

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.03.2021	Pronounced on: 30.03.2021
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CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

A.S.No.853 of 2010

1.Thirupurasundari,
W/o.Jayaraman

2.Deivakumaran
S/o.Gopalaraman

3.Kalyanasundari
S/o.Gopalaraman

.... Appellants/Plaintiffs

Vs.

1.Gopalaraman
S/o.Kumarasamy

2.Senji Lakshmi
W/o.Gopalaraman

3.Packiam,
W/o.M.R.Ramachandran

.... Respondents/Defendants

PRAYER: Appeal Suit is filed under Section 96 of C.P.C against the judgment and decree made in O.S.No.98/2007 on the file of the Additional District Judge (Fast Track Court No.II) at Cuddalore dated 28.07.2010.

For Appellants : Mr.V.Ayyadurai, Sr.C. for
Mr.G.Gokul

For Respondents : No appearance for R1 & R2
: Mr.R.Syed Mustafa for R3

J U D G M E N T

The appellants are the plaintiffs in the suit filed for partition, separate possession and permanent injunction restraining the 3rd defendant from alienating the 3rd item of the suit property.

2. The trial Court decreed the suit for partition in respect of the item Nos.1 and 2 and held that the plaintiffs are entitled for 1/4th share each. As far as the 3rd item is concerned, the relief sought against the 3rd defendant was dismissed. Against the disallowed portion of relief, the present appeal suit is filed.

3. The gist of the plaint is that the 1st defendant is the father of the plaintiffs 1 to 3. The 2nd defendant is the mother of the plaintiffs and the 3rd defendant is the sister of the 1st defendant. According to the plaintiffs, item Nos.1 and 2 of the suit property belongs to Kumarasamy Padayachi, who have five sons, Gopalaraman is one among them. During his life time of Kumarasamy Padayachi, partition took place between Kumarasamy Padayachi and his sons during the year 1970. Item Nos.1 and 2 was allotted to the 1st defendant Gopalaraman. Since then, the 1st defendant is in possession and enjoyment of the item Nos.1 and 2 of the suit property. Gopalaraman sold some of his properties at Marungur village and purchased the 3rd item property on 02.01.1976 in the name of his wife, the 2nd defendant. The sale consideration for purchasing the said property was from the joint family income and fund. Since the 3rd item property purchased from the joint family property fund, the same has to be treated as ancestral property and subjected to partition. The plaintiffs have come to know that the 2nd defendant had executed a sale deed in favour of the 3rd defendant due to coercion exerted on her and now the 3rd defendant tried to alienate the 3rd item property to third party. It is alleged in the plaint that the 3rd defendant, who is none other than the sister of the 1st defendant.

4. The 1st defendant had borrowed the money from the 3rd defendant and her husband in and around the year 2000. For the said money, the 3rd defendant has charged exorbitant interest for the money so borrowed. The 3rd item property was given as a security for the loan advanced. The loan was discharged on 20.07.2006. But on the same day, the 3rd defendant's husband coercion, the 1st and 2nd defendants and got a sale deed executed in his favour in respect of item 3 of the suit property, as if, the 3rd defendant had paid the sale consideration of Rs.4,95,000/- for the 3rd item property. The said sale transaction is not binding on the plaintiffs, since the 3rd item property is a joint family property purchased out of joint family income in the name of the 2nd defendant who had no separate income of her own.

5. The 2nd and 3rd defendants filed written statement. The 1st defendant remained ex parte. In the written statement of the 2nd defendant it was admitted that item Nos.1 and 2 are the

properties obtained by the 1st defendant under the family partition of the year 1970. The 3rd item property was purchased by the 1st defendant in the name of the 2nd defendant on 02.01.1976 and it has been treated, held and dealt with only as a joint family property. The 2nd defendant has no absolute title in respect of the 3rd item property. The 1st defendant borrowed money from one Ramachandran the husband of the 3rd defendant. Therefore, on 02.07.2006 the said Ramachandran / husband of 3rd defendant under threat and coercion obtained the sale deed from the 2nd defendant, for which she has not received any consideration. The plaintiffs and the 1st defendant are the true owners of the 3rd item property.

6. The 3rd defendant in the written statement had defended the suit stating that the suit has been filed at the instigation of the defendants 1 and 2 along with one Jayaraman who is the husband of the 1st plaintiff. It is faint attempt made by the 1st defendant and the husband of the 1st plaintiff. The suit is bad for partial partition, since there are other properties purchased from the joint family income, which has not been included in the suit. Whereas, the properties which are not the joint family property has been included. It is incorrect to say that the 1st defendant sold some of the properties in Marungur village and subsequently purchased item No.3 of the suit property in the name of the 2nd defendant from out of the sale consideration and joint family fund. The 3rd item property was not sold under coercion or threat. The plaintiffs/defendants 1 and 2 and the husband of the 1st plaintiff together decided to sell the 3rd item property and after receiving the consideration, the property was sold to the 3rd defendant by the 2nd defendant, in which, the 1st defendant and Jayaraman/husband of the 1st plaintiff are witnesses.

