



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :19.02.2021

Pronounced on :02.03.2021

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Appeal Suit No.202 of 2004
and
C.M.P.No.6623 of 2004

1.P.Subramaniam
2.P.Ramasamy

.. Appellants /Plaintiffs

/versus/

1.A.Palanisamy
2.A.krishnasamy
3.P.Ganesan
4.Tmt.Rukmani

.. Respondents/Defendants

Prayer: Appeal Suit has been filed under Section 96 of the Civil Procedure Code against the judgment and decree rendered in O.S.No.37 of 2002 dated 12.03.2003 on the file of the Additional District Judge (Fast Track Court IV), Cimbatores at Tirupur, Coimbatore District.

For Appellants :Mr.R.Saseetharan

For Respondents:Mr.V.P.Sengottuvel for R4
R1-died
R2-Steps not taken
No appearance for R3

J U D G M E N T

This appeal filed by the unsuccessful plaintiffs, who filed the suit for partition and failed.

2.For clarity, the parties are described as per the designation and ranking found in the plaint.

3.Brief facts of the case is that, plaintiffs 1 and 2 and defendants 2 to 4 are the sons and daughter of the first defendant Palanisamy. Alleging that the suit property is the family property jointly held by the plaintiffs and the



defendants in which the first defendant is the Kartha of the family, suit for partition filed by two sons of Palanisamy.

4. Brief Facts:-

On 02.05.1963, the first defendant and two others purchased the first item of the suit property. In the partition among the three owners of the property on 27.11.1963, the vacant site of the first item of the property was allotted to the first defendant. The construction over it was made out of joint contribution of the plaintiffs and defendants 2 and 3 along with the first defendant. The vacant site in item No.2 was purchased on 31.05.1979 in the name of the first defendant out of the contribution of the sons of the first defendant and construction was made from out of their contribution. The properties were purchased in the name of the first defendant being the eldest male member of the family. The portion of the second item of the suit property is in occupation of the first plaintiff. The second plaintiff is in occupation of the first item of the suit property. Until one year prior to filing of the suit, the members of the family were very cordial in joint enjoyment of the suit property. Later, mis-understanding arose between the plaintiffs and defendants 1 to 3.

5. Taking advantage, the fourth defendant, who is the daughter of the first defendant has made the first defendant to settle the second item of the suit property in her name on 14.12.1998, describing the property as vacant site, without mentioning the existing construction. When the plaintiffs came to know about that, the first defendant promised to cancel the settlement deed, but instead of cancelling the settlement deed, the first defendant executed the settlement deed in favour of the fourth defendant and in collusion with the second defendant the first defendant executed another settlement deed in favour of the second defendant transferring a portion of the first item property to him on 05.03.1999. As a member of the joint family, the plaintiffs along with defendants 1 to 3 are entitled for equal share in the property. The first defendant has no right to settle unilaterally, according to the whims and fancies, the property in favour of defendants 2 and 3. The settlement deeds executed in favour of the second defendant and the fourth defendant, are not valid and binding on the plaintiffs. Since the first defendant is intended to alienate the remaining property also and all the mediation ended futile, the suit for partition among the plaintiffs and defendants 1 to 3 at the ratio of 1/5th share.

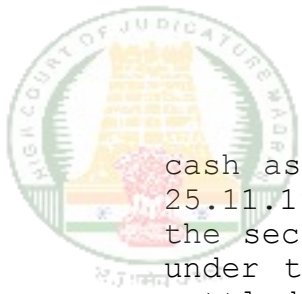
6. The first and the second defendants in their written statements have denied the allegations and the averments made in the plaint. They denied the averments that the properties were purchased in the name of the first defendant as Kartha of the



