

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.04.2019
PRONOUNCED ON : 23.05.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.1097 of 2013
and
C.M.P.No.22336 of 2018

1.P.R.Chenguttuvan
2.C.Yamuna Appellants/Defendants

Vs

1.C.Bhuvaneswari ...1st Respondent/Plaintiff

2.M/s.Rajathee Promoters,
Rep.by its Managing Partner
V.Babu,
No.16, Chandrabagh Avenue,
1st street, Mylapore,
Chennai - 600 004.

...2nd Respondent

(R2-Impleaded vide order of Court dated
06.03.2019 made in CMP.No.22336 of 2018
in SA.No.1097 of 2013)

PRAYER : Second Appeal filed under Section 100 of C.P.C.,
against the judgment and decree dated 27.02.2013 passed in
A.S.No.317 of 2011 on the file of the learned XVI Additional
District Judge, Chennai, confirming the judgment and decree
dated 27.01.2011 and made in O.S.No.8002 of 2007 on the file of
the learned V Assistant City Civil Judge, Chennai.

For Appellants : M/s.R.T.Shyamala
For R1 : Mr.R.Venkatavaradan
For R2 : Mr.V.K.Sethukumar

J U D G M E N T

This second appeal has been filed by the defendants
against the judgment and decree passed by the learned XVI
Additional District Judge, Chennai, in A.S.No.317 of 2011 dated
27.02.2013 confirming the judgment and decree passed by the

learned V Assistant Judge, City Civil Court, Chennai. in O.S.No.8002 of 2007 dated 27.01.2011.

2. The first respondent herein had filed a suit in O.S.No.8002 of 2007 on the file of the learned V Assistant Judge, City Civil Court, Chennai, seeking to divide the suit properties into three equal shares and to allow one such share to her and to direct the defendants to pay 1/3rd share in the tentative rent of Rs.10,000/- per month being the rental income derived from the suit properties and also to direct the defendants to render a true and proper accounts of the rental income derived from the suit properties till actual delivery of possession. The learned V Assistant Judge, City Civil Court, Chennai, by the judgment dated 27.01.2011 passed a preliminary decree for dividing the suit properties into three equal shares and to allot one such share. In so far as other reliefs are concerned, he dismissed the suit. Aggrieved by the same, the defendants had filed an appeal in A.S.No.317 of 2011 on the file of the XVI Additional District Judge, Chennai, and by the judgment dated 27.02.2013, the learned XVI Additional District Judge, Chennai, dismissed the said appeal, confirming the judgment and decree passed by the Trial Court. Feeling aggrieved, the defendants have filed the present Second Appeal.

3. For the sake of convenience, the parties are referred to as described before the Trial Court.

4. The averments made in the plaint are in brief as follows:

(a) The plaintiff is the second daughter of the first defendant and the second defendant is her elder sister. The first defendant got married the plaintiff's mother Tmt.C.Thilagam, on 03.10.1980. Out of the said wedlock, the second defendant and the plaintiff were born. The suit A and B schedule properties were originally owned by one Kanniappa Gramani, who is the great grand father of the plaintiff. The said Kanniappa Gramani, had executed a Will in favour of his two sons namely, Ponnusamy Gramani and Raju Gramani. After the demise of the said Kanniappa Gramani, his two sons have become absolute owner of their respective properties. The first defendant and his brother Sivakumar are the sons of the said Raju Gramani. The father of the first defendant Raju Gramani died intestate leaving behind his wife and two sons namely the first defendant and Sivakumar as his legal heirs. After the death of the said Raju Gramani, his legal heirs have partitioned the estate of late Raju Gramani under a registered partition deed dated 09.08.1982. In the said partition suit, A and B schedule properties were allotted to the share of the first defendant. Immediately, after partition, the plaintiff's mother Tmt.C.Thilagam, out of the own resources had developed the suit

A schedule property and constructed the residential -cum-commercial complex. Now, the said property is yielding a sum of Rs.1,10,650/- per month as rent and the first defendant earned lot of money without any proper accounts. He also got rental advance from the tenants. The list of the tenants and their details are mentioned in the plaint C schedule.

