

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.08.2019

PRONOUNCED ON : 20.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.NO.223 OF 2016

AND

C.M.P.NO.4583 OF 2016

1. Marappa gounder
2. Santhi @ Vijayalakshmi

... Appellants/
Respondents/Defendants

Vs.

1. T.D.Natarajan
2. Minor T.N.Boopathikumar,
Represented by his next friend/
Father T.D.Natarajan

... Respondents/Appellants/
Plaintiffs

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 11.12.2015 made in A.S.No.33 of 2014, on the file of the learned Second Additional District Court, Erode partly modifying the judgment and decree dated 17.01.2014, made in O.S. No.103 of 2011, on the file of the learned Sub Court, Perundurai.

For Appellants : Mr.N.Manokaran

For Respondents : Mr.D.Gopal

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JUDGMENT

In this Second Appeal, challenge is made to the the judgment and decree dated 11.12.2015, passed in A.S.No.33 of 2014, on the file of the Second Additional District Court, Erode partly modifying the judgment and decree dated 17.01.2014, passed in O.S. No.103 of 2011, on the file of the Subordinate Court, Perundurai.

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

3. Suit for partition and permanent injunction.

4. The case of the plaintiffs, in brief, is that the first defendant Marappa gounder and Valliammal are husband and wife and they had three children, namely, Santhi @ Vijayalakshmi, the second defendant, Devi and Balan @ Tamilarasu. Valliammal died intestate in the year 2010. Devi died on 02.08.1999 and the first plaintiff is the husband of the abovesaid Devi and the second plaintiff is the son born to the first plaintiff and the deceased Devi and the second plaintiff was born on 15.05.1998. The abovesaid Balan @ Tamilarasu also died on 03.12.2002 intestate. The suit properties are the ancestral properties of the first defendant and accordingly, the first defendant and his three children are entitled to common 1/4th share in the suit properties. Resultantly, on the demise of Balan @ Tamilarasu, Devi and Valliammal, according to the plaintiffs, the first defendant is entitled to a common 1/3rd share, the second defendant is entitled to a common 1/3rd share and the plaintiffs being the legal heirs of the deceased Devi, together are entitled to a common 1/3rd share in the suit properties. The plaintiffs and the defendants are in the joint possession and enjoyment of the suit properties and accordingly, the plaintiffs demanded the partition of their share, however, the second defendant informed that she had already obtained the settlement deed in her favour and repudiated their claim of share in the suit properties and on verification of the documents, the plaintiffs came to know that the second defendant had created a document purported to be a settlement deed in her favour on 28.11.2007 and further, according to the plaintiffs, the first defendant met with an accident during 2006 and the plaintiffs have been taking care of him and the suit properties are the undivided ancestral properties. The first defendant or for the matter Valliammal are not entitled to settle their share in the suit properties in favour of the second defendant and therefore, according to them, the settlement deed projected by the second defendant is void, ab-initio and hence, according to the plaintiffs, they had been necessitated to seek for appropriate reliefs against the defendants.

5. The defendants resisted the plaintiffs' suit contending that the relationship between the parties as averred in the plaint is correct and put forth the case that the death of Devi is not a natural one and she had committed suicide due to the harassment of the first plaintiff and after the death of Devi, the second defendant alone was looking after the first defendant and his wife and the first plaintiff never turned up and cared them and accordingly, the second defendant, being the

affectionate daughter, the first defendant and his wife, in a sound and disposing state of mind executed the settlement deed in favour of the second defendant and the second defendant has also accepted the same and put in possession and enjoyment of the suit properties and accordingly, the defendants prayed for the dismissal of the plaintiffs' suit.

6. In support of the plaintiffs' case PWs 1 and 2 were examined, Exs.A1 to A3 were marked. On the side of the defendants, DWs 1 and 2 were examined, no document has been marked.

7. On a consideration of the materials available on record and the submissions made, the trial Court was pleased to declare that the plaintiffs are entitled to 1/4th share in the suit properties and accordingly, granted the preliminary decree in favour of the plaintiffs and declined the relief of permanent injunction prayed for by the plaintiffs and accordingly disposed of the suit. The plaintiffs challenged the judgment and decree of the trial Court and the first appellate Court, on an appreciation of the materials available on record and the submissions made, was pleased to partly allow the appeal by declaring that the plaintiffs are entitled to 1/3rd share in the suit properties and confirmed the refusal of the relief of permanent injunction in favour of the plaintiffs as determined by the trial Court and accordingly, disposed of the first appeal. 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:

a. When the properties were inherited by Valliammal as the sole legal heir of her son Balan @ Tamilarasu was treated as her separate property, whether the First Appellate Court is correct in holding that she cannot execute a settlement deed in respect of an undivided extent?

b. Whether the plaintiffs being the husband and son of one late Devi, daughter of Valliammal are legally entitled to claim share in the property of Valliammal who inherited the property as the sole legal heir of her son Balan @ Tamilarasu?

