

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.02.2020

Date of Verdict :04.03.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.444 of 1999
and C.M.P.No.11908 of 2019

Srinivasan ...Appellant/1st Defendant

Vs.

- 1.Padmavathi
- 2.Lakshmi (Died)
- 3.Chandra
- 4.Thilagavathi (Died)
- 5.Alamelmangai
- 6.Minor Sabarinathan
rep. By mother Mythili
- 7.Mythili
(RR 5 to 7 given up as unnecessary parties)
- 8.A.K.Murugan
- 9.A.M.Shanmugham
- 10.A.M.Muralidharan
- 11.Uma Maheswari
(RR 8 to 11 brought on record as legal heir
of the deceased R2 viz., Lakshmi
vide order of the Court dated 29.07.2019
made in C.M.P.Nos.11907, 11911 &
11915 of 2019 in S.A.No.444 of 1999.)
- 12.A.Meenakshi Sundaram
- 13.Baranitharan
- 14.Anubama
- 15.Minor Tharun
- 16.Minor Athsitha
(RR 15 & 16 rep. by its guardian
viz., Mother Anbuma, the 14th respondent)
(RR 12 to 16 brought on record as legal heir
of the deceased R4 viz., Thilagavathi
vide order of the Court dated 29.07.2019
made in C.M.P.Nos.11912, 11913 &
11918 of 2019 in S.A.No.444 of 1999.)

...Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 15.07.1997 made in A.S.No.7 of 1997 on the file of the Subordinate Court, Bhavani modifying the judgment and decree dated 15.10.1996 made in O.S.No.414 of 1992 on the file of the Principal District Munsif Court, Bhavani.

For Appellant : Mr.T.Murugamanickam
Senior Counsel
for M/s.Zeenath Begum

For R1 : Mr.P.M.Duraisamy

For RR2 & 4 : Died (Steps taken)

For RR5 to 7 : Given up

For RR3, 8 to 15: Notice served

JUDGMENT

This second appeal is directed as against the judgment and decree dated 15.07.1997 passed in A.S.No.7 of 1997 on the file of the Subordinate Court, Bhavani modifying the Judgment and Decree dated 13.10.1996 passed in O.S.No.414 of 1992 on the file of the Principal District Munsif Court, Bhavani.

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

3. The case of the plaintiffs in brief is as follows :-

3.1. The suit is filed for partition. The 'A' schedule suit property belonged to their father A.R.Muthusamy Gounder and the 'B' schedule property belonged to their mother Ranganayagi Ammal. Both died intestate in the year 1986 and 1991, respectively. Therefore, the plaintiffs, defendants 1 and 2 and the defendants 3 and 4, who are the minor son and widow of the deceased brother Jegannathan are entitled to have their 1/7th share in the suit property. Therefore, the plaintiffs filed the suit for partition.

4. Resisting the plaintiffs' case, the defendants filed written statement stating that the suit properties are the ancestral joint family properties of all the parties in the suit. While being so, by the partition deed dated 24.04.1972, the 'A' schedule property was allotted to the father, namely, A.R.Muthusamy Gounder and the 'B' schedule property was allotted to the mother, namely, Ranganayagi Ammal. The 'C' and 'D' schedule properties were allotted to the first defendant. After

death of the father, the sisters of the first defendant demanded partition. Therefore, there was a mediation and entered into an agreement dated 28.12.1987 and accordingly, the properties were divided into three shares in which, the 'A' schedule in the said document was allotted to Ranganayagi Ammal. The 'B' schedule property was allotted to first defendant and 'C' schedule property was allotted to the deceased brother Jegannathan. Further, each sisters should be paid a sum of Rs.40,000/- and on receipt of the same they should register the release deed in favour of the brothers to relinquish their rights over the suit property. Accordingly, the first defendant and his brother settled the amount to their sisters and they also executed three release deeds on 14.09.1988 in favour of the first defendant thereby relinquished their right over the suit property. Thereafter, it was found that one item, namely, 'B' schedule property was omitted and as such the sisters were requested to rectify the mistake. Unfortunately, in the meanwhile, mother Ranganayagi Ammal and brother died, and in these circumstances the plaintiffs filed the suit. Hence, prayed for dismissal of the suit.

5. In support of the plaintiffs' case, P.W.1 was examined and marked Ex.A1. On the side of the defendants D.W.1 to D.W.4 were examined and marked Exs.B1 to B6. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit filed by the plaintiffs. Aggrieved over the judgment and decree of the trial Court, the plaintiff preferred an appeal suit in A.S.No.7 of 1997 before the Subordinate Judge, Bhavani. The first Appellate Court on appreciating the materials placed on records, partly allowed the appeal and decreed the suit insofar as the 'B' schedule property is concerned and the plaintiffs are entitled to have their 1/4th share in the 'B' schedule property alone. Challenging the same, the first defendant has come forward with the present second appeal.

