



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.12.2020

Pronounced on: 04.12.2020

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Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

S.A.Nos.1456 & 1457 of 1998

O.S.Ramasamy,
son of Seeranga Gounder,
r/o Olapalayam,
Modakurichi cusba.
Erode Taluk.

... Appellant/4th Defendant
in S.A.No.1456 of 1998

/versus/

1. R.Subramaniam, ... 1st Respondent/Plaintiff

2. R.Shanmugham, ... 2nd Respondent/1st Defendant

3. Komarappa Gounder (died),

4. Kaliappa Gounder (died),

... 3 & 4th Respondent/2 & 3 Defendant

5. Thulasimani,

6. K.Srinivasan,

... 5th & 6th Respondent

RR5 & 6 brought on record as Legal representatives of the deceased R4 vide order of Court dated 28.10.2011 made in C.M.P.Nos.1032 to 1034 of 2011 in S.A.No.1456 of 1998.

7. Rangasami,

8. Palaniammal,

9. Kannammal,

10. Kumaravel,

11. Sakthivel,

12. Gayathri,

... 7 to 12 Respondents

in S.A.No.1456 of 1998

RR7 to 12 brought on record as LR's of the Deceased R3 viz., Komarappa Gounder vide Order of Court dated 13.12.2019 made in C.M.P.No.740 to 742 of 2012 in S.A.No.1456 of 1998 (GKIJ).

O.S.Ramasamy,
son of Seeranga Gounder,
r/o Olapalayam,
Modakurichi cusba.
Erode Taluk.

... Appellant/Plaintiff
in S.A.No.1457 of 1998



/versus/

- | | |
|------------------------------|--|
| 1. Komarappa Gounder | ... 1 st Respondent/1 st Defendant |
| 2. Kaliappa Gounder, (died), | ... 2 nd Respondent/2 nd Defendant |
| 3. R.Subramaniam, | ... 3 rd Respondent/3 rd Defendant |
| 4. R.Shanmugham, | ... 4 th Respondent/4 th Defendant |
| 5. Thulasimani, | |
| 6. K.Srinivasan, | ...5 th & 6 th Respondents |

in S.A.No.1457 of 1998

RR5 & 6 brought on record as Legal representatives of the deceased R2 vide order of Court dated 28.10.2011 made in C.M.P.No.1035 to 1037 of 2011 in S.A.No.1457 of 1998.

Prayer in S.A.No.1456 of 1998: Second Appeal is filed under Section 100 of C.P.C praying against the judgment and decree dated 29.01.1998 made in A.S.No.201 of 1996 on the file of the First Additional District Judge cum Chief Judicial Magistrate Court, Erode confirming the judgment and decree dated 09.09.1996 made in O.S.No.466 of 1995 on the file of the Principal Subordinate Judge, Erode.

Prayer in S.A.No.1457 of 1998: Second Appeal is filed under Section 100 of C.P.C praying against the judgment and decree dated 29.01.1998 made in A.S.No.209 of 1996 on the file of the First Additional District Judge cum Chief Judicial Magistrate Court, Erode confirming the judgment and decree dated 09.09.1996 made in O.S.No.4 of 1993 on the file of the Principal Subordinate Judge, Erode.

For Appellant : Mr.Mukunth,
(both appeals) for M/s.Sarvabhauman Associates,

For R1, R5, R6 : Mr.A.Sundaravadhanan
in S.A.No.1456 of 1998

For R3, R5, R6 : Mr.A.Sundaravadhanan
in S.A.No.1457 of 1998

For R7 to R12 in : Mr.C.Jagadish,
SA.1456/1998

For R2 : No appearance
in S.A.No.1456 of 1998



J U D G M E N T

(The case has been heard through video conference)

These two Second Appeals arises from the common judgment dated 29.01.1998 passed in A.S.No.209 of 1996 and A.S.No.201 of 1996 by the First Additional District Judge-cum-Chief Judicial Magistrate, Erode. The First Appellate Court confirmed the judgment and decree passed in O.S.No.4 of 1993 and O.S.No.466 of 1995 on the file of Principal Sub-Court, Erode by a common judgment dated 09.09.1996.

