



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.01.2020

Pronounced on : 25.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

S.A(MD) Nos.95 of 2013 and 655 of 2012

and

C.R.P(MD)Nos.1170 and 1171 of 2013

and M.P(MD)Nos. 1 and 1 of 2013

C.R.P(MD)No.1170 of 2013:

R.Govindasamy ... Petitioner/Proposed Party/Petitioner

Vs.

1.Nagaraj

2.Murugeswari ...Respondents 1 and 2/Plaintiffs/Respondents

3.Nachimuthu ...3 rd Respondent/Defendant/Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order in I.A.No.121 of 2013 in O.S.No.169 of 2009 dated 09.04.2013 on the file of the District Munsif, Vadipatti.

C.R.P(MD)No.1171 of 2013:

R.Govindasamy ... Petitioner/Proposed Party/Petitioner

Vs.

1.Nagaraj

2.Murugeswari ...Respondents 1 and 2/Plaintiffs/Respondents

3.Suresh ...3 rd Respondent/Defendant/Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order in I.A.No.122 of 2013 in O.S.No.170 of 2009 dated 09.04.2013 on the file of the District Munsif, Vadipatti.

In both Civil Revision Petitions:

For Petitioners : Mr.N.S.Nandhakumar

For R1 & R2 : Mr.M.Thirunavukkarasu

For R3 : No appearance



S.A(MD) No.95 of 2013:

R.Govindasamy ... Appellant/Appellant/Plaintiff

Vs.

1.R.Sundararajan

2.Nagaraj

3.Murugeswari ... Respondents/Respondents/Defendants

PRAYER: The Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 08.11.2011 in A.S.No.71 of 2011 on the file of the II Additional Sub Court, Madurai, confirming the judgment and decree dated 18.01.2011 in O.S.No.512 of 2008 on the file of District Munsif cum Judicial Magistrate, Vadipatti.

For Appellant : Mr.N.S.Nandhakumar
For R2 & R3 :Mr.M.Thirunavukkarasu
For R1 : died

S.A(MD) No.655 of 2012:

1.K.Vellai Gengai

2.K.Gengai Vasan ... Appellants/Respondents 2 & 3/
Defendants 2 & 3

Vs.

1.R.Govindasamy ..1st Respondent/Appellant/Plaintiff

2. R.Sundararajan ... 2nd Respondent/1st Respondent
/1st Defendant

PRAYER: The Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 08.11.2011 in A.S.No.72 of 2011 on the file of the II Additional Sub Court, Madurai, reversing the judgment and decree dated 18.01.2011 in O.S.No.197 of 2009 on the file of District Munsif cum Judicial Magistrate, Vadipatti.

For Appellants : Mr.V.Nagendran
For R1 : Mr.N.S.Nandakumar
R2 : died

C O M M O N J U D G M E N T

S.A(MD)No.655 of 2012 is filed at the instance of the defendants 2 and 3 in O.S.No.197 of 2009 challenging the judgment and decree in A.S.No.72 of 2011 allowing the appeal and decreeing the suit in O.S.No.197 of 2009.

2. The suit in O.S.No.197 of 2009 was filed by the first respondent in the appeal in S.A(MD)No.655 of 2012 seeking a declaration that the sale deed dated 03.08.2009 executed by the first defendant in favour of the defendants 2 and 3 is null and void and for costs. According to the plaintiff, the suit property is



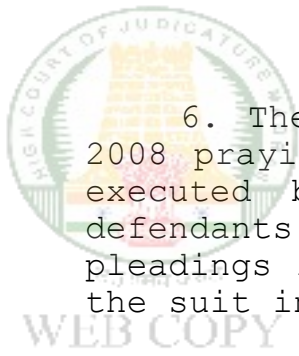
ancestral property belonging to the plaintiff and the first defendant. The same was under the management of their mother Kannammal till her death. On the death of the said Kannammal, the plaintiff and the first defendant were enjoying the property in common as co-owners.

