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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.11.2021
PRONOUNCED ON : 18.11.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A.No.446 of 2008
& M.P.No.1 of 2008

1. Mohammal
2. Karthikeyan
3. Ramesh
4. Murali
5. Tamilselvi

...Appellants/Plaintiffs 2-6

Vs.

1. Dhanasekaran
2. Sundararajan
3. Perumalsamy (Died)
4. Sulochana
5. Kotteswari
6. Miss.Indumathi
7. Yuvaraj

...Respondents/Defendants

(R5 to R7 are brought on record as LR's of the deceased R3 viz., Perumalsamy vide court order dated 26.07.2021 made in CMP Nos.9701, 9705 & 9695 of 2021 in SA No.446 of 2008 (PTAJ))

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Code of Civil Procedure, against the Judgment and decree dated 05.12.2007 made in A.S.No.23 of 2007 on the file of the Sub Court, Vellore, Vellore District, confirming the judgment and decree dt. 29.1.07 made in O.S.No.664 of 1996 on the file of the Additional District Munsif Court, Vellore.

For Appellants : Mr.K.A.Ravindran
For Respondents : Mrs.R.T.Sundari
(for R1, R2, R4 to R7)

J U D G M E N T

Aggrieved over the concurrent findings made in O.S.No.664 of 1996 dated 29.01.2007, on the file of the learned Additional District Munsif, Vellore and in AS No.23 of 2007 dated



05.12.2007 on the file of the learned Subordinate Judge, Vellore, the plaintiffs 2 to 6 in OS No.664 of 1996 have preferred the Second Appeal, praying to set aside the dismissal orders passed by the Courts below.

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2. For the sake of convenience, the parties are arrayed as per their own ranking before the trial Court.

3. The laconic averments made in the plaint, are as follows:

(i) The 1st plaintiff Natarajan (died) and Sundaresa Mudaliar are the sons of Rajagopal Mudaliar. Defendants 1 to 3 are the sons of Sundaresa Mudaliar and the 4th defendant is the widow of Sundaresa Mudaliar.

(ii) The 1st plaintiff, Sundaresa Mudaliar and their father Rajagopal Mudaliar constituted a Hindu Undivided Joint Family. The properties set out in schedule 'A' of the plaint are the joint family properties. The other brother Sadasivam had been adopted to his grandfather Murugesu Mudaliar and hence, he is not a member of the joint family and not entitled to any share in the joint family properties. Apart from those persons, there is one daughter Kamasala Ammal to Rajagopal Mudaliar, who is a deaf and dumb.

(iii) Plaintiffs have been maintaining Kamsala Ammal and her mother Chinammal. Since, the 1st plaintiff has been maintaining Kamsammal and the mother of the 1st plaintiff's father, i.e. Chinammal, Rajagopal Mudaliar executed a registered settlement deed dated 27.02.1957, conveying his 1/3 share in the 'A' schedule properties in favour of his wife Chinammal.

(iv) The said settlement deed was executed as a family arrangement and it also amounts to renunciation of his interest in the joint family properties in favour of his wife Chinammal. The said registered settlement deed was accepted by all the members of the joint family and also it was acted upon. Afterwards, the said Chinammal, the mother of the 1st plaintiff sold her 1/3rd right in the 'A' schedule properties, obtained by her under the settlement deed dated 27.02.1957 to the 1st plaintiff by a registered sale deed dated 20.03.1962. Accordingly, by virtue of the sale deed dated 20.03.1962 as well as by inheritance, the plaintiffs are entitled to 2/3rd share in the Schedule 'A' properties of the plaint. In the meantime, the 1st plaintiff Natarajan died leaving behind the plaintiffs 1 to 6 as his legal heirs.



(v) Thereafter, the brother of the 1st plaintiff and the father of the defendants 1 to 3 sold the properties described in the 'B' schedule to the 1st plaintiff's wife viz., the 2nd Plaintiff-Mohanambal, by a registered Sale Deed dated 19.08.1985. Ever since the date of sale, the 2nd plaintiff is in possession and enjoyment of the properties covered by the Sale Deed dated 19.08.1985, The joint family properties were set out in the Schedule A of the plaint. A portion of the property belongs to the Sundaresa Mudaliar is set out in the B Schedule of the plaint. Deducting the 'B' Schedule properties, the properties now available for division is described in the Schedule 'C' of the plaint. In the Schedule 'C' properties, the plaintiffs are entitled to 2/3rd share and the defendants are entitled to 1/3rd share. The defendants are not amenable for amicable division of the schedule 'C' properties. Hence, the suit.

