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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S. No.1217 of 2015
and M.P. No.1 of 2015

V.Janakiraman ...Appellant/2nd Defendant

vs

1.Vijaya
2.Dhanalakshmi
3.Rukmani
4.Parimala
5.Geetha
6.Sarala

..Respondents 1 to 6/Plaintiffs

7.Radha

8.Vedhavalli

9.V.Parthasarathy ...Respondents 7 to 9/Defendants 1,3, 4

Prayer: Appeal Suit filed under Order XLI Rule 1 read with Section 96 of C.P.C. to set aside the judgment and decree dated 07.07.2015 passed in O.S. No.63 of 2012 by the Additional District Judge III, Thiruvallur at Poonamallee.

For Appellant : Mr.C.P.Sivamohan

For Respondents : Mr.T.S.Vijayaraghavan
for R1 to R6
Mr.S.Kolandasamy for R7 & R8
Mr.S.Thirukumaran for R9

JUDGMENT

[Judgment of this Court was delivered by T.RAJA, J.]

This appeal has been brought up by the appellant/second defendant, brother of the plaintiffs, defendants 3 and 4 and son



of the first defendant, challenging the judgment and decree dated 07.07.2015 passed in O.S. No.63 of 2012 by the III Additional District Judge, Thiruvallur at Poonamallee.

2.The short facts, leading to the filing of the appeal, are as follows:

For the sake of convenience, the parties are addressed as they were arrayed before the Trial Court.

It is the case of the plaintiffs that the plaintiffs and the third defendant are the daughters, the first defendant is the wife and defendants 2 and 4 are the sons of one S.T.Venugopal. After his demise, since plaintiffs and defendants became the absolute owners of the schedule mentioned properties, they are all entitled to have equal share in the same. As the surrounding properties are converted into house sites, the schedule mentioned properties were kept as vacant site. Though they requested the defendants for amicable division of the schedule mentioned properties into ten equal shares, the defendants were postponing the division of the properties with an intention to defraud the plaintiffs' lawful share. While so, the plaintiffs came to know that the defendants are making arrangements to alienate the entire suit properties. Therefore, without any alternative remedy, they have filed Original Suit in O.S. No.63 of 2012 before the III Additional District Judge, Thiruvallur at Poonamallee seeking partition of the suit properties into ten equal shares by metes and bounds; to appoint the Advocate Commissioner to divide the suit properties into ten equal shares by metes and bounds and allot 6/10th share to the plaintiffs; and for permanent injunction restraining the defendants from alienating or creating any kind of encumbrance over the schedule mentioned properties till the final decree is passed; and for other reliefs.

Written statement has been filed by the appellant/second defendant denying the averments made in the plaint by the plaintiffs stating that the suit properties are ancestral properties. The suit properties among other properties were partitioned by way of Koorchit dated 25.03.1973 between one Thambiah Naidu and his 4 sons. Therefore, the suit properties were allotted to his father S.T.Venugopal, who is the father of defendants 2 to 4 and the plaintiffs. As such the above said S.T.Venugopal and his two sons are entitled to 1/3rd share each. Since his father died intestate on 13.12.1987, their 1/3rd share in the suit properties devolved to plaintiffs and defendants equally. Therefore, defendants 2 and 4 each are entitled totally



to 11/30th share and plaintiffs, defendants 1 and 3 each are entitled only to 1/30th share respectively. It was also the further claim of the second defendant that the suit is not properly valued and that the same is undervalued and he had also filed a suit for partition in O.S. No.345 of 1997 on the file of the Subordinate Court, Poonamallee and the same was transferred to the file of the District Court, Chengalpet due to pecuniary jurisdiction and re-numbered as O.S. No.210 of 2004 and again the same was transferred to the file of Fast Tract Court IV, Poonamallee for speedy disposal. Since in the above suit, the suit properties, relief and the parties are all one and the same as that of the present suit, the plaintiffs should have taken necessary steps to transpose them as plaintiffs and to conduct the case.

Written statement has also been filed by the fourth defendant and the same has been adopted by defendants 1 and 3 stating that he alone has taken care of the entire family, after the demise of his father and that the first plaintiff alone was married during the life time of his father and that the marriage expenses of plaintiffs 2 to 6 were incurred by him. Since he has incurred private debts, apart from raising loans from financial institutions for the marriage of plaintiffs 2 to 6 and also for the day today expenses of the first defendant, he is entitled for a contribution from the plaintiffs and the second defendant. While claiming so, the fourth defendant has reserved his right to give the particulars of expenses incurred by him, which are liable to be contributed by the plaintiffs and the second defendant.

