

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 09.04.2019	Delivered on 24.04.2019
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CORAM:

THE HONOURABLE MR. **JUSTICE R.SUBRAMANIAN****C.S.No.333 of 2018**

Dr.P.Lakshminarayan ... Plaintiff

Vs

1. Mr.P.Sivasubramaniam

2. Mrs. Gayathree Subramanian ... Defendants

Prayer : Complaint filed under Order XXIV, Rule 1 of the Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure 1908, praying for the following judgment and decree:-

- (a) For a declaration that the settlement Deed dated 11.02.2015 registered as Document No.584/2015 at Sub-Registrar Office, Purasawakkam executed by the 1st defendant in favour of the 2nd defendant is null and void as the 1st defendant do not have absolute right to settle the "B" schedule property in favour of the 2nd defendant;
- (b) For partition of relief that the suit "A" schedule property can be partitioned between the plaintiff and the 1st defendant and pass a preliminary Decree determining, the share to the Plaintiff and the 1st

defendant and to pass a final decree after appointing an Advocate Commissioner by allotting 50% share to the Plaintiff and the 1st defendant 50% share in the suit Schedule-A property and divide the same by metes and bounds;

(c) For permanent injunction restraining the 2nd defendant, her agents or anyone acting under her from in any way dealing with suit B schedule property or its parts by way of sale, lease or any mode of conveying in furtherance to settlement deed dated 11.02.2015 registered as Document No.584/2015 at Sub-Registrar Office, Purasawakkam with 3rd parties;

(d) For costs of the suit.

For Plaintiff : Mr.T.Sri Krishna Bhagavat

For Defendants : Mrs.Chitra Sampath, Senior Counsel
for M/s.Ralph Manohar

J U D G M E N T

The suit is one for declaration that the Settlement Deed dated 11.02.2015, registered as Document No.584 of 2015 in the office of the Sub-Registrar, Purasawakkam, executed by the 1st defendant in favour of the 2nd defendant is null and void, for partition of the suit 'A' Schedule property, allotment of 50% share to the plaintiff, for permanent injunction restraining the 2nd defendant from in any way dealing with suit 'B' Schedule

property or its parts by way of Sale, lease or any mode of conveyance and for costs.

2. The case of the plaintiff is that the suit 'A' Schedule property originally belonged to one P. Manickavelu Mudaliar, who died leaving behind three sons, viz., P. Shanmugasundara Mudaliar, P. Natesa Mudaliar and P. Sivaprakasa Mudaliar. The plaintiff is the grandson of the said P. Shanmugasundara Mudaliar, who died on 27.12.1963 and his wife Saraswathiammal died on 27.02.1989. The 1st defendant is the son of the deceased P. Shanmugasundara Mudaliar, (father of the plaintiff), the 2nd defendant is the daughter of the 1st defendant (sister of the plaintiff).

3. According to the plaintiff, the suit property was allotted to his grandfather P. Shanmugasundara Mudaliar, in the partition that took place between the sons of Manickavelu Mudaliar on 15.11.1954. It is also the claim of the plaintiff that the entire property belongs to the Hindu undivided family of which the 1st defendant is the manager. According to the plaintiff, the suit property being property allotted to his grandfather at a partition that took place between his grandfather and his brothers is the ancestral property in the hands of the grandfather and as such, he would on his birth

become entitled to a share. Therefore, according to the plaintiff, the 1st defendant had no right to execute a settlement deed in respect of the suit property, settling the suit 'B' Schedule property in favour of the 2nd defendant. Thus the sum and substance of the plaintiff's claim is that the settlement deed dated 11.02.2015, registered as Document No.584 of 2015 is invalid and that the plaintiff is entitled to a 50% share in the suit properties.

4. The claim of the plaintiff is resisted by the defendants contending that the suit property is neither a joint family property nor the property of a Hindu undivided family as alleged by the plaintiff. It is also claimed that the 1st defendant was a party to the Deed of Partition dated 15.11.1954 entered into between the father of the 1st defendant namely, Shanmugasundara Mudaliar and his brothers. According to the 1st defendant, while the suit property was allotted to his father Shanmugasundara Mudaliar, the 1st defendant was allotted the property shown in the 'B' Schedule to the said partition. Since suit property was allotted to his father Shanmugasundara Mudaliar, in the partition dated 15.11.1954 it is his separate property.

