

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.08.2019

PRONOUNCED ON : 25.09.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.836 of 2010

1. R. Manimekalai
2. K.Selvaraj
3. S.Umamakeswari
- 4.Ramamurthi

... Appellants/
defendants 3 to 6

Vs.

1. C.Mohan
2. C.N.Raja
3. C.Alamelu
4. P.Kumarasamy
- 5.K.Palaniyathal

... Respondents 1 to 3/Plaintiffs

... Respondents 4&5/
Defendants 1&2

Prayer: Appeal Suit filed under Section 96 of Civil Procedure Code as against the judgment and decree dated made by the Additional District Judge, (Fast Track Court II) Gobichettipalayam dated 30th April 2010 made in O.S. No.19 of 2007.

For Appellants : Mr.V.Ayyadurai, Senior Counsel
for M/s. P.Muthukumarasamy

For R1 to R3 : Mr.M.Guruprasad

For R4 & R5 : K.Govindanesan

JUDGMENT

Aggrieved over the judgment and decree dated 30.04.2010, passed in O.S. No.19 of 2007, on the file of the Additional District Judge, (Fast Track Court II), Gobichettipalayam, the defendants 3 to 6 have 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 plaintiffs 1 and 2 are the sons of the deceased M.Chinnasamy and the third plaintiff is the wife of the deceased M.Chinnasamy. The first defendant is the husband of the second defendant and the defendants 3 to 6 are the alienees. M.Chinnasamy's family

totally purchased 4.64 acres under different sale deeds in S.F.No.109 of Modachur Village. The second defendant's brother late V.S.Palanisamy purchased acre 1.73 in S.F.No.109 of Modachur Village on 13.12.1989 by way of two sale deeds and the first plaintiff purchased 0.70 acres on 12.12.1986 and the third plaintiff purchased 0.87 acres on 22.10.1990. Late M.Chinnasamy purchased acres 1.50 on 09.09.1982, 0.87 acres on 22.10.1990 and 0.70 acres on 22.06.1994. Late V.S.Palanisamy and M.Chinnasamy were good friends and late V.S.Palanisamy executed a power of attorney dated 20.04.1990 in favour of late Chinnasamy for marking house sites of his land 1.73 acres along with that of late Chinnasamy. Hence the plaintiffs' family property of 3.33 acres was merged with 1.73 of V.S.Palanisamy and the approval of the sites was done with the efforts taken by late Chinnasamy. The details of the approved plan had been set out in the plaint and late V.S.Palanisamy died on 11.06.1998. On 01.02.1998, he executed an unregistered Will in favour of his sister, the second defendant and no specific sites were allotted to Late V.S.Palanisamy on the date of the abovesaid Will. So far no agreement has been taken place between the plaintiffs and the defendants 1 and 2 about the sharing of sites considering the extent earmarked for the parks, shop, road etc., as per the extent of land they had contributed. The Will executed in favour of the second defendant is not admitted by the plaintiff. Out of 1.73 acres, 1.46 acres only will be available to late V.S.Palanisamy after deductions of the proportionate extent left for common purpose. On 09.05.2003 and on 01.11.2004, the first defendant obtained gift settlement from the second defendant and the house site numbers were chosen unilaterally in the said deeds in a collusive manner and they had been done without the knowledge of late Chinnasamy and the plaintiffs. The plaintiff and the legal heirs of late V.S.Palanisamy are yet to divide the total house sites out of 5.06 acres for them after deducting the reservation sites. Till such time the defendant cannot sell the house sites mentioned in the settlement deeds dated 09.05.2003 and 01.11.2004 without considering the reservation sites such as shops, parks etc., Hence, the suit is filed to divide and allot specific sites of plaintiffs out of total 5.06 acres to the land extent of acres 3.3 and to restrain the defendants from selling or alienating the house sites mentioned in the abovesaid settlement deeds without a proper division and consent and knowledge of the plaintiffs and hence the suit.

