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IN THE HIGH COURT OF JUDICATURE AT MADRAS

03.08.2021

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.483 of 2021 &
CMP. No.9300 of 2021

Rajalakshmi

... Appellant/Plaintiff

Vs.

1. Krishnamurthy
2. Durai
3. Malliga
4. Ettiyammal
5. Kala
6. Suriya
7. Minor Kanaga
8. Minor Nandhakumar

Minor Represents 6 to 8 are
represented by 5th Respondent herein
Natural Guardian & Mother Mrs. Kala

9. Syed Adam

... Respondents/Defendants

PRAYER: Second Appeal filed under section 100 of the Civil Procedure Code against the Judgement and Decree dated 14.02.2020 made in A.S.No.11 of 2018 on the file of the learned I Additional District Judge, Tindivanam, in confirming the Judgment and Decree dated 25.10.2017 made in O.S.No.44 of 2012 on the file of the learned Additional Sub Judge, Tindivanam.

For Appellant : Mr. P.Dinesh Kumar

JUDGEMENT

The plaintiff in the suit in O.S.No.44 of 2012 on the file of the Principal Sub Court, Tindivanam, is the appellant before this Court.

2. The plaintiff had filed a suit for a partition of her 7/36th share in the suit property, to declare the partition deed dated 01.08.2008 as null and void as also the sale deed dated 06.01.2011 executed by defendants 1 to 8 in favour of the 9th



defendant and 2nd defendant in favour of the 1st defendant and for injunction restraining the defendants from making further alienations. The parties are referred to in the same ranking as before the trial Court.

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3. The case in brief of the plaintiff was that she and defendants 1 to 3 and one Gnanamurthy were the children of the 4th defendant Ettiyammal and her husband, late Silamba Kounder. The 5th defendant is the wife of Gnanamurthy, who had died and defendants 6 to 8 are his children. It is her case that the suit properties are the joint family properties of Silamba Kounder and out of the income derived from the ancestral properties, the said Silamba Kounder had purchased the other properties. Therefore, those properties also partook the character of a joint family property. It is her contention that she had got married in the year 2002 and the 3rd defendant had got married in the year 1985 and thereafter, Gnanamurthy and the first defendant had got married. Just four years prior to the institution of the suit, the 2nd defendant had married a girl of his choice. The suit properties remained undivided as on the date of coming to the effect of the amended Hindu Succession Act. Therefore, the plaintiff is entitled to equal share on par with the male members. She would therefore submit that any transfer effected by the male heirs would have no binding on the female heirs. It is her case that defendants 1 and 2 along with the 5th defendant had created a partition deed dated 01.08.2008, taking advantage of Silamba Gounder's ill-health and poor eye sight and hearing, Silamba Gounder was not in a sound state of mind and he ultimately passed away in the end of 2010. The plaintiff, when she came to know about this fraudulently created partition deed, she has asked the 4th defendant about the same. The 4th defendant informed her that she was not aware any of such deed. The plaintiff would submit that the partition deed was not binding on her as it is a document created without adding her as party although she had a share in the property. The plaintiff would also contend that without including her, defendants 1 to 8 had sold the portion of the property to the 9th defendant on 06.01.2011. On the very same day, the 2nd defendant has also sold the property in favour of the 1st defendant. Once again, these deeds would not binding on the plaintiff. Therefore, she had come forward with the suit for the reliefs stated herein in above.

4. The suit was resisted only by the 9th defendant who was the purchaser of the property. The 9th defendant had filed a written statement inter alia contending that the properties were not the ancestral properties but were only the self-acquired



properties of Silamba Gounder. The partition had taken place during the life time of Silamba Gounder and he has also executed the same. Under the partition deed, a portion was allotted to Silamba Gounder and the other portions were allotted to his sons. The case of the 9th defendant was that there was no ancestral properties available to provide the nucleus for purchasing the other properties. Therefore, he had sought for dismissal of the suit. Defendants 1 to 8 remained ex parte before the trial Court.

