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IN THE HIGH COURT OF JUDICATURE AT MADRAS  
RESERVED ON : 06.03.2019  
PRONOUNCED ON : 28.03.2019  
CORAM  
THE HONOURABLE MR. JUSTICE T.RAVINDRAN  
S.A.No.1289 of 2005

1.Balasubramaniam  
2.Vairam  
3.Rethinakumar  
4.Alagappan  
5.Swamynathan  
6.Venkataraman

...Appellants/Defendants 1 to 6

Vs.

1.Arumugam  
2.Balu

...Respondents/Plaintiffs

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of Additional Sub Court, Mayiladuthurai dated 28.04.2005 made in A.S.No.168 of 2004 confirming the judgment and decree of District Munsif Court, Sirkali dated 26.02.2004 made in O.S.No.207 of 2001.

For Appellants : Mr.S.Sounthar  
For Respondent : Mr.D.Veerasekaran

#### JUDGMENT

In this second appeal, Challenge is made to the judgment and decree dated 28.04.2005 passed in A.S.No.168 of 2004 on the file of the Additional Subordinate Court, Mayiladuthurai confirming the judgment and decree dated 26.02.2004 passed in O.S.No.207 of 2001 on the file of the District Munsif Court, Sirkali.

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

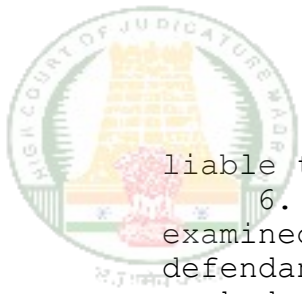
3. Suit for partition and mesne profits.

4. The case of the plaintiffs, in brief, is that the suit property lying in survey No. 225/05 measuring 0.18 cents with tiled house and trees thereon belonged to the plaintiffs grand



father by virtue of a sale deed dated 04.08.1950 and the plaintiffs are in the joint possession and enjoyment of the suit property. The plaintiffs' father had contributed funds for the benefit of the joint family. The plaintiffs' father, during his life time, effected partition in the presence of panchayatars and relatives on 11.05.1984 in respect of the family lands by way of a karavolai deed and left the suit property undivided and agreed to enjoy the same in common and after the demise of the plaintiffs' father, inasmuch as the plaintiffs are not willing to jointly enjoy the suit property in common with the defendants 1 and 2 and the defendants 1 and 2 are found to be acting adversely to the interest of the plaintiffs by endeavouring to alienate the suit property in favour of the defendants 3 to 6 and accordingly, seeking partition of their share in the suit property, the plaintiffs had issued a legal notice to the defendants on 06.07.2001 and to the same, the defendants sent a reply containing false allegations and hence, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

5. The defendants resisted the plaintiffs' suit contending that the suit laid by the plaintiffs is not maintainable either in law or on facts and according to them, the suit property has not been properly described in the plaint. In the pre-suit notice, the plaintiffs had claimed partition in respect of the property lying in survey No.225/5 measuring as 4- 1/3 cents out of 0.18 cents and on the other hand, the suit had been laid by the plaintiff in respect of the property comprised in survey No.222/7 of 0.18 cents and the suit property has not been properly described with correct boundaries and the boundaries given to the suit property are the boundaries to the property in survey No. 222/5 and therefore, inasmuch as the plaintiffs had not come forward with the clear case as regards the property in respect of which they had laid the suit, on that ground alone, the suit laid by the plaintiffs is liable to be dismissed. Further according to the defendants, by way of the karavolai deed dated 11.05.1984, the properties belonging to the joint family, inclusive of the suit property, had been divided between the plaintiffs' father Chockalingam and the defendants 1 and 2 and in the said partition, the plaintiffs' father was allotted 8 cents in the suit property and the defendants 1 and 2 were allotted 8 cents and the property purchased by the defendants 3 to 6 are covered under survey Nos. 222/5 and 222/6 and the defendants 3 to 6 had not acquired the suit property as such and the defendants 3 to 6 are unnecessary parties to the suit and the claim of the plaintiffs that the suit property is not covered in the karavolai deed dated 11.05.1984 is false and it is false to state that even thereafter, the suit property continued to remain as the joint family property and the suit property has not been properly valued and hence the suit is



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liable to be dismissed.