family. The allegation that the construction were put from the contribution of the plaintiffs and defendants 2 and 3 is denied. The property describing as item No.1 in the suit property was purchased by the first defendant from out of his own savings and earnings on 02.05.1963. The first defendant through his firewood shop and Tea stall earned and constructed the buildings in items 1 and 2 of the suit schedule property. They are the self-acquired property of the first defendant. Neither the plaintiffs nor defendants 2 and 3 have any right over it. They had not contributed anything for the improvement of the suit property. When the property was purchased in the year 1963, the plaintiffs were minors and depending on the first defendant. The revenue records and the municipal records stand in the name of the first defendant and he executed the settlement deed dated 05.03.1999 in favour of the second defendant. Pursuant to the settlement, the second defendant has taken possession of the first item of the suit schedule property. The remaining portion are with the first defendant and the same was rented out to the 3rd parties. The second item of the suit property, which was purchased by the first defendant on 31.05.1997, from out of his earning and savings, settled to the fourth defendant under settlement deeds dated 14.12.1988 and 25.11.1988 to and in favour of the fourth defendant. The said settlement deeds were acted upon and the revenue records are mutated in the name of the fourth defendant. Neither the plaintiffs nor defendants 2 and 3 have any right over the property. The plaintiffs and defendants 2 and 3 have got separated from the first defendant long ago and living separately. The first defendant living on the rental income derived from the portion of the first item of the property.

7. The third defendant has filed written statement supporting the case of plaintiffs 1 and 2.

8. The fourth defendant in her written statement has contested the partition suit defending the settlement deeds of the first defendant executed in her favour in respect of the second item of the suit schedule property. Her father, the first defendant purchased the property as vacant site under sale deed dated 31.05.1977. He was successfully running the tea shop and from out of that income, the property was purchased. The plaintiffs and the second defendants had no income of their own, when the property was purchased and improved by putting up construction over it. The settlement deeds executed by the first defendant in favour of the 4th defendant dated 25.11.1998 and 14.12.1998 were personally known to the plaintiffs. Initially, the first defendant thought of settling the second item of the property to the fourth defendant/sister. He also executed a Will to that effect but, later changed his mind and settled the entire item No.2 of the property in the name of the fourth defendant and in lieu of her share his sister was given



cash as insisted by her sister. Under the settlement deed dated 25.11.1998, the first defendant settled the western portion of the second item of the property with the building. Subsequently, under the settlement deed dated 14.12.1998, the first defendant settled eastern portion of the item No.2 of the property with the vacant site. Both the settlement deeds are valid, conferring absolute title upon the fourth defendant. The first plaintiff is occupying in the terraced portion of the item No.2 of the property as a tenant by paying rent of Rs.1,500/- per month. Only after instituting the suit he has stopped paying the rent for which auction for eviction is contemplated. Without relief regarding cancellation of the settlement deeds dated 25.11.1998 and 14.12.1998 the relief for share in the suit property is not maintainable.

9. On this averment, case was taken for trial and following issues were framed:-

- (1) Whether the suit properties is already divided or not?
- (2) Whether the sale deed dated 31.05.1979 is valid or not?
- (3) What is the share of the plaintiffs?
- (4) Whether the deed dated 05.03.1999 is valid or not?
- (5) Whether the suit is maintainable or not?
- (6) Cost and other relives?

10. On the side of the plaintiffs two witnesses were examined. 41 documents were marked as Ex.A1 to Ex.A41. On the side of the defendants, three witnesses were examined. 84 documents were marked as Ex.B1 to Ex.B84. After considering these documents and evidence, the trial Court concluded that the plaintiffs have no right in the suit properties. When the property was purchased, they were young minors without any income of their own and their alleged contribution for the purchase of the property or its improvement by putting construction over it, are not proved. The occupation of the first plaintiff in the portion of the second item of the property which was settled in favour of the fourth defendant is only as a tenant and not as a sharer. Since the properties are found to be self-acquired property of the first defendant, he has every right to settle the property to the second and fourth defendants.

11. Assailing the said judgment, this appeal is filed on the ground that the trial Court failed to properly appreciate the evidence let in by the plaintiffs. While the relationship between the parties are accepted, diversiting the right of the plaintiffs and settling the property in favour of the daughter and one son, among the four sons is suspicious conveyance. The contribution of the male members for improvement of the joint family property totally ignored by the trial Court. There is no evidence to disbelieve that the plaintiffs and defendants 1 to 3



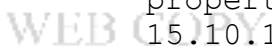
were living in joint family and enjoying the suit property jointly.

