

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 22.01.2019

DATED: 30.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A. No. 944 of 2003

And

C.M.P.No. 8598 of 2003

Natarajan .. Appellant/Appellant/2nd Defendant

Vs.

1. Rajathi .. 1st Respondent/1st Respondent/Plaintiff

2. Shanmuga Gounder

.. 2nd Respondent/2nd Respondent/1st defendant

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree passed by the Subordinate Judge, Athur, in A.S.No. 20 of 2000 dated 11.01.2002 confirming the Judgment and Decree passed by the District Munsif, Athur, in O.S.No. 296 of 1995 dated 25.07.2000.

For Appellant : Mr. S.Parthasarathy

For 1st Respondent : Mr.K.Ponmani
for Mr.V.Rajesh

For 2nd Respondent : No appearance

JUDGMENT

The second defendant Natarajan in O.S.No. 296 of 1995 on the file of the District Munsif Court, Athur, is the appellant herein.

2. O.S.No. 296 of 1995 had been filed by the plaintiff Rajathi, daughter of the appellant herein, seeking partition and separate possession of 1/4th share in the suit property. By Judgment and Decree dated 25.07.2000, the suit was decreed and a preliminary decree was passed as prayed for. Thereafter the second defendant filed A.S.No. 20 of 2000 before the Sub Court, Athur. By Judgment and Decree dated 11.01.2002, the First

Appeal was dismissed and the Judgment of the trial Court was confirmed. Challenging that Judgment, the second defendant had filed the present Second Appeal.

3. The Second Appeal had been admitted on the following two substantial questions of law:-

"(i) Whether the Courts below are right in declaring Ex.D5 as null and void when there is no issue framed with regard to the questioning the validity of Ex.D5?;

(ii) Whether the Courts below are right in holding that the first respondent is entitled for partition without mentioning about the debts in the said property?"

O.S.No. 296 of 1995 - District Munsif Court, Athur:

4. The plaintiff Rajathi was a minor at the time of institution of the suit. Pending the suit, she attained the age of major. She filed the suit seeking partition and separate possession of 1/4th undivided share in the suit property. The suit was filed against her paternal grandfather Shanmuga Gounder and her father Natarajan. The suit property was described as land measuring 2.69.0 hectares with 5 HP electric motor pump set in S.N.202/2, Pattudurai Village, Thalaivasal, Salem District.

5. According to the plaintiff, she was born to the second defendant. Her mother was Sundaram. The second defendant ill-treated her mother demanding dowry. He threw her and the plaintiff, who was a child out of the house. The second defendant then married one Deepa, daughter of Paneer, even though the marriage with the plaintiff's mother was subsisting. It was claimed that the second defendant had falsely prepared a partition deed dated 14.12.1994 between him and the first defendant. It was claimed that the partition deed is a sham and nominal document created to cheat the claims of the plaintiff and her mother. It was further claimed that the properties were ancestral properties. The plaintiff claimed entitlement to 1/4th undivided share according to Tamil Nadu Act 1 of 1990. The plaintiff also claimed that the debts incurred by the defendants will not bind her.

6. The plaintiff issued notice on 16.10.1995. Since the defendants did not come forward to give her share of the property, the suit had been filed. The first defendant filed a written statement admitting the marriage between the second defendant and Sundaram, the mother of the plaintiff. It was stated that that the second defendant was his only son. It was also admitted that the suit properties were ancestral

properties. It was also admitted that the plaintiff was entitled to a share under Tamil Nadu Act 1 of 1990. However, it was stated that the property was already divided on 14.12.1994 by a registered partition deed. It was stated that the defendants had incurred debts and were unable to pay interest. It was stated that unless the lands are sold, the property may be brought in auction for sale. It had been stated that the partition had become final. An additional written statement was filed stating that the first defendant was not a necessary party to the suit.

