



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.896 of 2014

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Ramalingam

... Appellant / Respondent / Defendant

-Vs-

Lakshmi Ammal

... Respondent / Appellant / Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the learned 2nd Additional District and Sessions Judge, Tiruchirappalli in A.S.No.295 of 2011, dated 27.03.2013 reversing the judgment and decree dated 09.07.2010 made in O.S.No.182 of 2005 on the file of the 1st Additional Subordinate Judge, Tiruchirappalli.

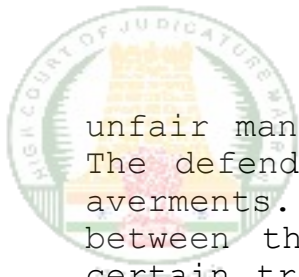
For Appellant	: Mr.R.Sundar Srinivasan
For Respondent	: Ms.J.Anandha Valli

JUDGMENT

This second appeal arises out of a partition suit. The respondent herein namely Lakshmi Ammal filed O.S.No.182 of 2005 on the file of the first Additional Subordinate Judge, Trichy, seeking partition and separate possession of 1/2 share in the suit properties. The suit properties are 13 in number.

2. The case of the plaintiff is that her father late Arumugam got most of the suit properties under registered partition deed dated 26.06.1952. Arumugam got married to Annakili and through the wedlock, the plaintiff and the defendant Ramalingam were born. After 1952 partition, the plaintiff's father purchased some properties. On 29.12.1969, there was a partition between the plaintiff's father Arumugam and the plaintiff's brother Ramalingam. In the said partition, Arumugam was allotted 'A' schedule properties, while Ramalingam was allotted 'B' schedule properties. The plaintiff's father Arumugam thus obtained exclusive title over the 'A' schedule properties set out in the partition deed dated 29.06.1969. The plaintiff would specifically claim that the suit schedule properties broadly correspond to "A" schedule properties of the partition deed dated 29.06.1969. The plaintiff's father died intestate in the year 1981. The plaintiff's mother also died some time in the year 1985.

3. The plaintiff would claim that the suit properties have not been partitioned. Since the defendant / brother was acting in an



unfair manner, she was constrained to file the suit for partition. The defendant filed the written statement controverting the plaint averments. The defendant pointed out that after 1969 partition between the defendant and Armugam/ father of the parties herein, certain transactions took place. Under the partition deed dated 29.06.1969, the father Arumugam was allotted as many as 11 items. All the 11 items were settled by Arumugam during his life time. Following the demise of the father, there was an exchange of properties between the plaintiff and the defendant on 27.05.1982. The defendant would allege that suppressing all these material aspects, the suit had been instituted. Based on the divergent pleadings, the trial Court framed the necessary issues. The plaintiff examined herself as P.W.1 and marked Ex.A1 to Ex.A6. The defendant examined himself as D.W.1 and marked Ex.B1 to Ex.B3.

4. After a consideration of the evidence on record, the trial Court, by judgment and decree dated 09.07.2010 dismissed the suit. Aggrieved by the same, the plaintiff filed A.S.No.295 of 2011 before the second Additional District and Sessions Judge, Trichy. By the impugned judgment and decree dated 27.03.2013, the first appellate Court set aside the judgment and decree passed by the trial Court and passed preliminary decree as prayed for. Aggrieved by the same, the defendant has filed this second appeal.

5.The second appeal was admitted on the following substantial questions of law:-

(a) Whether the lower appellate Court is justified in setting aside on surmises and conjectures the well considered judgment and decree of the trial Court?

(b) Whether the first appellate Court is justified in granting a decree for partition overlooking the deed of exchange dated 27.05.1982 executed between the plaintiff and appellant which would falsify the contention of the plaintiffs that the properties are common properties?

(c) Whether the first appellate Court is justified in not holding that the suit is barred by limitation?

(d) Whether the first appellate Court is justified in not holding that the plaintiff is estopped in fact and upon law and by conduct in claiming the relief of partition?

(e) Whether the first appellate Court is justified in setting aside the findings of the trial Court without any discussion about the reasoning assigned by the trial Court for dismissing the suit?

(f) Whether the first appellate Court is justified in not framing points for determination which is mandatory under Order 41 Rule 31 of C.P.C., which has resulted in miscarriage of justice.

(g) Whether the first appellate Court is justified in granting decree of partition when the sons of the appellant who are the settlees were not impleaded as parties?



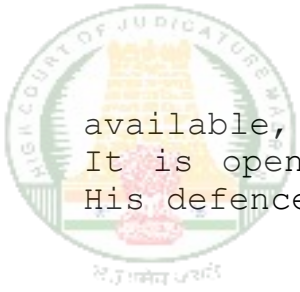
6. Heard the learned counsel on either side.

7. I am more than satisfied that the father of the parties herein namely Arumugam settled most of the items that were allotted to him under the partition deed dated 29.12.1969 (Ex.A3) in favour of the grand children born through the appellant and the plaintiff herself. Of-course, the registered deed of settlement dated 09.02.1977 executed by Arumugam in favour of the plaintiff was not marked before the Court below. The defendant however had marked the deed of exchange dated 27.05.1982 (Ex.B2). When the plaintiff was questioned on this, she flatly denied that an exchange ever took place. However, from a perusal of the grounds of first appeal, one can notice that she had grudgingly conceded that some of the suit items very much figure in Ex.B2- deed of exchange.

8. There is considerable merit in the contention of the learned counsel appearing for the appellants that a person who approaches the Court with unclean hands must be non-suited at the threshold. He referred to the decision of the Hon'ble Supreme Court reported in **(2010) 14 SCC 38 (Ramjas Foundation Vs. Union of India)**.

9. In the case on hand, the plaintiff had deliberately not included the deed of settlement dated 09.02.1977 executed in her favour and the deed of exchange entered into with the defendant. There is also another lacuna in the case of the plaintiff. The suit schedule comprises as many as 13 items but the description is totally vague. The plaintiff appears to have maintained the description that probably obtained way back in the year 1952. There is nothing to show that these items belonged to the father Arumugam. The plaintiff having come to the Court seeking the relief of partition, is obliged to file a correlation statement indicating that the properties belonged to the father Arumugam. Without taking note of any of these aspects, the first appellate Court has granted preliminary decree as prayed for.

10. It is admitted by the learned counsel appearing for the appellant that the property covered under Ex.A2, dated 03.12.1957 does not appear to be included in the 1969 partition deed (Ex.A3) or in the subsequent deed of settlement. Since the plaintiff has not filed the correlation statement, the counsel on either side agree that the impugned judgment and decree passed by the first appellate Court can be set aside and the matter can be remanded to the file of the trial Court. Accordingly, the impugned judgment is set aside. The second appeal is allowed. The matter is remanded to the file of the trial Court. The plaintiff will have to file a petition for amending the suit schedule. The plaintiff will have to file a correlation statement and thereafter, exclude the items that are covered under Ex.B1 dated 30.10.1978 and Ex.B2 dated 27.05.1982. If there are any other properties belonging to Arumugam still



available, the suit schedule will be confined only to those items. It is open to the defendant to file additional written statement. His defence is fully left open. No costs.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar(CS)

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To

- 1.The 2nd Additional District and Sessions Judge, Tiruchirappalli.
- 2.The 1st Additional Subordinate Judge, Tiruchirappalli.

COPY TO:

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.SUNDAR SRINIVASAN, Advocate (SR-26867[F] dated 19/08/2021)

+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-26873[F] dated 19/08/2021)

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