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3. The plaintiff would further claim that the first defendant had borrowed heavily without the knowledge of the plaintiff. When his creditors pressed for payment a panchayat was convened on 19.10.2002. At the request of the first defendant, the plaintiff discharged all the loans of the first defendant and the first defendant, in turn, gave up his half share in the property in favour of the plaintiff. It is the further contention of the plaintiff that when certain third parties attempted to interfere with the possession of certain agricultural land in Alanganallur Village belonging to the plaintiff and the first defendant, the first defendant and the plaintiff had filed W.P No.4548 of 1988 and 4519 of 1988 before this Court seeking police protection. The police demanded a sum of Rs.19,440/- towards expenses incurred in granting such protection and the said amount was also paid by the plaintiff on 07.01.1999 under a proper receipt. The fact that the first defendant was unable to pay his share of the expenses was also cited as a ground to claim that the first defendant has given up his share in the suit properties. Thus, the plaintiff would claim that he is the absolute owner of the property and the first defendant has no right to alienate the same in favour of the defendants 2 and 3. The sale deed was also impugned on the ground that it is for the entire property and not for the share of the first defendant alone.

4. The suit was resisted by the defendants 2 and 3 contending that the suit is not properly valued. The claim of relinquishment by the first defendant was stoutly denied. The borrowings alleged to have been made by the first defendant were also disputed. It was also contended that there was a partition between the plaintiff, the first defendant, and their father on 03.04.1954 registered as document No.2235/1954 in the office of the Alanganallur Sub Registrar, in and by which, the suit property was allotted to the first defendant and patta was also issued to the first defendant. The defendants 2 and 3 would further claim that pursuant to the said allotment made as early as in 1954, the first defendant had been in possession of the property by paying kist and he had validly alienated the property in favour of the defendants 2 and 3 on 03.08.2009. On the above pleadings, the defendants 2 and 3 sought for dismissal of the suit.

5. At trial, the plaintiff was examined as P.W.1. Ex.A.1 to Ex.A.25 were marked on their side. The first defendant was examined as D.W.1 while the third defendant was examined as D.W.2 and one Nagaraj was examined as D.W.3. Ex.B.1 to Ex.B.22 were marked on the side of the defendants.



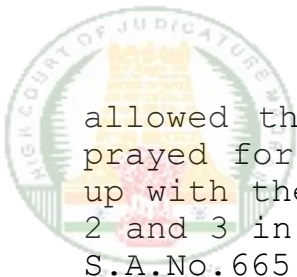
6. The plaintiff had also filed another suit in O.S.No.512 of 2008 praying for a declaration that the sale deed dated 02.03.2007 executed by the first defendant Sundarrajan in favour of the defendants 2 and 3 therein as null and void and for costs. The pleadings in the said suit are almost identical in the pleadings in the suit in O.S.No.197 of 2009.

7. The defendants in the said suit resisted the suit. The first defendant filed a separate written statement contending that the suit properties along with other properties were divided between the plaintiff, the first defendant and their father Ramasamy Naidu as early as on 03.04.1954. It was claimed that in the said partition, the suit property has been shown as Item No. 1 in 'C' schedule property and the same has been allotted to the first defendant absolutely with all power of alienation. Therefore, it was claimed that the plaintiff does not have any right over the suit property. The theory of relinquishment as well as borrowings pleaded by the plaintiff was denied. The alleged panchayat said to have been taken place on 19.10.2002 was also disputed.

8. The defendants 2 and 3 filed a separate written statement almost reiterating the claim that the suit property was allotted to the first defendant in the partition that took place on 03.04.1954 and the property was in fact allotted to the first defendant. Therefore, the first defendant being the absolute owner of the property, had every right to sell the same and hence, the sale deed dated 02.03.2007 executed by the first defendant in favour of the defendants 2 and 3 and the rectification deed dated 10.10.2008 are valid in the eye of law.