5. The defendants 1 and 2 resisted the plaintiffs suit contending that the extents of land purchased by Chinnasamy and Palanisamy are lying distinctly and they had always kept the identity of their properties separately and it is true that V.S.Palanisamy had executed a power of attorney dated 20.04.1990, in favour of late Chinnasamy to layout sites in his land measuring acres 1.73, but no such power had been given to make the house sites in acres 1.73 along with that of the land belonging to Chinnasamy. The allegation that acres 1.73 was merged with acres 3.3 is denied. No merger can take place when

common layout plan for different owners were approved. After the approval of the layout plan, the plaintiffs can sell the sites only in respect of the lands covered under their sale deeds and they do not have any right to sell or deal with the sites that are comprised in acres 1.73 purchased by V.S.Palanisamy and passed on to the defendants 3 to 6. The Will dated 11.06.1998 executed by V.S.Palanisamy in favour of the second defendant is true, valid and binding on the plaintiffs. There was no agreement regarding the share of the sites. The plaintiffs are not entitled for any sharing as claimed in the plaint. The allegation that the total extent of the layout is 5.06 acres is not correct. The reservation of the sites for shops, parks etc., does not enable the plaintiffs to claim any right over the land belonging to V.S.Palanisamy. The allegations that the defendants had carved out house sites unilaterally in a collusive manner is false. The allegations that the defendants cannot sell the sites without considering the reservation of the sites such as shops, parks etc., is false. Though the layout plan was approved on 20.11.1995, till date, neither Chinnasamy nor Palanisamy ever made a claim against the defendants that separate lands had been earmarked for shops, parks etc., and therefore, according to the defendants 1 and 2, the plaintiffs have no cause of action to lay the suit and the suit is liable to be dismissed.

6. The defendants 3 to 6 resisted the plaintiffs suit contending that they adopt the written statement filed by the defendants 1 and 2 and according to them, they had purchased the house sites on 22.01.2007 as detailed in the written statement for valid consideration and they had purchased the properties after verifying the documents of their vendors and satisfying that their vendors has good title to the property and that the property is free from encumbrance. The defendants are the bonafide purchasers for valid consideration and hence, the plaintiffs have no cause of action to institute the suit against the defendants and the 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:

1. Whether the plaintiffs are entitled to get plots by dividing the suit properties as prayed for?

2. Whether the plaintiffs are entitled to get permanent injunction as prayed for?

3. Whether it is correct that the suit is bad for nonjoinder of necessary parties?

4. Whether the suit has cause of action?

5. To what relief the plaintiffs are

entitled to get?

8. In support of the plaintiffs' case, PW1 was examined, Exs.A1 to A16 were marked. On the side of the defendants, DWs 1 and 2 were examined, Exs.B1 to B15 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 grant the relief of partition in favour of the plaintiffs as prayed for and also granted the relief of permanent injunction as prayed for and accordingly, disposed of the plaintiffs' suit. Impugning the same, the defendants 3 to 6 have preferred the First Appeal.

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

(1) Whether the plaintiffs are entitled to obtain partition and separate possession of plots as prayed for?

(2) Whether the plaintiffs are entitled to obtain the relief of permanent injunction as claimed in the plaint?

(3) To what relief the plaintiffs are entitled to?

(4) To what relief the defendants 3 to 6/appellants are entitled to?

Point Nos.1 & 2:

11. As could be seen from the materials placed on record, it is found that V.S.Palanisamy since deceased had executed the general power of attorney in favour of M.Chinnasamy since deceased on 20.04.1990 and the abovesaid power of attorney deed has been marked as Ex.A6. By way of Ex.A6, it is found that V.S.Palanisamy had permitted Chinnasamy to make house sites of his lands 1.73 acres after obtaining necessary permission. It is found that the plaintiffs family i.e., family of Chinnasamy own acres 3.33 and it is found that based on Ex.A6 power of attorney deed, Chinnasamy had merged the abovesaid acres 3.3 along with the acres 1.73 of V.S.Palanisamy and after much efforts had obtained a layout of the sites of the abovesaid total extent of 5.06 acres. That Chinnasamy had obtained the approval of the sites of the total extent of 5.06 acres is not in dispute. As above pointed out, the defendants have not disputed the execution of the power of attorney Ex.A6 deed by V.S.Palanisamy in favour of Chinnasamy qua the approval of the house sites as regards the extent of acres 1.73. All that they would state is that Chinnasamy had no authority to merge his land 3.3 acres with the extent of land belonging to V.S.Palanisamy covering 1.73 and obtain the common layout for the house sites for the total extent of 5.06 acres and therefore, on that basis, according to them, the plaintiffs are not entitled to earmark more extent of land for common purpose ,