9. It is not in dispute that the suit properties are the ancestral properties of the first defendant. The first defendant

and his wife Valliammal had three children, namely, Santhi @ Vijayalakshmi, the second defendant, Devi and Balan @ Tamilarasu. It is found that Devi had died leaving behind her husband and son who are the first and second plaintiffs respectively. It is further seen that Balan @ Tamilarasu had also died on 03.12.2002 intestate. Accordingly, the suit properties being the undivided ancestral properties, it is the case of the plaintiffs that they are entitled to 1/3rd share in the suit properties.

10. The main defence put forth by the contesting defendants is that the first defendant and his wife Valliammal had conveyed their 1/4th share in the suit properties in favour of the second defendant by way of a settlement deed dated 28.11.2007 and accordingly, it is her defence that the plaintiffs would be entitled to only claim, particularly, the second plaintiff would be entitled to claim only 1/4th share in the suit properties and accordingly, prayed for the dismissal of the plaintiffs' suit.

11. As could be seen from the materials placed on record, the suit properties remained undivided and in such view of the matter, the alleged settlement deed projected by the defendants dated 28.11.2007, cannot be held to be a valid document. It is admitted that an undivided coparcener cannot execute a settlement deed in respect of his/her undivided share in favour of any person and even if such a settlement deed had been executed, the same will not bind the other coparceners. The abovesaid position of law has been rightly appreciated and considered by the Courts below and by relying upon the authorities placed before them as detailed in their judgment and in such view of the matter, the right which Valliammal would have obtained on the demise of her son Balan @ Tamilarasu, being only the undivided interest in the coparcenary property, as determined by the first appellate Court, the settlement deed executed by her along with her husband in favour of the second defendant conveying the undivided 1/4th share in the suit properties in favour of the second defendant cannot be legally sustained. As above noted, there cannot be any settlement or gift of an undivided share of the coparcener without the consent of the other coparceners.

12. The argument has been put forth that Valliammal had derived the right of her son Balan @ Tamilarasu in the suit properties in her individual capacity. However, as above pointed out, Valliammal had derived only the undivided interest in the coparcenary properties and as such, would also not be entitled to settle or gift the same in favour of the second defendant. Accordingly, considering the position of law, as above stated, when there cannot be any settlement or gift of an undivided share of the coparcener properties by a coparcener

or by a person having coparcenary interest, in such view of the matter, the gift deed projected by the defendants for resisting the quantum of share of the plaintiffs in the suit properties has been rightly turned down by the first appellate Court.

13. The resultant position being, Valliammal having died intestate, her interest in the coparcenary properties would devolve upon her legal heirs as provided under Section 15 of the Hindu Succession Act. Accordingly, when it is found that Devi is also one of the legal heirs of Valliammal and the son of the deceased Devi, namely, the second plaintiff would also be entitled to claim his share as per law. In such view of the matter, the first appellate Court is justified in determining that the plaintiffs are entitled to obtain 1/3rd share in the suit properties and right in modifying the judgment and decree of the trial Court by declaring that the plaintiffs are entitled to obtain 1/3rd share in the suit properties. As determined by the first appellate Court, the trial Court after, holding that the settlement deed executed by the first defendant and Valliammal is invalid, had proceeded to uphold the settlement deed on the footing that the deceased Devi had committed suicide and it is only the second defendant who had been looking after the first defendant and his wife Valliammal. However, as held by the first appellate Court, the cause of the death of Devi is alien to the issues involved in the matter and when as above pointed out, the settlement deed as put forth by the defendants, does not stand scrutiny in the eyes of law and cannot be upheld, particularly, the same dealing only with the undivided interest in the coparcenary properties, in all, it is found that the first appellate Court is correct in declaring that the plaintiffs are entitled to 1/3rd share in the suit properties. Accordingly, the substantial questions of law formulated in the second appeal are answered in favour of the plaintiffs and against the defendants.

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

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Assistant Registrar (MDU)
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Sub Assistant Registrar

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To

1. The Second Additional District Judge,
Erode.
2. The Subordinate Court,
Perundurai.

Copy To

The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.71027

+1cc to Mr.D.Gopal, Advocate, S.R.No.70683

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