2. The parties to the lis are same. The facts are common. Joint trial in both suits was held and evidence was recorded in common. For the sake of convenient, the parties are referred by name as far as possible.

3. The Brief background leading to the litigation:-

O.S.Ramasamy, Komarappa Gounder, Kaliappa Gounder and Srinivasa Gounder, jointly purchased a total extent of land measuring 108 5/6 cents (50½ + 43 1/3 + 15 cents) from one M.P.Periyasami Thuran, under three sale deeds dated 20.04.1974 and 22.02.1977. It was vacant land at the time of purchase. In the said vacant land, they constructed building and installed machineries and started business in the name and style of "Shri Elumalaiyan Rice and Oil Mill". Later, one of the partner Srinivasa Gounder, sold his 1/4th share to one Ramasamy Gounder. Subsequently, under the family arrangement between the members of the Ramasamy Gounder, his 1/4th shares was allotted to his two sons R.Subramaniam and R.Shanmugam. Due to difference of opinion among the partners, the business came to an halt. The service connection was disconnected. Some of the machineries were sold or removed from the premises. At the instance of well wishers, Panchayat was held during the end of October 1992 to 24.11.1992 and as per the decision in the Panchayat, the machineries in possession of O.S.Ramasamy was handed over to one of the Panchayatar Mr.Loganathan. The property was divided into 4 lots. The first lot identified as item No.1, consists of the land, the rice mill building and the machineries was decided to put in action among the partners. The auction price was to be divided among the other three partners along with the respective lot identified as item Nos.2 to 4. Accordingly, on 24.11.1992, the First lot identified as item No.1 was put to auction. O.S.Ramasamy, was the highest bidder in the auction. His bid for Rs.5,60,000/- was confirmed and accepted by the parties. By draw of lot, the other items Nos.2 to 4 were allotted to the other 3 partners. The Panchayat, terms and conditions and the agreement between the parties, after the auction were reduced into writing. All the partner except one R.Subramaniam, signed the documents in the presence of the panchaytars.

4. In the above background of facts,



O.S.Ramasamy filed suit O.S.No.4 of 1993 to declare the compromise entered between the parties on 24.11.1992 in the presence of Panchaytars as valid and binding on all parties and enforceable. Consequentially, to pass decree in terms of the agreement, directing him to pay Rs.1,40,000/- each to the other partners in terms of the agreement dated 24.11.1992. The defendants questioned the validity of the said agreement and contested the suit. The second defendant R.Subramaiam, in his written statement also expressed his intention for division of the properties by metes and bound in equal moiety between the shares. Also, he filed a separate suit O.S.No.466 of 1995, with specific allegation that the Panchayat held on 24.11.1992 comprising the friends and business partners of O.S.Ramasamy was accepted by him and he refused to sign the compromise agreement. The document is not enforceable. Due to non-cooperation among the partners, the Mill is lying idle and not, it has become impossible to revive the partnership business, he, as one of the sons of the original partner Mr.Ramasamy Gounder, he is entitled get his 1/4th share along with his brother R.Shanmugam.

5. The Trial Court, in its common judgment, after considering the evidence held that the O.S.Ramasamy, the plaintiff in O.S.No.4 of 1993 is not entitled for the declaration and for final decree based on Ex.A-5 agreement, since one of the party namely R.Subramainam is not a signatory to that document. Hence, dismissed the suit in O.S.No.4 of 1993 and allowed the suit in O.S.No.466 of 1995 filed by R.Subramaniam, passing a preliminary decree to divide the suit property by metes and bound with good and bad soil, and allot 1/8th to R.Subramaniam.

6. These two Appeals are filed by O.S.Ramasamy against the common judgment of the Trial Court, was considered by the First Appellate Court and confirmed the Trial Court judgment.

