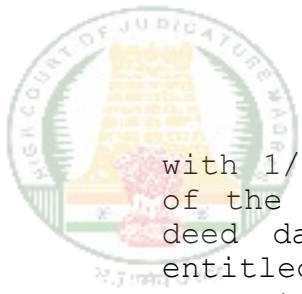




4.Suit for permanent injunction.

5.Briefly stated, the case of the plaintiffs is that the 4th plaintiff is the wife and the plaintiffs 1 to 3 are the daughters of the deceased Dhanapal Gounder, who died on 23.02.1991. The first defendant is the mother of the deceased Dhanapal Gounder. The 4th plaintiff's father-in-law viz., Appadurai Gounder had two sons viz., Dhanapal Gounder and Karuppa Gounder. The second defendant is the wife of the deceased Karuppa Gounder. During the life time of Appadurai Gounder, Dhanapal Gounder and his brother Karuppa Gounder and their pangali Solai Gounder had partitioned their properties by way of a registered partition deed dated 31.12.1971, under which, the "B" schedule properties had been allotted to the share of Dhanapal Gounder. Dhanapal Gounder died leaving only the plaint schedule properties and alienated some of the items which had been allotted to him in the abovesaid partition. The defendants are not entitled to the plaint schedule properties and the first defendant is one of the legal heirs of the deceased Dhanapal Gounder and after the demise of Dhanapal Gounder, it is only the plaintiffs, who had been in the possession and enjoyment of the suit properties as absolute owners. The first defendant had attested the partition deed dated 31.12.1971 and the original partition deed is in the custody of Karuppa Gounder. The first defendant had orally relinquished her share in the plaint schedule properties in favour of the plaintiffs. It is only the plaintiffs, who are in the exclusive possession and enjoyment of the plaint schedule properties. The defendants, without any entitlement, right or claim over the suit properties, are attempting to interfere with the plaintiffs' possession and enjoyment of the suit properties and hence, according to the plaintiffs, they had been necessitated to lay the suit for Permanent Injunction.

6.The defendants resisted the plaintiffs' suit contending that the plaintiffs' suit is not maintainable either in law or on fact. The relationship set out in the plaint is true. It is true that Solai Gounder, Dhanapal Gounder and Karuppa Gounder had partitioned the properties by way of the partition deed dated 31.12.1971. However, the abovesaid partition had been effected without the consent and consultation of the fourth plaintiff's father-in-law Appadurai Gounder and the first defendant is entitled to succeed to the share belonging to Appadurai Gounder and therefore, the abovesaid partition is not binding upon the first defendant. Denying the case of the plaintiffs that Dhanapal Gounder had alienated some of the properties allotted to him under the abovesaid partition deed, according to the defendants, the third item of the plaint schedule properties is the separate property of the first defendant by way of purchase and she had settled the same along



with 1/10 share in the Well situated in the 6th item in favour of the second defendant's son Ganesan by way of the settlement deed dated 13.11.1991 and therefore, the plaintiffs are not entitled to claim any relief in respect of the abovesaid settled properties. It is false to state that after the demise of Dhanapal Gounder, the remaining properties and the Well are in the exclusive possession and enjoyment of the plaintiffs. The first defendant is also one of the legal heirs of the deceased Dhanapal Gounder. It is false to state that the first defendant had attested the partition deed dated 31.12.1971. The first defendant had not come to the Registrar Office and also not signed in the alleged partition deed and her thumb impression had been concocted by the deceased Dhanapal Gounder. The first defendant had alienated most of the plaint schedule properties along with her daughters in favour of the second defendant by way of the sale deed dated 13.11.1991 and therefore, the share, which the first defendant is entitled to in the plaint schedule properties after the sale deed dated 13.11.1991, belongs to the second defendant and therefore, the suit laid by the plaintiffs without impleading the second defendant is not maintainable and also the suit laid by the plaintiffs without impleading Ganesan is also not maintainable. The plaint schedule properties are in the joint possession and enjoyment of the plaintiffs, Ganesan and the second defendant and the plaintiffs are not entitled to seek the relief of permanent injunction against the co-owners. Further, the case of the plaintiffs that the first defendant had orally relinquished her share in respect of the plaint schedule properties in favour of the plaintiffs is false. At no point of time, the first defendant had relinquished her right in favour of the plaintiffs qua the suit properties. The plaintiffs should have laid the suit only for partition and the suit laid by them simplicitor for the relief of permanent injunction is not maintainable and hence, sought for the dismissal of the plaintiffs' suit.