5. The learned trial Judge had framed the following issues.

1. Whether 1.8.2008 dated partition deed is falsely created and fabricated without the knowledge of Silamba Gounder?
 2. Whether the sale deed in favour 9th defendant is binding upon the plaintiff?
 3. Whether the plaintiff is entitled for partition of suit properties as prayed?
 4. Whether the partition deed dated 1.8.2008 is void in respect of plaintiff's share?
 5. Whether the plaintiff is entitled for declaration that sale in respect of plaintiffs share on 6.1.2011 in favour of D9 is void?
 6. Whether the sale deed by D2 in favour of D1 dated 6.1.2011 is void?
 7. Whether the plaintiff is entitled for Injunction as prayed?
 8. To what other relief?
- Additional Issue I
1. Whether the plaint Schedule properties are the Hindu joint family properties?

The plaintiff had examined herself as PW1 and one Arumugam as PW2. Exs.A1 to A10 were marked on her side. The 9th defendant examined himself as DW1 and had marked Exs.B1 to B9.

6. The learned Additional Subordinate Judge decreed the suit in part stating that the plaintiff was entitled to 1/6th share in 28 cents and 26 cents of land comprised in S.No.245/8 which was the portion allotted to the share of Silamba Gounder in the partition deed and preliminary decree was granted in her favour. The suit was dismissed with reference to the other reliefs. The plaintiff had challenged the said judgment and decree by filing A.S.No.11 of 2018 and the 9th defendant had challenged the said judgment insofar as it partly decreed the suit for partition by filing A.S.No.13 of 2018 before the I Additional District Judge, Tindivanam. The learned Judge, after considering the



7. Mr.Dinesh Kumar, learned counsel appearing on behalf of the appellant would contend that the plaintiff had discharged the onus cast on her to show that the properties in question were joint family co-parcenary properties. It is for the defendants to prove that the properties are the self-acquired and they have not proved the same. He would contend that the plaintiff has proved that the property is the joint family property by filing Ex.A10 sale deed executed both by Silamba Gounder and his brother, who had adduced evidence as PW2. Even assuming that the property is the self-acquired property of Silamba Gounder, the same cannot be subject to partition since the sons are neither joint tenants nor non tenants in common. Therefore, the subsequent sale executed by the defendants is clearly not valid and has to be set aside.

9. The plaintiff has come forward with the case that the properties in question are joint family properties. To prove the same, she has not let any evidence except for filing Ex.A10, sale deed executed by Silamba Gounder and Arumugam, his brother. The Courts below have considered this exhibit and held that the recital of Ex.A10 would not reveal that it is an ancestral property. Therefore, the contention of the plaintiff that Ex.A10 would be a proof of the ancestral nature of the properties fails. That apart, Exs.B1 to B6 are sale deeds under which Silamba Gounder had purchased the properties. Under Ex.B7, there is also an exchange made between Silamba Gounder and one Sadaiyan. None of these documents would show that the said Silamba Gounder had purchased the same out of the ancestral income. On the contrary, it clearly demonstrates that the properties have been purchased from the independent income of Silamba Gounder and therefore, the Courts below have rightly come to the conclusion that the properties are separate properties of Silamba Gounder. The partition deed has been entered into as early as in the year 2008. The plaintiff has not taken any steps to question the partition during the life time of her father, though she would submit that she was aware of the same. According to the plaintiff, her father had died in the year 2010, two years after the execution of the partition deed. The plaintiff has also not filed any documents to show that her father was in a poor health condition. The Courts below have also considered the recitals of Ex.A1 to arrive at a conclusion



that the parties to the document were enjoying the properties in common and since they had decided to separate, the partition deed had come into existence. Therefore, considering the fact that the plaintiff has not been able to prove the ancestral nucleus and as defendants have proved that the property is a self-acquired property of Silamba Gounder, the plaintiff is entitled to only a share in the property allotted to Silamba Gounder under Ex.A1 partition deed.

10. The appellants have not been able to show a substantial question of law warranting the interference of this Court sitting in Second Appeal. Consequently, the Second Appeal stands dismissed and the judgment and decree in A.S.No.11 of 2018 of the first Additional District Judge, Tindivanam, is confirmed. No order as to costs. Consequently, the connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1.The I Additional District Court,
Tindivanam.

2.The Additional Sub Court,
Tindivanam.

+1cc to Mr.D.Ravi Chander, Advocate Sr.38226

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CMP. No.9300 of 2021

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