6. In support of the plaintiffs' case P.Ws.1 to 5 were examined and Exs.A1 to A5 were marked. On the side of the defendants D.Ws.1 and 4 were examined and Exs.B1 to B4 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the courts below had accepted the plaintiffs' case and accordingly granted the reliefs in favour of the plaintiffs as prayed for. Impugning the same, the defendants have preferred the second appeal.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

"1.Whether the judgments of courts below that the respondents are entitled to 1/3 share in the suit property is vitiated by error apparent on face of record as they failed to consider that the respondents are not entitled to claim any right in respect of their father's share in suit property as he had already admitted partition and in a subsequent exchange deed?

2.Whether the respondents are entitled to maintain a partition suit when the suit property is already partitioned between the parties earlier?

3. Whether the judgment of lower appellate court is liable to be set aside as it has not adverted to the oral evidence on record?"

9. The plaintiffs' grand father is one Agoram Pillai. Agoram Pillai had two sons, namely, the plaintiffs' father Chockalingam Pillai and the first defendant, Ramanathan pillai. The second defendant is the son of the first defendant. According to the plaintiffs, the suit property belonged to their grand father Agoram Pillai by virtue of sale deed dated 04.08.1950, the copy of which has been marked as Ex.A1/B2. From the abovesaid document, it is evident that as put forth by the plaintiffs, the suit property had been acquired by Agoram Pillai and therefore, it is evident that the suit property is the joint family property of Agoram Pillai and his sons as well as the plaintiffs and the second defendant. The parties are not in dispute that the partition had been effected between the plaintiffs' father and the first defendant by way of a karavolai chit dated 11.05.1984. According to the plaintiffs, by way of the abovesaid karavolai deed, only the lands had come to be divided and the suit property had not been the subject matter of the said deed. Per contra, it is the case of the defendants that even the suit property had come to be divided by way of the



abovesaid karavolai deed. However, both the parties had not endeavoured to produce the karavolai deed dated 11.05.1984 by way of which they had put forth the case that the properties belonging to the joint family had been divided.

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10. Inasmuch as the suit property is found to have been acquired by Agoram Pillai, when there is no material placed on the part of the defendants to hold safely that the same had also been the subject matter of the karavolai deed dated 11.05.1984 and the parties had been enjoying the suit property independently of their respective shares in the same as put forth by the defendants, in such view of the matter, it has to be held that the suit property had not been the subject matter of the karavolai deed dated 11.05.1984.

11. The defendants had put forth their case that the suit property had not been properly described in the plaint. It is their case that in the pre-suit notice, the plaintiffs had claimed partition in respect of the land comprised in survey No.225/5, whereas, they had laid the suit in respect of the suit property comprised in survey No.222/7. However, as rightly determined by the courts below, considering the materials placed on record, it is found that the boundaries in respect of the property comprised in survey No.225/6 and 222/7 are projected to be similar and the defendants by projecting the case as if Sivagami Ammal and the first defendant had alienated the properties comprised in survey No.222/5 and 222/6 to the defendants 3 to 6 and not the suit property and on that footing had come forward with the defence as if the plaintiffs have not laid the suit by properly describing the suit property with correct survey number, boundaries etc. No doubt, there is some discrepancy in the description of the the property given in the pre suit notice as well as the plaint schedule, however, as could be seen from the materials placed on record, it is found that the defendants had put forth their claim that survey No.222/5 absolutely belongs to Sivagamiammal by virtue of sale transaction dated 26.04.1969. However, as rightly determined by the courts below, the abovesaid sale deed in the name of Sivagamiammal has not been projected by the defendants. However, the defendants had projected the sale deed dated 12.06.2001 marked as Ex.B4 whereunder the first defendant and his wife Sivagamiammal had sold certain properties to the defendants 3 to 6 and as rightly determined by the courts below, on a comparison of the 1<sup>st</sup> item of the properties comprised in Ex.B4, it is found to be similar to the suit property as described in the plaint schedule with the same boundaries and however, they had deliberately given the survey number for the same as 222/6 and alienated the same in favour of the defendants 3 to 6. If really the survey No.222/6 measuring 0.18 cents absolutely belonged to Sivagamiammal, the sale deed dated 26.04.1969, in the name of Sivagamiammal, would have been



