

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.02.2020

Date of Verdict : 21.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.75 of 2000
and C.M.P.No.943 of 2000

1. Sundara Rajan (died)
2. Kuppulkshmi (died)
3. Sow. Bagyalakshmi
W/o.V.Alvar
(Third appellant
brought on record as
legal heirs of the deceased
appellants 1 & 2 vide order
of the Court dated 04.11.2008
made in C.M.P.Nos. 1550 to 1552
of 2008 in S.A.No.75 of 2000) ...Appellants

Vs.

1. Dhanam (Deceased) ...1st Respondent/ Appellant/Plaintiff
2. M.Natarajan
3. M.Umapathy
4. Lakshmi
5. R.Shanmugham
6. R.Jagadeesan
7. Karpagam

(Respondents 5 to 7 are recorded
as legal heirs of the deceased
first respondent vide order of
this Court Dated 22.02.2019
made in S.A.No.75 of 2005 as
per memo dated 27.09.2018)

8. Angamuthu (Died) .. Respondents 2 to 8/ Respondents2
to 8/ defendants 2 to 8

9. Mahendiran
10. Mohanambal
11. Thangammal .. Respondents 9 to 11/ Respondents
10 to 12/ defendants 10 to 12

12. A.Saminathan
13. A.Balagurumoorthy
14. M.Anandhi

(Respondents 12 to 14 are
brought on record as
legal heirs of the deceased
eighth respondent R8 vide order
of the Court dated 23.07.2019
made in C.M.P.Nos.11650,

11654 and 11658 of 2019 in
S.A.No.75 of 2000)

...Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 16.02.1999 made in A.S.No.170 of 1997 on the file of the learned First Additional District Judge-cum-Chief Judicial Magistrate, Erode, reversing the judgment and decree dated 21.03.1997 made in O.S.No.490 of 1993 on the file of the learned Additional Subordinate Judge, Erode.

For Appellants : Mr.V.P.Sengottuvel

For Respondents

R1, R8 : Died
R2, R3, R5, R6, R10, R11 : Notice served

R4, R9, R13, R14 : Not ready in notice
R7 : Exparte
For R12 : Mr.Deepan Uday

JUDGMENT

This second appeal is directed as against the judgment and decree dated 16.02.1999 made in A.S.No.170 of 1997 on the file of the learned First Additional District Judge-cum-Chief Judicial Magistrate, Erode, reversing the judgment and decree dated 21.03.1997 made in O.S.No.490 of 1993 on the file of the learned Additional Subordinate Judge, Erode.

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

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

3.1. The suit is filed for partition. The suit property and other properties are joint family properties of one Chinnappan @ Marimuthu Chettiar and his brother Ramalingam Chettiar. They had divided the said family properties by a partition deed dated 24.11.1951, in which the suit property was allotted to the share of the joint family of Chinnappan @ Marimuthu Chettiar. He had five sons and one daughter. Among them, one of the sons died leaving behind him, the defendants 1 to 3 as his legal heirs. Another son died leaving behind him, the defendants 4 to 6 as his legal heirs. One of the son left the family and he did not return home and his whereabouts are not known. Only daughter also died leaving behind the ninth defendant herein and one son as her legal heirs. Her son also died leaving behind him, the defendants 10 to 12 as his legal heirs.

3.2. The suit properties are being joint family property of late Chinnappan @ Marimuthu Chettiar and his sons. Even after his demise, the property was not divided and even during

his life time, the eighth defendant had executed release deed dated 29.11.1951 in favour of his father as Kartha of the family. Therefore, the eighth defendant seems to be no interest in the suit property and got separated from the joint family. Thereafter, all the family members mortgaged the suit property on 13.02.1953 to Erode House Mortgage Bank and availed loan to discharge the joint family debts to the tune of Rs.900/-. The said mortgage deed also registered in Document No.223 of 1953 dated 14.02.1953 on the file of the Sub Registrar Office, Erode. Thus it is clear that the entire suit property is a joint family property and all the parties are enjoying the same without partition so far. Therefore, the said Chinnappan and his legal heirs entitled to have 1/4th share. The branch of one of the son viz., Ruthiramoorthy i.e., the husband of the plaintiff was entitled to an undivided 6/20 share. The plaintiff is the widow and the defendants 4 to 6 are the legal heirs in the branch of the predeceased son Rudramoorthy. Thus, the plaintiff and the defendants 4 to 6 are each entitled to an undivided 6/80 share. Hence the suit.