4. The case of the defendants, is as follows:

The plaint allegations are incorrect. There is no truth in them. The suit is bad for non-joinder of necessary parties, particularly, Mohanambal. The 1st defendant states that his father died during the year 1988. In 1950, when his father was alive, there was a partition between his father, the 1st plaintiff and their father Rajagopal Mudaliar. In the said partition, Sundaresa Mudaliar was allotted in S.No.141 an extent of 3-1/2 cents; in S.No.124/4, an extent of 1-1/2 cents; in S.No.222/1, an extent of 10 cents; in S.No.139/1 an extent of 16-1/2 cents, in S.No.162 an extent of 7 cents; in S.No.295/1 an extent of 40 cents, in S.No.1339/2, an extent of 1-1/2 cents and half of the tiled house in S.No.173 in Abdullapuram. The total breadth is 29 feet and the length is 71-1/2 feet. In the said house, there is a terraced house also which is jointly owned by the plaintiffs and the defendants. The defendants are entitled to ½ share in the entire tiled portion, terraced portion and in the backyard. The plaintiff suppressed the essential aspects of the family status and their divided nature, as stated above. According to the defendants, the suit is not maintainable.

5. Based on the abovesaid pleadings, the learned Additional District Munsif, Vellore, framed necessary issues and tried the suit. On the side of the plaintiffs, the 4th plaintiff examined himself as PW1 and marked seven documents, as Ex.A1 to Ex.A7. On the side of the defendants, four witnesses were examined as DW1 to DW4, wherein DW1 is the 1st defendant and seven documents were marked as Ex.B1 to Ex.B7.



6. Having considered the materials placed before him, the learned Additional District Munsif, Vellore, vide judgment and decree dated 29.01.2007, dismissed the suit filed by the plaintiffs.

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7. Aggrieved over the same, the plaintiffs preferred an appeal in AS No.23 of 2007 on the file of Sub Court, Vellore. By judgment and decree dated 05.12.2007, the learned Subordinate Judge, Vellore, after confirming the findings arrived at by the trial Court, dismissed the appeal.

8. Aggrieved over the concurrent findings of the Courts below, the plaintiffs 2 to 6 herein, are before this Court with the present Second Appeal. When the Second Appeal came up for admission, this Court formulated the following substantial question of law.

"Whether Ex.-A1 can be upheld construing the same as family arrangement between the members of the family since Ex.A1 was not questioned or disputed for over 50 years?

9. Heard the respective learned counsel appearing on behalf of the appellants and the defendants and perused the materials available on record.

10. The deceased 1st plaintiff Natarajan and his brother Sundaresa Mudaliar are the sons of Rajagopal Mudaliar. Defendants 1 to 3 are the sons of Sundaresa Mudaliar and the 4th Defendant is the widow of Sundaresa Mudaliar. The other brother Sadasivam, who is the son of Rajagopal Mudaliar had been adopted to his grandfather Murugesu Mudaliar. Apart from those male members, Rajagopal Mudaliar was having one daughter Kamasala Ammal, who is a deaf and dumb person.

11. It is the case of the plaintiffs that the suit 'A' schedule property is the Hindu Joint Family Property, which belongs to the deceased 1st plaintiff, Sundaresa Mudaliar and Rajagopal Mudaliar. Since another son Sadasivam has already been adopted to his grandfather Murugesu Mudaliar, he is not having any share in the Hindu Joint Family property.

12. The further case of the plaintiffs is that since being the reason that the 1st plaintiff had maintained his deaf and dumb sister Kamasala Ammal and his mother Chinammal, his father Rajagopal Mudaliar executed the registered settlement deed dated 22.07.1957, conveying his 1/3rd right in the A schedule property in favour of his wife, Chinammal. Subsequent



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to that, the said Chinnammal, sold the 1/3rd right which was derived by her through the settlement deed dated 22.07.1957, to the deceased 1st plaintiff by a registered sale deed dated 20.03.1962. Accordingly, the plaintiffs are entitled to 2/3rd share in the 'A' schedule property.

13. Afterwards, Sundaresa Mudaliar, who is the father of the defendants 1 to 3 sold the 'B' schedule properties described in the schedule of the plaint in favour of the 1st plaintiff's wife, Mohanambal, by a registered sale deed dated 19.08.1985. Thereby, in the remaining properties i.e. in 'C' Schedule property, the plaintiffs are entitled to 2/3rd share and the defendants are entitled to 1/3rd share.

14. The learned counsel appearing for the appellants would contend that since the father of the 1st plaintiff viz., Rajagopal Mudaliar, executed a settlement deed only in respect to 1/3rd share and afterwards the Sundaresa Mudaliar sold out the 'B' schedule properties in favour of the 1st plaintiff's wife, it should be presumed that the settlement deed dated 22.07.1957 is a family arrangement. Accordingly, it is necessary to partitioned 'C' schedule property, as prayed for.