7. The second defendant filed a written statement admitting the marriage between himself and Sundaram, the mother of the plaintiff. He accepted that the plaintiff was born to him. However he denied allegations of ill-treatment of Sundaram and also the allegation of marriage with Deepa. He stated that he had entered into a partition deed with his father and consequently, claimed that the plaintiff's claim cannot be granted. He stated that he had incurred debts and that the plaintiff was also responsible for the repayment of the debts. He stated that the plaintiff was entitled to one half share of his share. The second defendant filed an additional written statement stating that the Court fee should have been paid under Section 37(1) of the Tamil Nadu Court Fees and Suit Valuation Act.

8. On the basis of the above pleadings, the District Munsif, Athur, framed the following issues for trial:-

- (i) What is a share of the plaintiff in the suit property?;
- (ii) Whether the plaintiff is liable to repay the debts?;
- (iii) Whether the plaintiff is entitled for the relief claimed?; and
- (iv) To what other relief?

The following additional issues were also framed:-

- (i) Whether the suit is bad for misjoinder of parties?; and
- (ii) Whether the suit is maintainable?

9. During trial, the plaintiff examined herself as PW-1 and her mother Sundaram as PW-2. The first defendant examined himself as DW-1. The defendants also examined Somasundara Goundar, Thangavelu, Sengottuvelu and Arumugam as DW-2 to DW-5. The second defendant Natarajan was examined as DW-6. The plaintiff did not file any documents. The defendants filed Exs. B-1 to B-5. Ex.B-1 dated 06.12.1980 was the record for filing of O.S.No. 178 of 1980 by DW-4 Sengottuvelu against the first defendant; Ex.B-2 was the promissory note executed by Shanmuga

Gounder dated 14.12.1994; Ex.B-3 was the promissory note executed by Shanmuga Gounder in favour of Krishnan dated 13.12.1990; and Ex.B-4 was the partition deed executed between the first and second defendants dated 14.12.1994.

10. On consideration of the oral and documentary evidence, the learned District Munsif, Athur, specifically found that the suit properties were ancestral properties and that the plaintiff was entitled to the benefit of the Tamil Nadu Act 1 of 1990. It was also found that to cheat her of her share the defendants had entered into a sham and nominal partition deed Ex.B-5 dated 14.12.1994. It was specifically found that the debts said to have been incurred by the first and second defendants were fabricated and that the documents filed were also false and fabricated documents. It was specifically found that the debts, even if incurred, had been incurred only after the plaintiff and her mother were chased out of the house and consequently, the plaintiff cannot be held to be liable for the said debts.

11. Holding as above, the District Munsif, Athur, decreed the suit and also declared that the document dated 14.12.1994 in Ex.B-5 was a fraudulently prepared document and decreed the suit with costs.

A.S.No. 20 of 2000 - Sub Court, Athur:

12. Challenging that Judgment, the second defendant filed the said First Appeal. This came up for consideration before the Sub Court, Athur. By Judgment and Decree dated 11.01.2002, the Sub Judge, Athur, framed points for consideration and reappraised the evidence. The learned Sub Judge also found as a fact that the plaintiff and her mother were chased out of the house 13 years prior to the filing of the suit and thereafter the second defendant had incurred debts, for which the plaintiff cannot be held responsible. The learned Sub Judge also found that the partition deed Ex.B-5 dated 14.12.1994 was a sham and nominal document entered into between the two defendants only to cheat the plaintiff of her share. It was specifically found that the debts were falsely created for the purpose of the suit. Finally, the Appeal was dismissed. The Judgment and Decree of the Trial Court was confirmed.

S.A.No. 944 of 2003:

13. Challenging that Judgment the second defendant Natarajan had filed the present Second Appeal.

14. The Second Appeal had been admitted on the following two substantial questions of law:-

“(i) Whether the Courts below are right in

declaring Ex.D5 as null and void when there is no issue framed with regard to the questioning the validity of Ex.D5?;

(ii) Whether the Courts below are right in holding that the first respondent is entitled for partition without mentioning about the debts in the said property?"

15. For the sake of convenience even though the second defendant is the appellant, the parties will be referred as plaintiff, first defendant and second defendant.