4. The defendants 4 to 6 filed written statement and they are also sailing with the plaintiff and prayed for decree the suit as prayed for.

5. Resisting the plaintiff's case, the seventh defendant filed separate written statement and stated that in respect of the first item of the suit property belonged to Chinnappan @ Marimuthu Chettiar and it is not an ancestral property and it was purchased by his own earning. The seven defendant purchased first item of the suit property from his father by a registered sale deed dated 16.02.1961 for valid sale consideration. His father was alive till 1968, therefore, except the seventh defendant, no one have entitled any share in the first item of the suit property. The eighth defendant already filed suit in O.S.No.1973 of 1970 for partition and same was decreed, in which the defendants 4 to 6 were also parties. The plaintiff had full knowledge about the earlier suit and therefore, prayed for dismissal of the suit.

6. The eighth defendant filed separate written statement stating that the entire property are not joint family property. The eighth defendant never executed any release deed dated 29.11.1951 in favour of his father. In respect of the same, he also filed suit in O.S.No.1973 of 1970 and the said issue was also settled. In fact, he had incurred loss in his business and as such the said release deed was executed and was never acted upon. In fact, in the earlier suit filed by him, 1/5th share was decreed in his favour. Therefore, the present suit is liable to be dismissed.

7. On the side of the plaintiff, she herself examined as P.W.1 and were marked Ex.A.1 to Ex.A.5. On the side of the defendants, they examined D.W.1 & D.W.2 and were marked Ex.B.1

to Ex.B.13. On perusal of the material produced on record and on considering both the oral and documentary evidences adduced by the respective parties and also the submissions made, the trial Court dismissed the suit filed by the plaintiff. Aggrieved by the same, the plaintiff preferred an appeal suit in A.S.No. 170 of 1997 and the first appellate Court allowed the appeal and decreed the suit filed by the plaintiff. Aggrieved by the same, the defendants 8 and 9 preferred this present second appeal.

8. At the time of admission of this second appeal on 17.10.2003, the following substantial questions of law were formulated for consideration:-

"i) Whether the lower appellate Court erred in law in decreeing the suit for partition when there is already a partition suit between the parties which had become finally and the plaintiff and her sons and daughters were parties to that suit?

ii) Whether the lower appellate Court is right in decreeing the suit when it was barred by the principles of resjudicate and estoppel?"

9. The learned counsel appearing for the appellants and the respondents are present and they are reiterated the averments set out in the plaint as well as the written statement.

10. Heard Mr.V.P.Sengottuvel, learned counsel appearing for the appellants and Mr.Deepan Uday, learned counsel appearing for the respondents.

11. The plaintiff filed suit for partition and she is the wife of one Rudramoorthy and she sought for her 6/80 shares in the suit schedule property. Before the trial Court, the defendants 3, 9 -12 were set ex-parte. The defendants 1, 4-6 are sailing with the plaintiff and sought for allotment of their respective shares in the suit property.