5. Upon the intestate death of Shanmugasundara Mudaliar, on 27.12.1963, after come into force of the Hindu Succession Act 1956, the suit property devolved on to the 1st defendant, his step sister, sister and mother in equal shares. The suit property is not a coparcenary property. The step sister of the 1st defendant released her rights over the suit property upon receipt of a sum of Rs.10,000/- on 29.03.1972, under a deed of release registered as Document No.2852 of 1972. The mother of the 1st defendant died intestate on 27.02.1989 and her share in the suit property devolved on the 1st defendant and his sister Lakshmikantham. The said Lakshmikantham, settled her half share in the schedule property by the settlement deed dated 25.06.2009, registered as document No.2225 of 2009 on the 1st defendant and as such, the 1st defendant became the absolute owner of the entire 'A' Schedule property. The 1st defendant as the absolute owner of the suit property had executed the settlement deed dated 11.02.2015 settling the front portion of the property on the plaintiff and rear portion on the defendant. It is further contended by the 1st defendant that the properties allotted to him under the Partition Deed dated 15.11.1954 were subject matter of the partition between himself and the 1st defendant and the said partition was recorded by way of a registered

instrument of partition dated 31.03.1982, bearing Document No.149 of 1982. As per the said partition certain properties were allotted to the share of the plaintiff.

6. According to the defendants, the said partition was also acted upon by the plaintiff and the plaintiff has mortgage the property allotted to him M/s.Chennai Purasaiwalkkam Benefit Fund, by way of a Deed of Mortgage dated 24.06.1992. It is also claimed that pursuant to the said partition, the plaintiff had sold other properties allotted to him to one Mrs.Fathimarani, under a Sale Deed dated 05.04.2007 and to one Mr.Liaqat Ali Khan, under the Sale Deed dated 05.04.2007. Therefore, according to the defendants, there is no Hindu Undivided Family or Joint family in existence ever since 31.03.1982, when the partition was entered into between the plaintiff and the 1st defendant.

7. On the above pleadings, the following issues were framed by this Court:

1. *Whether the suit properties are Hindu Undivided Family properties?*
2. *Whether the 1st defendant is entitled to make settlement deeds independently without making plaintiff as party?*

3. Whether the plaintiff has right over the suit properties and what is the extent of his rights?

4. Whether the suit properties are ancestral properties?

5. Whether the 1st defendant has right to make settlement deeds if the properties are ancestral properties?

6. Whether Document No.584/2015, dated 11.02.2015 executed by 1st defendant in favour of 2nd defendant is bad in law and be declared as null and void?

7. Whether the plaintiff is entitled for relief of partition of suit schedule 'A' property, if so, what is the plaintiff's share in the property?

8. Whether the plaintiff is entitled for permanent injunction against 2nd defendant as prayed for in the suit?

9. To what relief the plaintiff is entitled to?

8. At trial, the plaintiff was examined as P.W.1 and Exhibits P1 to P7 were marked. Exhibits D1 to D6 were marked in his cross-examination. There is no oral evidence on the side of the defendants.

9. I have heard Mr.T.Sri Krishna Bhagavat, learned counsel

appearing for the plaintiff and Mrs. Chitra Sampath, Senior Counsel appearing for M/s. Ralph Manohar, learned counsel for the respondents.

Issue Nos.1 and 4:

10. These two issues are taken up together as they are interlinked with each other.

11. Mr.T.Sri Krishna Bhagavat, learned counsel appearing for the plaintiff would contend that the suit property having been allotted to his grandfather in a partition that took place on 15.11.1954 would part take the character of ancestral property and hence the 1st defendant had no right to execute a settlement deed in respect of the suit properties.

12. Contending contra, Mrs.Chitra Sampath, learned Senior Counsel appearing for the defendants would submit that the 1st defendant was a party to the said partition deed and he was represented by his mother as a guardian. Under the said partition deed certain properties were allotted to the 1st defendant himself. Therefore, according to her, the properties that were allotted to Shanmugasundara Mudaliar, the father of the 1st defendant which devolved on the 1st defendant and the other heirs of

Shanmugasundara Mudaliar, on his death on 27.12.1963 would be held by them as their separate property, in view of Section 8 of the Hindu Succession Act, 1956. The devolution having been under Section 8, the properties that were allotted to Shanmugasundara Mudaliar, in the Partition dated 15.11.1954 would be absolute properties of the 1st defendant and the other heirs of the deceased Shanmugasundara Mudaliar. She would also point out to the fact that the properties allotted to the 1st defendant in the partition dated 15.11.1954 were subject matter of a further partition dated 31.03.1982 between the plaintiff and the 1st defendant.

