

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :21.10.2019
PRONOUNCED ON: 05.11.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

A.S.No.834 of 2010
and
M.P.No.1 of 2010

Kuppusamy ... Appellant/2nd Defendant

Vs.

1. Anjalam

2. Manivannan

3. Saravanan

4. Valarmathi

5. Nirmala

6. Anaiyammal @ Perumayee ... Respondents/Plaintiffs
1 to 5/1st Defendant

Prayer: First Appeal filed under Section 96 r/w Order 41 (Rule (1) of C.P.C., against the judgment and Decree dated 25.03.2008 passed in O.S.No.61 of 2007 on the file of the Additional District Judge at Salem (Fast Track Court No.1 Salem).

For Appellant : Mr.L.Rajendran

For RR1 to R5 : Mr.S.Saravanakumar
for M/s.I. Abrar Mohamed Abdullah

For RR6 : Dismissed vide court order dated
19.10.2012

J U D G M E N T

Aggrieved over the judgment and Decree dated 25.03.2008 passed in O.S.No.61 of 2007 on the file of the Additional District Judge, Fast Track Court No.1, Salem, the second defendant has preferred 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 plaintiffs in brief is that the first plaintiff is the mother of the plaintiffs 2 to 5. First defendant is the sister of the first plaintiff. The second defendant is the son of one Mrs. Madachi @ Chinnaponnu, who is one of the sisters of the first plaintiff and the first defendant. The plaint schedule properties originally belonged to the father of the first plaintiff and the first defendant by name Kootha Konar. The said Kootha Konar, his wife Nallammal, their daughters namely the first defendant, the deceased Madachi @ Chinnaponnu, the first plaintiff Ponnammal and Kaliaperumal, the husband of the first defendant and P. Narayanan, the husband of the first plaintiff had entered into a deed of partition dated 22.10.1977 and the B schedule properties described in the abovesaid partition deed which are the present suit properties had been allotted to the first plaintiff, her husband, the first defendant and her husband and the abovesaid four persons had been enjoying the suit properties since then without any division and therefore the abovesaid four persons are entitled to 1/4 share each. Narayanan died intestate on 12.03.1995 leaving behind him, the plaintiffs as his legal heirs. Kaliaperumal had died intestate on 21.11.2004 leaving behind him his wife, the first defendant as the sole heir. The second defendant's mother and Ponnammal were living together in the C schedule properties of the abovesaid partition deed and they were also given the vested remainder in the A schedule properties of the abovesaid partition deed after the death of Kootha Konar and his wife, who were given life estate in respect of the A schedule properties of the abovesaid partition deed. The second defendant has no manner of right, title or interest or the possession over the plaint schedule properties, however he is giving out as if the owner of the entire extent in S.F.No.181/1 covering an extent of acre 4.70 with a well and 5 HP electric motor and a service connection. The plaintiffs are together entitled to half share in it. The first defendant is entitled to other half share in the plaint schedule properties. The second defendant has nothing to do with the same and furthermore the second defendant on 12.06.2007 has also given out that he had obtained the sale deed from the first defendant in respect of the abovesaid properties and would sell the same within a week and hence according to the plaintiffs, the need for the suit for appropriate reliefs.