placed by the defendants for consideration. On the other hand, as found by the courts below, on a perusal of the recitals contained in Ex.B4, it is found that by way of the abovesaid sale transaction, the first defendant and his wife Sivagamiammal had endeavoured to alienate the properties derived from Agoram Pillai by way of the sale deed dated 04.08.1950 as well as the property acquired by Sivagamiammal by way of the sale deed dated 26.04.1969. In Ex.B4, they have clearly described the first item of the property as having been acquired by Agoram Pillai on 04.08.1950 and also described the same as belonging to them ancestrally but cleverly they had described the said item as comprised in survey No.222/6, however, giving the same boundaries, as pertaining to the plaint schedule property and thereby contended that to mislead the court, the plaintiffs have not properly described the suit property with correct boundaries. When they had traced the title of the first item of the properties comprised in Ex.B4 as having been acquired by Agoram Pillai by way of the sale deed dated 04.08.1950 and when on a perusal of the abovesaid sale deed marked as Ex.A1/B2, the same pertains to the suit property comprised in survey No.222/7 and with a view to mislead the plaintiffs, the defendants are found to have conveyed the suit property as such by way of Ex.B4 sale transaction, however, cleverly describing the same as lying in survey No.222/6 instead of survey No.222/7 and however, had chosen to give the same boundaries with reference to the said property, which are found to be similar to the boundaries given to the plaint schedule property and the abovesaid factors had been rightly assessed and determined by the courts below and by way of Ex.B4 sale transaction, the first defendant and his wife Sivagamiammal had also chosen to convey the property acquired by Sivagamiammal in survey No.222/5 and therefore, the defence put forth by the defendants that the plaintiffs have not properly described the suit property with correct survey number, boundaries etc., had been rightly discountenanced by the courts below.

12. According to the plaintiffs' case, with a view to deprive their share in the suit property, according to them, the first defendant had colluded with the other defendants and created the documents for the purpose of conveying the suit property and the said plea projected by the plaintiffs had come to be established to be true in the light of the abovesaid factors and in such view of the matter, the defendants cannot be allowed to plead and contend that the suit property had not been properly described with correct particulars.

13. When the suit property had been admitted to be the ancestral property acquired by Agoram Pillai by way of Ex.A1/B2 sale transaction, the first defendant and his wife are not entitled to dispose of the same by way of Ex.B4 sale transaction to the defendants 3 to 6 by giving wrong survey number for the



suit property and thereby contend that it is only the plaintiffs who had furnished the incorrect particulars of the suit property. It is thus found that the defendants have not come forward with the true defence to resist the plaintiffs' case as determined by the courts below.

