



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A. (MD)No.861 of 2010

Jeganathan ... Appellant/Appellant/Plaintiff

Vs.

Sellathurai ... Respondent/Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the lower appellate Court dated 05.07.2010 made in A.S.No.2 of 2010 on the file of the Additional Sub Court, Karur, confirming the judgment and decree of the trial Court dated 12.11.2009 made in O.S.No.325 of 2007 on the file of Principal District Munsif Court, Karur.

For Appellant : Mr.P.Vinoth
for Mr.R.Subramanian

For Respondent : Mr.N.Satheesh Kumar

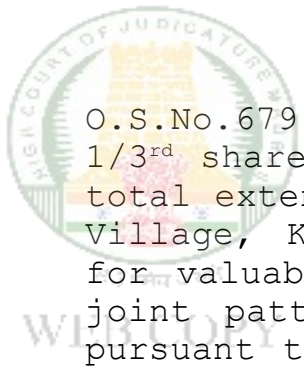
JUDGMENT

Aggrieved over the concurrent findings of the Courts below, dismissing the suit filed for partition, the present Second Appeal is filed.

2.The parties are referred to as per their rank before the trial Court.

3.The brief fact, leading to file this Second Appeal, reads as follows:-

The suit property was originally owned by one K.Ramasamy Gounder, by virtue of the partition deed dated 29.02.1964. The said K.Ramasamy Gounder had a son viz., K.R.Ganesan. The said Ramasamy Gounder died long back leaving behind his one son K.R.Ganesan. The said K.R.Ganesan had a son viz., G.Amirthalingam. The said K.R.Ganesan, Son of Ramasamy Gounder, executed a settlement deed in respect of the property in favour of his son G.Amirthalingam retaining a right for enjoyment, till his life time. Therefore, G.Amirthalingam is absolutely entitled to the suit property. The said G.Amirthalingam has filed a suit in



O.S.No.679 of 1987 for partition. The above suit was decreed for 1/3rd share. The plaintiff has purchased the 1/3rd share, out of total extent of 1.25 acres in S.F.No.125/7, situate at Appipalayam Village, Karur Taluk from K.R.Ganesan and his son Amirthalingam for valuable consideration, through a registered sale deed and a joint patta was also issued in favour of the plaintiff. In pursuant to the above sale, the plaintiff is in joint possession of the property, without making any division or partition. Hence, a suit in O.S.No.325 of 2007 for partition, claiming 1/3rd share.

4. The defendant, denying the case of the plaintiff, submitted that K.Ramasamy Gounder had another son viz., Velusamy. On 29.05.1987, the plaintiff's vendor K.R.Ganesan, executed a general power of attorney in respect of his share in favour of his father K.Ramasamy Gounder. The said K.Ramasamy Gounder, for himself and as a power agent of his son K.R.Ganesan and another son Velusamy, has executed a registered sale deed, dated 03.06.1987, in respect of an extent of 63 $\frac{3}{4}$ cents in S.F.No.125/7, in favour of one Ranjitham for total sale consideration of Rs.38,000/-. Similarly, by sale deed dated 04.06.1987, remaining extent of 63 $\frac{3}{4}$ cents were sold for similar value in favour of one P.Murugesan, Son of Ranjitham. Thereafter, the said P.Murugesan, executed a gift settlement deed in favour of his mother Ranjitham on 19.02.2018. Thereby, the said Ranjitham become entitled to an entire extent of 1.27 $\frac{1}{2}$ cents. The patta also stands in the name of the said Ranjitham. Thereafter, the said Ranjitham and her legal heir have executed a sale deed dated 30.10.2000, in favour of the defendant for a total sale consideration of Rs.1,53,000/-. Ever since from the date of purchase, the defendant is in possession and enjoyment of the property. The only intention of the plaintiff is to grab the property from the defendant. Hence, disputed the rights of the plaintiff.

