

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-02-2020

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.NO.37 OF 2017

AND

C.M.P.NO.1580 OF 2017

1.Maragatham

2.Lakshmi

... Appellants/Plaintiffs

vs.

Karuppakkal (Died)

1.P.Nanjukutti

2.P.Palanisamy

3.Rukmani

4.P.Subbathal

5.P.Mani

6.Vasanthamani

7.Kalaivani

8.Mohankumar

... Respondents/Defendants

Prayer:-

Appeal Suit is preferred under Section 96 of the Code of Civil Procedure read with Order 41, Rule 1 of the Code of Civil Procedure, against the judgment and decree dated 30.03.2016 passed in O.S.No.593 of 2010 on the file of the learned III Additional District and Sessions Judge, Coimbatore.

For Appellants : Ms.K.Sandhya for
M/s.Sarvabhauman Associates

For Respondent-2 : Mr.V.Venkatasamy

For Respondent-1 : Died

For Respondents-3 to 8 : No Appearance

J U D G M E N T

The appeal suit on hand is directed against the judgment and decree dated 30.03.2016 passed by the learned III Additional District and Sessions Judge, Coimbatore in O.S.No.593 of 2010.

2. The appellants in the appeal suit are the plaintiffs in the suit and the respondents in the appeal suit are the defendants in the suit.

3. The suit was instituted by the appellants/plaintiffs seeking declaration that the Partition Deed dated 28.05.1983 is null and void and the same is not binding on the plaintiffs besides for partition of suit property and allotment of two shares to the plaintiffs and permanent injunction against the defendants 2 to 9 from alienating and encumbering the suit property.

4. The suit has been filed claiming that the suit schedule property, an ancestral property, originally belonged to one Pattiyanna Gounder and that he died during the year 1951, leaving behind his son Peria Gounder. Pattiyanna Gounder's wife Marakkal also died during the year 1983. Their son Peria Gounder died on 29.12.1994, leaving behind the first defendant as wife, and defendants 2 to 6 and the plaintiffs 1 and 2 as his sons and daughters, claiming that suppressing the legal heirs and facts, a Partition Deed in Doc.No.2201 of 1983 was executed and registered on 28.05.1983 among Periya Gounder and defendants 1 to 3, which according to the plaintiff, was either a fabricated one or obtained fraudulently from the Periya Gounder, the plaintiff has sought for declaration and partition.

5. The plaintiffs would also claim that the property acquired by Peria Gounder is an ancestral property and that all the legal heirs of Peria Gounder are entitled for legal right over the property. The plaintiffs would claim that the Partition Deed (Document No.2201/1983) entered into among the defendants 1 to 3 and Peria Gounder was against the law that was in force at the time of execution of the said Partition Deed and therefore, is not binding on the legal heirs of Peria Gounder. Consequently, the Release Deed dated 24.02.2010 (Document No.1004/2010) executed by the first defendant in favour of the second defendant as well as the Release Deed dated 10.03.2010 (Document No.1384/2010) executed by the defendants 2, 7 and 8 in favour of the 9th defendant and the Release Deed dated 11.03.2010 (Document No.1385/2010) executed by the 9th defendant in favour of the defendants 2, 7 and 8 are not binding on them as they were in furtherance of Partition Deed Document No.2202/1983, which according to the plaintiffs, is not binding on them. The plaintiffs would further claim that, during September 2009, the plaintiffs approached the defendants for partition, they refused to accede to the demand and stand that they have already partitioned the suit property. The plaintiffs obtained a certificate copy of the said Partition Deed and filed the suit for partition.

6. The second defendant filed written statement and it was adopted by the defendants 7, 8 and 9 in and by which the first defendant would admit that the suit property is an ancestral property and that the father of the plaintiffs and the defendants died on 28.05.1983 besides that the said Peria Gounder and his sons Manjukutty viz., the second defendant and Palanisamy, the third defendant along with their mother Karuppakkal entered into Partition Deed registered as Document No.2202/1983. The defendants 2 and 3, who were allotted Schedule 'B' and Schedule 'C' properties under the said Partition Deed were in possession and enjoyment of the same and the revenue records were also stand in their name. The second defendant would also claim that he has sold the house that was allotted to him to one Mr.Mani about 25 years ago. The second defendant would also claim that agricultural property allotted under the said partition, was mortgaged by him with Vellanaipatti Primary Cooperative Bank on 04.04.2001. The said mortgage was discharged by him by availing loan from Saravanampatty Primary Agricultural Cooperative Bank on 02.07.2004 by creating mortgage the said property. According to the second defendant, the suit schedule property is an ancestral property and the daughters have been given in marriage long prior to 1983 and therefore, they have no right in the suit property. He would claim that when the daughters were given in marriage, their marriages were celebrated in good manner and enough seer were given to them by their father and after his death, by defendants and other brothers. The second defendant would also speak about alienation of the property so allotted to him under the Partition Deed besides, the further alienation of the suit property. The second defendant would also claim that the plaintiffs have not included the other properties that were the subject matter of Partition Deed (Dcoument No.2202/1983) besides failing to implead the purchasers of the suit property. According to the second defendant, the suit is bad for partial partition and for non-joinder of necessary parties.