9. The suit in O.S.No.512 of 2008 was tried along with the suit in O.S.No.197 of 2009 and common evidence was let in, in both the suits.

10. After considering the evidence on record, the learned District Munsif by a common judgment dated 18.01.2011 dismissed the suits concluding that the first defendant is the absolute owner of the suit properties in both the suits as per the partition that had taken place on 23.04.1954. The claim of oral relinquishment made by the plaintiff was negatived. Aggrieved by the said judgment and decree in both the suits, the plaintiff preferred two appeals in A.s.Nos.71 and 72 of 2011. The learned II Additional Sub Judge, Madurai, who heard the appeals, on re-appreciation of the evidence, concluded that the sale deed executed by the first defendant in favour of the defendants 2 and 3 in O.S.No.512 of 2008 is valid and hence, the dismissal of the suit in O.S.No.512 of 2008 was confirmed. As regards A.S.No.72 of 2011, the learned Appellate Judge found that the property subject matter of the said suit was not included in the partition dated 03.04.1954. On the said finding, the learned Appellate Judge concluded that the plaintiff has a share in the suit property. On the said finding, the learned Appellate Judge



allowed the appeal and decreed the suit in O.S.No.197 of 2009 as prayed for. Aggrieved, the plaintiff in O.S.No.512 of 2008 has come up with the Second Appeal in S.A.No.95 of 2013, while the defendants 2 and 3 in O.S.No.197 of 2009 have come up with the Second Appeal in S.A.No.665 of 2012.

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11. The following questions of law were framed by this Court in S.A. (MD) No.95 of 2013:

(a) Whether the Courts below are right in dismissing the suit of the appellant inspite of the fact that the suit sale deed dated 02.03.2007 Ex.A.1 and rectification deed dated 16.10.2008 under Ex.A.2 are in no way connected with Exhibit B1 dated 23.04.1954 claimed as Parent Title deed by the respondents.

(b) Whether the Court below are right in dismissing the suit of the appellant while the same property from the first respondent is claimed by the second and third respondents and also the appellants in S.A.No.655 of 2012 which is preferred by Vellaigangai and Gangaivassan against this appellant (sic).

(c) Whether the Courts below are right in not considering the pleadings and proof adduced by the appellant in respect of debts incurred by the first respondent for giving up his right in the suit property in the possession of enjoyment of the appellant in the absence of pleadings, proof and denial by the first respondent?

(d) Whether the Court below are right in dismissing the suit after rendering factual finding by the trial Court on 18.11.2010 that the first respondent is entitled to half share in the suit property and the appellant is entitled to other share in the property?

12. Insofar as S.A.No.665 of 2012 is concerned, notice of motion was ordered and the same was tagged on with S.A.No.95 of 2013.

13. The two Civil Revision Petitions namely, C.R.P(MD)Nos. 1170 and 1171 of 2013 have been filed by the appellant in S.A.(MD)No.95 of 2013 challenging the orders passed in I.A.No.121 of 2013 in O.S.No.169 of 2009 and I.A.No.122 of 2013 in O.S.N.170 of 2009 seeking to implead himself on the ground that the appeals against the judgment in A.S.No.71 of 2011 is pending before this Court. Therefore, the result of the Second Appeals would govern the result of the Civil Revision Petitions also.

14. I have heard Mr.N.S.Nandhakumar, learned counsel appearing for the appellant in S.A.(MD)No.95 of 2013 and the first respondent in S.A(MD)No.655 of 2012, Mr.V.Nagendran, learned counsel appearing for the respondent in S.A(MD)No.655 of 2012 and M.Thirunavukarasu,

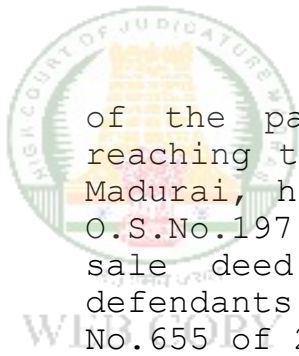


learned counsel for the respondents 1 and 2 in both Civil Revision Petitions and the respondents 2 and 3 in S.A(MD) No.95 of 2013.