5. The learned District Munsif, based on the pleadings framed the following issues:

- a) *whether the plaintiff is entitled to partition as prayed for?*
- b) *what are the other reliefs the plaintiff entitled to?*

6. On the side of the plaintiff, he himself was examined as P.W.1 and Exs.A1 to A12 were marked. On the side of the defendant, three witnesses were examined and Exs.B1 to B10 were marked. Based on the evidence and materials, learned District Munsif, answered the issues as against the plaintiff and dismissed the suit. The first appellate Court has also confirmed the judgment of the trial Court. As against the concurrent findings, the present second appeal is filed.



7. While admitting the Second Appeal, the following substantial questions of law have been framed:-

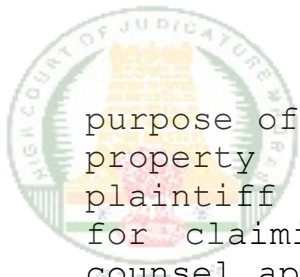
a) Whether in law have not the Courts below erred in ignoring the decree in O.S.No.679 of 1987 under which the plaintiff's vendor became entitled to 1/3rd share?

b) Whether in law is not the lower Appellate Court wrong in holding that the settlement deed dated 16.12.1974 was not accepted when neither the defendant nor the other sharers disputed the settlement deed? and

c) Whether in law have not the Courts below misconstrued Ex.A8 wherein it is clearly recited that after executing the settlement deed, Ganesan had ceased to have any interest in the joint family property?

8. The learned counsel appearing for the appellant vehemently contended that the Courts below have not considered the settlement deed executed in favour of K.R.Ganesan, Son of K.Ramasamy Gounder. Once the settlement deed is already in force in favour of G.Amirthalingam, the question of selling the property by the Ramasamy Gounder does not arise at all under Exs.B2 and B3. It is the further contention of the learned counsel appearing for the appellant that the share of K.R.Ganesan has already dealt in favour of his son by Ex.A2, settlement deed dated 16.12.1974. Such being the matter, the question of selling the property by K.Ramasamy Gounder, at a later point of time, does not arise at all. It is the further contention of the learned counsel appearing for the appellant that the said G.Amirthalingam, the vendor of the plaintiff herein has already filed a suit in O.S.No.679 of 1987, for claiming partition of his 1/3rd share. In the above suit, preliminary decree was passed as early as on 21.04.1993. The trial Court and the first appellate Court have ignored the preliminary decree passed in O.S.No.679 of 1987, wherein the defendant's vendor also a party. Hence, his contention is that the Courts below have not appreciated the evidence and record. Ex.A8 also confirms the execution of the settlement deed. Therefore, the share entitled by K.R.Ganesan could not have been dealt with by others. The plaintiff has purchased 1/3rd share from the said Amirthalingam under Ex.A4, dated 05.01.2007. Hence, the contention of the learned counsel appearing for the appellant is that when the share of the vendor of the plaintiff has already declared, the plaintiff is certainly entitled to claim partition in the suit property. Hence, prayed for allowing the appeal.

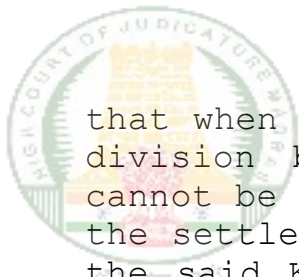
9. The learned counsel appearing for the respondent would submit that the suit is nothing, but abuse of process of law and the plaintiff's own imagination. Ex.A4 was created only for the



purpose of filing the said suit. Defendant has purchased the suit property in the year 2000 itself. After seven years, the plaintiff has purchased the property and filed the present suit for claiming partition. It is the contention of the learned counsel appearing for the respondent that admittedly, the property is an ancestral property and any settlement referred to is not valid in the eye of law. Further all the co-owners joint together sold the property in the year 1987 itself. Therefore, when the properties have been sold, any subsequent documents will not create any right over the property to claim a partition. Hence, his contention is that the Courts below have thoroughly analyzed the entire evidence and dismissed the suit. Therefore, the same does not require any interference. It is also his contention that while describing the boundary of the property in Ex.B1, it is stated that the property situates on the western side of the defendant's property. Therefore, it is very clear that the vendor of the plaintiff G.Amirthalingam would not have been in possession of any portion of the plaint schedule property. Hence, Prays for dismissal of the appeal