13. The partition deed dated 15.11.1954 has been produced as Ex.P1, a perusal of the document shows that the 1st defendant was a party to the said document and he was allotted certain properties individually to be enjoyed by him absolutely. The partition deed dated 31.03.1982 has been marked as Ex.D4 in cross-examination of P.W.1. A perusal of Ex.D4 would show that the plaintiff and the 1st defendant had entered into a partition dividing the properties that were allotted to the 1st defendant in the partition dated 15.11.1954. It is also seen from Exs. D1, D2 and D3 that the plaintiff individually and along with his daughter had dealt with the properties allotted to him, under the partition deed dated 31.03.1982

namely, Ex.D4.

14. From the above documentary evidence, it is clear that the properties that were allotted to Shanmugasundara Mudaliar, under Ex.P1 Partition Deed dated 15.11.1954 were his absolute properties and on his death on 27.12.1963, after the coming in to the force Hindu Succession Act, 1956, devolved on the 1st defendant and the other heirs of the deceased Shanmugasundara Mudaliar, under Section 8 of the said Act. The claim of the defendants that the other heirs of Shanmugasundara Mudaliar namely, the step sister of the plaintiff and the sister of the plaintiff had relinquished their rights over the suit property has not been denied or disputed by the plaintiff. In fact the plaintiff in his oral evidence admitted the execution of the Partition Deed dated 31.03.1982, the Mortgage Deed dated 24.06.1992, and the Sale Deeds dated 05.04.2007. The above conduct of the plaintiff would show that the plaintiff had accepted and acted upon a partition deed dated 31.03.1982.

15. Mrs.Chitra Sampath, learned Senior Counsel appearing for the defendants would also draw my attention to the judgment of Full Bench of this Court in ***the Additional Commissioner Income Tax, Madras Vs. P.L.Karuppan Chettiar*** reported in ***AIR 1979 Madras 1***, and the judgment

of the Hon'ble Supreme Court in **Commissioner of Wealth Tax, Kanpur and Ors. Vs. Chander Sen and Ors**, b AIR 1986 SC 1753. The Full Bench of this Court in **P.L.Karuppan Chettiar's** case, cited supra, had held that the property allotted to the father of the male Hindu at the partition to which the male Hindu is a party, would devolve on the male Hindu, upon the death of his father after 1956, under Section 8 and not under Section 6 of the Hindu Succession Act 1956.

16. Thus, on the above findings, the Hon'ble Full Bench of this Court had concluded that such property where the devolution is under Section 8 would be held by the male Hindu as his separate property and not as joint family property or co-parcenary property. The said dictum of the Full Bench of this Court was accepted and approved by a Hon'ble Supreme Court in **Commissioner of Wealth Tax, Kanpur and Ors. Vs. Chander Sen and Ors.**

17. In view of the said categorical pronouncements of the Full Bench of this Court and the Hon'ble Supreme Court, referred to supra, it is clear that the property allotted to Shanmugasundara Mudaliar, in the partition dated 15.11.1954, upon his death on 27.12.1963, would devolve on his heirs under Section 8 and will part take character of separate

property of his heirs and cannot be said to be ancestral property or co-parcenary property. Added to the above position of law, the facts of this case, wherein the plaintiff and the 1st defendant had entered into a partition on 31.03.1982, with reference to properties that were allotted to the 1st defendant in the partition that took place on 15.11.1954 would strengthen the case of the defendants. Consciously the properties that were allotted to Shanmugasundara Mudaliar, which had devolved on the 1st defendant were not included in the said partition. This in my opinion would conclusively establish that the suit property was always treated as the absolute property of the 1st defendant.

18. The very fact that the sisters of the 1st defendant had executed release deed and a settlement deed in his favour would affirm the character of the property in the hands of the 1st defendant as his separate property. The issues 1 and 4 are therefore, answered against the plaintiff in favour of the defendants, concluding that the suit properties were the separate properties of the 1st defendant.