7. In support of the plaintiffs' case, PWs1 & 2 were examined and Exs.A1 to A9 were marked. On the side of the defendants, DWs1 to 3 were examined and Exs.B1 to B5 were marked.

8. On an appreciation of the materials placed on record, both oral and documentary and the submissions put forth by the respective parties, the Courts below were pleased to dismiss the plaintiffs' suit. Impugning the judgment and decree of the Courts below, the present second appeal has been preferred by the plaintiffs.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

" (a). Whether the Courts below are



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right in holding that Ex.A1 partition deed dated 31.12.1971 is not valid and binding on the respondents, when the defendants/respondents themselves have not disputed particularly the execution of the said partition deed?

(b).Whether the Courts below are right in holding that Ex.A1 partition deed is invalid and against the Hindu Succession Act on the reason that no share had been given to the father Appadurai Gounder in the partition deed, but when the fact is that the said Appadurai Gounder is an attesting witness to the partition deed?"

10.The plaintiffs claim title to the plaint schedule properties based on the partition deed dated 31.12.1971. According to the plaintiffs, Appadurai Gounder had two sons viz., Dhanapal Gounder and Karuppa Gounder. The 4th plaintiff is the wife and the plaintiffs 1 to 3 are the daughters are the legal heirs of the deceased Dhanapal Gounder. The second defendant is the wife of the deceased Karuppa Gounder. According to the plaintiffs, during the life time of Appadurai Gounder, his two sons viz., Dhanapal Gounder and Karuppa Gounder along with their Pangali Solai Gounder had effected partition by way of the partition deed dated 31.12.1971 and put forth the case that "B" schedule properties had been allotted to the share of the deceased Dhanapal Gounder. Further also, would contend that Dhanapal Gounder had alienated some of the items allotted to him in the abovesaid partition and died leaving only the plaint schedule properties. It is the further case of the plaintiffs that though the first defendant, the mother of the deceased Dhanapal Gounder, is also one of the legal heirs, the first defendant had relinquished her share in the suit properties in favour of the plaintiffs. Thus, according to the plaintiffs, after the demise of Dhanapal Gounder, it is only the plaintiffs, who are in the exclusive possession and enjoyment of the plaint schedule properties. While so, as the defendants, without any entitlement, claimed right over the plaint schedule properties, attempted to interfere with their possession and enjoyment, hence according to the plaintiffs, they had been necessitated to lay the suit against the defendants for the relief of permanent injunction.

11.Though the defendants in their written statement have admitted the factum of execution of the partition deed dated 31.12.1971, according to the defendants, the abovesaid partition deed is not valid and binding upon them, particularly, when it is



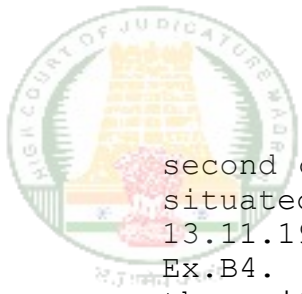
seen that the family partition had been effected only by the sons of Appadurai Gounder along with Solai Gounder, particularly, during the life time of Appadurai Gounder. No proper explanation is forthcoming on the part of the plaintiffs as to why Appadurai Gounder had not been made as a party to the abovesaid partition deed. Though the plaintiffs would claim that Appadurai Gounder had attested the abovesaid partition deed, when it is noted that the family properties had been divided, Appadurai Gounder would be entitled to a share in the family properties as the head of the family but strangely ignoring him, the sons had effected partition along with Solai Gounder in respect of the family properties. It is not even pleaded by the plaintiffs that Appadurai Gounder had agreed not to obtain any share in the family properties and thereby, stood as an attestor in the abovesaid partition deed. Furthermore, the plaintiffs would also claim that the first defendant, who is the mother of the deceased Dhanapal Gounder, had attested the abovesaid partition deed. The abovesaid case of the plaintiffs has been stoutly disputed by the defendants, particularly, by the first defendant. According to the defendants, the first defendant has not affixed her thumb impression in the abovesaid partition deed and the same had been concocted by the deceased Dhanapal Gounder. The defence plea being above, in such view of the matter, though the defendants have admitted the factum of the execution of the partition deed dated 31.12.1971, would contend that the same is not valid and binding upon them. It is for the plaintiffs to establish that the abovesaid partition is valid and binding upon the defendants. As above pointed out, no proper explanation is forthcoming on the part of the plaintiffs as to why the head of the family viz., Appadurai Gounder was not made as a party to the partition deed. Furthermore, there is no material on the part of the plaintiffs worth acceptance that the first defendant had affixed her thumb impression in the abovesaid partition deed and the plaintiffs had not endeavoured to examine the parties associated with the abovesaid partition deed. At the foremost, the plaintiffs have not even endeavoured to produce the original partition deed dated 31.12.1971. On the other hand, they have only filed the copy of the same, which has come to be marked as Ex.A1. Though the plaintiffs would claim that the original partition deed is in the custody of Karuppa Gounder, no material is forth coming pointing to the same on the part of the plaintiffs. Therefore, when the first defendant has disputed the factum of her attestation in the partition deed by affixing her thumb impression and when with reference to the same, the plaintiffs have not adduced any acceptable materials, the plaintiffs should have, at least, produced the original partition deed so as to send the LTI of the first defendant for comparison by an expert in the manner known to law. On the other hand, the plaintiffs would rest with the establishment of the authenticity of Ex.A1 partition deed only by examining PW2 and marking the copy of the said deed.



