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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

SECOND APPEAL NO.213 OF 2015

Arthanari

... Appellant/
Defendant/Respondent

Vs.

Venkatachalam

... Respondent/
Appellant/Petitioner

PRAYER:

Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 17.11.2014 in A.S.No.6 of 2014 on the file of Subordinate Court, Mettur, reversing the judgment and decree dated 23.01.2014 in O.S.No.369 of 2010 on the file of District Munsif Court, Mettur.

For Appellant : Mr.R.Subramanian
For Respondent : Mr.G.Surya Narayanan

J U D G M E N T

Defendant is the appellant in this Second Appeal.

2. Aggrieved over the reversal of the judgment and decree passed in O.S.No.369 of 2010 dated 23.01.2014 on the file of District Munsif Court, Mettur, by the First Appellate Court in its judgment and decree passed in A.S.No.6 of 2014 dated 17.11.2014, the defendant has preferred the above Second Appeal.

3. Plaintiff filed a suit for partition. The plaintiff and defendant are brothers. According to the plaintiff the suit properties originally belonged to his grandfather Ramasamy Gounder. After his demise his 6 sons had partitioned the properties and his predeceased fathers share was given in favour of their mother since the plaintiff and defendant were minors then. Patta stood in the name of their mother and continued to be in joint possession of the parties. Their mother died on



06.03.2010. After her demise plaintiff demanded partition during June 2010. But the defendant had denied it on the pretext that their mother gifted the property by way of registered settlement deed dated 12.12.2008 in his favour. Their mother has no legal right to settle the ancestral property and taking advantage of the illiteracy of their mother, the defendant has fraudulently created the settlement deed. Hence the settlement executed by their mother over the ancestral property is not legally sustainable and it shall be set aside and the suit properties shall be divided by metes and bounds and half share shall be allotted to each.

4. The defendant denied the averments made in the plaint. Though it is admitted that the properties were given in the name of their mother, due to the demise of their father, the plaintiff suppressed material facts. Their mother educated her sons, the parties to the suit with so much of struggles. For educating the plaintiff she sold 70 cents of land in S.No.170/2B out of total extent of 3.50 Acres in favour of one Anai Gounder. After completing his studies, the plaintiff joined as a teacher in Panchayat Union Elementary School, Peria Soragai. On 01.10.1973 he was confirmed and retired from service on 31.03.2008. But during the entire period, the plaintiff did not take care of their mother. On the other hand, the defendant had taken care during her life time. Their after there was oral partition between the parties by which the plaintiff was allotted S.No.167/23 in Patta No.1184 measuring an extent of 6 $\frac{3}{4}$ cents, in which he has constructed a terraced house and a tiled house worth about 5 laksh and residing there. Door No of the house is 5/257 and patta got transferred to plaintiff's name and he is enjoying the same by paying tax apart from properties in S.No.161/8c an extent of 0.41 cents; in S.No.167/23 an extent of 0.41 cents; in S.No.167/23 an extent of 0.22 $\frac{1}{4}$ allotted in his favour. Later in respect of the lands which were in possession of the defendant is

S.No.167/5 - 0.5 cents
S.No.167/12 - 0.10 cents
S.No.167/16 - 0.17 cents
S.No.167/21 - 0.81/2 cents

S.No.166/1C - 0.62 cents, their mother executed a settlement deed registered as Door No.5198 of 2008 dated 12.12.2008 in his favour. She died on 06.03.2010. After execution of the settlement, the plaintiff did not ask for partition between 2008-2010, supporting facts filed the suit on the misleading ground the properties are in joint possession.

5. Their mother has right to execute the settlement deed. The properties were allotted to the mother and the defendant were settled by the mother, to which she has legal right. Having



failed to maintain their mother, the plaintiff has no moral right in asking for partition in her properties. The allegation that the settlement deed was fraudulent is deemed. Since, the properties were already partitioned, the plaintiff has no right to partition the property again. There is no cause of action and the valuation is wrong. The suit is bad for partial partition as it does not reveal the properties in Patta No.1184 and 1730. Hence the plaintiff is not entitled to any relief.

6. The Trial Court framed appropriate issues and dismissed the suit after trial. On appeal the judgment and decree of the Trial Court was reversed and allowed the appeal.