12. Defendants 1, 2 and 4 have admitted that the plaintiffs were sent to the Knitting Company as collee to earn livelihood. Therefore, the contribution for improvement of the joint family property could not be ignored. The failure of the first plaintiff to recollect the name of the vendors cannot be a ground to reject the claim of the plaintiffs. The 2nd item of the property was purchased only on 31.05.1997 and at the time, the first plaintiff was nearly 13 years old. Therefore, the conclusion of the trial Court that the plaintiffs at the time of purchasing the suit properties were minors and not capable to earn, is an erroneous conclusion. At the time of filing the suit in the year 1999, the first plaintiff was 52 years old and he had contributed his income for the property helping the first defendant in his firewood shop and tea stall. A portion of the second item of the property is in the possession of the first plaintiff as a sharer, which has not been properly appreciated by the trial Court.

13. The learned counsel appearing for the appellants submitted that because the properties were purchased in the name of the Kartha, the sons should have contributed for improvement of the joint family property. They cannot be deprived of their right. No valid reason has been shown in the settlement deed for depriving the other legal heirs, who are entitled for a share in the property.

14. Per contra, the learned counsel appearing for the respondents/defendants states that, the first item of the property came to the hands of the first defendant by virtue of division among the co-owners in the year 1966. The second item of the property was purchased in the year 1977. The first defendant had his own source of income and he was maintaining the family and out of the savings, he had purchased these properties. He, on his own, had settled the property in favour of the second and fourth defendants. The said settlement deeds are valid and duly executed in accordance with law and acted upon. Without cancellation of the said deeds, as per Section 31 of the Specific Relief Act, the suit filed for partition. Hence, it is bad in law.

15. In support of his submission, the learned counsel appearing for respondents/defendants rely upon the judgments of Madras High Court Division Bench in (1) K. Jagannathan v. A. M. Vasudevan Chettiar and 12 others reported in 2001 (2) CTC 641 and (2) K. Narayanasamy v. K. Thusiraman and others reported in AIR 2019 Mad. 188.



17. The suit for partition alleging that the suit schedule properties are joint family properties, was presented on 15.10.1999 before the Sub Court Tirupur. The relief sought was for division of the suit property into five equal shares and allot two shares to the plaintiffs together and put them in separate possession. In the plaint, it is specifically averred that, the plaintiffs along with defendants 1 to 3 were living together in the suit property, till in the year 1998. However, the first defendant has dealt the suit property as personal property and executed two settlement deeds. Those settlement deeds are marked as Exs.A4 to A5. Under Section 31 of the Specific Relief Act, when any written instrument, if left outstanding may cause serious injury to a person, such person should claim for adjudging the said instrument as void or voidable and cancel the same. In this case, the plaintiffs have stopped with the relief of division of the property, but had not sought for any declaration in respect of the two settlement deeds, which will seriously injure them, if left outstanding.

19.As far as the documentary evidence are concerned, the plaintiffs have marked 41 documents. Ex.A1 is the sale deed dated 02.05.1963 to show that the first defendant along with Ramasamy and Nachimuthu gounder had purchased the first item property from one S.Adbulkadir. After six months under Ex.A2, they have divided the property among themselves on 27.11.1963, in which B schedule property was allotted to the first defendant. This 54 x 40 ½ feet vacant land is the first item property in the present suit. When this property was purchased even according to the plaintiffs' witness PW-2, the eldest son Subramaniam was hardly 10 to 12 years old. The 'B' schedule property, which was purchased on 31.05.1997 under Ex.A3 is a vacant land measuring an extent of 4 cents 286 17/32 7 sq.ft. This was also purchased only in the name of the first defendant.



It is an admitted fact that, the first defendant had his own business and earning and the plaintiffs as well as the defendants 1 to 3 were school going kids.