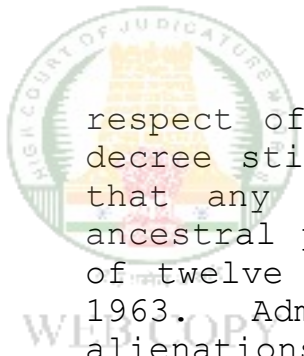
10. Heard the learned counsel appearing for the appellant, the learned counsel appearing for the respondent and perused the materials available on record carefully.

11. The suit has been laid, mainly on the strength of the settlement deed dated 16.12.1974, said to have been executed by one K.R.Ganesan in respect of his 1/3rd share in the ancestral property in favour of his son G.Amirthalingam. It is not disputed by both sides that the suit property is an ancestral property allotted to the K.Ramasamy Gounder under Ex.A1, the partition deed dated 29.02.1964. It is the contention of the plaintiff that the said Ramasamy Gounder had only one son viz., K.R.Ganesan, whereas, it is the contention of the defendant that the said Ramasamy Gounder had two sons viz., K.R.Ganesan and Velusamy. On perusal of Exs.B2 and B3, sale deeds dated 03.06.1987 and 04.06.1987, it is seen that the contention of the plaintiff that K.Ramasamy Gounder had only one son is found to be false. The above two sale deeds were executed by K.Ramasamy Gounder on his behalf and also on behalf of one of his son K.R.Ganesan and another son Velusamy, in respect of 1.27 ½ cents in the suit property. The above documents makes it very clear that the contention of the plaintiff that Ramasamy Gounder had only one son is untrue and the existence of the other son has been purposely suppressed in the plaint. Be that as it may. The plaintiff is a purchaser of the so called undivided 1/3rd share from the Amirthalingam. On perusal of Ex.A2, it is seen that when the other co-owners are very much alive and when the properties were not partitioned by metes and bounds, undivided share has been settled in favour of one Amirthalingam, son of K.R.Ganesan by one of the co-owner. It is well settled



that when the ancestral properties remained joint and there was no division by metes and bounds, the settlement of the property cannot be valid in the eye of law. Be that as it may. If really, the settlement has been acted upon, there was no reason as to why, the said K.R.Ganesan has given a registered power of attorney in favour of his father to deal with his share. On a bare perusal of Exs.B2 and B3 sale deeds, make it clear that a general Power of Attorney has been given by K.R.Ganesan to his father viz., K.Ramasamy Gounder to deal with the property. On the strength of the above power of attorney, not only the share of the said K.R.Ganesan, the remaining shares, belonged to K.Ramasamy Gounder and his another son Velusamy, were also sold under Exs.B2 and B3, for valid consideration in the year 1987 itself. Therefore, now it cannot be said that since there was a settlement in respect of Amirthalingam property, the plaintiff's vendor had a title to the property. It is also relevant to note that the suit in O.S.No.679 of 1987 appears to have been filed by the plaintiff's vendor for claiming 1/3rd share. In the said suit, preliminary decree has also been passed. Though it is submitted by the learned counsel appearing for the appellant that the defendant's vendor has also a party to the above suit, it is to be noted that the suit was filed for partition.