7. Against which the defendant preferred the above Second Appeal and it was admitted on 27.04.2015 on the following questions of law:

“ (a) Whether the Lower Appellate Court is wrong in holding that the suit properties are joint family properties and was the mother entitled to execute a settlement deed?

(b) Whether the Lower Appellate Court misconstrued Exs.B1 and B2 which resulted in perverse findings?”

8. Heard the submissions and perused the evidence.

9. The core issue looms large for decision is as to whether the suit properties are ancestral properties and as to whether the mother is entitled to deal with the properties.

10. The pleadings are made that the properties are ancestral properties derived through the grandfather of the parties. The factum that the title to the property is traced to the grandfather Ramasamy Gounder is admitted by the defendant also. A plan has been raised during oral evidence that the property was purchased by the mother of the properties vide Ex.B1- a sale deed dated 12.03.1966 and as such it is individual property. Further the property were already partitioned between the parties vide Ex.B3-partition deed. But it is relevant to note that the defendant has pleaded oral partition in the written statement. Thus the Ex.B1 and Ex.B3 were not pleaded and no defense was taken on the basis of the above said documents.

11. The suit has been filed for partition for the properties in Patta No.893

1. S.No.167/5 - 0.02.00 Ha
2. S.No.167/12 - 0.4.00 Ha
3. S.No.167/16 - 0.07.00 Ha
4. S.No.67/21 - 0.03.50 Ha



5. S.No.168/1c - 0.41.50 Ha

12. Among these properties several number 1,2,4 are the properties allotted to the life estate of their mother. Ex.B3 recites that the properties allotted to the mother of the parties shall be divided equally after her demise on the advice of common mediators. A further reading of Ex.B1 and B3 specifically recites that the properties are ancestral in nature. From the documentary evidence, even though there were no pleadings, it is noted that the source of title derived through the father of parties from their grandfather.

13. In so far as the oral evidence is concerned, the defendant as D.W.1 would depose that the grandfather secured loan by executing sale deed and the properties were redeemed by all the six sons in their individual names. The share of the father of the parties was purchased in the name of the mother as the father of the parties expired by that time. It is further admitted that the properties were mentioned as ancestral properties in Ex.B1 as well as in Ex.B3.

14. To sum up the defendant in his written statement admitted that the plea that it is an ancestral property derived from the grandfather Ramasamy Gounder. Though the defendant has not pleaded about the Ex.B1 and B3 and alleged oral partition, it proved the said documents the properties are ancestral properties. Particularly Ex.B1 said to be the sale deed in favour of the mother, the evidence of the defendant as D.W.1 would clarify the fact that the sale deed Ex.B1 was executed in the name of the mother due to the death of the father of the parties.

15. From the above facts, it can be easily inferred that instead of registering the sale in the name of the father, it was registered in the name of the mother, since he was no more. Otherwise it would have been registered in the name of the father of the parties. Thus the properties shall be construed as share allotted to the father in partition between the sons of Ramasamy Gounder, the brothers. Secondly it can be inferred that the properties mentioned in Ex.B1 were not purchased out of the own funds of the mother of the parties, but it has the efforts of members of the joint family.

16. The Trial Court proceeded on the basis that the property was purchased by the mother, through sale deed marked as Ex.B1 and therefore it is her individual property and she has a right to settle the property as per her wishes. Further it is found that as per Sec.14 of Hindu Succession Act, the estate of a female Hindu becomes an absolute property. But the provision does not apply to the case on hand. It is not the property



inherited by the mother from her husband, but it is the property passed on to the share of one of the joint family member through his widow. Thus it is not the estate of the widow but it is the property of the co-parceners. Therefore, the finding of the Trial Court is erroneous.

17. The First Appellate Court has rightly concluded as joint family properties of the parties and hence the mother is not entitled to deal with the same as her individual properties. Hence the settlement deed executed by the mother is not binding upon the plaintiff. The questions of law are answered against the appellant/defendant. The judgment and decree passed in A.S.No.6 of 2014 on the file of sub Court, Mettur stands confirmed.

18 .In fine, the Second Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

TK

To

1. The Subordinate Judge
Subordinate Court
Mettur.

2. The District Munsif
District Munsif Court
Mettur.

+1cc to Mr.R.Subramanian, Advocate, S.R.No.45795
+1cc to Mr.G.Surya Narayanan, Advocate, S.R.No.45479

SA NO.213 OF 2015

RLD(CO)
PM/03/06/2022