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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.NO.612 OF 2021

1.K.Gurusamy

2.R.Kanniyammal

3.S.Kalamani

4.M.Veni

5.V.Saravanakumar

6.N.Mahalakshmi

7.R.Vimala

8.N.Venkatachalam

...Appellants/Appellants 1 to 5, 7 to 9/
Plaintiffs 1 to 5, 7 to 9

Vs.

1.T.Chitra

...1st Respondent/6th Appellant/6th Plaintiff

2.Ammasai

A.Kannappan (Died)

A.Ponnusamy (Died)

A.Veluchamy (Died)

3.A.Natraj



4.Radhamani

5.R.Ramasamy

6.Vijayalakshmi

7.Ladha

8.Kaliammal

9.Kalpana

10.Shanthi

11.Kavitha

12.Koniammal

13.Saraswathi

...Respondents 2 to 13/Respondents 1,5 to 15/
Defendants 1,5 to 15

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 08.01.2019 passed in A.S.No.63 of 2017 on the file of the V Additional District and Sessions Judge of Coimbatore, confirming the Judgement and Decree dated 09.01.2017, in O.S.No.401 of 2013 on the file of the Principal Subordinate Judge, Coimbatore.

For Appellants : Mr.R.Aranganathan

JUDGMENT

The unsuccessful plaintiffs 1 to 5 and 7 to 9 are the appellants before this Court. The Second Appeal arises out of the suit for partition filed by the plaintiffs therein. The suit O.S.No.401 of 2013 instituted by the plaintiffs on the file of the Principal Subordinate Court, Coimbatore was dismissed, as against which they had filed A.S.No.63 of 2017 on the file of the V Additional District and Sessions Court, Coimbatore. The Appellate Court had also dismissed the appeal confirming the Judgment and Decree of the Trial Court. The parties are referred to in the same array as in the suit.



2. The plaintiffs had filed the above suit stating that the suit properties are the ancestral properties of the plaintiffs, the same having been owned by their grand father Arumuga Gounder and his wife Chinnamal by virtue of sale deed dated 12.09.1969. They would submit that the said Arumuga Gounder had died intestate on 08.04.1994 and thereafter his wife and sons, defendants 2 to 5 as his legal heirs were in enjoyment of the same. The said Chinnamal had also died intestate on 30.06.1998 and after her demise the property was being enjoyed by defendants 2 to 5. The plaintiffs are the sons and daughters of defendants 2 to 5.

3. The case of the plaintiffs is that when they had visited the property on 29.09.2012 they were prevented by defendants 1 and 6 along with some of their henchmen from entering the suit property. The defendants 1 and 6 have stated that they were the owners of the property. When the plaintiffs had enquired with the defendants 2 to 5 they did not receive a definite answer which prompted them to obtain the encumbrance certificate from the Registrar's office. They came to understand that the property had been sold by to the 1st defendant on 19.05.1999. They had also given a power of attorney to the 7th defendant who had sold the property to the 6th defendant.

4. The plaintiffs had filed O.S.No.2177 of 2012 and 2250 of 2012 against the vendors and the same is pending. The vendors have thereafter executed the settlement deeds in favour of their heirs. The plaintiffs would submit that the suit property is an ancestral property, in which the plaintiffs have an equal share.

5. The 2nd defendant had filed a written statement which was adopted by defendants 3 to 5, in which they would support the case of the plaintiffs. They would submit that the 7th defendant had approached them stating that they would get more profit by selling the lands by forming a layout and had requested these defendants to give them a power of attorney. Believing the words of the 7th defendant, they had also given a power of attorney on 19.05.1999.

6. However, the 7th defendant did not take steps to form layout and on the contrary he has sold the property to the 6th



defendant, his wife. The defendants 2 to 5 had issued a legal notice to the 7th defendant, who had issued a reply contending false allegations. The defendants 1, 6 and 7 are closely related and their only intent appears to be to grab the property of the defendants. The defendants 2 to 5 would ultimately submit that the plaintiffs were entitled to the relief as prayed for.

7. The written statement filed by defendants 1 and 6 to 13 would read as follows. These defendants had denied the allegations contained in the plaint except the fact that the property belonged to Arunachala Gounder and Chinnamal by virtue of the sale deed dated 12.06.1969 and that the said Arunachala Gounder and Chinnamal had died intestate.

8. The defendants 1 and 6 to 13 would submit that the property are the absolute property of the defendants 2 to 5 who had inherited their father's self acquired property and as absolute owners they had sold the property to these defendants. The defendants 2 to 5 had contended that they had decided to dispose of the portion of the property as they were unable to take care of the same. Therefore, they had executed a sale deed in favour of the 1st defendant with reference to an extent of 40 cents out of the total properties. Thereafter, defendants 2 to 5 had partitioned the remaining extent amongst themselves under the registered partition deed dated 12.01.2000. The 1st defendant had executed a settlement deed in favour of her daughters defendants 8 to 10 on 21.09.2011 and they have been in possession and enjoyment of the property since then.