20. The settlement deeds-Ex.A4 executed in favour of the fourth defendant and Ex.A5 executed in favour of the 2nd defendant. The first defendant categorically stated that the property are the self-acquired property and out of love and affection, he settled the property in presentee. DW1 had mounted the witness box and subjected himself for cross examination. He has denied the averments made in the plaint that the suit property were purchased out of family exertion and the contribution of the plaintiffs 1 and 2 and defendants 1 to 3. He has specifically stated that the first plaintiff Subramaniam ran out from the home, when he was 10 or 12 years old and the second plaintiff Ramasamy studied upto SSLC and he spent for his education. The second defendant Krishnasamy and the third defendant Ganesan studied upto 10th standard. The allegation that he made his sons to go for coolie work and found to be false. Contrarily, he had spent for his sons education and they have not contributed anything for the family.

21. From DW-1 evidence, we find that since 1947, he had been running firewood shop and tea shop at Tiruppur, then on the Avinashi Road before he purchase the first item property in the year 1963. Thereafter, in the first item of the property, which got under the partition-Ex.A2, he had established tea stall and earning his livelihood. From his evidence, we could also find that four or five years prior to filing of the suit, the plaintiffs and the third defendant had quarrelled with the first defendant and snatched away the title documents and the same is ended in criminal complaint. So, it is obviously clear that the first defendant and his three sons, who are the plaintiffs and the third defendant were not in good terms.

22. In the evidence of the first defendant, he has also established that he raised loan from Urban Bank and Lakshmi Vilas Bank for improvement of the suit property and later, cleared the debts from out his income. Ex.B45 to Ex.B61 are the pro-notes executed by the first defendant for raising the loan. These pro-notes prove the fact that since 22.05.1959, the first defendant was in the habit of borrowing the money and discharging the same. The encumbrance certificates marked as Ex.B62 to Ex.B64 go to show that, when the first defendant purchased the first item of the property which was under mortgage with Lakshmi Vilas Bank, the first defendant and other co-purchasers have discharged the mortgage. Similarly, he has shown the first item property as security and has raised the loan. These documents indicate that there was no contribution from the plaintiffs or other sons of the first defendant for



purchasing the property or improving the suit property.

23. Since the plaintiffs have failed to prove that they have contributed for purchase of the suit property and for its improvement, the trial Court has rightly dismissed the suit for partition. The plaintiffs want to prove a fact contrary to the title document. So, the burden is upon them to adduce satisfactory evidence. None of the documents produced on behalf of the plaintiffs indicate that there was any contribution on their part for purchase of the suit property or for improvement of the suit property. There is no evidence to show that the suit properties were treated as joint family property and the first defendant was only Kartha and name lender. Contrarily, the first defendant has placed enough documentary evidence to show that the property was purchased by him from his own earning and he has raised loan and improved the property and repaid the loan from out of his earning. Therefore, being a self-acquired property, the first defendant has absolute right to deal with the property, as per his wish. The plaintiffs and the third defendant being estranged sons, they were not given any property by the first defendant and he has mounted the witness box and stated the reason for not giving any property to them.

24. Furthermore, as pointed out by the learned counsel appearing for the appellants, the settlement deeds Ex.A4 and Ex.A5 and Ex.B72, being validly executed and acted upon, the plaintiffs ought to have sought for cancellation of the said deed, as per Section 31 of the Specific Relief Act, 1963. Since the plaintiffs have not sought for declaration to adjudge these documents as void or voidable to cancel the said document, the suit is bound to be dismissed on that ground also.

25. In such circumstances, the plaintiffs can have no right to claim shares in the self-acquired property of the first defendant. For the aforesaid reasons, the appeal suit has to be dismissed.

26. In the result, this Appeal Suit is dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To:

The Additional District Judge,
Fast Track Court No.IV,
Coimbatore at Tirupur,
Coimbatore District.

+1cc to Mr.R.Saseetharan, Advocate, S.R.No.12719

+1cc to Mr.V.P.Sengottuvel, Advocate, S.R.No.13243

A.S.No.202 of 2004

and

C.M.P.No.6623 of 2004

GJ(CO)

CB(01/10/2021)