(b) In the year 2005, the first defendant created some family problem raising the family dispute. The second defendant is with the first defendant and the plaintiff is with her mother and they reside in a small portion in suit A schedule property. However, the first defendant not allowed them to live in the said portion also. He gave all kinds of troubles to the plaintiff and her mother. Hence, the plaintiff's mother lodged a police complaint against the first defendant. But, it did not yield any fruitful result. The first defendant had filed a suit in O.S.No.6177 of 2005 on the file of the V Assistant Judge, City Civil Court, Chennai, for the relief of permanent injunction restraining the defendants therein from interfering with his peaceful possession and enjoyment of suit A schedule property and also filed an application seeking interim injunction. Though initially an ex-parte interim injunction was granted, subsequently after appearance of the plaintiff's mother and contesting the same, the said application was dismissed on 14.11.2005. Aggrieved by the same, the first defendant preferred an appeal in CMA No.69 of 2006 on the file of the I Additional Family Court, Chennai, and the same was dismissed for default. The first defendant also filed an application in H.M.O.P.No.1713 of 2005 on the file of the II Additional Family Court, Chennai, seeking divorce by making unsustainable allegations with regard to the plaintiff's mother who is alleged to be having affair with one Rajendran and the said petition is pending. The first defendant did not maintain the plaintiff and her mother and did not pay any amount to her and her mother for their livelihood. The original owner namely Balu Kanniappa Gramani, who is the maternal great grand father of the plaintiff and she is entitled to 1/3rd share of ancestral property. The first defendant also admitted in this plaint filed in O.S.No.6177 of 2005 that the suit properties are the ancestral properties. Further, the first defendant is trying to grab the entire properties by mortgaging the same with various banks and other private financiers. The second defendant also colluding with the first defendant. Hence, the plaintiff was constrained to file the above suit for the aforesaid reliefs.

5. The averments made in the written statement filed by the defendants 1 and 2 are in brief as follows:

(a) It is true that the suit properties were originally belonged to the first defendant's grandfather namely Balu Kanniappa Gramani. Out of his love and affection towards his

grandsons, he settled the suit properties and other properties in favour of the first defendant and his brother Sivakumar under a settlement deed dated 15.07.1937. By virtue of the said settlement deed, the first defendant and his brother Sivakumar became the absolute owner of the suit properties and it is not their ancestral properties as claimed in the plaint. The suit properties were not devolved by way of inheritance to claim the same as ancestral property. Already the first defendant had filed a divorce petition against his wife in H.M.O.P.No.1713 of 2005 on the file of the II Additional Family Court, Chennai, on the ground of adultery and cruelty. The first defendant and his brother Sivakumar have partitioned under a registered partition deed dated 09.08.1982 in respect of the properties settled in their favour as per the settlement deed dated 15.07.1937. In the said partition, the suit properties were allotted to the share of the first defendant and hence, the first defendant has become absolute owner of the suit properties and in the said properties, the plaintiff cannot claim any right.

(b) The allegations that the plaintiff's mother had developed A schedule property by spending huge money and now the first defendant is collecting rent to the tune of Rs.1,10,650/- per month and also received advance from the tenants are all false. The suit properties were given as collateral security and already a case is pending before the DRT for a sum of Rs.3.25 crores and those facts are known to the plaintiff and her mother; Suppressing the same, the plaintiff has filed the above suit. The plaintiff and her mother are not living in the suit A schedule property and they are living at Chintadripet in the house of the parents of her mother. Since, the suit properties are separate properties of the first defendant, the suit for partition is not maintainable and therefore, the defendants prayed to dismiss the suit.

6. Based on the aforesaid pleadings, the learned V Assistant Judge, City Civil Court, Chennai, had framed necessary issues and tried the suit. During Trial, on the side of the plaintiff, the plaintiff examined herself as P.W.1 and she marked Exhibits A1 to A11 as exhibits. On the side of the defendants, the first defendant examined himself as D.W.1 and he marked one document as Ex.B1.