15. While elaborating the questions of law framed, Mr.Nandhakumar, learned counsel appearing for the appellant in S.A (MD)No.95 of 2013 would vehemently contend that the courts below were not right in their construction of the partition deed dated 23.04.1954. He would also contend that the suit property in O.S.No.512 of 2008 is not the subject matter of Ex.B.1 dated 23.04.1954. He would make strenuous attempt to compare the boundary recitals in the partition deed dated 23.04.1954 and to distinguish the same from the description in the suit in respect of the first item of 'C' schedule property. The claim of the plaintiff in both the suits is based upon a oral release, which is per se invalid. There cannot be oral release of a right in immovable property for a value of more than Rs.100/-. Apart from the said legal impediment, the plaintiff has not also let in any evidence to show that there was a panchayat on 19.10.2002 and it was in the said panchayat the first defendant had relinquished his right over the suit property subject matter of both the suits. Even according to the plaintiff in both the suits, the properties are ancestral properties and both the plaintiffs and the first defendant had inherited the same. This being so, burden is heavily on the plaintiff to prove the oral relinquishment pleaded by him. The courts below have adverted to the evidence on record and concluded that as far as the property subject matter of the suit in O.S.No.512 of 2008 is concerned, the same was allotted to the first respondent as item No.1 in 'C' schedule property as per Ex.B.1, partition deed dated 23.04.1954.

16. The trial court has, in fact, recorded the finding that the the boundaries found in Ex.B.1 partition deed as well as the suit properties tallied. On the said finding the learned trial Judge concluded that the suit property was allotted to the first defendant Sundarrajan under Ex.B.1 dated 23.04.1954. Despite his best efforts, Mr.Nandhakumar, learned counsel appearing for the appellant in S.A (MD)No.95 of 2013 is unable to drive home his claim that the property was not subject matter of Ex.B.1. The learned trial Judge has also relied upon the admission of P.W.1. In his evidence P.W.1 stated that Ex.B.1 partition deed was made by his father when both the plaintiff as well as the first defendant were minors and they had accepted the said partition. The trial court also referred to specific admission by the plaintiff as P.W.1 in his evidence accepting the boundaries in Ex.B.1 regarding the property subject matter in O.S.No.512 of 2008.

17. The trial court also concluded that the property subject matter of O.S.No.197 of 2009 was also subject matter of Ex.B.1 partition deed dated 23.04.1954. Upon the said finding, the learned trial Judge dismissed both the suits. However, on appeal, the appellate court namely, the Sub Court, Madurai found that the



of the partition deed dated 23.04.1954 marked as Ex.B.1. Upon reaching the said conclusion, the learned II Additional Sub Judge, Madurai, held that the plaintiff as well as the first defendant in O.S.No.197 of 2009 have a equal share in the property and hence the sale deed executed by the first defendant in favour of the defendants 2 and 3 in O.S.NO.197 of 2009/the appellants in S.A.(MD) No.655 of 2012 is not valid.

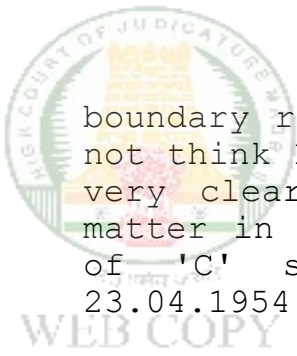
18. Mr.Nagendran, learned counsel appearing for the appellant in S.A.(MD)No.655 of 2012 would contend that the finding of the lower appellate court that the suit property subject matter of O.S.No.197 of 2009 does not form part of Ex.B.1 partition deed and the same was not allotted to the first defendant under the said document is incorrect. He would further submit that even assuming that the property was not subject matter of the sale deed executed by the first defendant in favour of the appellants in S.A.(MD)No.655 of 2012 would be valid to the extent of his half share. Therefore according to him, the appellate court was not justified in granting declaration that the sale deed executed by the first defendant in their favour on 03.08.2009 is wholly invalid. He would also invite my attention to the recitals in the said document in order to buttress his submission.

