



A.S.No.10 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 10.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MRS.JUSTICE N.MALA

A.S.No.10 of 2013

and M.P.No.1 of 2013 & C.M.P.Nos.8978 of 2019 & 11188 of 2022

1.S.Jayanthi

2.Minor Vikramraj

... Appellants

[2nd petitioner Minor Vikramraj declared as Major and his mother S.Jayanthi W/o.Late N.Saravanan. 1st petitioner discharged from the guardianship vide Court order dated 08.04.2019 made in C.M.P.No.8972 & 8974 of 2019 in A.S.No.10 of 2013 by MMSJ / CSNJ]

[Appellants are exempted from taking steps to bring on record the LRS of deceased 6th and 9th respondents as per Division Bench order of this Court vide order dated 26.09.2022 made in C.M.P.No.14632 of 2022 in A.S.No.10 of 2013]

Vs.

1.R.S.Natesan

2.N.Sudha

3.Umadevi

4.Sivasubramaniam

5.Ramakrishnan

6.R.S.Thangavel

7.R.S.Venkitusamy

8.R.S.Shanmugasundaram



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9.S.Leelavathi

10.S.A.Mohamed Rafik

... Respondents

Prayer:- Appeal Suit filed under Order 41 Rule 1 r/w Section 96 C.P.C., against the judgment and decree dated 19.03.2012 made in O.S.No.5 of 2005 passed by the Additional District and Sessions Court / Fast Track Court No.3, Dharapuram.

For Appellants	:	Mr.V.Lakshmi Narayan for M.Guruprasad
For R1 & R2	:	Mr.R.Asokan
For R3	:	Mrs.Hema Sampath, Senior Counsel for Mr.P.Navaneetha Krishnan
For R7 & R8	:	Mr.N.Srinivasan
For R4, R5, R6, R9 & R10	:	No appearance

JUDGMENT

[Judgment of the Court was made by **S.S.SUNDAR, J.,**]

The appellants herein are the plaintiffs in the suit in O.S.No.5 of 2005 on the file of the Additional District and Sessions Court / Fast Track Court No.3, Dharapuram. The appellants filed the suit for the partition of their 35/432nd shares in all the suit properties and for separate possession. The suit is also for other consequential reliefs in respect of item nos.1 to 7 and 2/3rd shares in item no.9.



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2. Though, the plaintiffs claimed 35/432nd shares in items no.1 to 7 of the suit properties and 2/3rd shares in item no.9 of the suit properties, as regards item no.8 they claimed 10/18th shares. In the plaint, the plaintiffs stated that all the suit properties belonged to the family of one Ramasamy Mudaliar, who died on 07.01.1964. It is admitted that the said Ramasamy Mudaliar died leaving behind his only son by name Chenniappa Mudaliar, who had 5 sons and one daughter, namely R.S.Periyasamy, Thangavel, Venkidusamy, Shanmugasundaram, Natesan and Leelavathi. Natesan who is the 1st defendant in the suit is one of the sons of ChenniappaMudaliar and the grandson of Ramasamy Mudaliar. The 2nd defendant is the wife of 1st defendant. The 1st appellant / plaintiff is the wife of late Thiru.Saravanan who is the only son of the 1st defendant Nateson. The 2nd plaintiff is the son of Saravanan. The 3rd defendant in the suit is one Umadevi who is the sister of Saravanan and the daughter of defendants 1 and 2. Defendants 4 and 5 are the sons of one R.S.Periyasamy. Defendants 6 to 8 are the brothers of the 1st defendant. The 9th defendant is the sister of the 1st defendant.



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3. It is the specific case of the appellants that the suit properties are the ancestral properties. It is contended that Chenniappa Mudaliar and his sons entered into a partition in respect of their agricultural lands on 23.02.1949 under a registered Partition Deed in which the properties described as 'A' schedule in the said documents were allotted to Chenniappa Mudaliar and his 5 sons including the 1st defendant. It is the further case of the plaintiffs that Ramasamy Mudaliar and Chenniappa Mudaliar partitioned their house properties under a registered Partition Deed dated 14.12.1949 in which the properties described as 'B' schedule properties therein were allotted to Chenniappa Mudaliar and his sons.