7. The learned V Assistant Judge, City Civil Court, Chennai, after considering the materials placed before her found that the suit properties assumed the character of ancestral properties and hence, the plaintiff is entitled for 1/3rd share in the suit properties, in view of the amendments made in the Hindu Succession Act. Accordingly, she decreed the suit and passed a preliminary decree to divide the suit properties into 3 equal shares and allot one such share to the plaintiff. Further,

she dismissed the suit in respect of other reliefs. Aggrieved by the same, the defendants had filed an appeal in A.S.No.317 of 2011 on the file of the XVI Additional Judge, City Civil Court, Chennai. The learned XVI Additional Judge, City Civil Court, Chennai, held that even though the properties were got by the first defendant under Ex.A1 settlement deed, subsequently while dividing the properties under Ex.A2 partition deed, it has been stated that the said properties are joint family properties and hence, the first defendant is estopped from contending that the suit properties are his personal property and not a joint family properties. Accordingly, he dismissed the appeal and thereby confirmed the judgment and decree passed by the Trial Court. Feeling aggrieved, the defendants have filed the present Second Appeal.

8.This Court at the time of admitting the Second Appeal has formulated the following substantial questions of law:

"(1). Whether the suit property can be classified as coparcenary property, when the first appellant got the undivided half share in the suit schedule property by a Settlement Deed dated 25.06.1937 from his grand father Kanniappa Gramini and another individual half share got from his brother P.R.Sivakumar, who released his half share by a registered Partition Deed dated 09.08.1982?

(2) Whether the Courts below are correct in holding that the suit schedule property is a joint family property in which the daughter is having a right as per the Hindu Succession Amendment Act, 39 of 2005 when she was not born on the date when the Partition Deed dated 09.08.1982 was entered between the first appellant, his brother and mother?

(3) Whether the Court below are correct in interpreting the document Ex.A2 by saying that the property was treated as joint family property, but failed to see that joint family property and coparcenary property are different and further even though Ex.A2 was mentioned as Partition Deed, but in fact P.R.Sivakumar, the brother of the first appellant released his undivided half share in the suit schedule property in favour of his brother, the first appellant herein and thereby he became the absolute owner of the suit schedule property? "

9. Heard Miss.R.T.Shyamala, the learned counsel for the appellants/defendants and Mr.R.Venkatavaradan, the learned counsel for the first respondent and Mr.V.K.Sethukumar, the learned counsel for the second respondent.

10. Substantial Questions of Law 1, 2 and 3:

The learned counsel for the appellants/plaintiffs has submitted that the Courts below erred in holding that the suit properties are ancestral and joint family properties. She further submitted that the Courts below on erroneous view had wrongly held that the first defendant had admitted in Ex.A2 that the properties are joint family and coparcenary properties. She further submitted that the Courts below failed to see that since the suit properties were got by the first defendant under a settlement deed executed by his grand father, it cannot be said that the properties are joint family properties of the first defendant and therefore she prayed to allow the Second Appeal and to set aside the judgments and decrees passed by the Courts below and dismiss the suit.

11.The learned counsel for the appellants/defendants in support of her contentions, relied upon the following decisions:

1.Chinna Palanisamy Gounder Vs. Latha and Others, (2017) 1 MLJ 759

2.Samandhi Vs. Arumugam and Others, S.A.No.162 of 2011, dated 18.04.2017

3.C.N.Arunachala Mudaliar Vs. C.A.Muruganatha Mudaliar, 1953 AIR (SC) 495

12.The learned counsel for the second respondent has submitted that during pendency of the Second Appeal, the second respondent had purchased 60% of the undivided share in the suit properties from the first defendant by paying a sum of Rs.3 crores and obtained a sale deed on 19.11.2018. He further submitted that as per Section 52 Transfer of Property Act, the second respondent can step into the shoes of the first defendant and entitled to defend and protect his interest and hence, the second respondent has been impleaded as party in the Second Appeal. He further submitted that since the first defendant got the properties under the settlement deed executed by his grand father, the said properties are the separate properties of the first defendant in which the plaintiff cannot claim any right during the life time of the first defendant and therefore he prayed to allow the Second Appeal.

