

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :23.07.2019

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

S.A.No.717 of 2015

and

M.P.No.1 of 2015

1.K.Subramaniam
2.Karunambal
3.Mahalakshmi
4.Deivathal

... Appellants/
Defendants 1 to 4 in Trial Court

Vs

1.Saraswathy
2.Ganapathiappan
3.Muthusamy
4.Ganesan
5.Manickam
6.Nagarajan
7.Rayappan
8.Poovathal

... Respondents/Plaintiff and
Defendants 2 to 11 in Trial court

PRAYER: The Second Appeal filed under Section 100 of CPC, against the judgment and decree of the learned II Additional Subordinate Judge, Tirupur in A.S.No.53 of 2012 dated 15.04.2015 confirming judgment and decree of the learned District Munsif, Avinashi in O.S.No.172 of 2007 dated 29.02.2012.

For Appellant : Mr.S.S.Swaminathan

For R1 : Mr.Ma.P.Thangavel

For RR2 to 7 : K.Govi Ganesan

For R8 : No Appearance

JUDGMENT

The defendants in O.S.No.172 of 2007 on the file of the District Munsif Court, Avinashi, are the appellants herein.

2. O.S.No.172 of 2007 had been filed by the plaintiff, Saraswathi, seeking partition and separate possession of 50 ½ cents of land, which had been described in the suit schedule. The plaintiff's mother Angammal held a total area of 6.83 acres. Angammal had subsequently settled 1.83 acres in the name of her husband Maarappa Gounder. She subsequently settled the remaining 5 acres of land in the names of her two sons namely, Rayappa Gounder and Karuppa Gounder in equal measures. On the death of Angammal and her husband Maarappa Gounder, in view of the settlements effected, their two sons Rayappa Gounder and Karuppa Gounder were both entitled to an equal share of 2.50 acres + 1/3 of 1.83 acres. This would mean that they were each entitled to 2.50 acres + 61 cents and which would mean 311 cents or 3 acres and 11 cents.

3. The plaintiff is the daughter of Angammal and Maarappa Gounder. She was entitled to an undivided 1/3rd share of the property which was settled in the name of Maarappa Gounder by Angammal. This would mean that she was entitled to 1/3rd of 1.83 acres which is 61 cents. Consequently, on the death of the parents, Rayappa Gounder and Karuppa Gounder were each entitled to 3.11 acres and the plaintiff, Saraswathi, their sister, was entitled to 61 cents. To this extent there is no dispute among the parties.

4. The suit came to be decreed for 50 ½ cents by the learned District Munsif, Avinashi. Circumstances leading to such decree was interpretation of a document, Ex.A4 dated 31.05.1979, which was a sale deed executed by the legal heirs of Rayappa Gounder and the plaintiff Saraswathi in favour of one Muthusamy. In that sale deed, both the vendors covenanted that they were conveying their shares in the schedule mentioned property. The total area mentioned in the schedule was 6.43 acres. However, the document was valued for purposes of stamp duty only for 3.21 ½ acres alone. Consequently, the Trial Court entered into a mathematical calculation. It was determined by the Trial Court that the property conveyed was the entire area which fell to the share of Maarappa Gounder namely, 311 cents or 3.11 acres and the remaining 10 ½ cents was out of the share of 61 cents available with the other vendor namely, the plaintiff, Saraswathi. If Saraswathi had sold 10 ½

cents then the land available with her would be 61 cents less 10 ½ cents, which would be 50 ½ cents. The Trial Court granted a decree for this area of 50 ½ cents, since the properties had not been divided by metes and bounds.

5. Aggrieved by the Judgment of the Trial Court, the defendants who are the legal heirs of the Karuppa Gounder had filed A.S.No.53 of 2012 which came up for consideration before the II Additional Sub Court, Tirupur, on 15.04.2015. By judgment of even date, the learned II Additional Sub Judge, Tirupur, had confirmed the decree granted by the Trial Court. The facts as held by the learned District Munsif were upheld on all aspects by the learned II Additional Sub Judge.

6. Questioning the judgment of the learned II Additional Sub Judge, Tirupur, the defendants have filed the present Second Appeal. The Second Appeal had been admitted on 08.09.2015, on the following three Substantial Questions of Law:

"1. Whether the Courts below are justified in granting the relief of declaration in the suit for partition and separate possession?

2. Whether the Courts below can render a decision contrary to and dehors the documentary and oral evidence?

3. Whether the lower appellate Court is justified in confirming the decision of the Trial Court based on conjectures and misreading and misinterpreting the evidence?"

7. Heard arguments advanced by Mr.S.S.Swaminathan, learned counsel for the appellants and also by Mr.M.P.Thangavel, the learned counsel for the contesting 1st respondent / Plaintiff.

8. Mr.S.S.Swaminathan, learned counsel for the appellants assailed the reasonings given in the judgments of both the Trial Court and the First Appellate Court by pointing out Ex.A4 in which, the vendors namely, the 1st respondent / Saraswathi / plaintiff and the legal heirs of Marappa Gounder had conveyed in absolute terms, all their rights in the properties mentioned in the schedule. The

properties mentioned in the schedule was 6.43 acres. However, no explanation has been advanced as to how, when Angammal originally had 6.83 acres, the area in the schedule was reduced to 6.43 acres. Be that as it may, the Sale Deed had been valued for purposes of stamp duty only for 3.21 $\frac{1}{2}$ acres. The learned counsel stated that the contents of the document must be read to find out the intention of the executants. The learned counsel pointed out that there has been clear expression of intent to convey the entire shares which the vendors had over the suit property. The learned counsel also stated that valuation of the document for a lesser area would not be of any consequence, since that would have been prepared by a document writer.