such as, shops, parks, etc., in the extent of the acres 1.73 land belonging to V.S.Palanisamy and therefore, according to the defendants, the plaintiffs are not entitled to claim partition of the separate plots based on the merger of the abovesaid two extents of land belonging to V.S.Palanisamy and Chinnasamy by way of formation of house sites.

12. It is found that V.S.Palanisamy had executed a Will in favour of his sister, namely, the second defendant and based on the abovesaid Will, the second defendant is found to have executed settlement deeds in favour of her husband, namely, the first defendant and the abovesaid documents have been exhibited in the matter. Now, according to the plaintiffs, in the settlement deeds executed in favour of the first defendant by the second defendant, the house sites had been unilaterally fixed without having regard to the reservations of the sites for shops, parks, etc., and therefore, apprehending that if the defendants 1 and 2 are allowed to alienate the house sites without reserving the land for the formation of the sites for parks, shops, etc., the same would cause unnecessary trouble and hardship and accordingly, the plaintiffs would put forth the case that they had been necessitated to lay the suit against the defendants for appropriate reliefs.

13. The only point of issue between the parties is that according to the defendants, Chinnasamy had no entitlement to merge his lands and the lands of V.S.Palanisamy for the formation of the house sites. No doubt under the power of attorney deed Ex.A6, V.S.Palanisamy had not directed Chinnasamy to form house sites of the extent of acres 1.73 by merging the extent of acres 3.3 belonging to Chinnasamy. However, as rightly contended by the plaintiffs' counsel, there is no prohibition on the part of Chinnasamy for merging the two extents of land before seeking the approval of the layout for the formation of the house sites in the total extent. When Chinnasamy had the power to form the house sites qua the lands belonging to V.S.Palanisamy and when Chinnasamy deemed it fit to merge the land of V.S.Palanisamy and the land belonging to him and accordingly, moved for the sanction of the house sites of a total extent of 5.06 acres and necessary plan had been since obtained by him, in such view of the matter, subject to the reservations of the sites for the common purposes earmarked for parks, shops, etc., it is found that only the remaining house plots would be available to the parties, as regards the extent owned by them. As above stated, only with reference to the said plots, the parties would be entitled to deal with the same and the parties cannot be allowed to exclude the reservations of the sites for the common purposes earmarked for parks, shops, etc., and any endeavour to alienate the house sites on their own, the same would defeat the arrangement of the formation of the house sites in the approval plan.

14. Considering the materials available on record, insofar

as this case is concerned, the defendants 1 and 2 had not chosen to enter into the witness box and considering the evidence of DW2, Ramamurthi, it is seen that he is aware of the execution of power of attorney deed by V.S.Palanisamy in favour of Chinnasamy and also the obtainment of the approved layout by Chinnasamy by merging the land of V.S.Palanisamy and his land and in such view of the matter, when the intending purchasers, namely, the defendants 3 to 6 are put on notice about the same and they having noted about the reservation of the sites earmarked for shops, parks etc., in such view of the matter, the intending purchasers, namely, the defendants 3 to 6 can secure the plots only after excluding the sites reserved for the shops, parks etc., and they cannot be allowed to claim right over the sites reserved for common purpose and accordingly, it is found that they would be entitled to secure the house plots from their vendors namely, the defendants 1 and 2.