4. It is admitted that the husband of the 1st plaintiff and father of the 2nd plaintiff by name Saravanan died on 19.09.1996 leaving behind the plaintiffs and his mother who is the 2nd defendant in the suit. As regards suit schedule item no.8 it appears that the said property had been purchased by the 1st defendant by a Sale Deed dated 22.02.1993 from Tamil Nadu Housing Board. Though it is stated by the plaintiffs that the said property was purchased by the 1st defendant as Kartha of the family, the learned counsel appearing for the appellants submitted that he is not pressing for any relief in respect of item



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no.8. having regard to the documents and evidence which are against the case pleaded by the plaintiffs.

5. As regards item no.9 of the suit property, it is the case of the plaintiffs that the father namely the 1st defendant Natesan executed the Settlement Deed in favour of Saravanan, the husband of 1st appellant, on 25.06.1990. As per the Settlement Deed, the plaintiffs contended that they are entitled to 2/3rd shares and the 2nd defendant is entitled to remaining 1/3rd shares in 9th item of the suit properties. As regards items no.1 to 7, the specific case of the appellants is that the suit properties are ancestral properties. Stating that the 3rd defendant orally relinquished her share in favour of plaintiffs and defendants 1 and 2, it is contended that she has no right or title in any property and she is impleaded only as a formal party. The suit was resisted by defendants 1 to 3 and 6 by filing independent written statements. The other defendants remained ex-parte. Defendant No.1 disputed the case of the plaintiffs by contending that the suit properties are the separate properties of the 1st defendant. However 1st defendant was set ex-parte thereafter. However, the 3rd defendant, namely the sister-in-law of the 1st appellant, filed a written statement admitting that the suit



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properties items no.1 to 7 are ancestral properties of 1st defendant Natesan and his children. However she denied oral relinquishment and claimed 1/18th shares in items no.1 to 7 and 1/3rd shares in item no.8 and prayed for allotment of shares. The 1st and 6th defendant though filed written statements, did not choose to contest the suit except 3rd defendant all other defendants were set ex parte.

6. The plaintiffs filed Exs.A1 to A7 and the 1st plaintiff examined herself as P.W.1 whereas the 3rd defendant herself was examined as D.W.1. The 3rd defendant also marked exhibits Exs.B1 and B2. The Trial Court after framing necessary issues held that the suit properties had not been proved to be joint family properties of plaintiffs and defendants. Holding that the plaintiffs are not in the joint possession and enjoyment of the suit properties, the Trial Court held that the plaintiffs or the 3rd defendant are not entitled to any relief. As regards the Settlement Deed stated to have been executed by the 1st defendant in favour of the 1st plaintiff's husband, the Trial Court held that the said Settlement Deed was never acted upon. The Trial Court did not accept oral relinquishment. But suit was dismissed in view of the finding that all the suit properties are the separate properties of 1st defendant. Aggrieved by the judgment and decree of the Trial Court the above appeal is preferred by plaintiffs 1 and 2.



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7. The learned counsel appearing for the appellants submitted that there is a categorical admission by contesting respondents namely the 3rd respondent as regards the character of suit properties as ancestral properties and therefore the finding of the Trial Court describing the suit properties as separate property is not supported either by pleadings or by documents. This Court has seen that the 1st defendant namely the father-in-law of the 1st plaintiff and grandfather of the 2nd plaintiff after filing the written statement denying the character of suit properties remained ex parte throughout. The contention that the suit properties are ancestral properties is supported by the 3rd defendant and has not been denied by any other defendants by letting in evidence or by examining any one of the parties to dispute the claim.

