



IN THE HIGH COURT OF JUDICATURE AT MADRAS

14.09.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.275 of 2020 &
CMP No.3390 of 2020

Pavayee Ammal

... Appellant

Vs.

1.Sakthivel
2.Krishnan
3.Thangavel
4.Sengottaiyan

... Respondents

PRAYER: First Appeal filed under Order 41 Rule 1 r/w. Section 96 of the Code of Civil Procedure against the judgment and decree dated 19.10.2019 made in I.A.No.58 of 2019 in O.S.No.12 of 2018 on the file of the learned Third Additional District Court, Villupuram @ Kallakurichi.

For Appellant : Mr.N.Manoharan

For Respondents: No appearance

J U D G M E N T

The plaintiff whose plaint has been rejected by orders of the learned III Additional District Judge, Villupuram in I.A.No.58 of 2019 in O.S.No.12 of 2018, is the appellant before this Court. A brief narration of the facts which has culminated in the filing of the First Appeal is necessary for a better appreciation of the case.

2. The plaintiff had filed a suit in O.S.No. 12 of 2018 for a partition and separate possession of her 1/4th share in the suit schedule properties and for a consequential injunction restraining the 4th defendant from proceeding with execution proceeding in E.P. No. 96 of 2016 in O.S.No 153 of 2003. It was her case that the suit properties belonged to her father Muthu Gounder. She would submit that Muthu Gounder had died intestate in the year 1993 leaving behind him surviving the plaintiff and defendants 1 to 3 to succeed to the suit properties. The plaintiff and defendants 1 to 3 were enjoying the same jointly. However, without the knowledge and consent of the plaintiff, defendants 1 to 3 had entered into a registered partition deed in respect of the suit properties on 13.06.1988. Pursuant to



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this partition, the 3rd defendant had entered into a registered sale agreement in respect of item Nos.11 to 17 with the 4th defendant. As per the terms of the sale agreement, the properties therein were to be sold by the 3rd defendant for himself and on behalf of his minor children. The 3rd defendant had also received an advance and the balance was to be paid within a period of 3 years. The plaintiff would submit that this agreement is only a sham and nominal one. Thereafter, the 4th defendant appears to have filed a suit for specific performance in O.S.No.153 of 2003 against the 3rd defendant and his minor children in respect of suit items 11 to 17. The 3rd defendant and his minors remained ex parte and ultimately, the suit came to be decreed on 24.01.2011. It was only when this suit was pending that the plaintiff had got wind of the partition deed. She had filed I.A.No.338 of 2008 to implead herself in the suit for specific performance. However, the application was rejected and her revision to this Court in CRP. (PD) No.34 of 2009 also ended in a dismissal. However, this Court had observed that it is open to the plaintiff to take appropriate proceedings. Therefore, she had come forward with the present suit.

3. The defendants 1 to 3 remained ex parte and written statement was filed only by the 4th defendant. It is the case of the 4th defendant that the suit properties belonged to Muthu Gounder, who during his life time, had entered into a partition with his sons, defendants 1 to 3. This partition was effected to the knowledge of the plaintiff. Under the partition deed, suit items 1 to 5 were allotted to the share of the first defendant and was described as 'B' schedule. Likewise, suit items 6 to 9 fell to the share of the second defendant as 'C' schedule properties and items 10 to 16 were allotted to the 3rd defendant share as 'D' schedule properties. Pursuant to the partition, the revenue records were mutated in the name of the respective sharers. Muthu Gounder was not allotted any property and therefore, on his death no property was available for partition. The 4th defendant would submit that he is a bona fide purchaser for the value and the suit itself has been filed in collusion with the 3rd defendant who was trying to get more money out of the 4th defendant. He would further submitted that the suit is bad for non-joinder and mis-joinder of parties. Ultimately, the 4th the defendant prayed to have the suit dismissed.

4. After the filing of the written statement, the 4th defendant had taken out an application in I.A.No.58 of 2019, to reject the plaint. The application was filed on two grounds. One, that the suit is highly belated since the property had been partitioned as early as on 30.06.1988, much before that coming into force of Act I of 1990. Secondly, on the ground that since Muthu Gounder did not have any share in the properties, the suit itself claiming a partition of his properties was not



maintainable. The said application was resisted by the plaintiff, by inter-alia contending that the property belonged to the joint family of Muthu Gounder, The plaintiff and defendants 1 to 3 and Muthu Gounder had purchased the suit schedule properties only in his capacity as 'Karta'. The properties were all put into the joint hotchpot and therefore, she was entitled to a 1/4th share. As regards the limitation, she would submit that she became aware about the partition only when she was contesting the suit in O.S.No.153 of 2003 in the year 2008. She would further argue that the present petition for rejecting the plaint was highly belated and mis-directed, since the suit was already posted for trial and P.W.1 was to be examined.

5. The learned District Judge on considering the arguments, allowed the application and consequently, the plaint came to be rejected. Challenging this order, the present first appeal has been filed.

6. Mr. N.Manoharan, learned counsel appearing on behalf of the plaintiff/appellant would contend that the properties in question have to be treated as joint family properties as the same has been purchased by Muthu Gounder only in his capacity as 'karta' and the properties were also being treated only as the joint family properties. Therefore, the plaintiff was entitled to maintain the suit for partition. He would submit that these factors can be considered only during the trial and it cannot be dismissed at the threshold. That apart, the suit was at the stage of trial with P.W.1, in the box waiting to be cross-examined. As regards the issue of limitation, he would submit that it is a mixed question of law and facts and cannot be a ground for rejecting the plaint.

7. Heard the learned counsel and perused the records. The respondent though served did not enter appearance through counsel.

8. . Points for consideration

Whether the order of the Principal District Judge rejecting the plaint is correct?

9. Admittedly, it is the case of the plaintiff that the suit properties belonged to Muthu Gounder exclusively. It is not her case that the properties are ancestral properties. The properties have been partitioned during the life time of Muthu Gounder with his blessings on 13.06.1988 and from which date each of the sharers have been in separate possession and enjoyment of their respective shares. Considering the fact that the properties are the self-acquired properties of Muthu Gounder and the same has been partitioned, there exists no



property which is available for partition, since under the partition deed, Muthu Gounder had not chosen to have a property allotted to his share. Therefore, the very cause of action for filing the suit is non-existent. The learned District Judge has considered the above facts in a very great detail while allowing the application for rejecting the plaint. As regards the issue of limitation, as rightly argued by Mr.N.Manoharan, the same is a mixed questions of law and facts which cannot be considered at the threshold by dealing with the petition to reject the plaint.

10. The learned District Judge has elaborately considered the arguments and evidence to arrive at a decision to reject the plaint. I do not find any reason to re-visit this Judgement and Decree. Hence, the first appeal is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar

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To

The Third Additional District Judge,
Villupuram @ Kallakurichi.

Copy To

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

+1cc to Mr.N.Manoharan, Advocate, S.R.No.46417

A.S.No.275 of 2020 &
CMP No.3390 of 2020

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