

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2019

PRONOUNCED ON : 31.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

A.S.No.187 of 2010

Sampoornam ... Appellant /1st Defendant

Vs.

1.Sakunthala

2.Sengodan ... Respondents/Plaintiff& 2nd Defendant

Prayer :- First Appeal has been filed under Section 96 of CPC against the Judgement and Decree dated 30.09.2009 passed in O.S.No.13 of 2005 on the file of the Additional District Judge, Fast Track Court, Namakkal.

For Appellant : Mr.P.Jagadeesan

For Respondent : Mr.D.Shivakumaran
No.1

For Respondent : No appearance/set exparte
No.2 vide order dated 03.07.2019

JUDGMENT

Aggrieved over the Judgement and Decree dated 30.09.2009 passed in O.S.No.13 of 2005 on the file of the Additional District Judge, Fast Track Court, Namakkal, the first defendant has come forward with the first appeal.

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

3.Suit for Partition and Permanent Injunction.

4.The case of the plaintiff in brief is that the suit properties belonged to the family of the plaintiff and the defendants and the plaintiff and the defendants entered into a partition with respect to the family properties belonging to them on 19.08.1997 and as per the abovesaid partition, "A"

schedule properties described in the abovesaid partition deed had been allotted to the father of the plaintiff and the first defendant viz., the second defendant and the properties described as "B" schedule in the abovesaid partition deed had been jointly allotted to the plaintiff and the first defendant and accordingly, the plaintiff and the first defendant had been enjoying the properties allotted to them and as at present, due to difference of opinion, the plaintiff and the first defendant are unable to enjoy the properties allotted to them jointly, accordingly, the plaintiff demanded her share in the suit properties, however, the first defendant refused to accept the same and the patta has also been jointly issued in favour of the plaintiff and the first defendant in respect of the suit properties and the first defendant claiming that the suit properties are belonging to her absolutely and thereby, she had endeavoured to alienate the suit properties to the third parties to which she is not legally entitled to and hence, according to the plaintiff, she has been necessitated to lay the suit against the defendants for appropriate reliefs.

5.The first defendant resisted the plaintiff's suit contending that it is true that the plaint schedule properties are the ancestral joint family properties and also true that on 19.08.1997, the plaintiff and the defendants had executed a registered partition deed in respect of the properties belonging to the family and the "A" schedule properties described in the abovesaid partition deed had been allotted to the father of the first defendant viz., the second defendant and the "B" schedule properties described in the abovesaid partition deed had been jointly allotted to the plaintiff and the first defendant and till now, the plaintiff and the first defendant are enjoying the suit properties separately by metes and bounds and the first defendant is enjoying half share in the suit properties and even prior to the partition, the father of the first defendant viz., the second defendant had obtained a loan in a sum of Rs.4,00,000/- and he had obtained the said loan only based on the "B" schedule properties i.e. the suit properties and the defendants are ready and willing to divide the suit properties as per their enjoyment, however, the plaintiff ought to pay a sum of Rs.2,00,000/- for the debts of the father of the first defendant i.e. the second defendant and only on the payment of debts in respect of her share, the plaintiff is entitled to seek partition and therefore, according to the first defendant, there is no cause of action for the suit and the suit is liable to be dismissed.

6.The second defendant resisted the plaintiff's suit contending that in respect of the family properties, the partition had been effected between the second defendant and his daughters viz., the plaintiff and the first defendant on