13.Per Contra, the learned counsel for the first respondent/plaintiff has submitted that on the date of execution of Ex.A1 settlement deed, the first defendant was not born and hence he cannot claim that the suit properties are his separate properties. He further submitted that in Ex.A1 settlement deed, life interest was given to the first defendant's parents and only after their death, the properties will devolve upon the first defendant and his brother. He further submitted that in this case, that at the time of executing Ex.A2 partition deed,

the first defendant's mother was alive and as per the settlement deed, she had no right to deal with the property, but , she also joined in Ex.A2 partition deed and hence the said document is not valid. He further submitted that admittedly, the suit properties were originally belonged to first defendant's grand father Kanniappa Gramani and as such the suit properties are ancestral properties and in the said properties, by virtue of the Hindu Succession Act (Tamilnadu amendment Act 1989) and also Hindu Succession (Amendment Act 2005), the plaintiff being daughter has become coparcener and hence, she is entitled to get share in the suit properties. He further submitted that taking into consideration, the aforesaid facts, the Trial Court has held that the plaintiff is entitled to get 1/3rd share in the suit properties and the same has been confirmed by the First Appellate Court and in the said factual concurrent findings, this Court cannot interfere and therefore he prayed to dismiss the Second Appeal.

14.The learned counsel for the first respondent/plaintiff, in support of the aforesaid contentions relied upon the following decisions:

1.Kaliappan (Died) & Others Vs. A.K.Somasundaram (Died) & Others, CDJ 2012 MHC 4059

2.Mangammal @ Thulasi & Another Vs. T.B.Raju & Others, CDJ 2018 SC 438

15.It is an admitted fact, that the plaintiff is the second daughter of the first defendant and the second defendant is the first daughter of the first defendant. It is also an admitted fact that due to family dispute, the plaintiff and her mother Tmt.C.Thilagam are living separately and the first defendant and his first daughter (second defendant) are living separately. It is also an admitted fact that the first defendant had filed a divorce petition against his wife in H.M.O.P.No.1713 of 2005 and the same is pending before the Family Court, Chennai. It is also an admitted fact that the suit properties and other properties were originally belonged to first defendant's grand father Kanniappa Gramani.

16.Though the plaintiff has stated in her plaint that the said Kanniappa Gramani had executed a Will in favour of his two sons namely Ponnusamy Gramani and Raju Gramani, actually no such Will had been executed by the said Kanniappa Gramani. On the contrary, the said Kanniappa Gramani had executed a registered settlement deed dated 25.06.1937 and a registration a copy of the said document has been produced by the plaintiff herself and marked as Ex.A1. A perusal of Ex.A1 would show that the said Kanniappa Gramani got vast properties both agricultural and other house properties. In the said document itself he had clearly stated that in the partition which took place on

15.06.1906 between himself and his two brothers with regard to their ancestral property which was situated in Pallur Village, Chengalpattu Taluk, to his share, a sum of Rs.148.12.9/- was allotted and since the said amount was very small amount, he gave the same to his elder brother Annasamy Gramani and hence he had no ancestral property at all. He further stated that he came to Chennai and out of his own efforts he purchased the properties mentioned in the said document. With regard to the aforesaid facts, there is no dispute. Therefore, it is clear that the properties mentioned in the said documents are the self-acquired properties of the said Kanniappa Gramani.

17. In Ex.A1 settlement deed, the said Kanniappa Gramani had stated as to who are the persons entitled to the said properties and how they have to enjoy the same. In the said document, he had stated that the properties which are mentioned in A schedule shall go to his elder son Ponnusamy Gramani and the said Ponnusamy Gramani can enjoy the said properties till his life time and after his death his wife has to enjoy the same and after her death, their children will enjoy the same as absolute owners. Likewise, he had stated that the properties which are mentioned in B schedule of the said document shall go to his younger son Raju Gramani and he has to enjoy the same till his life time without encumbering the same and after his death, his wife has to enjoy the same and after her death, their children have to enjoy the said properties as absolute owners. Further, the said Kanniappa Gramani had retained certain properties for his enjoyment and they are mentioned in C schedule in the said document. He had stated that after his death, his sons have to get the same and enjoy the same. Further, in the said document, he also allotted certain properties for charitable purpose.