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According to PW1, the partition deed dated 31.12.1971 had been effected by four persons and also would claim that her mother-in-law is also a party to the partition deed and that her LTI had been obtained in the partition deed and further, reiterated that her mother-in-law is a party to the partition deed. During the pendency of the suit, the first defendant had died. However, the first defendant, during her life time, had filed her written statement disputing the validity and the binding nature of Ex.A1 partition deed and also in particular contended that she had not attested the partition deed by affixing her LTI and not visited the Sub Registrar office and therefore, contended that her LTI had been concocted by the deceased Dhanapal Gounder. As above pointed out, despite the abovesaid defence version, the plaintiffs have not placed any material worth acceptance to hold safely that the first defendant had attested the partition deed in the manner known to law. No person associated with the partition deed has been examined. Though the plaintiffs had examined one Sampath Kumar as PW2 and PW2 would claim that Ex.A1 partition deed had been effected between Appadurai Gounder, Dhanapal Gounder, Karuppa Gounder and Solai Gounder and pursuant to the same, four sharers are enjoying their separate properties, on the other hand, as above pointed out, Appadurai Gounder is not a party to Ex.A1 partition deed. No share had been allotted to him under Ex.A1 partition deed. Therefore, the evidence of PW2, that Appadurai is a party to Ex.A1 partition deed and that he had been enjoying the properties allotted to him pursuant to the abovesaid partition deed, is found to be a total falsehood and therefore, the evidence of PW2 would be of no use to sustain the plaintiffs' case and is quite inconsistent to the plaintiffs case. PW2, during the course of cross examination, would admit that he does not know anything about the partition effected between Karuppa Gounder, Dhanapal Gounder and Appadurai Gounder and also would admit that he does not know anything directly about the execution of the abovesaid partition deed and the evidence of PW2 being totally at variance, giving one stand during the course of chief examination and another stand during the course of cross examination and in such view of the matter, no safe credence could be attached to the evidence of PW2 as well as PW1 for upholding the validity and binding nature of Ex.A1 partition deed, particularly, when PWs 1 & 2 are unable to point out correctly as to who are the parties to the partition deed and on the other hand, would depose contrary to the recitals contained in Ex.A1 partition deed. The Courts below are found to be justified in rejecting the evidence of PWs 1 & 2 and consequently, coming to the conclusion that Ex.A1 partition deed is not valid and binding upon the defendants.

12. According to the defendants, the third item of the plaint schedule properties is the separate property of the first defendant and that she had settled the same in favour of the



second defendant's son Ganesan along with 1/10 share in the Well situated in 6th item by way of the settlement deed dated 13.11.1991. The abovesaid settlement deed has been marked as Ex.B4. Further, from Ex.B2, it is noted that the third item of the suit properties had been acquired by the first defendant from one Muthammal. Therefore, the Courts below are found to be justified in holding that the third item of the plaint schedule properties is the separate property of the first defendant and accordingly, she had settled the suit properties along with 1/10 share in the Well in item No.6 in favour of Ganesan under Ex.B4 settlement deed. To establish the authenticity of Ex.B4 settlement deed, the defendants have also examined one of the attestors of the settlement deed as DW2 viz., Dhandapani. DW2 had clearly deposed about the execution of the settlement deed Ex.B4 in favour of Ganesan by the first defendant. In addition to that, the defendants have also examined the settlee Ganesan as DW3 and DW3 has also testified that he had acquired the properties settled in his favour by the first defendant under Ex.B4 settlement deed and been enjoying the said properties pursuant to the same. In addition to that, as held by the Courts below, the Adangal extract marked on the part of the plaintiffs as Ex.A3 for the faslis 1400 to 1411 also depict the name of Ganesan in respect of Survey No.14/4. All put together, the Courts below are found to be correct in upholding the case of the defendants that the third item of the plaint schedule properties is the separate property of the first defendant and that she had validly settled the same along with 1/10 share of the Well in item No.6 in favour of Ganesan DW3.