19. Mr.M.Thirunavukarasu, learned counsel appearing for the respondents 2 and 3 in S.A(MD) No.95 of 2013 would contend that once it is found that the oral release is not proved and the suit property in O.S.No.512 of 2008 is subject matter of the partition deed dated 23.04.1954, the courts below were right in holding that the suit property in O.S.No.512 of 2008 is the subject matter of partition deed dated 23.04.1954. The courts below were right in dismissing O.S.No.512 of 2008.

20. I have considered the rival submissions.

21. A reading of Ex.B.1 partition deed particularly item No.1 of 'C' schedule property would go to show that the father of the plaintiff as well as the first defendant Ramasamy Naidu had made various arrangements with reference to allotment of his properties to his sons. The properties have been allotted as several sub items ('Thakkus'). A conjoint reading of boundary recitals found in document would clearly show that the properties subject matter of O.S.No.512 of 2008 would, in fact, part of the first item of 'C' schedule, which was allotted to the first defendant. Therefore, the claim of the plaintiff that the said property was in joint enjoyment of the plaintiff and the first defendant cannot be countenanced.

22. A comparative chart showing the boundary recitals has been filed by Mr.N.S.Nandhakumar, learned counsel for the respondents 2 and 3 in S.A.(MD) No.95 of 2013. Despite his valiant efforts he is unable to show that the boundary recitals of the property shown as 'C' schedule property in Ex.B.1 does not tally with the



boundary recitals in the suit property in O.S.No.512 of 2008. I do not think I could agree with his submissions since boundary recitals very clearly would show that the suit schedule property subject matter in O.S.No.512 of 2008 was, in fact, shown as the first item of 'C' schedule property under Ex.B.1 partition deed dated 23.04.1954.

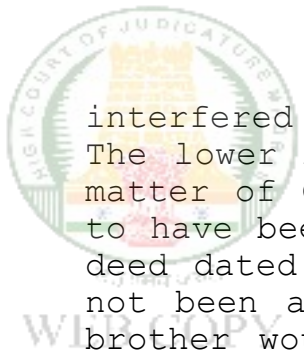
23. Both the courts below have, on analysing the evidence on record, concluded that the suit property subject matter of O.S.No.512 of 2008 is, in fact, the first item of 'C' schedule property under Ex.B.1 partition deed. The said finding is based on valid documentary evidence and that has not been shown to be perverse or in ignorance of material evidence. Therefore, the first question of law framed in S.A(MD)No.95 of 2013 is answered against the appellant therein.

24. On the second question of law, it was not claimed by the appellant himself that the property subject matter of O.S.NO. 512 of 2008 and O.S.NO.197 of 2009 are the same. He had come with two different suits seeking to set aside two different sale deeds executed by the first defendant relating to different items of suit properties. Therefore, the second question of law is also answered against the appellant.

25. The courts below, in fact, analyzed the oral and documentary evidence and have come to the conclusion that the oral relinquishment pleaded by the appellant/plaintiff in O.S.NO.512 of 2008 has not been proved and the same cannot said to be valid. I do not find any non-consideration of evidence on the part of the courts below. Hence, the third question of law is also answered against the appellant.

26. A perusal of the judgment and decree of the trial court as well as the Appellate Court would show that both the courts below have concluded that the suit property in O.S.NO.512 of 2008 is in fact the first item of 'C' schedule property of Ex.B.1, which has been allotted to the first defendant, Sundarrajan and as such, he has every right to alienate the same. There is no finding to the effect that the plaintiff is entitled to half share in the said property either on 18.11.2010 or any other date. In view of the same, the fourth question of law is also answered against the appellant. In view of the answers to the questions of law the Second Appeal in S.A(MD)No.95 of 2013 has to necessarily fail and it is accordingly dismissed.