7. The allegation that the 1st defendant borrowed money from the husband of the 3rd defendant and exorbitant interest at the rate of 36% to 72% was collected from the 1st defendant are all false and denied. The receipts relied by the plaintiffs alleged to have been given to the 3rd defendant husband in fact relates to the transaction between the 1st defendant and the 3rd defendant's husband. It was a document given to the husband of the 1st plaintiff to show his brothers that he has debt and liability. The said receipts does not reflect any real transaction and such document is not true and genuine record.

8. The allegations of coercion and fraud made against the 3rd defendant denied and claimed exclusive right over the 3rd item property as a bonafide purchaser from the lawful owner. Based on the said pleadings, the trial Court framed the following issues:

1. Whether the suit property are joint family property?
2. Whether the sale deed dated 20.07.2006 executed by the 2nd defendant in favour of the 3rd defendant is true and valid?
3. Whether the plaintiffs have share in the suit property?
4. Whether the plaintiffs are entitled for $\frac{3}{4}$ th share in the suit item 1 to 3?
5. Whether the plaintiffs are entitled for declaration that the sale deed dated 20.07.2006 is null and void?
6. Whether the plaintiffs are entitled for permanent injunction as prayed?
7. What other relief the plaintiffs are entitled?

9. Before the trial Court, three witnesses on behalf of the plaintiffs and two witnesses on behalf of the defendants were examined. The 2nd plaintiff and two other witnesses were examined as PW.1 to PW.3. The 2nd and 3rd defendants were examined as DW.1 and DW.2. 14 exhibits were marked on behalf of the plaintiffs and six exhibits were marked on behalf of the defendants.

10. The trial Court on considering the evidence held that item 1 and 2 are the properties inherited by the 1st defendant in which the plaintiffs are entitled $\frac{1}{4}$ th share each. Whereas, the 3rd item property purchased by the 2nd defendant is her separate property and not the joint family property. Therefore, the purchase of the 3rd item property by the 3rd defendant is valid and cannot be subjected to partition or the 3rd defendant be restrained from dealing with the said property.

11. Assailing the said judgment, the plaintiffs have preferred the appeal as against the disallowed portion of relief on the ground that the trial court had attached undue weightage to the registered sale deed despite the fact that the plaintiffs have proved that no consideration was passed for the said sale transaction. The trial Court is not correct in holding that the suit item No.3 was not the Hindu undivided joint family property. Undue weightage has been given by the trial Court to Ex.B1-Xerox copy of the registered deed dated 03.04.2000. It is an inadmissible document and not relevant to conclude the issue whether the suit item 3 is a joint family property or not. The trial Court erred in holding the sale deed Ex.A2 as a valid document contrary to other oral and documentary evidence which proves otherwise. The evidence of the attesting witnesses and the scribe are sufficient only to prove due execution of sale deed, but not proof for passing of consideration. This vital aspect has been over looked by the trial Court.

12. The learned Senior counsel for the appellants would submit that the sale deed was obtained under coercion and same

has been proved by the statement of account given in the hand writing of the 3rd defendant's husband. While so, the trial Court ought not to have omitted the 3rd item property from partition. The evidence of the 2nd defendant, who has categorically stated that she is not the true owner of the property and only a name lender and she was asked to sign the sale deed, has not been considered by the trial Court.

13. Per contra, the learned counsel for the respondents would submit that the plaintiffs had not proved that the 3rd item property was purchased in the name of the 2nd defendant by the 1st defendant from the sale proceeds of the joint family property. There is no evidence to show the 3rd item property was purchased from out of joint family fund. The trial Court, after rightly considering the evidence that the 2nd defendant had her own source of income and hailed from affluent family, had rightly held that it was purchased on her own fund and she voluntarily sold the property to the 3rd defendant. Her evidence was disbelieved by the trial Court because she has spoken contrary to her own written document to favour her children. The statement of accounts relied by the plaintiffs were not the document relates or admissible in evidence. Therefore, the trial Court had rightly rejected it. The said document does not indicate that it was with reference to any transaction between the 2nd defendant who sold the property to the 3rd defendant.

14. The point for determination in this appeal is (i) whether the 3rd item property is a part of joint family property or not? and (ii) whether the evidence of 2nd defendant is reliable.