18. After the death of Raju Gramani, his sons namely the first defendant and his brother Sivakumar along with their mother Padmavathi had partitioned the properties which were allotted under Ex.A1 settlement deed in favour of Raju Gramani and his sons. After the death of Raju Gramani, his sons and his wife partitioned the properties vide Ex.A2 partition deed dated 09.08.1982. A perusal of Ex.A2 would show that the suit properties were allotted to the share of the first defendant. There is no dispute with regard to the aforesaid facts also. Since, admittedly, the suit properties and other properties were self-acquired properties of Kanniappa Gramani and he gifted the suit properties under Ex.A1 settlement deed in favour of the first defendant and his brother Sivakumar by giving life interest to their parents, the suit properties are separate properties of the first defendant. Therefore, by no stretch of imagination it can be said that the suit properties are ancestral properties.

19.The First Appellate Court also recorded the findings that the suit properties were originally belonged to Kanniappa Gramani and he settled the said properties to his grand sons by giving life interest to his sons. But, by referring to certain recitals in Ex.A2, the first Appellate Court held that the first defendant has admitted in the said document that the properties are joint family properties and hence he is estopped from contending that the properties are his personal properties. The said approach is not proper. Ex.A2 is the partition deed executed between the first defendant, his brother Sivakumar and their mother Padmavathi. Since, they wanted to divide the properties, a recital has been made in the said document that they have been members of the Hindu undivided family and they decided to divide the properties which are possessed by the joint family. There is no dispute that the first defendant, his brother and their mother constituted a joint family. But, that it does not mean that they have admitted that the properties mentioned in the said document are ancestral properties. In case the children of the first defendant and his brother also parties to the said document, it can be presumed that the first defendant and his brother have treated the suit properties as joint family properties in which their children also can get right. Admittedly, in Ex.A2, the children of first defendant and his brothers not at all parties. Further, even assuming that the first defendant had admitted in Ex.A2 that the suit properties are joint family properties, it cannot be said that he is estopped from contending that the said properties are separate properties.

20.At this juncture, it would be relevant to refer to Section 31 of the Indian Evidence Act 1872, which reads thus :- Admissions not conclusive proof, but may estop. - Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained."

21.A plain reading of the aforesaid provision of law would show that the admission does not operate as conclusive proof and so evidence to rebut it, or to show that it was wrongly made, could be given. But, if a person to whom the admission is made believes it and acts upon it, then the person making the admission would be prohibited or estopped from showing that the admission was wrongly made. In this case, admittedly, the first defendant got the suit properties through Ex.A1 settlement deed. So, it is clear that the suit properties are his separate properties. Further, in this case, it is not the case of the plaintiff that believing the words mentioned in Ex.A2, she has done something and therefore the principle of estoppel will not apply in this case.

22. In Chinna Palanisamy Gounder Vs. Latha and Others, (cited supra), this Court has held that when the son inherits the property as per Section 8 of the Hindu Succession Act 1956, he does not take it as Kartha of his own undivided family, but takes it in his individual capacity.

23. In Samandhi Vs. Arumugam and Others, (cited supra), relying upon the aforesaid decision has held that the properties inherited by the first defendant are his separate properties.

24. In this case the first defendant had not inherited the properties under Section 8 of the Hindu Succession Act, 1956. Hence the aforesaid decisions will not apply to the facts of this case.