Issue Nos.2, 3, 5 and 6:

19. These issues are taken up together, as decision of one issue will have bearing on the other.

20. Once it is held that the suit property was the absolute property of the 1st defendant in his hands. The 1st defendant has got every power to make a settlement deed in respect of the said property. The plaintiff as the son of the 1st defendant would not get any right by birth over the said property so long as the 1st defendant is alive. It therefore, follows that the settlement deed dated 11.02.2015 executed by the 1st defendant in favour of the 2nd defendant is valid and the same cannot be questioned by the plaintiff. Therefore, issue Nos. 2, 3, 5 and 6 are answered in favour of the defendants and against the plaintiff.

Issue No.7:

21. Once it is concluded that the plaintiff has no right by birth over the suit properties, it follows that he cannot seek a partition of the suit property. Hence issue No.7 would answer against the plaintiff.

Issue No.8:

22. This issue relates to the prayer for injunction. It is already been concluded that the suit property is the absolute property of the 1st defendant and the settlement deed executed by the 1st defendant is true

and valid. Hence, the plaintiff will not be entitled to relief of permanent injunction also.

23. In the light of the above findings, the suit necessarily fails and it is dismissed. However, considering the relationship between the parties, there shall be no order as to costs. In view of the above, all the pending applications are closed.

24.04.2019

jv
Index: Yes/No
Internet: Yes/No
Speaking order/Non Speaking order

List of Witnesses examined on the side of the plaintiff:

PW1 - Dr.P.Lakshminarayan

List of Witnesses examined on the side of the Defendants: Nil

List of Exhibits marked on the side of the Plaintiff:

Sl. No.	Exhibits	Description of Documents
1	Ex.P1	The Photocopy of the Partition Deed dated 15.11.1954 bearing Doc. No.957/1954
2	Ex.P2	The Photocopy of the death certificate of P.Shanmughasundra Mudaliar dated 27.12.1963
3	Ex.P3	The Photocopy of the death certificate of Mrs.Saraswathammal dated 28.03.1989
4	Ex.P4	The Photocopy of the Legal Heirship Certificate of P.shanmughasundra Mudaliar dated 23.01.1991
5	Ex.P5	The certified copy of the Settlement Deed dated 11.02.2015 bearing Doc. No.583/2015 executed by the 1 st defendant in favour of the Plaintiff
6	Ex.P6	The certified copy of the Settlement Deed dated 11.02.2015 bearing Doc. No.584/2015 executed by the 1 st defendant in favour of the 2nd defendant
7	Ex.P7	The photocopy of the Caveat Petition dated 09.05.2018.

List of Exhibits marked on the side of the Defendants:

Sl. No.	Exhibits	Description of Documents
1	Ex.D1	Q13: Did you mortgage the property which was received by in partition dated 31.03.1982 Registered as Doc.No.149/1982, SRO, Sowcarpet to Purasawakkam permanent fund limited in the year 1992? A: Yes, The said mortgage deed is marked as Ex.D1.
2	Ex.D2	Q22: Plaintiff and his daughter have jointly sold a part of the portion of the property allotted to them vide sale deed

Sl. No.	Exhibits	Description of Documents
		dated 05.04.2007 registered as Doc.No.392/2007, SRO, Sowcarpet to Liyakath Ali Khan and Yasmin Banu? A: Yes, The above sale deed is marked as Ex.D2.
3	Ex.D3	Q23: Plaintiff and his daughter have jointly sold a part of remaining portion of the property allotted to them vide sale deed dated 05.04.2007 registered as Doc. No.393/2007, SRO, Sowcarpet to Fathima Rani? A: Yes, the above sale deed is marked as Ex.D3.
4	Ex.D4	Q5; Do you admit the certified copy of partition deed dated 31.03.1982 Registered as Doc.No.149/1982, SRO, Sowcarpet which is shown to the plaintiff? A: I admit that it is a certified copy. The said document is marked as Ex.D4
5	Ex.D5	Q14: The 1 st defendant has vide deed of settlement dated 11.02.2015 Registered as Doc.No.353/2015 at SRO, Periamet given property at Nehru Timber Market to you? A: Yes, the said document is marked as Ex.D5
6	Ex.D6	Q15: Are you collecting and enjoying rents from Ex.D5 property? A: It was a conditional settlement were the rent was collected by my father till September 2016. Since he fell sick and released his life interest in Ex.D5. Yes the said document is marked as Ex.D6

jv

24.04.2019

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To
The Sub Assistant Registrar,
Original Side,
High Court, Madras.

R.SUBRAMANIAN,J.

jv



Pre Delivery Judgment
C.S.No.333 of 2018

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24.04.2019