7. Aggrieved the Second Appeal Nos.1456 of 1998 and 1457 of 1998 filed before this Court.

8. This Court, admitted the Second Appeals and formulated the following substantial questions of law for consideration:-

1). Having rightly found that all parties agreed to divide the suit property as per Ex.A.4 concluded panchayath agreement dated 24.11.1992 whether the Courts below are right in law in not giving effect to the same on the mis-construction of Ex.A.4 - agreement in holding that it is an incomplete agreement of partition?

2). When parties have agreed to mode of division under Ex.A.4 Panchayath agreement



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and when parties are entitled to enforce Ex.A.4 agreement, whether the Courts below are right in law in dismissing the suit in O.S.No.4 of 1993 on the file of Principal Subordinate Judge, Erode, on an assumption that Ex.A.4 agreement is incomplete?

9. The Learned Counsel for the Appellant contended that, Ex.A-4 is a complete agreement and Ex.A-5 is only the procedure to enforce the agreement. Merely because R.Subramaniam refused to sign Ex.A-5, Court cannot allow him to wriggle out from his committed under Ex.A-4. The Courts below failed to consider that the parties agreed for payment of the auction price within one month from 24.11.1992. The suit expressing the readiness and willingness to make the payment as per the Panchayat agreement was filed before expiry of one month period. Therefore, the appellant cannot be blamed for non-performance of the agreement.

10. The Learned Counsel for the respondents submitted that, Ex.A-5, is not an enforceable agreement. Ex.A-4 and Ex.A-5 are to be read together. The Courts below have rightly held that the alleged compromise agreement is not a concluded contract and therefore, not enforceable. The appellant cannot compel the dissenting partner to agree for the term suitable to him. In view of impossibility to continue the partnership business, it is just and appropriate to divide the properties by metes and bound. Hence, the Second Appeals ought to be dismissed.

11. The entire dispute revolves around Ex.A-4 and Ex.A-5 both dated 24.11.1992. The scrutiny of these two documents, we find that, Ex.A-4 is a hand written chit, except the bid details in respect of item No.1 and drawing of lots for item Nos.2 to 4, no other details recorded. In this document Kumarappa Gounder, R.Subramaniam, R.Shanmugam, Kaliappa Gounder and O.S.Ramasamy have signed along with 12 Panchayathars. In Ex.A-5, typed in Rs.10/- stamp paper, except Subramaniam other 4 have signed. The deed is captioned as "Partition agreement deed". In this document, the recitals provides the information leading to entering this agreement and the terms of agreement. Reading of Ex.A-4 in isolation and independently does not convey any meaning. It makes sense, only if it is read along with Ex.A-5. Therefore, the contention of the appellant counsel that Ex.A-4 is a complete document is not correct. In fact, the contra statement that Ex.A-5 is the complete document and Ex.A-5 provides only the micro details about the bid and drawing of lot is correct. Ex.A-4 in isolation is not enforceable. Ex.A-5, draw in the stamp paper, which contains the terms of agreement is worthless because one of the party to the agreement has refused to sign.

12. For the reason stated above, the Substantial



questions of law formulated by this Court is answered against the appellant. In the result, the Second Appeal Nos.1456 and 1457 of 1998 are dismissed. No order as to costs.

Note:- Pending Appeals, respondent No.3 (Komarappa Gounder) and Respondent No.4 (Kaliappa Gounder) died and their legal representatives were brought on record as Respondent Nos.5 to 12. In the memo dated 09.01.2020 filed by the LR's of Komarappa Gounder arrayed as respondents 7 to 12 Court fees of Rs.2,500/- under Section 37(3) of TNCFSV Act, tendered to allotted 2/8th share in the suit property. The Court shall take note of this fact and draft decree accordingly.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

bsm

To:-

1.The First Additional District Judge cum Chief Judicial Magistrate Court, Erode.

2. The Principal Subordinate Judge,
Erode.

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

+2cc to Mr.Sarvabhauman Associates, Advocate, S.R.No.39021 and
39022

+1cc to Mr.A.Sundaravadhanan, Advocate, S.R.No.39109

+2cc to Mr.S.Senthil, Advocate, S.R.No.39134

S.A.Nos.1456 & 1457 of 1998

SS(CO)
GN(12/10/2021)