



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.08.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.868 of 2014

WEB COPY

K.Muthulakshmi

... Appellant / Appellant /
Plaintiff

Vs.

K.Selvam Ammal (Died)

1. V.Rani
2. K.Ganesan
3. K.Murugesan
4. Vaideki
5. V.Sivakamasundari

... Respondents/Respondents/
Defendants

Prayer: Second appeal filed under Section 100 of C.P.C., to allow the second appeal and to set aside the judgment and decree dated 30.11.2012 made in A.S.No.16 of 2011 on the file of the Principal District Judge, Thanjavur, confirming the judgment and decree dated 22.11.2010 made in O.S.No.293 of 2010 on the file of the Principal Subordinate Judge, Thanjavur.

For Appellant : Mr.A.Arumugam,
for M/s.Ajmal Associates.

For R-1,R-4&R-5 : Mr.P.Sesubalan Raja

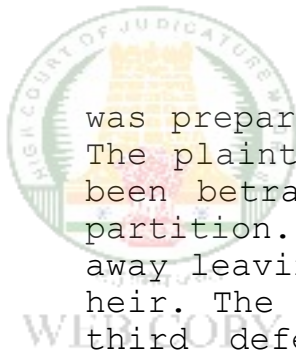
For R-2 & R-3 : No appearance.

* * *

J U D G M E N T

This second appeal arises out of a partition suit.

2. The plaintiff is the appellant. The case of the plaintiff is that the suit properties are the self-acquired properties of her father V.Kuppusamy Vanniyar. He died intestate on 12.06.1991. He left behind his wife Selvam Ammal, the plaintiff and three sons, namely, Veerasekaran, Ganesan and Murugesan as his surviving legal heirs. The plaintiff stated that on 27.03.2000, the partition deed



was prepared(Ex.A.6) and the plaintiff signed in the said document. The plaintiff realized several years later that her interests have been betrayed and she had not been allotted anything in the said partition. In the meanwhile, one of her brothers Veerasekaran passed away leaving behind the second defendant Rani as his surviving legal heir. The plaintiff demanded 1/5th share in the suit properties. The third defendant Ganesan sailed with the plaintiff. The second defendant Rani, wife of Late.Veerasekaran filed written statement controverting the plaint averments.

3. According to the second defendant, since the partition had already taken place and the same was also duly reduced into writing, the question of maintaining the suit for partition will not arise. Based on the divergent pleadings, the trial Court framed the necessary issues. The plaintiff examined herself as P.W.1 and marked Ex.A.1 to Ex.A.8. The contesting defendant Rani examined herself as D.W.1, while the third defendant Ganesan examined himself as D.W.2. Ex.B.1 to Ex.B.6 were marked. After a consideration of the evidence on record, the trial Court by judgment and decree dated 22.11.2010 dismissed the suit. Aggrieved by the same, the plaintiff filed A.S.No.16 of 2011 before the Principal District Judge, Thanjavur. The third defendant Ganesan filed A.S. No.5 of 2012 before the very same Court. Both were taken up together and by the impugned judgment and decree dated 30.11.2012, both the appeals were dismissed and the decision of the trial Court was confirmed. Challenging the same, this second appeal has been filed by the plaintiff.

4. This second appeal was admitted on the following substantial questions of law:-

"1. Whether in the absence of any substantive evidence that any of the property of K.Kuppusamy Vanniyar was allotted to the share either the plaintiff or her mother Ex.A.1 is valid, since it is not supported by any consideration?

2. Whether the alleged partition deed in which properties were not allotted to 2 sharers can be treated as partition deed and in such a case is not the plaintiff entitled to file a suit for partition straight away without setting aside the earliest partition deed Ex.A.6?

3. Whether the trial Court has framed the proper issues under Order 13 Rule 1 of C.P.C., 1908 and whether such a failure to frame proper issues has vitiated the trial and the judgment of the trial Court?

4. Whether the failure of the first appellate Court to frame the proper points for consideration under Order 41 Rule 31 of C.P.C., 1908 has resulted in patently wrong decision to the detriment of the plaintiff?

<https://hcservices.ecourts.gov.in/hcservices/5>. Whether Ex.A.3 is void under Section 23 of



Indian Contract Act, 1872?

6. Whether the finding of the Courts below that the plaintiff is not entitled to the decree for partition is as a result of admission of immaterial and irrelevant evidence and rejection of material admissible evidence and whether such a perverse finding is liable to be dismissed under Section 100 of C.P.C., 1908?

