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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2021

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

SA NO.433 OF 2012

Ramesh

... Appellant/Appellant/Plaintiff

VS.

1.Poongavanam @ Rani

2.Narayanasamy

... Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 29.07.2011 made in A.S.No.23 of 2010 on the file of Subordinate Court, Arani, Thiruvannamalai District, confirming the judgment and decree dated 29.11.2007 made in O.S.No.23 of 2002 on the file of District Munsif Court, Polur, Thiruvannamalai District.

For Appellant : Mr.A.R.Suresh

For Respondents : Mr.M.Sriram
for Mr.D.Rajendran

J U D G M E N T

The unsuccessful plaintiff is the appellant before this Court.

2.Originally, the Suit was filed by the junior paternal uncle of the plaintiff as his Guardian against the first respondent / natural guardian / mother of the plaintiff, for the relief of partition of $\frac{3}{4}$ share of the minor, in the property allotted to the share of his father.

3.During the pendency of the Suit, the minor attained majority and he pursued the Suit with the same prayer of claiming partition of $\frac{3}{4}$ share in his father's property.



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4.Both the Courts below have given a concurrent finding that the institution of the Suit by the junior paternal uncle as a Guardian is not maintainable, as he was not appointed as a Guardian either by the Court or the by the concerned natural Guardian. Further, it is held that the mother and natural Guardian of the plaintiff had sold the property for herself and for his son. The said sale was not challenged either in the plaint or after the plaintiff attained majority in the year 2005. Therefore, the Courts below have given a concurrent finding that the Suit is not maintainable and that oral partition of the property by the family members of the joint family has not been proved. The property which is sought for partition has not been divided and allotted in favour of the plaintiff's father by metes and bounds. Without clear identity of the property, by allotment of share, the partition Suit is not maintainable.

5.Heard the submissions made on either side.

6.At the outset, it is admitted that the junior paternal uncle of the plaintiff was not appointed as a Guardian as per law. He filed the Suit claiming himself as a legal Guardian without any authority, against the mother and natural Guardian of the plaintiff. Secondly, even though it is claimed that there was oral partition between the joint family members, no such proof was filed to show that the properties were divided and division of status has come into force between the joint family members. Further, a perusal of the Schedule of properties mentioned in the plaint, it is seen that it includes the property, to which the plaintiff has no title. Thirdly, there is no relief sought for against the second defendant.

7.Even assuming that the case of the plaintiff is correct, he is entitled to one half share of his father's property and another half share goes to the mother. Secondly, they have no right over the "A" Schedule property, which was alienated by his grandfather's brother in favour of the second defendant. Therefore, framing of the Suit by the junior paternal uncle claiming himself as a legal Guardian without any authority for the same is not sustainable. Secondly, partition of third party property is also not sustainable in the eyes of law. Thirdly, when the sale was made by the mother and natural Guardian for herself and on behalf of the minor, the said action should have been challenged and a prayer should have been sought for setting aside the sale, in so far as the minor share's is concerned. But, on the contrary, partition of $\frac{3}{4}$ share as sought for in the plaint is without any basis. The Sale Deed was not questioned even after the minor had attained majority. Once a minor attains majority, he is entitled to question the sale made during his minority, within three years after he attaining



majority. If it is not questioned within three years, it is deemed that he impliedly ratified the sale made by the natural Guardian on his behalf. Till date, there is no challenge to the sale made by the mother. The property has been conveyed to the second defendant and he has become an absolute owner, after a lapse of three years after the plaintiff attained majority in the year 2005. In such circumstances, the property, which is not available for partition, cannot be sought to be divided. As such, the Suit is not maintainable in law and had become futile because of the implied ratification of the plaintiff with regard to the sale. Therefore, the judgment and decree passed by the Courts below does not warrant any interference. I do not find any question of law, much less, substantial question of law arising out of the factual background of the case.

8. In fine, the Second Appeal merits no consideration and accordingly stands dismissed at the admission stage itself. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

TK

To

1. The Subordinate Judge
Subordinate Court,
Arani, Thiruvannamalai District.
2. The District Munsif
District Munsif Court
Polur, Thiruvannamalai District.

+1cc to Mr.A.Rajendiran, Advocate, S.R.No.47614

SA NO.433 OF 2012

JPL(CO)
SU(08/06/2022)