13.The claim of the plaintiffs that the first defendant had orally relinquished her share in respect of the plaint schedule properties in favour of the plaintiffs has been seriously challenged by the defendants. In such view of the matter, the plea of oral relinquishment has to be established by the plaintiff as per law. In this connection, PW1/the 4th plaintiff would depose that her mother-in-law i.e. the first defendant had relinquished her share in the plaint schedule properties in writing even before the demise of Dhanapal Gounder and subsequently, she would contradict the abovesaid statement by testifying that her mother-in-law had not relinquished her share in the plaint schedule properties in writing and again she would claim that her mother-in-law had relinquished her share in the plaint schedule properties in their favour by way of a document. Therefore, as rightly held by the Courts below, inasmuch as the first defendant has not relinquished her right in the plaint schedule properties in favour of the plaintiffs either orally or in writing, the plaintiffs are unable to sustain the case of the oral relinquishment as put forth by them in the plaint. Having pleaded oral relinquishment in the plaint, PW1 would give a diametrically opposite version that the relinquishment made by



the first defendant was in writing. Therefore, considering the abovesaid factors in toto, the Courts below are found to be justified in holding that the plea of oral relinquishment on the part of the first defendant qua the plaint schedule properties in favour of the plaintiffs has not been established by the plaintiffs in any manner.

14. Furthermore, according to the defendants, the first defendant had alienated most of the items of the plaint schedule properties along with her daughters in favour of the second defendant by way of the sale deed dated 13.11.1991 and the abovesaid sale deed has been marked as Ex.B1. Considering the abovesaid factors in toto, when there is no material to hold that the plaintiffs are in the exclusive possession and enjoyment of the suit properties and when it is found that the first defendant is also entitled to a share in the plaint schedule properties as the legal heir of the deceased Dhanapal Gounder and the first defendant has also got right over the third item of the plaint schedule properties by way of Ex.B2 sale deed and subsequently, settled her share in favour of DW3 Ganesan and also alienated her share in the plaint schedule properties in favour of the second defendant would only go to reveal that the plaintiffs are not the exclusive owners of the plaint schedule properties. On the other hand, the second defendant as well as Ganesan are also having right and share over the plaint schedule properties. In such view of the matter, the Courts below are found to be correct in holding that the plaintiffs having failed to establish that they are in the exclusive possession and enjoyment of the plaint schedule properties in their own right as put forth by them and on the other hand, when it is noted that the second defendant and Ganesan are also the co-owners of the plaint schedule properties, as such, the plaintiffs would not be entitled to seek the relief of permanent injunction against the co-owners. In addition to that, when the plaintiffs' claim of exclusive possession and enjoyment of the plaint schedule properties are put to challenge vehemently by the defendants, despite the same, the plaintiffs have not endeavoured to seek the relief of declaration and partition qua the plaint schedule properties as per law. The abovesaid aspect also undermines the claim of the plaintiffs.

15. In the light of the above discussions, in my considered opinion, no substantial question of law is involved in this second appeal. Be that as it may, the substantial questions of law formulated for the reasons aforesaid, are accordingly, answered in favour of the defendants and against the plaintiffs.

In conclusion, the judgment and decree dated 18.10.2006 passed in A.S.No.119 of 2004 on the file of the Additional Subordinate Court, Tiruvannamalai, confirming the Judgment and Decree dated 30.09.2004 passed in O.S.No.195 of 1998 on the file



of the Additional District Munsif Court, Chengam, Tiruvannamalai, are confirmed. Accordingly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

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Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

sms

To

- 1.The Additional Subordinate Judge,
Tiruvannamalai.
- 2.The Additional District Munsif Court,
Chengam, Tiruvannamalai.

Copy to:
The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.R.Karthikeyan, Advocate, S.R.No.3171

S.A.No.1270 of 2008

KV(CO)
CB(30/09/2021)