5. The first defendant has filed the written statement and admitted the relationship between the parties and also admitted that the suit properties originally belonged to the deceased Kootha Konar and the partition effected by way of a partition deed dated 22.10.1977 in respect of the suit properties and other properties as putforth in the plaint and further admitted that the four persons described in the plaint are allotted and entitled to the plaint schedule properties and further admitted that after the demise of the first plaintiff's husband and the first defendant's husband, the plaintiffs are entitled to half share and the first defendant entitled to half share in the plaint schedule properties. Further putforth the case that the second defendant and Ponnammal were allotted C schedule of the partition deed dated 22.10.1977 and given vested remainder in respect of the A schedule properties of the partition deed. Further putforth the case that the second defendant had no manner of right, title or interest over the suit properties. Further disputed the claim of the second defendant that he is the owner of the plaint schedule properties. Further would contend that the second defendant had claimed that he had purchased the plaint schedule properties from the first defendant by way of a sale deed, however no such sale deed had been effected by the first defendant in respect of the second defendant. On verification, the first defendant came to know that the sale deed had been brought out by the second defendant in respect of the property comprised in S.F.No.181/1 of an extent of acre 4.70 and the abovesaid sale deed is a fraudulent document and the first defendant is never necessitated to sell her property to the second defendant. At the old age, the first defendant was depending upon the second defendant's assistance and help. The second defendant cunningly took advantage of the same and exploited the situation. In fact, the first defendant had entrusted 50 sovereigns of gold and Rs.1,00,000/- to the second defendant and reposed faith and confidence in the second defendant as he being her sister's son. Taking advantage of the abovesaid situation by exercising influence and dominating the will of the first defendant, the second defendant is attempting to secure a separate patta and also represented that he would be able to manage the properties if a power of attorney had been executed in his favour. The first defendant being an illiterate lady agreed to execute the power of attorney in favour of the second defendant and the second defendant took her to the Registrar's office and obtained her thumb impression in a deed representing that the abovesaid deed is only a power of attorney. The first defendant is never necessitated to alienate the property allotted to her under the partition deed. The second defendant is guilty of cheating, fraud, misrepresentation and misappropriation. In this connection, the first defendant had lodged a police complaint

against the second defendant. Hence the first defendant prays for passing of the preliminary decree as prayed for.

6. On the basis of the above pleas set out by the respective parties, the following issues were framed by the trial court for consideration:-

- i. Whether the suit properties are in joint possession?
- ii. Whether the partition deed dated 22.10.1977 is valid or not?
- iii. Whether the plaintiffs are entitled for the share in the suit property?
- iv. Costs and other reliefs?

7. In support of the plaintiffs' case, P.W.1 was examined. Exs.A1 to A3 were marked. On the side of the first defendant, no oral and documentary evidence has been adduced.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to grant the preliminary decree in favour of the plaintiffs as prayed for by allotting one share in favour of the plaintiffs and also granted the relief of permanent injunction as prayed for. Impugning the same, the second defendant has preferred the First Appeal.

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

- i. Whether the judgment and Decree dated 25.03.2008 passed in O.S.No.61 of 2007 on the file of the Additional District Judge, Fast Track Court No.1, Salem is liable to be set aside as put forth by the second defendant/appellant?
- ii. To what relief the second defendant/appellant is entitled to?
- iii. To what relief the plaintiffs are entitled to?

10. The relationship between the parties is not in dispute. It is found that the suit properties and other properties belonged to Kootha Konar, the father of the first plaintiff and the first defendant. It is further found that Kootha Konar and his daughters and the husbands of the first plaintiff and first defendant had effected partition in respect of the properties belonging to the family by way of a partition deed dated 22.10.1977 and the copy of the abovesaid partition deed has been marked as Ex.A1. The plaintiffs would put forth the case that by way of the abovesaid partition deed, the suit

properties had been allotted to the share of the first plaintiff and the first defendant and their husbands respectively. It is also putforth by the plaintiffs that the husbands of the first plaintiff and the first defendant had died intestate. Therefore, it is found that the share of their respective husbands would be succeeded by their legal heirs respectively and thereby, it is further found that as such the plaintiffs would be entitled to half share in the plaint schedule properties and the first defendant would be entitled to half share in the plaint schedule properties.

11. It is contended that the second defendant has no manner of right, title or interest whatsoever in respect of the plaint schedule properties and on the other hand, he attempted to claim a false title over the same by putting forth the case that he has purchased the same from the first defendant and thereby attempting to alienate the same, hence according to the plaintiffs, they need for the suit for appropriate reliefs. As could be seen from the materials available on record only the first defendant has filed the written statement and in the written statement filed by the first defendant, she has in toto accepted the plaintiffs' case and also accepted that the plaintiffs are entitled to claim half share in the plaint schedule properties and the other half share belong to her.