15. Considering the facts and circumstances of the case in entirety and when the power of attorney deed Ex.A6 empowers Chinnasamy to obtain the house sites qua the land belonging to V.S.Palanisamy and there is no prohibition on the part of Chinnasamy for merging the two extents of lands with the land of Palanisamy for the formation of house sites and in such view of the matter, when it is seen that due to the efforts taken by Chinnasamy, the sites had been formed for the total extent of 5.06 acres and accordingly, the plaintiffs and the defendants, as held by the trial Court, would be entitled to obtain plots by dividing the house plots within their respective properties and accordingly, it is found that the plaintiffs would be entitled to seek the partition of their plots within their extent of 3.33 acres belonging to them excluding the sites reserved for the purpose of shops, parks, road etc., and similarly, the defendants would also be entitled to make allotment of the house sites within their extent of 1.73 acres belonging to V.S.Palanisamy after excluding the house sites reserved for shops, parks etc., and contrary to the same, the defendants are not entitled to alienate or encumber any portion of the suit property and in such view of the matter, it is found that the trial Court is justified in granting the reliefs of partition and permanent injunction in favour of the plaintiffs as prayed for.

16. For the reasons aforesaid, the plaintiffs are entitled to partition and separate possession of the house sites in respect of the extent of 3.3 acres after deducting the extent of reserved sites left for parks, shops, roads etc., as prayed for and also entitled to the relief of permanent injunction as claimed in the plaint. Accordingly, the point Nos.1 and 2 are answered.

17.

Point Nos.3 and 4:

17. For the reasons aforesated, the judgment and decree dated 30.04.2010, passed in O.S. No.19 of 2007, on the file of the Additional District Judge, (Fast Track Court II), Gobichettipalayam are confirmed and resultantly, the First Appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

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To:

The Additional District Judge,
(Fast Track Court II), Gobichettipalayam.

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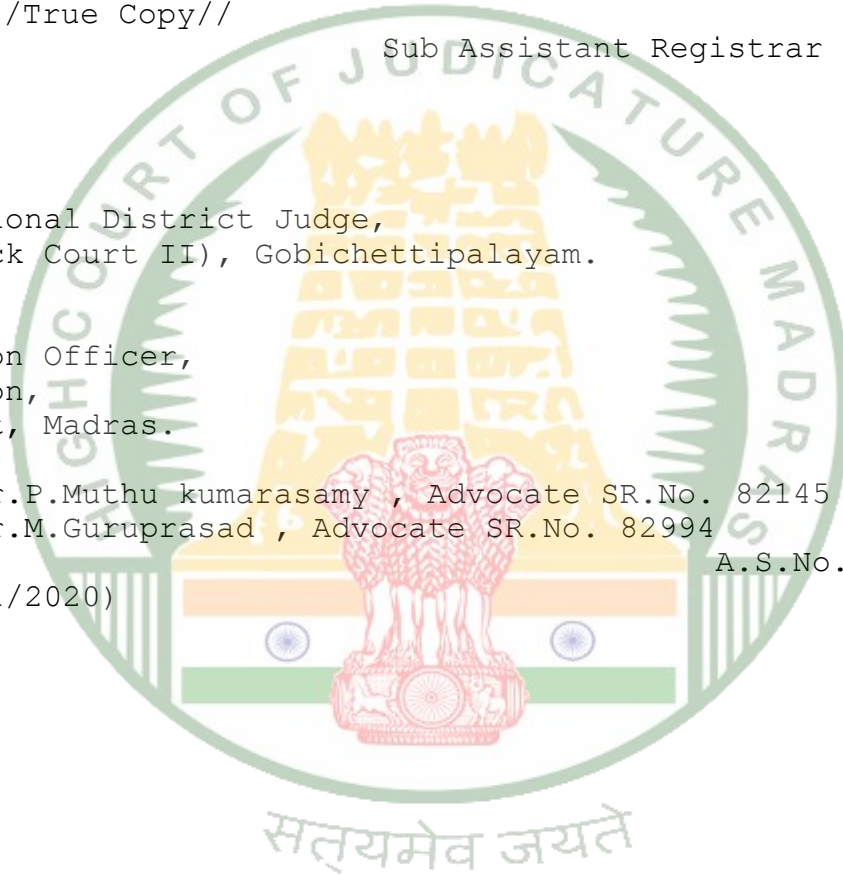
The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.P.Muthu kumarasamy , Advocate SR.No. 82145

+1cc to Mr.M.Guruprasad , Advocate SR.No. 82994

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A.SK(21/01/2020)



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