19.08.1997 and the "A" schedule properties described in the abovesaid partition deed had been allotted towards his share and the "B" schedule properties had been allotted to the share of the plaintiff and the first defendant, however, according to the second defendant, the abovesaid partition deed had been executed only nominally, as according to him, the suit properties as well as the other properties belonged to him ancestrally and the plaintiff and her husband had approached him to create a partition deed nominally for the purpose of securing the loan from the bank in connection with the purchase of lorry and accordingly, the abovesaid partition deed had come to be executed on 19.08.1997, however, the said partition had not come into force and pursuant to the same, the plaintiff has not enjoyed the share allotted to her in respect of the suit properties and the abovesaid partition deed had not come into force and the plaintiff and her husband had purchased the lorry on the strength of the loan obtained by them and enjoying the same and however, they had not enjoyed the suit properties at any point of time and the second defendant had incurred debts in a sum of Rs.4,00,000/- for celebrating the marriage on his daughters and he had secured the said loan only on the strength of the properties described in the partition deed abovestated and accordingly, the plaintiff and the first defendant had agreed that they would discharge the loan incurred by the second defendant and divide the properties subsequent thereto and the said arrangement had been effected by way of a panchayat and only on the said understanding, the partition deed dated 19.08.1997 came into executed and however, neither the plaintiff nor the first defendant had come forward to discharge the loan incurred by the second defendant and accordingly, the second defendant had been necessitated to pay the interest on the loan secured by him and though in the partition deed dated 19.08.1997, recitals are not incorporated as regards the discharge of the loan, however, as per the Panchayat decision, the plaintiff and the first defendant had agreed to discharge the loan and then divided the properties and suppressing the same, the plaintiff has come forward with the suit. If the plaintiff requires the division of the suit properties and allotment of her share, the plaintiff is obliged to discharge the debts incurred by the second defendant and without the same, the plaintiff is not entitled to seek partition in respect of the suit properties and the plaintiff as the daughter has also the responsibility to discharge the debts incurred by her father and therefore, the suit laid by the plaintiff is liable to be dismissed.

7. On the basis of the abovesaid pleas put forth by the respective parties, the following issues were framed by the trial Court for consideration:

(i). Whether the plaintiff is entitled

to claim the relief of partition in respect of the suit properties as put forth in the plaint?

(ii).Whether it is true that there has been a partition in respect of the suit properties between the parties by way of a registered partition deed dated 19.08.1997?

(iii).Whether it is true that the loan of Rs.4,00,000/- had been incurred in connection with the suit properties?

(iv).To what relief the plaintiff is entitled to?

8.In support of the plaintiff's case, PW1 was examined and Exs.A1 & A2 were marked. On the side of the defendants, DWs1 to 3 were examined and no document has been marked.

9.On an appreciation of the materials placed on record and the submissions made, the trial Court was pleased to determine that the plaintiff is entitled to obtain half share in the suit properties and accordingly, the preliminary decree was passed in favour of the plaintiff, however, declined the relief of permanent injunction sought for by the plaintiff and accordingly, disposed of the plaintiff's suit. Aggrieved over the same, the present second appeal has been preferred by the first defendant.

10.The following points arise for determination in this second appeal:

(i).Whether the plaintiff is entitled to obtain the partition and separate possession of half share in the suit properties as claimed in the plaint?

(ii).Whether the plaintiff is liable to discharge the family debts said to have been incurred by the second respondent before seeking the partition and separate possession of her share in the suit properties as put forth by the defendants?

(iii).To what relief the first defendant/appellant is entitled to?

(iv).To what relief the plaintiff/first respondent is entitled to?

11.Point Nos. 1 & 2

The relationship between the parties is not in dispute. The plaintiff and the first defendant are the daughters of the second defendant. It is also not in dispute that the suit properties and the other properties belonged to the family of the second defendant ancestrally and according to the plaintiff, the parties had effected partition in respect of the family properties by a deed of partition dated 19.08.1997, whereunder, it is put forth by the plaintiff that the "A" schedule properties described in the abovesaid partition deed had been allotted to the share of the second defendant and the "B" schedule properties described in the abovesaid partition deed had been allotted to the share of the plaintiff and the first defendant and it is the case of the plaintiff that the "B" schedule properties described in the abovesaid partition deed are the suit properties and accordingly, it is put forth that inasmuch as the suit properties had been allotted to the plaintiff and the first defendant jointly by way of the abovesaid partition deed and as at present, due to difference of opinion, the plaintiff and the first defendant are unable to enjoy the suit properties jointly, it is put forth that she had demanded the partition and allotment of her share in the suit properties to the first defendant and however, as the first defendant had not come forward to effect the partition as claimed, according to the plaintiff, she has been necessitated to institute the suit for appropriate reliefs.

12.As far as the first defendant is concerned, she has admitted the execution of the partition deed dated 19.08.1997 between the parties concerned in respect of the family properties and the allotment of the suit properties jointly to the share of the plaintiff and the first defendant and in addition to that, also admitted that pursuant to the abovesiad partition deed, she had been enjoying her share in the suit properties separately by metes and bounds and however, would resist the plaintiff's case by putting forth the defence that the second defendant had incurred loan in a sum of Rs.4,00,000/- from the others on the strength of the suit properties and accordingly, contended that the plaintiff is liable to discharge her part of the abovesaid debts i.e. Rs.2,00,000/- and without the discharge of the abovesaid debts on the part of the plaintiff amounting to Rs.2,00,000/-, according to the first defendant, the plaintiff is not entitled to seek partition and separate possession of her alleged share in the suit properties and accordingly, prayed for the dismissal of the plaintiff's suit.