14. As above noted, according to the plaintiffs, by way of the karavolai deed dated 11.05.1984 only the lands had been divided and not the suit property. Though the defendants would plead that the suit property had also been divided, however, no material worth acceptance has been placed on their part evidencing that the suit property had also been the subject matter of the partition effected by way of the abovesaid karavolai deed. To sustain their abovesaid defence, the defendants have not projected the karavolai deed. However, the defendants would project an unregistered and unstamped exchange deed said to have been executed between the first defendant and the plaintiffs' father on 17.06.1985 marked as Ex.B3 and by way of the said document, the argument has been put forth by the defendants that the court should infer that the suit property had already been divided by way of the karavolai deed dated 11.05.1984 and for the abovesaid limited purpose, in other words, for the abovesaid collateral purpose, to ascertain the division in the status amongst the parties, even as regards the suit property, according to the defendants, the exchange deed marked as Ex.B3, though it is unregistered and unstamped, can be looked into and on that basis their defence version should be accepted. On a perusal of Ex.B3 exchange deed, it is found that by way of the abovesaid document Chockalingam pillai seems to have exchanged the suit property to the first defendant and in turn had obtained the properties belonging to the first defendant in exchange and there is a reference about the karavolai dated 11.05.1984 containing the recitals that the parties had already become divided by way of the same. However, when the abovesaid document (Ex.B3) is found to be not properly stamped and registered as per law, in such view of the matter, as rightly put forth, in the light of the provisions contained in the Registration and the Stamp Act cumulatively, the abovesaid document cannot be looked into at all for any purpose even for the collateral purpose as sought to be projected by the defendants. In such view of the matter, the decision relied upon by the defendants' counsel reported in AIR 1974 Mad 239 (C.S.Kumaraswami Gounder vs. Aravagiri Gounder and Anr.) that the unregistered document could also be looked into for collateral purpose, particularly, for determining the division in the status amongst the parties concerned, in my considered opinion has no relevance or applicability to the facts and circumstances of the case at hand.

15. In addition to that when the suit property is found to be the joint family property of the plaintiffs and the defendants 1 and 2 and had not been divided as such, it is found



that all the joint family members have the right in the same and in such view of the matter, the claim of the defendants that the first defendant and the plaintiffs' father on their own, had chosen to enter into the exchange deed marked as Ex.B3 with reference to the suit property, excluding the plaintiffs and the second defendant, as such, cannot be legally sustained. When the plaintiffs and the second defendant are also found to be constituting members of the joint family, the alleged exchange deed said to have been entered into between Chockalingam and the first defendant, would not be, in any manner, binding upon the plaintiffs or the second defendant, as the case may be, and when the truth and validity of the abovesaid document itself, on the abovesaid lines, has not been established by the defendants by letting in acceptable evidence and when the abovesaid document is found to be not binding upon the plaintiffs and the second defendant and furthermore, when the abovesaid document has not been registered and stamped as required by law, and also not shown to have been acted upon by placing reliable materials, in all, it is found that the document cannot be relied upon for any purpose inclusive of collateral purpose as sought to be projected by the defendants i.e. for establishing the division in the status between the parties and therefore, the courts below are totally justified in not placing reliance upon the abovesaid exchange deed for accepting the defence version. Therefore, the contention put for the by the defendants that they had established the factum of partition in respect of the suit property by way of the karavolai dated 11.05.1984 through Ex.B3 exchange deed cannot be accepted in any manner and the same had been rightly rejected by the courts below.

16. In the light of the above discussions, the case projected by the defendants that the suit property had already been divided and the same had been admitted by the plaintiffs' father in the exchange deed Ex.B3, does not merit acceptance and therefore, the argument put forth by the defendants that the plaintiffs are not entitled to maintain the partition suit for dividing the suit property again also cannot be accepted and when the abovesaid pleas put forth by the defendants as well as the case projected by the plaintiffs had been rightly assessed and analysed by the courts below based on the materials placed on record, both oral and documentary, in the proper perspective, both factualwise as well as legalwise, the courts below on giving proper reasonings and conclusions thereby had rejected the defence version and accepted the plaintiffs' case, in my considered opinion, no interference is warranted with the judgment and decree of the courts below upholding the plaintiffs' case. The substantial questions of law formulated in this second appeal are accordingly answered against the defendants and in favour of the plaintiffs.



17. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed

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1. Additional Subordinate Court, Mayiladuthurai
2. District Munsif Court, Sirkali.

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