Additional written statement has also been filed by the second defendant stating that pending the suit, the plaintiffs impleaded item Nos.5 and 6 of the suit properties. Since item No.5 of the suit property was given to him and item No.6 of the suit property was purchased by him from one M.Udayakumar, S/o.Munusamy Naicker on 10.02.1988, by the time his father passed away, claiming equal share in item Nos.5 and 6 of the properties was not tenable.

With this background, the Trial Court, after framing the following issues, has decreed the suit as prayed for by the plaintiffs holding that the plaintiffs are entitled to have 6/10th share in the suit schedule properties:

'a)Whether the plaintiffs are jointly entitled to partition of 6/10th share in the suit properties?



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- b) Whether the plaintiffs are entitled for permanent injunction as prayed for?
- c) To what other reliefs the plaintiffs are entitled to?
- d) Whether the 5th and 6th items of the suit properties are not the joint family properties?'

Aggrieved thereby, the present appeal has been filed by the appellant/ second defendant.

3. Learned counsel appearing for the appellant/second defendant heavily pleaded before us that when the plaintiffs have initially come to the Trial Court seeking a decree for partition, they have claimed equal rights only in 4 items of suit schedule properties. After filing the suit in the year 2012, for the reasons best known to them, they have changed their entire grounds and prayer, by adding two more items of properties, namely item Nos.5 and 6 and claiming equal share in those properties and the same was not even substantiated by them in oral and documentary evidence. Secondly, learned counsel appearing for the appellant argued that when the plaintiffs have filed the amended plaint, they have admitted the case of the appellant in paragraph 3(a) mentioning clearly and explicitly that item No.6 of the suit property was purchased under a registered Sale Deed dated 10.02.1988 by the father of the plaintiffs and defendants 2 to 4. When the said pleading goes in favour of the appellant/second defendant, the belated claim made by the plaintiffs in the amended plaint is nothing, but, cooked up one and concocted and an after thought. When the pleadings made in paragraph 3(a) makes the factual position clear beyond any imagination that item No.6 of the suit property was purchased on 10.02.1988 by the father of the plaintiffs and defendants 2 to 4, who passed away on 13.02.1987, the Trial Court ought to have clearly looked into the conduct of the plaintiffs for making a greedy and false prayer, which has not been done by the Trial Court. Since the Trial Court, without properly applying its judicial mind, has decreed the suit as prayed for by the plaintiffs, the findings given by the Trial Court in respect of the partition to the item No.6 of the suit property is liable to be set aside, otherwise grave prejudice would be caused to the appellant. Thirdly, the Trial Court has given the finding that the appellant has not produced any documentary evidence, which is un-warranted and un-justified for the simple reason that the plaintiffs on their own, filed amended plaint and added two more properties, viz. Item Nos.5 and 6, in which, paragraph 3(a) makes the factual position clear that item No.6 of the suit property was purchased on 10.02.1988 by the father of the plaintiffs and defendants 2 to 4, who



passed away on 13.02.1987 and the said Item Nos.5 and 6 were not part of the schedule properties in the original plaint filed in the year 2012. Taking note of the fact that the Sale Deed was registered on 10.02.1988 by the appellant and by the time the father of the plaintiffs and defendants 2 to 4 died on 13.12.1987, the Trial Court ought to have disbelieved the false case projected by the plaintiffs. Since the same has not been done, grave prejudice has been caused to the appellant. Therefore, the decree and judgment passed by the Trial Court, holding that the plaintiffs are entitled to have 6/10th share in the suit properties including item No.6 of the suit property, are liable to be modified.

4.Taking reliance from the judgment of this Court, in which, I was also one of the parties, in the case of P.Hemamalini -vs- K.Palani Malai and others reported in 2021 6 MLJ 513, holding that both son and daughter are entitled to have equal share in the ancestral property, learned counsel appearing for the appellant further pleaded that when there was a panchayat resolution taken place on 19.04.1998 between the parties to the suit, in which, it was agreed that the married daughters, unmarried daughters and the mother would be paid with 1.5, 2.5 and 2 lakhs respectively and that the panchayat has also accepted the said settlement in principle on the same day, it is binding upon the parties. Therefore, the subsequent amended plaint, filed in the year 2012, claiming share in item No.6 of the suit property, cannot be accepted.

5.Learned counsel appearing for the appellant further submitted that in the said O.S. No.210 of 2004, filed by the appellant, the plaintiffs have not taken care to transpose them as plaintiffs that goes without saying that the plaintiffs had not evinced any interest in the partition suit filed by the appellant. It is the further claim of the learned counsel for the appellant that the appellant, being the eldest son, borne the expenses of the marriages of the five sisters from his own pocket and the same has not been denied by the plaintiffs by filing any rejoinder. As the said aspects were not looked into by the Trial Court, the impugned judgment and decree are liable to be interfered with.

