



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.08.2021

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

S.A. (MD) No.550 of 2014

WEB COPY

1. S.Vijayakumar
2. S.Elangiyam
3. S.Sivanandham ... Appellants/Respondents 1 to 3/
Plaintiffs

Vs.

1. V.Amirthavalli ... 1st Respondent/Appellant/
2nd Defendant
2. K.Subramanian ... 2nd Respondent/4th Respondent/
1st Defendant

Prayer: Second appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 30.03.2010 made in A.S.No.273 of 2008 on the file of the Principal District Judge, Tiruchirappalli, reversing the judgment and decree dated 22.09.2008 made in O.S.No.111 of 1999 on the file of the Principal District Munsif cum Judicial Magistrate, Lalgudi.

For Appellants : Ms.J.Maria Roseline
For R-1 : Mr.H.Lakshmi Shankar
For R-2 : No appearance.

J U D G M E N T

The plaintiffs in O.S.No.111 of 1999 on the file of the Principal District Munsif-Judicial Magistrate, Lalgudi, are the appellants in this second appeal.

2. The suit was for partition. According to the plaintiffs, the suit property measuring 55 cents out of the total extent of 1.10 cents and forming part of a larger extent belonged to their great grandfather Murugan. Murugan had three sons, namely, Muthusamy, Parimanam and Kandhasamy. The suit property measuring 1.10 cents was allotted to Muthusamy and Kandhasamy. Kandhasamy was entitled to 55 cents. The first defendant Subramanian is the son of Kandhasamy. The plaintiffs are the children born to Subramanian. According to the plaintiffs, their father Thiru.K.Subramanian illegally sold 55 cents of the suit property along with the son and grandson of his brother Muthusamy in favour of the second defendant Amirthavalli on 30.05.1990. According to the plaintiffs, the property is an ancestral property and that therefore, the alienation made by the father is not binding on them.



3. The first defendant remained ex-parte. The purchaser Amirthavalli filed her written statement controverting the plaint averments. Based on the rival pleadings, the trial Court framed the necessary issues. The first plaintiff Vijayakumar examined himself as P.W.1 and marked Ex.A.1 to Ex.A.7. The second defendant Amirthavalli examined herself as D.W.1. Ex.B.1 to Ex.B.4 were marked. After consideration of the evidence on record, the trial Court granted preliminary decree granting 3/4th share in favour of the plaintiffs. Aggrieved by the same, the purchaser/second defendant filed A.S.No.273 of 2008 before the Principal District Judge, Tiruchirappalli. By the impugned judgment and decree dated 30.03.2010, the appeal was allowed and the judgment and decree passed by the trial Court was set aside and the suit was dismissed. Challenging the same, the second appeal came to be filed.

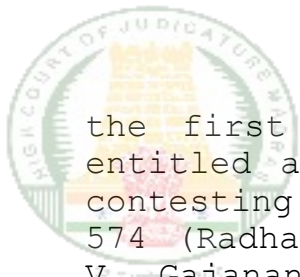
4. Though the second appeal was filed as early as in the year 2014, only notice was ordered and it had not been formally admitted till date.

5. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to formally admit the second appeal, after framing substantial questions of law that arise for determination. She would point out that the Courts below having correctly found that the character of the property is ancestral, ought to have held that the alienation made by the first defendant was not binding on the plaintiffs. She would also point out that the recitals in the sale deed indicate that the purchaser as well as the vendor/first defendant proceeded on the basis that the property was the self-acquired property of the first defendant. The purchaser during the course of her testimony conceded that she purchased the property on the premise that it was a self-acquired property of the vendor. She would also contend that the first appellate Court had erroneously placed the burden of proof on them to show that the alienation was for family necessity. She would also state that there was nothing to show that the alienation of the property was really warranted. She therefore called upon this Court to frame substantial questions of law on the lines indicated above and answer them in favour of the appellants and set aside the impugned judgment and decree and restore the decision of the trial Court.

6. Per contra, the learned counsel appearing for the contesting respondents submitted that the impugned judgment and decree do not call for any interference.

7. I carefully considered the rival contentions and went through the evidence on record.

8. The Courts below have concurrently found that the suit property is ancestral in character. Now the only question is whether



the first defendant K.Subramanian, father of the plaintiffs was entitled alienate the same. The learned counsel appearing for the contesting respondent relied on the decision reported in AIR 1967 SC 574 (Radhakrishnadas V. Kaluram) and AIR 1997 SC 1686 (Sunder Das V. Gajananrao) for the proposition that the Kartha of the joint Hindu family is very much entitled to alienate the ancestral property for family necessity. Of course if the alienation is otherwise vitiated, certainly it can be avoided. But then, the Hon'ble Division Bench of Madras High Court in the decision reported in (1976) 2 MLJ 134 (Santhana Venugopala Krishnan and Others V. K.V. Venugopal and Others) held that the burden to show that the alienation was not for family necessity would be only on the other members of the coparcenery impeaching the sale.

9. I went through the plaint averments. Except stating that the suit property is an ancestral property and the alienation made by the father is not binding on them, there is no other averment. No ground of challenge is set out. The elementary pleadings are absent. I hold that the first appellate Court has correctly approached the issue. No substantial question of law arises for consideration. This second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

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 Principal District Judge,
Tiruchirappalli.
2. The Principal District Munsif cum
Judicial Magistrate, Lalgudi.
3. The Record Keeper, V.R.Section, (2C)
Madurai Bench of Madras High Court, Madurai.



+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-26086[F] dated 12/08/2021)

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SR(CO)
KB(26.10.2021) 4P 6C