6. At the time of admission of the second appeal, the following substantial questions of law were framed :-

a) When the agreement for partition Ex.B1, has been found to be validly executed, whether the lower Appellate Court was correct in holding, that, one portion of the document will not bind the executants?

b) Whether the plaintiffs are estopped from claiming any right to partition, when they have relinquished their right in the suit properties?

7. The learned Senior Counsel appearing for the first defendant submitted that the suit 'A' and 'B' schedule properties are ancestral properties. By the partition deed, the 'A' schedule property was allotted in favour of the father and 'B' schedule property was allotted in favour of the mother of the plaintiffs and defendants 1 and 2. Among the family members there was a Panchayat Muchalika dated 28.12.1987, which was admitted by all the parties. Accordingly, the plaintiffs and the second defendant received their respective amount of Rs.40,000/- and they executed release deed insofar as their shares are concerned in favour of the first defendant and his deceased brother, which were marked as Exs.B2 to B5. The attestors to those release deed were examined as D.W.2 and D.W.3 and proved the release deed executed by the plaintiffs. In fact, the plaintiffs also categorically admitted about the receipt of money. Though, now they disputed the receipt of money, unless those release deeds were cancelled, it become valid. He further submitted that insofar as Ex.B3 is concerned, it was returned for non payment of sufficient stamps. Though, it was not registered, it is valid until it was cancelled by the executant. Therefore, considering the above facts and circumstances, the Trial Court rightly dismissed the suit. Unfortunately, the first Appellate Court partly allowed the suit insofar as the 'B' schedule property is concerned that the plaintiffs are entitled to have their 1/4th share in the 'B' schedule property. He vehemently contended that even under the Panchayat Muchalika Ex.B1 dated 28.12.1987, the mother of the plaintiffs and defendants 1 and 2 were given only life estate and she was not given any absolute right over the 'B' schedule property. Without considering their recital of Muchalika itself, the first Appellate Court reversed the findings of the Trial Court insofar as the 'B' schedule property. Therefore, he prayed for dismissal of the suit on its entirety.

8. Per contra, the learned counsel for the plaintiffs submitted that Exs.B1 is not at all valid one. Since the conditions imposed in the said deed was not at all complied with by their brother, namely, D.W.1 and his deceased brother. The plaintiffs have received only a sum of Rs.26,000/- instead of Rs.40,000/-. Therefore, the first Appellate Court rightly reversed the findings of the Trial Court and decreed the suit in part and prayed for dismissal of the appeal.

9. Heard Mr.T.Murugamanickam, learned Senior counsel appearing for the appellants and Mr.P.M.Duraisamy, learned counsel appearing for the first respondent.

10. This Court considered the rival submission made by the learned counsel on either side.

11. Admittedly, the plaintiffs and defendants 1 and 2 are sisters and brother. The fourth defendant is the widow of the deceased brother of the first defendant. The third defendant is the minor son of the fourth defendant. The suit properties were allotted in favour of their father and mother. Thereafter, on 28.12.1987, there was a family arrangement and they executed Muchalika and accordingly, the 'A' schedule property in the Muchalika was allotted in favour of their mother Ranganayagi Ammal, which is the suit 'B' schedule property. The 'B' schedule property in the Muchalika was allotted to the first defendant. The 'C' schedule property in the Muchalika was allotted to the deceased brother of the first defendant. Each sister should be paid a sum of Rs.40,000/- and on receipt of the same, they should register release deed by relinquishing their rights over the 'A' and 'B' schedule suit property in favour of their brothers.

12. According to the plaintiffs, there was a Panchayat Muchalika, which was marked as Ex.B1 and it is not valid, since the conditions imposed in that deed are not complied with by the defendants. Therefore, they are entitled to have their 1/7th share in the suit properties. The partition deed between the family members of the plaintiffs' father was marked as Ex.A1. Thereafter, among the family members of the plaintiffs and defendants there was a family arrangement and they executed Panchayat Muchalika, which was marked as Ex.B1. P.W.1 deposed that she admitted Ex.B1- Muchalika and denies the execution of Ex.B3. But she admits that she aware of the execution of Ex.B3. The first defendant was examined as D.W.1 and he deposed that the release deed executed by the plaintiffs, which were marked as Exs.B2 to B4, in which, B3 was not registered on account of deficit stamp duty and it was returned. Further, it was taken back for the reason that the share of their mother was not included in the said document. The defendants also examined D.W.2 and D.W.3, who are the attestors to the document Exs.B3 and B4 and proved the receipt of money by the plaintiffs, as per the Muchalika Ex.B1. D.W.4, one of the attestors for Ex.B1 deposed and proved the Ex.B1. Considering these facts and evidence on record, the Trial Court dismissed the suit. The first Appellate Court reversed the finding insofar as the 'B' schedule property is concerned on account that the 'B' schedule property was never given up by the plaintiffs and as such they are entitled to have their 1/4th share in the 'B' schedule property.

