27.02.2008 marked as Ex.A15.

15. The plaintiff's counsel in support of his contentions placed reliance upon the decisions reported in 2002(3) LW 669 [Krishnamoorthy Gounder Vs. Sitarama Gounder and others] and 94 LW 36 [Ramalingam Vs. Manicka Gounder and others]. The principles of law outline in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

16. In the light of the above discussions, it is found that the trial court has analysed all the aspects of the issues involved between the parties in the right perspective by assessing the materials placed on record, both factually as well as legally and rightly come to the conclusion that the plaintiff's suit is hopelessly barred by limitation and the plaintiff is not entitled to the reliefs of partition and declaration prayed for. Further the trial court has rightly held that the plaintiff has also failed to establish her claim of joint possession and enjoyment of the plaint C schedule properties and consequently, rightly determined that the Court fees paid by the plaintiff is incorrect.

17. In the light of the abovesaid discussions, I hold that the plaintiff's suit is not legally sustainable without challenging the Donation deed dated 14.03.1951. I hold that the plaintiff's suit is barred by limitation. I hold that the

plaintiff is not entitled to obtain partition and separate possession of 7/16 share in the plaint C schedule properties as putforth in the plaint. Further I hold that the plaintiff is not entitled to seek the relief of declaration as regards the settlement deed dated 27.02.2008. Accordingly, the Point Nos.1 to 4 are answered against the plaintiff.

Point Nos.5 and 6:

18. For the reasons aforesaid, the judgment and Decree dated 11.11.2010 passed in O.S.No.115 of 2008 on the file of the III Additional District Judge, Puducherry are confirmed and resultantly the First Appeal is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (ADI MDU)

//True copy//

Sub Assistant Registrar

mfa

To

The III Additional District Judge,
III Additional District Court,
Puducherry.

Copy to

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

A.S.No.89 of 2013
and
M.P.No.1 of 2013

RSI (CO)
GMY (21/08/2020)

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