12. According to the plaintiff, originally the suit property belonged to Chinnappan @ Marimuthu Chettiar and his brother Ramalingam Chettiar and thereafter it was partitioned between them by a partition deed dated 24.11.1951, in which the suit property was allotted to one Chinnappan @ Marimuthu Chettiar. He had five sons and one daughter by name Muthuthandavan, Rudramoorthy, Angamuthu(D7), Sundararajan (D8), Arumugham and Uthrammal. The defendants 1 to 3 are the legal heirs of Muthuthandavan. The plaintiff is the wife of the deceased Rudramoorthy and the defendants 4 to 6 are their legal heirs. The one of the son Arumugham left from the house even before the 40 years and his whereabouts are not known. The daughter Uthrammal died leaving behind her daughter viz., Ruppulakshmi (D9) and her son Ramachandran. The said

Ramachandran also died and his legal heirs are the defendants 10 to 12.

13. The first item of the suit property were purchased by the said Chinnappan @ Marimuthu Chettiar and his brother by the registered sale deed dated 30.07.1917, which was marked as Ex.B.1. The property which is situated on the northern side of the property in Ex.B.1, was purchased by the said Chinnappan @ Marimuthu Chettiar, by the registered sale deed dated 25.10.1929, which was marked as Ex.B.2. Thereafter, all the properties were partitioned by a partition deed dated 24.11.1951, which was marked as Ex.B.3. The 7th defendant purchased the first item of the suit property from his father viz., Chinnappan @ Marimuthu Chettiar, by a sale deed dated 16.02.1961, which was marked as Ex.B.4. Thereafter the 7th defendant mortgaged the suit property with the Erode Co-operative House Mortgage Bank Ltd., on 07.06.1962, which were marked as Ex.B.5 and Ex.B.6.

14. The 8th defendant filed a suit in O.S.No.1973 of 1970 before the District Munsif Court, Erode for declaration, declaring that the release deed dated 29.11.1951 is null and void and for partition. In the said suit, the first item of the present suit property was shown as B schedule property. The said suit was decreed and concluded that the B suit schedule property was purchased by his father on his own income and insofar as the A suit schedule property, it belonged to joint family. Only because of the debt issues, the 8th defendant executed the said release deed dated 29.11.1951 and thereafter it was not acted upon. Accordingly, the first item of the suit property was declared as self acquired property of his father and in respect of the second item of the suit property, the 8th defendant entitled to have 1/5 share. Therefore, the trial Court dismissed the suit filed by the plaintiff.

15. The first appellate Court concluded that the earlier suit is not binding upon the plaintiff since, she was not a party in that suit and therefore, she is entitled to have her share in the second item of the suit property. Further held that the 8th defendant executed release deed dated 29.11.1951, as such he is not entitled to have any share in the B schedule property.

16. On perusal of the judgment and decree passed in O.S.No.1973 of 1970, which were marked as Ex.B.11 and Ex.B.12, it declared that the release deed dated 29.11.1951 is null and void. Further in the said suit, the 8th defendant was allowed 1/5th share in the B schedule property. Therefore, the present suit is also hit by principles of resjudicata. The findings of the trial Court in the judgment and decree dated 17.09.1985 in O.S.No.1973 of 1970 is clearly binding the plaintiff in the present suit, since the parties in the present suit are the same in the earlier suit. Therefore, the finding of the first

appellate Court is perverse and against the evidence, as such this Court has no other option to interfere with the findings of the first appellate Court. Accordingly, all the substantial questions of law formulated by this Court are answered in favour of the defendants and as against the plaintiff.

17. In fine, the second appeal stands allowed and the judgment and decree dated 16.02.1999 made in A.S.No.170 of 1997 on the file of the First Additional District-cum-Chief Judicial Magistrate Court, Erode, is hereby set aside and resultantly, the judgment and decree dated 21.03.1997 made in O.S.No.490 of 1993 on the file of the Additional Subordinate Court, Erode, is restored. Consequently, connected miscellaneous petition is also closed. No order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

rts
To

1. The First Additional District Judge
-cum-Chief Judicial Magistrate,
Erode.
2. The Additional Subordinate Judge,
Erode.
3. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1cc to Mr.V.P.Sengottuvel , Advocate SR.No. 16324

S.A.No.75 of 2000

mr co

A.SK(20.01.2021)

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