13. The plaintiffs filed a suit without even mentioning about the Exs.B1 to B4 and simply filed a partition suit as if they are entitled to have their equal share in the suit properties. Even after filing the written statement by the defendants, the plaintiffs have not chosen to file their reply to the written statement. Therefore, all the documents, which were marked as Exs.B1 to B4 are admitted by the plaintiffs and they are estopped from denying the same. Further, P.W.1 also categorically admitted about the preparation of Ex.B3, though denies the execution of Ex.B3. The Ex.B3 was kept pending for registration for the reason of deficit stamp duty, since it was admitted by P.W.1 and in fact, execution of the said document also admitted and the receipt of amounts also not denied and as such the plaintiffs cannot claim any share in the suit schedule properties. Therefore, the reasoning and findings rendered by the first Appellate Court are perverse and against the evidence on record and they are liable to be interfered with. Accordingly, all the substantial questions of law formulated by this Court in this Second Appeal, are answered in favour of the defendants and as against the plaintiffs.

14. Accordingly, the second appeal is allowed and the Judgment and Decree dated 15.07.1997 made in A.S.No.7 of 1997 on the file of the Subordinate Court, Bhavani are set aside and consequently, the Judgment and Decree dated 15.10.1996 made in O.S.No.414 of 1992 on the file of the Principal District Munsif Court, Bhavani are restored. No order as to costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Subordinate Judge,
Bhavani.
2. The Principal District Munsif,
Bhavani.

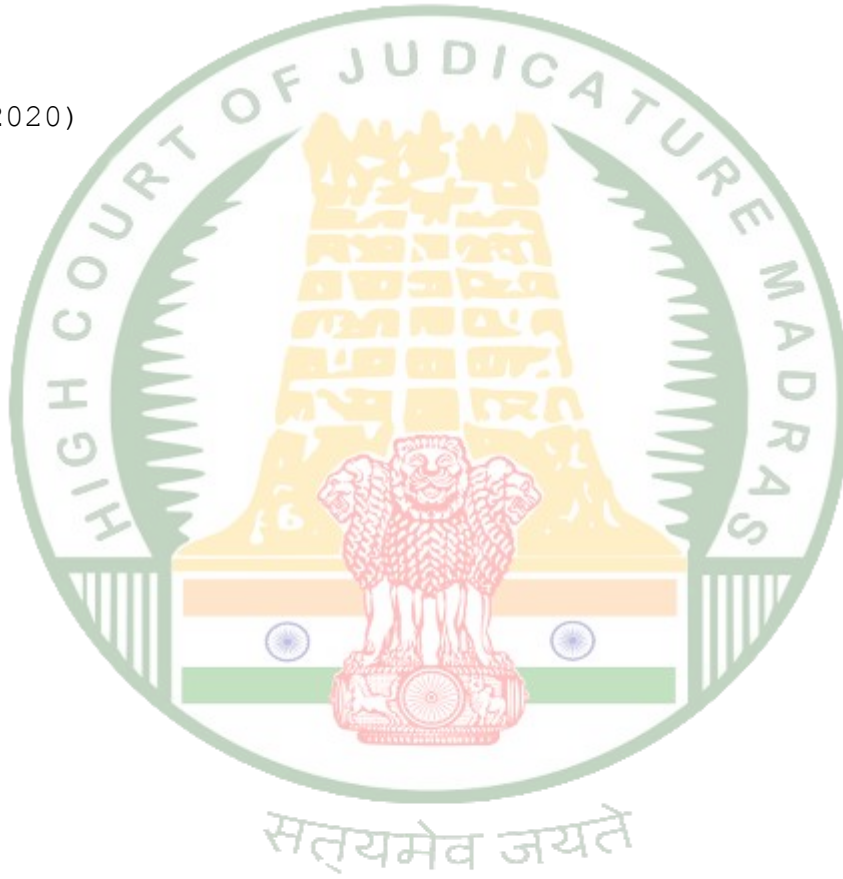
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3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+1 CC to Ms. Zeenath Begum, Advocate sr 19572.
+1 CC to Mr.P.M.Duraisamy, Advocate sr 19381.

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RSK(CO)
SP(20/08/2020)



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