13.The second defendant would plead that the partition deed dated 19.08.1997 had been effected nominally, as according to him, the plaintiff and her husband had requested the second defendant to create a partition deed nominally for the purpose

of securing loan from the bank to purchase a lorry and on that basis, it is the case of the second defendant that the abovesaid partition deed had been effected nominally and pursuant to the same, the plaintiff and the first defendant had not enjoyed the suit properties described to have been allotted to them in the abovesaid partition deed and according to the second defendant, the suit properties are the ancestral properties and the same are in his possession and enjoyment and furthermore, it is also pleaded by the second defendant that he had incurred expenses in a sum of Rs.4,00,000/- for celebrating the marriage of his daughters and the abovesaid loan had been obtained only on the strength of the family properties inclusive of the suit properties and therefore, without the discharge of the said loan, according to him, the plaintiff is not entitled to seek the partition in the suit properties and further, according to him, the plaintiff had admitted to discharge the loan in the panchayat convened and hence according to him, the partition deed dated 19.08.1997 came to be effected and therefore, as the plaintiff is liable to discharge her part of the loan abovestated and without doing so, the plaintiff is not entitled to seek the relief prayed for in the suit and thereby, prayed for the dismissal of the plaintiff's suit.

14.The partition deed dated 19.08.1997 effected between the parties has come to be marked as Ex.A1. On a perusal of Ex.A1, it is seen that by way of the same, the plaintiff and the defendants had chosen to divide the family properties amongst themselves and accordingly, it is found that the "A" schedule properties described in the partition deed had been allotted to the share of the second defendant and the "B" schedule properties described in the said partition deed had been allotted to the share of the plaintiff and the first defendant jointly. Ex.A1 is a registered deed. In such view of the matter, when the execution of Ex.A1 deed has been admitted by all the parties and in fact, when according to the first defendant, Ex.A1 partition deed had been acted upon and she had put forth the case that pursuant to the same, she had been enjoying her share in the suit properties separately by metes and bounds, the first defendant cannot be allowed to contend that without discharging the loan amount to the extent of her share qua the debt, the plaintiff is not entitled to seek partition in respect of the suit properties. If really, as put forth by the defendants, the second defendant had incurred any loan on the strength of the family properties inclusive of the suit properties from others and the plaintiff and the first defendant had agreed to discharge the said loan in proportionate to their share and if really, the abovesaid arrangement had been made by the parties concerned in the panchayat convened and when according to the second defendant, only thereafter Ex.A1 partition deed had come to be entered into, if the abovesaid

case projected by the second defendant or for the matter, the case projected by the first defendant has any element of truth, necessary recitals to that effect would have been incorporated in Ex.A1 partition deed. However, no such recital has been mentioned in Ex.A1 partition deed, particularly, with reference to the availment of any debt on the part of the second defendant on the strength of the family properties, and in addition to that, the defendants had not come forward clearly as to when the second defendant had incurred the loan and from whom, he had incurred the loan and on what basis, he had incurred the loan and with reference to the abovesaid particulars absolutely there is no clear and concrete averments in the written statement put forth by the defendants. Therefore, when the case put forth by the defendants that the second defendant had incurred a loan of a sum of Rs.4,00,000/- from the others and when with reference to the particulars of the same, no clear pleas had been set out by the second defendant in the written statement, in such view of the matter, particularly, when with reference to the obtainment of the loan by the second defendant on the strength of the family properties, the same has not spelt out in Ex.A1 partition deed, as above pointed out, the plea of the defendants that the family debt amounting to Rs.4,00,000/- is in existence and the same is required to be discharged by the plaintiff and the first defendant, as such, cannot be readily accepted. Furthermore, the defendants had not endeavoured to detail as to who are the Panchayatars, who had mediated between them and also not evinced interest to examine the so called Panchayatars to prove the so called arrangement effected between them qua the discharge of the loan as put forth by them.