15. On the other hand, it is the case of the defendants that in the year of 1950, before executing a settlement deed on 22.07.1957, there was a oral partition made in respect to the property, owned by the Rajagopal Mudaliar. Only on that score, the said Rajagopal Mudaliar executed a settlement deed in favour of his wife. In otherwise, it cannot be said that the settlement deed dated 22.07.1957 is a family arrangement. In order to substantiate his case, on the side of the defendants, three witnesses have been examined as DW2, DW3 and DW4. They all have stated before the trial Court, as in 1950, there was an oral partition effected in the family of the Rajagopal Mudaliar.

16. Now, on considering the other relevant circumstances, it would appear that before the trial Court, the settlement deed dated 22.07.1957 was marked as Ex.A1. In respect of the said document, it is the contention raised by the defendants that the same is a fabricated one. Since the plea of forgery is taken as above by the defendants, the duty is cast upon the defendants to prove that the settlement deed dated 22.07.1957 is a fabricated one.

17. In this regard, on going through the said document, as per the endorsement made by the Sub Registrar, the said document was a registered one. However, the same contains only

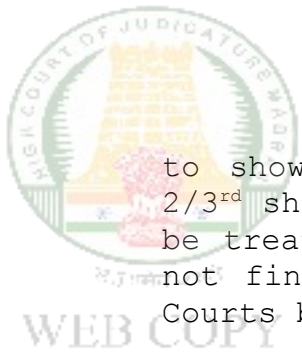


four pages. On the other hand, a cursory looking of the said document now, it appears that Ex.A1 contains five pages, wherein, in the last page the seal of the Sub Registrar is not available. Further, in the 5th page some of the properties stated in the 'A' schedule property was bequeathed in favour of Chinnammal, wife of Rajagopal Mudaliar. Therefore, the same reveals the fact that the said document was a fabricated one and therefore, we cannot rely on the said document.

18. It is an admitted case on the side of the plaintiffs that only on the strength of the said Ex.A1, Chinnammal, who is the wife of Rajagopal Mudaliar, executed a sale deed in favour of the 1st plaintiff. Therefore after concluding that the settlement deed itself is a fabricated one, executing the sale deed on the strength of the said document is not having any much force. Therefore, the said circumstances would reveal the fact that Ex.A1 cannot be treated as a family arrangement and therefore, the case of the plaintiffs that they are already having 2/3rd share in the 'A' schedule property is found not correct. Even assuming that the settlement deed dated 22.07.1957, is found correct, since the same has been exhibited without the consent of other co-owners, the same cannot have much force for conveying the 1/3rd share in favour of the 1st plaintiff.

19. In this regard, on going through the stand taken by the defendants it was their case that in 1950 itself, there was an oral partition/arrangement in the family of Rajagopal Mudaliar. In order to prove the said evidence, they have examined three more persons, who are all residing in the same locality, as defendants' side witnesses. Though the evidence given by DW3 is not having any significance, since he is aged about 6 years, at the time of alleged oral partition, the other evidence given by DW2 and DW4 are fully in support of DW1. Further, on the side of the defendants, patta passbooks which stand in the name of the 1st defendant and in the name of his father Sundaresa Mudaliar, were marked as Ex.P1 to Ex.P3. Those, patta passbooks are issued in the year of 1986 only in respect of the 'C' schedule property. The said circumstances establish the fact that already the defendants are enjoying the separate possession of 'C' schedule property. Though, the revenue records, is not a title for the document, the same can be taken into account for accepting the possession.

20. In view of the above, the plaintiffs have not filed their case by relying on true and genuine documents. The evidence put forth by the plaintiffs are not having any strength



to show that the plaintiffs are already in the possession of 2/3rd share in the 'A' schedule property. Further, Ex.A1, cannot be treated as a family arrangement and therefore, this Court do not find any error in the concurrent judgments rendered by the Courts below.

21. With the above observations, the Second Appeal is dismissed. The judgments made in O.S.No.664 of 1996 dated 29.01.2007, on the file of the learned Additional District Munsif, Vellore and in AS No.23 of 2007 dated 05.12.2007 on the file of the learned Subordinate Judge, Vellore, are sustained. No Costs. Consequently, the connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1.The Subordinate Judge, Vellore

2.The Additional District Munsif, Vellore

Copy to

The Section Officer

VR Section

High Court, Madras 104.

+1 CC to Mr. Margabandhu, Advocate sr 59951.

S.A.No.446 of 2008

MG(CO)

SP(22/12/2021)