7. A separate written statement was filed by the third defendant, in and by which, he would toe the line taken by the second defendant besides claiming that as per the law prevailed during the time of execution of the Partition Deed dated 28.05.1983, the daughters of Peria Gounder were not entitled to any share in the property, which according to him, in an ancestral property. He would also deny the allegations made by the plaintiffs that the Partition Deed is a fabricated one, obtained fraudulently from Peria Gounder. The third defendant would also claim that the plaintiffs were never in joint possession of the suit property and therefore, the valuation as made by the plaintiffs and the Court Fee paid thereon, is not in accordance with law.

8. The Trial Court framed the following issues for consideration:-

(1) Whether the plaintiff is entitled for a declaration as prayed for ?

(2) Whether the plaintiff is entitled for partition as prayed for ?

(3) Whether the plaintiffs are entitled for permanent injunction as prayed for ?

(4) Whether the reliefs sought by the plaintiffs are barred by limitation ?

(5) Whether the suit is bad for non-joinder of necessary parties ?

(6) Whether the suit is bad for partial partition ?

(7) To what relief the plaintiffs are entitled ?

9. The Trial Court considered the documents as well as the evidences. It is pertinent to note that irrespective of all other evidences, PW-1 himself admitted the fact regarding the Partition Deed dated 28.05.1983. The Trial Court, in its, finding categorically considered these aspects and made a finding that the coparceners had partitioned the family property in the year 1983 itself and also allotted the properties to their sons, namely, defendants 2 and 3. Thus, the plaintiff cannot claim any right over the suit property and the claim of the plaintiff is to be rejected.

10. With reference to Law of Limitation, the period of 12 years from the date of knowledge of the plaintiffs' exclusion from the joint family property under Article 110. The plaintiffs have claimed that they came to know about the Partition Deed dated 28.05.1983 only during September 2009 and the suit was instituted within the period of three years itself, the same cannot be rejected on the ground of limitation. However, during the cross-examination of PW-1, nothing has been elucidated, indicating that the plaintiffs had knowledge about the Partition Deed dated 28.05.1983 and after the execution of the same.

11. Therefore, the Trial Court relied on the decisions in the cases of Jagjit Singh vs. Vinod Kumar [AIR 2006 J&K 70], Venkataramana and 6 others vs. N.Munuswamy Naidu and 4 others [2010 (4) CTC 640] and Selvi and 2 others vs. Gomathy Ammal [2009 (1) CTC 541]. The Trial Court found that Ex.A-1 Partition Deed 28.05.1983 speaks about and deals with the properties other than the suit schedule property also. The second defendant has stated in his written statement that he has sold away the residential property allotted to him under the Partition Deed dated 18.05.1983 to one Mr.Mani about 25 years ago and the same has not been denied by the plaintiffs. In fact, PW-1 admits that she is aware of the same. However, the plaintiffs had not chosen to either implead the subsequent purchaser or even to include

the other properties dealt with in Ex.A-1 in the suit schedule. Therefore, the Trial Court found that the suit is bad for partial partition as well as the non-joinder of necessary parties.

12. This Court is of the considered opinion that the plaintiff who filed the suits for declaration and partition, has to prove that the plaintiffs have a right to claim partition. In other words, the properties being capable of partition, so as to consider the relief sought for in the suit.

13. In the present case, the plaintiffs in clear terms admitted the earlier Partition Deed dated 28.05.1983 and even during the cross-examination, there was no specific denial about the knowledge of the Partition Deed and further, it was admitted by PW-1 that she had knowledge about the sale of one property in favour of the third person Mr.Mani 25 years ago.

14. This being the factum, the Trial Court is right in drawing factual inference that the plaintiffs were aware of the earlier Partition Deed. Therefore, the suit was barred by limitation. This apart, necessary parties had not been impleaded and on these two grounds, the suit was dismissed by the Trial Court. Thus, this Court do not find any perversity or infirmity in respect of the judgment and decree dated 30.03.2016 passed by the learned III Additional District and Sessions Judge, Coimbatore in O.S.No.593 of 2010.

15. Accordingly, the judgment and decree dated 30.03.2016 passed by the learned III Additional District and Sessions Judge, Coimbatore in O.S.No.593 of 2010 is confirmed and consequently, the present appeal suit, namely A.S.No.37 of 2017 stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

सत्यमेव जयते
Sd/-

Assistant Registrar(AD I)

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Sub Assistant Registrar

Svn

To

1. The III Additional District and Sessions Judge, Coimbatore.

2. The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to M/s.Sarvabhauman Associates, Advocate, S.R.No.9086
+1cc to Mr.V.Venkatasamy, Advocate, S.R.No.8821

A.S.No.37 of 2017

MS (CO)
CS/17/09/2020



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