25. In C.N.Arunachala Mudaliar Vs. C.A.Muruganatha Mudaliar, (cited supra), the Hon'ble Supreme Court has held as follows:

"In our opinion, on reading the will as a whole the conclusion becomes clear that the testator intended the legatees to take the properties in absolute right as their own self-acquisition without being fettered in any way by the rights of their sons and grandsons. In other words, he did not intend that the property should be taken by the sons as ancestral property. The result is that the appeal is allowed, the judgments and decrees of both the courts below are set aside and the plaintiff's suit is dismissed. Having regard to the fact that the question involved in this case is one of considerable importance upon which there was considerable difference of judicial opinion and that the plaintiff himself is a pauper, we direct that each party shall bear his own costs in all the courts."

26. In this case, the first defendant got the properties through the settlement deed executed by his grand father. In the said settlement deed, the settlor namely Kanniappa Gramani gave absolute right to his grandsons and hence in view of the aforesaid decision of Hon'ble Supreme Court, the suit properties are separate properties of the first defendant.

27. In Kaliappan (Died) & Others Vs. A.K.Somasundaram (Died) & Others, (cited supra), a series of successive life interests created under a Will. Under the said circumstances, this Court has held as follows:

"No such valid successive life interest can be created in favour of persons in existence and unborn persons. But, when there is a gift to a

class of persons some of whom are in existence and others are not, such a gift will be valid and take effect with regard to persons in existence at the time of testator's death and invalid regarding others, but it does not fail wholly and totally."

In this case under Ex.A1 settlement deed life interest was given to only living persons namely his sons and their wives but absolute right was given to grand children. Therefore, the aforesaid decision will not help the first respondent/plaintiff.

28. In *Mangammal @ Thulasi & Another Vs. T.B.Raju & Others*, (cited supra), the Hon'ble Supreme Court has held that by virtue of Hindu Succession (Tamilnadu Amendment Act 1989), daughter of unmarried daughter of coparcener is entitled to claim partition in the Hindu joint family property. It also held that in view of the amendment introduced by the Central Government in Hindu Succession Act (Amendment 2005), the daughter is coparcener only on the date of commencement of the said Act, her father was alive. In this case, admittedly, the plaintiff did not marry on the date of the commencement of the Tamilnadu Amendment Act. Further her father is also alive both on the date of commencement of Tamilnadu Act and also the Central Act. For claiming benefits under the said amendments, the plaintiff should prove that the suit properties are ancestral properties. If the suit properties are ancestral properties, then certainly the plaintiff is entitled to claim partition, in view of the aforesaid amendments, but in this case, the suit properties are not ancestral properties, but, they are separate properties of the first defendant. Therefore, the plaintiff cannot seek partition in the suit properties.

29. The learned counsel for the first respondent/plaintiff has submitted that even though the first defendant is getting considerable income from the suit properties, he neglected the plaintiff and her mother and he did not maintain them. In such a case, it is always open to them to file a suit for maintenance and the plaintiff can also ask for marriage expenses from her father. Further, as per Section 39 of the Transfer of Property Act, they can ask for charge over the properties. But, as per law, the plaintiff is not entitled to ask for partition in respect of separate properties (suit properties) of her father. The Trial Court without taking into consideration of the aforesaid facts had decreed the suit for partition and the First Appellate Court also mechanically confirmed the judgment and decree of the Trial Court and therefore the same are liable to be set aside. Accordingly, the substantial questions of law are answered in favour of the

appellants/defendants.

30.In the result, the Second Appeal is allowed. The judgments and decrees passed by the Courts below are set aside and the suit in O.S.No.8002 of 2007 on the file of the V Assistant Judge, City Civil Court, Chennai, is dismissed. Considering the facts and circumstances of the case, the parties are directed to bear their respective costs. Consequently, connected miscellaneous Petition is closed.

s/d-

Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

gbi

To

1. The XVI Additional District Judge,
Chennai,

2. The V Assistant City Civil Judge,
Chennai.

+1 CC to M/s.R.T. Shyamala, Advocate sr 44182.

+1 CC to Mr.V.K.Sethukumar, Advocate sr 44203.

+1 CC to Mr.V.K.Sethukumar, Advocate sr 44203.(22/07/2019)

S.A.No.1097 of 2013

and

सत्यमेव जयते C.M.P.No.22336 of 2018

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SP(18/07/2019)

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