15. The suit for partition in respect of 3 item property is more fully described in the plaint. Regarding the first two items, there is no quarrel about the nature of the property. Ex.A.1 is the sale deed in favour of the 2nd defendant. Based on the said sale deed, the revenue records has been mutated in favour of the 2nd respondent Senjilakshmi under Ex.A4. The property has been sold to the 3rd defendant on 20.07.2006. The said property is the 3rd item property. As far as the items 1 and 2, the parties accepted that the same was inherited by the 1st defendant through family partition occurred in the year 1970. It carries character of ancestral property, in which, the plaintiffs' son and daughter are entitled for partition. Whereas, the 3rd item property purchased by the 2nd defendant in the year 1976. According to the plaintiffs, it is a property purchased from out of the sale consideration derived from selling part of the ancestral property at Marungur village. The plaintiffs have not mentioned what is the property when it was

sold and for how much it was sold and whether the said property was really the ancestral property and whether that sale proceeds was source to buy the 3rd item property.

16. The bald and vague averments that the sale price to purchase the 3rd item property under Ex.A1 was from the joint family nucleus is not sufficient to treat it as joint family property. When the evidence indicates that the 2nd defendant had her own source of income while purchasing the 3rd item property, it is deemed to be herself acquired property. The plaintiffs to prove their case have examined the 2nd defendant / Deivakumaran as PW.1. In the cross examination, he had denied the knowledge of many of the basic facts regarding the suit property and the source of income to purchase the property. The 2nd plaintiff admits in the cross examination that he and his father have entered into partition on 03.04.2000. If really, the property was purchased by his father / the 1st defendant in the name of his mother/ 2nd defendant, while entering with the partition in the year 2002, the 3rd item property should have been included. When this document Ex.B1 was confronted with the witnesses he feigned ignorance the contents about the partition deed.

17. The learned counsel for the appellants would submit that the said document is unregistered xerox copy, the Court ought not to have relied upon it. The said document has relied by the trial Court not to decide title, but only for the collateral purpose to show that the 1st defendant had no intention to claim any right in the 3rd item property purchased by the 2nd defendant. Much reliance on the statement of accounts marked as Ex.A.14 made by the appellants. This statement is not the extract of accounts maintained in the regular course of business. It is an hand written chit. The author was not examined. Its authenticity not proved and relevancy not established. It is pertinent to note that the sale deed Ex.B2 in favour of the 3rd defendant was executed by the 2nd defendant and attested by the 1st defendant as well as the husband of the 1st plaintiff as witnesses. Both have not been examined by the plaintiff to show that there was no consideration passed as per the sale deed. They have examined the 2nd defendant who executed the sale deed in favour of the 3rd defendant. The 2nd defendant is the mother of the plaintiff and the wife of the 3rd defendant's brother. In the sale deed, her husband and son-in-law are the witnesses. Being a registered document, the presumption is in favour of the 3rd defendant. The burden of disproving the said presumption is on the plaintiffs. The evidence of DW.1, the 2nd defendant does not inspire confidence to dislodge the presumption available in favour of a registered document. Though to support the plaintiffs, the 2nd defendant has deposed that Ex.B4 was obtained under duress, but she admits that she did not give any complaint before the Sub Registrar at the time

of registration or to the police. This clearly shows that it is only an after thought to deny the right of the 3rd defendant after executing the sale deed receiving sale consideration.

18. The trial Court after taking note the evidence rightly held that the item Nos. 1 and 2 were inherited by the 1st defendant under partition among the brothers and father held in the year 1970. Whereas, the 3rd item property was purchased by the 2nd defendant from out of her own fund. There is no evidence to show that it was purchased from out of the joint family property fund. In the year 2000, when the 1st defendant and his son/2nd plaintiff effected partition of the family property, the property in the name of the 2nd defendant was not included. Precisely, it indicates the parties are aware and recognised that the property in the name of the 2nd defendant is her exclusive property, while so, the sale of 3rd item property to the 3rd defendant under Ex.B2 on 20.07.2006 has been duly effected. The revenue tax receipts issued in the name of the 3rd defendant, which are marked as Ex.B3 to Ex.B5. The patta for the property also transferred in the name of the 3rd defendant and marked as Ex.B6. The letter marked as Ex.A12 and receipts marked as Ex.A13 and Ex.A14 does not have any bearing to decide the validity of sale deed Ex.B2 = Ex.A4 executed by the 2nd defendant in favour of the 3rd defendant.

19. This Court on considering the documentary evidence as well as the oral evidence finds no error in the conclusion of the trial Court. The appeal is devoid of merit. The plaintiffs can have no right to seek partition of the 3rd item property. While the 2nd defendant as the owner of the property had sold the property to 3rd defendant. After receiving the consideration and retracting the genuineness of the transaction by the 2nd defendant belatedly after lapse of four years does not inspire confidence and does not satisfy the requirement of Section 91 of the Evidence Act which enables oral evidence to over ride the written document.

20. For the said reasons, the Appeal Suit is dismissed. Judgment of the trial Court is confirmed. No order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To,

1.The Additional District Judge,
(Fast Track Court No.II),
Cuddalore.

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

+1cc to Mr.G.Gokul, Advocate Sr.20565
+1cc to Mr.R.Syed Mustafa, Advocate Sr.20436

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