6.Learned counsel appearing for respondents 1 to 6/plaintiffs pleaded that the plaintiffs have filed the above Original Suit in O.S. No.63 of 2012 before the III Additional District Court, Poonamallee claiming equal share in 4 items of suit schedule properties and thereafter, finding that 2 items of properties were not shown in the plaint, they have rightly moved



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the Trial Court seeking leave to amend the plaint and after the grant of leave from the Trial Court, they have filed the amended plaint by adding two more properties. In the amended plaint, when the plaintiffs have justified their stand stating that in respect of item No.5, title has been derived through a registered exchange deed dated 27.03.1990 bearing document No.1022/90 and in respect of item No.6, title has been derived through a sale deed dated 10.02.1988 by the father of the plaintiffs and defendants 2 to 4, the same has not been denied or refuted by the appellant/second defendant. Learned counsel appearing for respondents 1 to 6/plaintiffs, explaining further, pleaded that when a specific plea has been raised stating that item No.6, belonged to the father of the plaintiffs and defendants 2 to 4, it has to be construed that item No.6 belonged to the plaintiffs and defendants. Although the father of the plaintiffs and defendants 2 to 4 died on 13.12.1987, the stamp paper was purchased in March 1987 and therefore, the same shows that it was purchased during the life time of their father by sale deed dated 10.02.1988, hence, item No.6 is not amenable for any partition, it is pleaded.

7.Learned counsel appearing for the ninth respondent/fourth defendant argued that the first daughter alone was married during the life time of the father of the parties. After the demise of their father, the marriage expenses of five sisters were borne by the fourth defendant from his own pocket. This factum has not been denied by the parties.

8.To answer the plea raised by all the parties, the following points for consideration arise for determination in this appeal:

- 'a)Whether the parties are entitled to have 1/10th share in all the suit properties viz. item Nos.1 to 6?
- b)Whether findings and conclusion reached by the Trial Court are flawless and the same can be accepted?
- c)Whether the appellant is entitled to get any relief?'

9.But, we are finding it difficult to accept the argument made by the learned counsel appearing for respondents 1 to 6/plaintiffs so as to accept his contention for partitioning all the properties equally among the parties to the suit proceedings. While perusing the reasons given by the Trial Court in para 12 of the impugned judgment, it could be seen that the Trial Court has given a finding that the appellant herein has not produced any sale deed to substantiate his claim that item No.6 should be kept out of the partition.

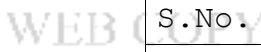


10.It could be mentioned herein that the first defendant is the wife and all the plaintiffs and defendants 2 to 4 are children of late S.T.Venugopal, who died intestate on 13.12.1987. After demise of their father, the plaintiffs filed suit for partition of 10 equal shares by metes and bounds and to allot each 1/10th share in 4 items of schedule mentioned properties. Subsequently, when an amended plaint was filed adding 2 more properties namely, item Nos.5 and 6 of the suit schedule properties for partitioning equally, although the second defendant/appellant has raised hue and cry against the prayer made by the plaintiffs stating that the plaintiffs are not entitled to any share in the property for the simple reason that there was a panchayat resolution passed on 19.04.1998, in which, a settlement, signed by 16 panchayatars in the village, has been made to the effect that unmarried daughters, married daughters and mother should be given 2.5, 1.5 and 2 lakhs, as rightly canvassed by the learned counsel for the plaintiffs, none of the plaintiffs have appended their signatures and it is an unregistered one, therefore, this settlement is far from acceptance.

11.In this regard, learned counsel appearing for the appellant has produced a judgment reported in 2021 6 MLJ 513 in the case of P.Hemamalini -vs- K.Palani Malai and others, in which, the Division Bench of this Court, in which, I am also one of the parties to the O.A. dealing with Section 6 of the Hindu Succession and (Amendment) Act 2005, has laid down the law holding clearly that any partition made by execution of a deed of partition, duly registered under the Registration Act, 1908, alone shall be considered as a genuine partition whereas any unregistered partition can have no validity. It is necessary to extract the relevant paragraph as under:

'23. After a comparative analysis of both the above provisions, if we apply Section 29-A by taking the marriage date 25.3.89 and the partition date 25.3.89, the same will go repugnant to the cut off date 20.12.2004 fixed by Section 6 of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), because as per Section 29-A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990), if any partition has taken place prior to 25.3.89, such partition shall not be invalidated and any partition taking place from 26.3.89 will be invalid, whereas when we apply Section 6 of the Hindu Succession (Amendment) Act, 2005, the partition taking place from 26.3.89 till 20.12.2004 will not be invalidated or affected and they are saved