9. Likewise, the 7th defendant Ramasamy, to whom the power of attorney had been executed had sold the property to the 6th defendant who has been in possession and enjoyment of the property since then. She in turn had executed a settlement deed in favour of her three daughters, i.e., defendants 11 to 13. After a lapse of nearly 12 years the plaintiffs are now trying to set up a false claim to the suit property taking note of the increase in land value. The suit is vexatiously made with malafide intention and deserves to be dismissed.

10. The Trial Court, namely, the Principal Subordinate Court, Coimbatore had framed the issues as to whether the plaintiffs are entitled to the partition and separate possession and had 9/13 share in the suit properties?



11. The plaintiffs have examined the 5th plaintiff on their side and marked Ex.A.1 to Ex.A.5. The defendants on their side had examined 2 witnesses, i.e., 9th and 7th defendants as D.W.1 and D.W.2 respectively. They had marked Ex.B.1 to Ex.B.14.

12. The Trial Court on an elaborate consideration of the evidence on record dismissed the suit stating that as the Class I heirs of Arunachala Gounder and Chinnamal, defendants 2 to 5 had alienated the properties and properties were absolute properties of Arunachala Gounder and Chinnamal and was not an ancestral properties.

13. Challenging the said Judgement, the plaintiffs had preferred A.S.No.63 of 2017 on the file of the V Additional District & Sessions Court, Coimbatore. The learned District and Sessions Judge confirmed the findings and the Judgement and Decree of the Trial Court and dismissed the appeal. Challenging the same the appellants are before this Court.

14. The learned counsel for the plaintiffs / appellants would submit that the suit properties were being enjoyed as an ancestral properties and therefore the defendants 2 to 5 did not have the right to alienate the property without reference to their sons and daughters who became entitled to the share in the property. He would submit that the Courts below have not framed any issue as to whether the properties were ancestral property or the self acquired property of the deceased Arunachala Gounder and his wife Chinnamal. Therefore, the Judgement and Decree required to be revisited.

15. A perusal of the records would show that even according to the plaintiffs, the property belonged to both Arunachala Gounder and Chinnamal by virtue of the sale deed of the year 1969 i.e., 12.06.1969. In fact in the plaint, the plaintiffs have pleaded as follows:

“மேற்கண்ட தாவா சொத்துக்கள் வாதிகளின் தாத்தாவான லேட், ஆறுமுக கவுண்டர், த.பெ.கருப்ப கவுண்டர் மற்றும் அவரது மனைவி சின்னம்மாள், க.பெ.ஆறுமுக கவுண்டர் என்பருக்கும் கடந்த 12-6-1969 அன்று ஜாயிண்ட் II அலுவலகத்தில் ஏற்பட்ட கிரைய ஆவண பதிவு எண்.1357/1969 மூலம் சுயார்ஜித வகையில் இருவருக்கும் பாத்தியப்பட்ட சொத்தாகும்.



16. The plaintiffs have therefore clearly stated that the properties were self acquired property of Arumuga Gounder and his wife Chinnamal. The defendants 2 to 5 are their sons. It is also an admitted case that both their father and mother had died intestate. Therefore, under Section 8 and 15 of the Hindu Succession Act, it is only the defendants 2 to 5 who are the Class I legal heirs of the said Arumuga Gounder and his wife Chinnamal and the property would devolve upon them absolutely.

17. The sale in favour of the 1st defendant and the power of attorney given to the 7th defendant who in turn had sold the property to 6th defendant have been done only by defendants 2 to 5, who as the absolute owners had alienated the property. The plaintiffs have no right to question the same since the property in question is not an ancestral one.

18. It is also seen that the after the death of Arumuga Gounder and Chinnamal, defendants 2 to 5 have also partitioned the property under a partition deed dated 12.01.2000. Therefore, they have exercised their absolute right over the suit property and the plaintiffs who have no right to the property cannot seek to have a partition of the suit properties.

19. I do not find any reason to interfere with the well considered Judgement and Decree of the Court belows and accordingly the Second Appeal is dismissed as it does not involve any Substantial Questions of law. No costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

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To

1. The V Additional District and Sessions Judge,
Coimbatore.
2. The Principal Subordinate Judge, Coimbatore.



Copy To

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

+1cc to Mr.S.B.Viswanthan, Advocate, S.R.No.43738

S.A.No.612 of 2021

MG(CO)
RLP(21/10/2021)