27. In S.A(MD) No.665 of 2012 though the trial court dismissed the suit, the lower appellate court found that the property subject matter of the said suit was not subject matter of partition deed dated 23.04.1954. It is a factual finding recorded by the learned Appellate Judge. The first Appellate Court being a final court of



interfered with in Second Appeal unless it is shown to be perverse. The lower Appellate Court concluded that the suit property subject matter of O.S.No.197 of 2009 was not included in 'C' schedule said to have been allotted to the first defendant under Ex.B.1 partition deed dated 23.04.1954. Once it is found that the suit property has not been allotted to the first defendant, the plaintiff being his brother would be automatically entitled to half share in the said property. Hence, the sale deed dated 03.08.2009 would enure only to the extent of half share of the first defendant in the suit property. It will not bind the plaintiff with regard to his half share. However, the lower Appellate Court has decreed the suit in its entirety setting aside the sale deed dated 03.08.2009 though it had concluded that the sale deed will enure only the half right of the first defendant, who executed the sale deed in favour of the defendants 2 and 3.

28. Therefore, the judgment and decree in A.S.No.72 of 2011 needs to be modified and the same is modified as follows:

The suit in O.S.No.197 of 2009 will stand decreed declaring the sale deed dated 03.08.2009 will not be binding on the plaintiff to the extent of his half share only.

29. In the result, S.A(MD)No.655 of 2012 is allowed in part. The decree in O.S.No.197 of 2009 is modified declaring the sale deed dated 03.08.2009 executed by the first defendant in favour of the defendants 2 and 3 in O.S.No.197 of 2009/the appellant in S.A.(MD) No.655 of 2012 would be invalid to the extent of half share of the plaintiff subject matter of O.S.No.197 of 2009.

30. Adverting to the Civil Revision Petitions, both the Civil Revision Petitions have been filed by the appellant in S.A(MD)No.95 of 2013 as against the orders passed refusing to implead him in two suits namely O.S.No.170 of 2009 and 169 of 2009. Both the suits relate to the suit property subject matter of O.S.No.512 of 2008, which was sold by the first defendant therein to the defendants 2 and 3 namely, Nagaraj and Murugeswari. In view of the fact that S.A (MD)No.95 of 2013 has been dismissed confirming the judgment and decree in O.S.No.512 of 2008 and it has been held that the petitioner in the Civil Revision Petition has no right over the said property, the dismissal of the impleading application by the trial court is confirmed and the Civil Revision Petitions are dismissed. Considering the circumstance of the cases, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

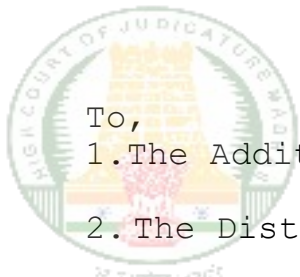
Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

CM



To,

1.The Additional Subordinate Judge, Madurai.

2.The District Munsif cum Judicial Magistrate, Vadipatti.

Copy to:The Section Officer, V.R.Section,

Madurai Bench of Madras High Court, Madurai. (2 copies)

+1 CC to M/s.M.THIRUNAVUKKARASU, Advocate (SR-8014[F]

+4 CC to M/s.K.MURALI SHANKAR, Advocate (SR-8231 to 8234)

+2cc's to M/S.V.NAGENDRAN, Advocate, Sr.Nos.8909 and 8323

S.A(MD) Nos.95 of 2013 and 655 of 2012

and

C.R.P(MD)Nos.1170 and 1171 of 2013

and M.P(MD)Nos. 1 and 1 of 2013

25.02.2020

SMA/11/03/2020/10P/12C