12. On perusal of the suit register-Ex.A3, it is seen that the suit has been filed in the year 1987 i.e., on 29.06.1987 and the preliminary decree was passed on 21.04.1993. Except, the suit register-Ex.A3, no other documents were filed to show that whether the pleadings in the above suit are similar in nature with regard to the settlement and its validity has been made and contested and whether there was any issues framed by the Court with regard to the settlement deed viz., Ex.A2. Therefore, merely relying upon Ex.A3, this Court cannot come to the conclusion that the issue with regard to the validity of the settlement deed dated 16.12.1974, arose in an earlier occasion. Be that as it may. Though the preliminary decree was passed on 21.04.1993, from the records, it is seen that it has not been enforced. No final decree application has been filed for dividing the property, in pursuant to the decree passed in O.S.No.679 of 1987. It is also relevant to note that to enforce any decree of the Court, the period of limitation is twelve (12) years, as per Article 136 of the Limitation Act, 1963. Though the preliminary decree was passed in the year 1993, it has not been enforced and no final decree application has been filed. Though it is the contention of the learned counsel for the appellant that pursuant to the preliminary decree, the partition deed was executed among the family members under Ex.A8, it is to be noted that though the legal heirs of Ramasamy Gounder has entered a partition deed, the defendant or his vendor are not a party to the above document. In such view of the matter, mere entering of some partition in



respect of the undivided properties, it cannot be said that the decree still holds good and creates a right. It is to be noted that any alienation is made by the father in respect of the ancestral property, the same has to be challenged within a period of twelve (12) years, as per Article 109 of the Limitation Act, 1963. Admittedly, the father viz., K.Ramasamy Gounder has made alienations on 03.06.1987 and 04.06.1987. Such alienations have not been challenged by K.R.Ganesan or his son within the period of limitation i.e., (12) years from the date of sale. Therefore, it cannot be stated that the plaintiff's vendor had share in the property. Even assuming that they had a share in the property, as per the preliminary decree by operation of law, the same is lost and extinguished. When co-shares is excluded from the joint family property, to enforce right to share, the same should be done within a period of twelve (12) years, as per Article 110 of the Limitation Act, 1963. Having obtained preliminary decree in the year 1993, the same has not been enforced. Much water has been flown thereafter. On a perusal of Ex.B1, dated 13.01.20103, the boundaries set out in the above deed, makes it very clear that the plaintiff's vendor have no property in the above mentioned four boundaries. If really, the plaintiff's vendor had retained their right in the property or in possession of the property, the same would have been reflected in any one of the boundaries, but the same has not been reflected. It also clearly indicates that the rights of the plaintiff's vendor, if any, already lost by operation of law. It is also to be noted that the plaintiff claims to have purchased the property in the year 2007, after seven years of purchase of the property by the defendant. It is to be noted that in the year 1987 itself under Exs.B2 and B3, the kartha Ramasamy Gounder and his two sons sold the suit survey field to one Mrs.Ranjitham and her son Murugesan. Thereafter, the said Murugesan executed gift settlement in favour of his mother and thereby the said Ranjitham has become absolute owner of the property. The said Ranjitham along with her legal heirs had dealt with the property in favour of the defendant in the year 2000, through Ex.B5. After the above purchase, the plaintiff appears to have purchased the property from his vendor, who already lost his share, if any, in the ancestral property not only by way of sale under Exs.B2 and B3 and also by operation of law. Such being the position, on the basis of the preliminary decree passed in the year 1993, which was also not enforced within 12 years, his right has already extinguished by operation of law. Such being the position, mere execution of any document did not convey any title to the plaintiff to claim partition in the suit property.

13. Accordingly, this Court is of the view that the Courts below have rightly appreciated the entire facts and circumstances and dismissed the suit and accordingly, all the substantial questions of law are answered in fine.



14. In the result, this second appeal is dismissed. No costs.

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Sd/-

Assistant Registrar (CS-III)

/ /2021

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Additional Subordinate Judge,
Karur.

2.The Principal District Munsif,
Karur.

3.The Section Officer-2 copies
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.N.SATHEESH KUMAR, Advocate (SR-207[F] dated
06/01/2021)

+1 CC to Mr.R.SUBRAMANIAN, Advocate (SR-223[F] dated 06/01/2021)

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