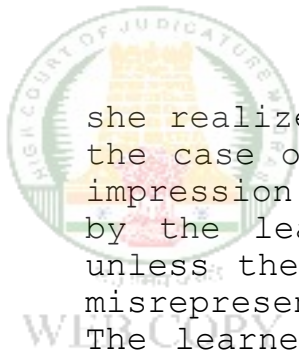
7. Whether the suit for mandatory injunction is barred by limitation especially when such a claim was even made in the suit in O.S.No.960 of 1983 on the file of the District Munsif Court, Dindigul and given up in the compromise decree?"

5. The learned counsel appearing for the appellant contended that the partition among the family members is also a form of contract. It is true that in the case on hand, the partition that took place among the family members was reduced into writing and also registered. But a mere look at Ex.A.6 dated 27.03.2000 would show that nothing was allotted to the plaintiff. Therefore, there was a total failure of consideration. The learned counsel referred to Section 23 of the Indian Contract Act, 1872 and contended that the contract that is bereft of consideration is void. Since the document is void, it is not necessary for the plaintiff to even sue for its cancellation and the plaintiff can safely ignore the same. The case involves partition of the properties of the father Kuppusamy Vanniyar. Kuppusamy Vanniyar died intestate in the year 1991. The family members had planned to partition the properties in the year 2000. The property referred to by the second defendant was purchased by the plaintiff out of the funds of her husband way back in the year 1980. Therefore, the Courts below have erred in not recognising and allotting her 1/5th share in the suit properties.

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

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

8. The plaintiff had conceded in her plaint itself that there was a partition in the family in respect of the suit properties and that the same was reduced into writing and that she signed in the said document and that it was also registered. The plaintiff herself has filed the said document as Ex.A.6. The learned counsel appearing for the contesting respondents pointed out that the plaintiff's son had attested the said document. The plaintiff was aged about 54 years when she filed the suit. She must have been around 47 years of age when Ex.A.6 was executed and registered. In the plaint, the plaintiff has only averred that she signed in the said document with a fond hope that her mother and brothers would have set apart



she realized that her interest has been totally betrayed. It is not the case of the plaintiff that she is illiterate or that her thumb impression was obtained by misrepresentation. As rightly pointed out by the learned counsel appearing for the contesting respondents, unless the contract is shown to be vitiated by fraud, coercion or misrepresentation, it cannot be characterised as void or ignored. The learned counsel would point out that Section 23 of the Indian Contract Act may not be an appropriate provision and that it is only Section 25 of the Act that may be probably relevant. Section 25 of the Indian Contract Act, 1872 states that an agreement made without consideration is void, unless it is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other. In this case, the partition was expressed in writing and it was also registered. The other parties are mother and brothers. Therefore, the plaintiff was standing in a near relation to the other parties of the document. It is quite well known that the daughter who has been given in marriage, on account of natural love and affection do give up their share in the family properties. In view of Section 25 of the Indian Contract Act, 1872, Ex.A.6 cannot be characterised as void.

9. The learned counsel appearing for the contesting respondents drew my attention to the decision reported in **AIR 1976 SC 1 (Ratnam Chettiar and Others Vs. S.M. Kuppaswami Chettiar and Others)**. In the said decision, the Hon'ble Supreme Court had categorically held that a partition effected between the members of the Hindu Undivided Family by their own volition and with their consent cannot be reopened, unless it is shown that the same is obtained by fraud, coercion, misrepresentation or undue influence. In such a case, the Court should require a strict proof of facts because an act inter vivos cannot be lightly set aside. In the present case, a look at the pleadings would show that no such allegation has been made. All that the plaintiff claims is that she was under a fond hope that some item would have been allotted to her share in the document. A mere reading of the document would have shown whether any property was allotted to her or not. That is why, the Courts below concurrently held that the version of the plaintiff is quite unbelievable. Having signed with eyes wide open, the document which was attested by her own son, the plaintiff cannot ten years later seek to reopen settled and concluded arrangements.

10. There is a considerable force in the version of the learned counsel appearing for the respondents that when the plaintiff is a party to the document without seeking cancellation of the same, she cannot file a suit for partition, simpliciter. Such suit is not maintainable. The substantial questions of law are answered against the appellant.



11. This second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

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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,
Thanjavur.
2. The Principal Subordinate Judge,
Thanjavur.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2 COPIES)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-26727[F] dated 19/08/2021)

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