15. During the course of evidence, it is seen that according to the second defendant, he had incurred the loan from others during the period 1990 - 1996 and also admitted that for the obtainment of the said loan, he had only put his signature and he had not secured the signature of his daughters viz., the plaintiff and the first defendant and furthermore, also admitted that till date, the creditors, who had advanced the loan, had not initiated any action against him or in respect of the family properties as such. Therefore, it is obvious that as rightly determined by the trial Court, the alleged loan said to have been incurred or received by the second defendant during 1990 - 1996, at the time of the institution of the present suit, is found to be clearly time barred. Furthermore, if really no such debt had been incurred by the second defendant as put forth by the defendants, necessary materials pointing to the same would have been projected by them. As abovestated, the pleas, with reference to the same, are very very vaguely stated in the written statement. In this connection, the second defendant would endeavour to examine one Srinivasan as DW3, from whom, he is stated to have borrowed loan. If really the second defendant

had borrowed loan from DW3 Srinivasan, necessary averments with reference to the same would have mentioned in the written statement filed by him. Furthermore, DW3 Srinivasan would state that the second defendant had incurred loan from him and also from others and according to DW3, he has advanced the said loan on 01.08.1997 and when with reference to the same, neither PW3 nor the second defendant has projected any materials and as rightly found and held by the trial Court, when according to the second defendant, he had incurred the loan during 1990 - 1996, quiet inconsistent to the same, PW3 would claim the borrowal of money from him by the second defendant on 01.08.1997. In any event, as held by the trial Court, when there is no material at all worth acceptance evidencing the obtainment of the loan on the part of the second defendant, particularly, on the strength of the suit properties and when with reference to the same, no recitals are contained in Ex.A1 partition deed and equally, when there is no material on the part of the defendants that the plaintiff and her husband had requested the creation of the partition deed for the purpose of securing loan from the bank to purchase a lorry and as rightly held by the trial Court for securing the loan from the bank, even the solvency of the guarantors would be sufficient and there is no need for the creation of any partition deed, as such, for the purpose of the loan and in such view of the matter, when there is absolutely no material on the part of the defendants that the second defendant had incurred any loan from others on the strength of the suit properties in particular and the so-called loan is still out standing and as abovenoted, when there is no material placed on the part of the defendant evidencing that any action had been taken by the so-called creditors against the second defendant or against the family properties inclusive of the suit properties till date and when the first defendant has admitted the coming into effect of Ex.A1 partition deed and also when it is seen that pursuant to Ex.A1 partition deed, the patta had been jointly issued in favour of the plaintiff and the first defendant in respect of the suit properties, in all, it is seen that the case projected by the second defendant, in particular, that Ex.A1 partition deed had been effected nominally for the purpose of enabling the plaintiff and her husband to secure the loan from the bank cannot at all be believed and accepted and rightly rejected by the trial Court. Equally, the case put forth by the defendants that the second defendant had incurred debt in a sum of Rs.4,00,000/- on the strength of the suit properties and other properties is also found to be unacceptable, particularly, considering the position that there is no material at all on the part of the defendants pointing to the same and furthermore, when it is seen that the evidence of DW3 does not inspire confidence qua the same and accordingly, when it is found that Ex.A1 partition deed had come into effect and thereby, the plaintiff and the first defendant are found to have

enjoyed the suit properties allotted to them jointly by way of the same by obtaining patta etc., and however, as at present, the plaintiff and the first defendant are unable to enjoy the suit properties jointly and peacefully, it is seen that the plaintiff had been necessitated to seek partition and separate possession of her share in the suit properties and hence, the need for the suit on the part of the plaintiff for partition.

16. In the light of the abovesaid discussions, when the defendants had failed to establish the existence of any debt in respect of the suit properties and the liability of the plaintiff to discharge her alleged share of the so-called debt, in such view of the matter, the plaintiff is found to be not liable to discharge any debt as put forth by the defendants for securing the partition and separate possession of her share in the suit properties. Resultantly, the plaintiff is found to be entitled to seek partition and separate possession of her share in the suit properties as prayed for. Accordingly, the point Nos.1 and 2 are answered in favour of the plaintiff and against the first defendant/appellant and the second defendant.

17. Point Nos.3 &4

In conclusion, the Judgement and Decree dated 30.09.2009 passed in O.S.No.13 of 2005 on the file of the Additional District Judge/Fast Track Court, Namakkal are confirmed and resultantly, the first appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Sms

To

1. The Additional District Judge,
Fast Track Court, Namakkal.

2. The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.P.Jagadeesan, Advocate, S.R.No. 65562

+1cc to Mr.D.Shivakumaran, Advocate, S.R.No. 65583

A.S.No.187 of 2010

SAI (CO)

GN(06/02/2020)