12. Therefore, considering the abovesaid pleas putforth by the respective parties and the materials available on record, particularly, considering that the suit properties had been allotted to the first plaintiff and the first defendant and their husbands respectively and thereby the plaintiffs are entitled to claim half share in the plaint schedule properties, it is found that the trial court has rightly determined that the plaintiffs are entitled to obtain half share in the plaint schedule properties and accordingly granted the reliefs in favour of the plaintiffs as prayed for.

13. Despite service, the second defendant has not chosen to challenge the plaintiffs' suit and remained absent and accordingly he had been set exparte by the trial court. It is now found that only the second defendant has chosen to prefer the Appeal challenging the judgment and decree of the trial court.

14. When as could be seen from the materials available on record and as per Ex.A1 partition deed, the suit properties had been allotted only to the first plaintiff, the first defendant and their husbands, accordingly, the plaintiffs would

be entitled to claim half share in the same as above pointed out. When there is no material to hold that the first defendant had alienated her share in the suit properties in favour of the second defendant by way of a sale transaction and not claimed to have acquired the properties by way of a Will said to have been executed by Kootha Konar and particularly when the alleged sale deed and the Will projected by the second defendant in the appeal grounds not having been placed for consideration and furthermore, when as above pointed out, the second defendant having not chosen to contest the plaintiffs' case in any manner and remaining exparte and in such view of the matter, when the claim of title putforth by the second defendant by way of the alleged purchase from the first defendant and the Will said to have been executed by Kootha Konar in favour of the first defendant and thereby the partition deed Ex.A1 would cease to operate as such, the abovesaid pleas could not be accepted in the absence of pleas and materials pointing to the same before the trial court. In such view of the matter, as rightly putforth by the plaintiffs' counsel, when the grounds projected by the second defendant for setting aside the judgment and decree of the trial court has no basis or legs to stand, particularly in the absence of any pleas or materials pointing to the same and when the second defendant has now only focused on the Will said to have been executed by Kootha Konar in favour of the first defendant and when no such plea of Will has been taken by the first defendant in her written statement and when the alleged claim of purchase of the suit properties by the second defendant from the first defendant has also not been buttressed by any materials whatsoever and in such view of the matter, as rightly putforth by the plaintiffs' counsel, the judgment and decree of the trial court needs no interference as sought to be projected by the second defendant.

15. In the grounds projected by the second defendant in the First Appeal, no plea has been taken as to why the second defendant had not chosen to contest the plaintiffs' case before the trial court and remained exparte. Therefore, when the second defendant had chosen to remain exparte before the trial court and not contested the plaintiffs' case, despite having knowledge about the lis instituted by the plaintiffs and accordingly in the absence of any pleas and materials in support of the grounds now projected by him as such, in the light of the abovesaid factors, it is found that the claim of the second defendant that he is entitled to the plaint schedule properties cannot be accepted and the same is found to be based without any foundation and in such view of the matter, the judgment and decree dated 25.03.2008 passed in O.S.No.61 of 2007 on the file of the Additional District Judge, Fast Track Court No.1, Salem do not warrant any interference. Accordingly, the Point No.1 is answered.

Point Nos.2 and 3:

16. For the reasons aforesated, the judgment and decree dated 25.03.2008 passed in O.S.No.61 of 2007 on the file of the Additional District Judge, Fast Track Court No.1, Salem are confirmed and resultantly, the First Appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Additional District Judge at Salem,
Fast Track Court No.1,
Salem.

Copy to

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

+1cc to Mr.L.Rajendran, Advocate Sr.91337

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A.S.No.834 of 2010
and
M.P.No.1 of 2010

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