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15.Subsequently, the plaintiffs added 2 more properties by filing amended plaint namely, item Nos.5 and 6 of the suit schedule properties. When the amended plaint was filed, paragraph 3(a) is crucial for the purpose of answering the claims and the counter claims made by the parties, which is extracted as under:

16.A perusal of the above paragraph clearly shows that father of the plaintiffs and defendants 2 to 4, have derived the item No.6 of the suit schedule property through sale deed dated 10.02.1988. When the plaintiffs themselves have categorically admitted that item No.6 of the suit property was purchased only by way of a sale deed dated 10.02.1988, it could be seen that on the date of execution of the Sale deed, the father S.T.Venugopal is no more. However, an argument was placed before us stating that when the stamp papers were purchased in March 1987, the father was alive. Therefore, it goes to the root of the case



that when item No.6 was purchased, the father was alive and it implies that the sale consideration was given only from the joint income of the father of the plaintiffs and defendants 2 to 4. But, no such evidence was placed before the Trial Court and also before us. However, when we look into the averments made by the plaintiffs, it could be seen that they have admitted one crucial fact that item No.6 was purchased on 10.02.1988 and during the said period, their father passed away on 13.12.1987. When the 6th item of property was purchased only on 10.02.1988, their father passed away on 13.12.1987 and therefore, as claimed by the learned counsel for the appellant, the appellant alone became the owner of the property. This aspect could have been seen judicially by the Trial Court, but it has not been done so. Therefore, the issue No.2 is answered holding that the findings and conclusions of the Trial Court are erroneous, hence they are set aside.

17. When it is also the claim of the appellant that he, being the eldest son, borne all the marriage expenses of the five sisters by meeting out all the expenses from his own pocket, the same has not been denied by the plaintiffs by filing any reply or rejoinder.

18. Therefore, when the 6th item of property, having an extent of 714 sq.ft. has been purchased by the appellant by sale deed dated 10.02.1988 and it has also been admitted by the plaintiffs in paragraph No.3(a) of the amended plaint, the findings given by the Trial Court, holding that the appellant has not produced any sale deed to substantiate his case, are liable to be interfered with for the simple reason that it is a well settled legal position that as per Section 58 of the Evidence Act, the facts admitted are not required to be proved, which is extracted hereunder:

'58. Facts admitted need not be proved - No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.'

19. A perusal of the above provision shows that the facts admitted need not be proved. In the present case, when the appellant, has all the time projected his case, stating that



item No.6 of the suit schedule property cannot be put for partition and it was the original case of the plaintiffs that they were entitled to have equal share of the suit properties only in respect of 4 items of properties and subsequently, they claimed that they were entitled to have equal share in 2 more properties, by filing amended plaint for adding 2 more items of properties, viz. item Nos.5 and 6 of the suit schedule properties, we are of the considered view that item No.6 of the suit property was purchased by the appellant through sale deed dated 10.02.1988, since the father of the plaintiffs and defendants 2 to 4 already passed away on 13.12.1997.

20.Since the Trial Court has committed error in putting item Nos.1 to 6 of the suit schedule properties for partition, we are inclined to set aside the findings given by the Trial Court with regard to item No.6 of the suit schedule property. Therefore, the findings given by the Trial Court by putting all the suit schedule properties for partition are set aside. In respect of item Nos.1 to 5 of the suit schedule properties, the findings given by the Trial Court shall remain un-altered.

21.Needless to mention that the plaintiffs are not entitled to have a share in item No.6 of the suit schedule property and therefore, the same cannot be put in the common pool for partition, as it absolutely belonged to the appellant/second defendant.

22.As it is submitted by the learned counsel appearing for the appellant and the respondents that admittedly, the mother Radha passed away during the pendency of the appeal on 31.05.2021 and therefore, the share allotted by the Trial Court in favour of the mother of the parties, shall be divided equally among the plaintiffs and defendants 2 to 4, while passing the decree, the share of the mother of the parties, shall be equally distributed to the plaintiffs and defendants 2 to 4. Accordingly, issue No.3 is answered.

23.With the above observation, the appeal stands partly allowed. Consequently, M.P. No.1 of 2015 is closed. No costs.

s/d-
Assistant Registrar

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Sub-Assistant Registrar



To

1.The Additional District Judge III,
Thiruvallur at Poonamallee.

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

+1 CC to Mr.C.P.Sivamohan, Advocate sr 59194

+1 CC to Mr.T.S.Vijayaraghavan, Advocate sr 58703.

A.S. No.1217 of 2015
and M.P. No.1 of 2015

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