9. Mr.S.S.Swaminathan, also argued that very specifically, since Saraswathi / 1st respondent / plaintiff was one of the vendors and had covenanted that she had conveyed her entire holding, it would only mean that she had conveyed 61 cents which fell to her share as legal heir of her father Maarappa Gounder. The evidence of PW2 was also pointed out by the learned counsel. PW2, Palanisamy was the son of the Rayappa Gounder the brother of the plaintiff / Saraswathi. It was stated that he had admitted in cross examination that the executants to the document had conveyed all their rights over the properties to which they were entitled to. He further pointed out that in cross examination Saraswathi / 1st respondent / plaintiff had admitted she was not in possession and that the revenue records also did not stand in her name. It was also argued by Mr.S.S.Swaminathan that an overall construction of Ex.A4 would imply that Saraswathi / 1st respondent / plaintiff had conveyed her entire share in favour of the present appellants.

10. On the other hand, Mr.M.P.Thangavel, learned counsel appearing for the 1st respondent / plaintiff strongly refuted the said contentions. According to the learned counsel, when the document was valued only for 3.21 $\frac{1}{2}$ acres, by no stretch of imagination could the plaintiff deemed to have sold more than 10 $\frac{1}{2}$ cents, since the other vendor had sold his entire holdings which was 3.11 acres. It was argued by the learned counsel that both the Courts below had given a proper interpretation of the document and of the evidence recorded before it.

11. I have carefully considered the arguments advanced.

12. The following facts are not in dispute:

(i). Angammal originally had 6.83 acres.

(ii). She settled 1.83 acres in favour of her husband Maarappa Gounder.

(iii). She settled the remaining 5 acres in favour of her 2 sons namely, Rayappa Gounder and Karuppa Gounder.

(iv). The father Maarappa Gounder was entitled to 1.83 acres and that land was self-acquired lands in his hands.

(v). This would also imply that the said land of 1.83 acres, on his demise would be divided in equal proportion to his class-I heirs.

(vi). His class-I heirs, on his death, were his two sons and one daughter namely, Rayappa Gounder, Karuppa Gounder and the plaintiff Saraswathi. They were each entitled to an undivided share of 61 cents.

(vii). Quite apart from the said undivided share of 61 cents, Rayappa Gounder and Karuppa Gounder were also entitled to an undivided 2.50 acres, in view of the settlement of 5 acres in their favour by their mother Angammal.

(Viii). Consequently, on the death of Angammal and Maarappa Gounder, the two sons were entitled to 3.11 acres each and the daughter Saraswathi was entitled to 61 cents.

(ix). There had been no position by metes and bounds of the entire extent of land.

13. Under Ex.A4, dated 31.05.1979 which was the sale deed executed by the plaintiff Saraswathi and the legal heirs of Rayappa Gounder, they could have conveyed at the most, 61 cents and 3.11 acres each. The document had however been valued at 3.21 $\frac{1}{2}$ acres. It is the evidence of PW2 that his father had conveyed his entire share. Consequently, Rayappa Gounder had conveyed 3.11 acres. This would also imply that the other vendor Saraswathi could have conveyed only 10 $\frac{1}{2}$ cents. This would give a balance of 50 $\frac{1}{2}$ cents in her name. That is the share she seeks and that is the share which had been granted to her by both the Courts below.

14. This mathematical calculation points to the fact that she is entitled to 50 $\frac{1}{2}$ cents. With respect to the contention that Ex.A4 should be examined as a whole, I am afraid that the valuation of the document for purposes of stamp duty also is very significant. Ex.A4 had been valued for purposes of stamp duty only for 3.21 $\frac{1}{2}$ acres. The

property to that extent alone could have been conveyed by the vendors. The other contention raised regarding the evidence of PW2 also cannot be accepted, since in his proof affidavit, he had very clearly stated the manner in which 3.21 ½ acres had been sold namely, the entire share of his father and 10 ½ cents of his Aunt, namely the plaintiff Saraswathi.

15. In view of the above reasonings, I am afraid that I am not able to subscribe the contention raised on behalf of the appellants. The learned counsel also stated that the Courts below have granted a declaratory relief when partition and separate possession had been sought. Partition and separate possession of a ratio of the land can be granted. In this case, the actual extent of land to which the plaintiff was entitled to had been crystalized as 50 ½ cents. It is only for that purpose that a declaration had been granted, declaring the title of the 1st respondent / plaintiff to 50 ½ cents. The division of the entire area by metes and bounds can be worked out only during the final decree proceedings, in presence of all the co-sharers to appropriately identify the said land for its division. It is also to be mentioned that the lands were also subjected to various encumbrances by way of sale the respective rights of the purchasers can be examined only during the final decree application.

16. With the above observations, the Substantial Questions of Law are answered against the appellants and the Second Appeal fails and the same is dismissed, however without costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

smv

To

- 1.The District Munsif, Avinashi.
- 2.The II Additional Sub Court, Tirupur.
- 3.The Section officer,
VR Section, Madras High Court.

+1cc to Mr.S.S.Swaminathan , Advocate SR.No. 63254

+1cc to Mr.Ma.P.Thangavel , Advocate SR.No. 63019

+1cc to Mr.K.Govi ganesan , Advocate SR.No. 62968

S.A.No.717 of 2015

A.SK(06/11/2019)