16. The plaintiff is the daughter of the second defendant. The second defendant is the son of the first defendant. The suit property, namely, land measuring 2.69.0 hectares together with 7 hp electric motor pump set in S.No. 202/2, Pattudurai village, Thalaivasal, Salem District, is admittedly an ancestral property. The plaintiff was aged 13 years at the time of filing the suit. She was a minor. Pending the suit, she attained the age of majority. She filed the suit seeking 1/4th undivided share in the suit property taking advantage of Tamil Nadu Act 1 of 1990. Both the Courts below have held that she is entitled to partition and separate possession of 1/4th share in the suit property. The defence taken by the defendants was that they had entered into a partition deed on 14.12.1994 which was marked as Ex.B-5. Both the Courts below found that it was the document was created to cheat the plaintiff of her legitimate right of share in the property. Both the Courts also found that the debts said to have been incurred by the defendants have been falsely created and have been stated only for the purpose of the suit. Both the Courts below rejected the evidence let in in this regard by the defendants as false evidence. They specifically found that the plaintiff was not entitled to share in the debts incurred by her father and grandfather particularly since those debts were incurred after she and her mother were chased out of the house.

17. By any mathematical calculation it can be seen that the plaintiff was chased out when she was a child of two years by her father. The plaintiff is not liable to share the debts incurred by the defendants. On the other hand the plaintiff is entitled for a share in the property without being mulcted with share in the debts or liabilities. Those debts and liabilities will have to borne only by the first and second defendants from the shares which they from partitioning the property.

18. The first substantial question of law which had been framed is whether the Courts below were right in declaring Ex.B-5 as null and void particularly when no issue was framed

regarding its validity. I hold that both the Courts below were correct in holding that Ex.B-5 was null and void since two issues were framed which surrounded discussion of Ex.B-5. The first issue was with respect to the share of the plaintiff and the second issue was whether the plaintiff was liable to share in the repayment of the debts. Both these issues had been contested by the defendants on the basis of Ex.B-5. In Ex.B-5, some debts had been mentioned and therefore in order to answer the second issue, Ex.B-5 was examined by both the Courts below and it was found that it was a sham and null and void document. It was also found that the plaintiff was not entitled to repay the debts incurred by the defendants. Ex.B-5 was discussed also with respect to the share which was to be allotted to the plaintiff, and since it was held to be a null and void document, the plaintiff was declared to be entitled to an undivided 1/4th share in the suit property. Therefore, the substantial question of law is answered that both the Courts below were correct in declaring that Ex.B-5 was a null and void document.

19. The second substantial question of law was whether the Courts below were correct in holding that the plaintiff was entitled for partition without mentioning about the debts in the property. As a fact, it had been concurrently held that the plaintiff and her mother were chased out of the suit property 13 years prior to the institution of the suit. The plaintiff was aged 15 years at the time of institution of the suit. She had been chased out of the house by her own father when she was just a child of 2 years. The debts incurred by her father and grandfather were after she was chased out of the house. Consequently, I hold that the plaintiff was not liable for any share of the debts. Those debts were incurred for immoral purposes of her father. The plaintiff is not liable for repayment of any of the debts. On the other hand, she is entitled for partition and is also entitled for partition of 1/4th undivided clear and marketable title in the suit property. If at all, the defendants have creditors, they can proceed only against the remaining portion of the suit property and not against the share of the plaintiff. I hold that both the Courts below were correct in holding that the plaintiff was entitled for partition without mentioning about the debts in the suit property.

20. In view of the above discussion, I hold that the Second Appeal is to be dismissed and is accordingly dismissed with costs right through. The Judgment and Decree of the trial Court in O.S.No. 296 of 1995 dated 25.07.2000 and the by the First Appellate Court in A.S.No. 20 of 2000 dated 11.01.2002 are both confirmed.

C.M.P.No. 8598 of 2003:

21. In view of the Judgment passed, the interim stay of passing of final decree is vacated and the District Munsif Court, Athur, is directed to proceed further in passing final decree in O.S.No.296 of 1995 without any delay.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

vsg

To

1. Subordinate Court, Athur.
2. District Munsif Court, Athur.
3. VR Section, High Court, Madras.

+1cc to Mr. V.Rajesh, Advocate, S.R.No. 8147

S.A. No. 944 of 2003

And

C.M.P.No. 8598 of 2003

KJ(CO)
GN(09/07/2019)