8. Having regard to the peculiar circumstances and pleadings this Court is unable to sustain the findings of the Trial Court. Suit items no.1 to 7 are therefore the joint family properties of the 1st defendant and his brothers in which, the husband of 1st plaintiff is also entitled to a share by birth. The 3rd defendant is also entitled to a share equal to the share of her deceased brother by virtue of 2005 Amendment to Hindu Succession Act. It is the specific case



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of the plaintiffs that the property in suit item 9 is the absolute property of 1st plaintiff's husband who got the property under the Settlement Deed executed by the 1st defendant under Ex.A2. The Settlement Deed under Ex.A2 dated 25.06.1990 is in respect of an extent 944 Sq.ft. consisting of two items. The 1st item is an extent of 200 Sq.ft. and the 2nd item is an extent of 744 Sq.ft. The suit property is in respect of an extent of 17,838 Sq.ft. in T.S.No.297, Ward No.2, situated at Chola Kadai Street, in which a Thirumana Mandapam namely "Sri Ram Kalyana Mandapam" has been constructed.

9. The appellants filed a petition in C.M.P.No.8978 of 2019 for the reception of additional documents under Order 41 Rule 27 of C.P.C. Out of 4 documents, one of the documents is the Partition Deed dated 21.05.1983 between the 1st defendant and the husband of the 1st appellant. As per the said Partition Deed, an extent of 16,622 Sq.ft was allotted to the plaintiffs' husband Saravanan. Strangely this Court finds that in paragraph no.9 of the plaint, plaintiffs submitted that the property which is described as item no.9 was given to the 1st plaintiff's husband by the 1st defendant under a registered Settlement Deed dated 25.06.1990 and the said registered Settlement Deed is marked as Ex.A2. Whereas the document only reveals that an extent of 944 Sq.ft alone is



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conveyed and not an extent of 17,838 Sq.ft. as described in the plaint. In that context, the learned counsel appearing for the appellants relied upon the additional document namely the Partition Deed which is not yet marked. Though the Partition Deed dated 21.05.1983 indicates that there was a partition between the 1st defendant and his son namely the husband of the 1st appellant and an extent of 16,622 Sq.ft. of the land in item no.9 was allotted to the 1st plaintiff's husband, there is no pleading in the plaint supporting the claim based on the said Partition Deed. It is to be noted that the property that was allotted to the 1st defendant in the said partition was dealt with by him under Ex.A2 namely the Settlement Deed which was executed by the 1st defendant in favour of his son. Since the Settlement Deed Ex.A2 supports the case of the appellants this Court believes that the document must be genuine. However, the learned counsel appearing for the 1st defendant submits that the genuineness of the document cannot be presumed merely because the 1st defendant remained ex parte throughout. Having regard to the fact that there is reference to the Partition Deed in the year 1983 which is sought to be marked as an additional document in Ex.A2, this Court is of the view that an opportunity must be given to the plaintiffs as well as the 1st defendant to lead additional evidence on the



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genuineness and validity or otherwise of the document. However the suit in

respect of item no.9 in so far as the extent covered under the document Ex.A2

is concerned, the appellants contends that the property belonged to 1st plaintiff's

husband and therefore the plaintiffs are entitled to 2/3rd shares in the extent of

944 Sq.ft. which was allotted to the 1st defendant. This Court has already found

that the properties items no.1 to 7 are joint family properties and therefore the

plaintiffs are entitled to 2/3rd shares of the husband of 1st plaintiff in all the suit

properties which are described as items no.1 to 7. The suit in respect of item

no.8 is liable to be dismissed on the concession of the learned counsel

appearing for the appellants. Hence the judgment and decree of Trial Court in

respect of item no.8 is confirmed. As regards item no.9, the findings of the Trial

Court that the settlement is not valid is set aside. Considering the evidence and

the pleadings, the learned counsel appearing for the defendants 1 and 3 have no

serious dispute as to the validity of Settlement Deed under Ex.A2. Since the

dispute is only in respect of partition of item no.9, this Court has to remit the

matter to decide the truth and validity of the 1983 Partition Deed as this Court

having regard to the peculiar circumstances is inclined to allow the petition in

so far as the 1983 Partition Deed is concerned.



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10. It is indeed seen that the petition filed by the appellants in C.M.P.No.8978 of 2019 consists of few more documents. Since this Court has already decided the appeal in respect of items no.1 to 7, this Court is unable to find any relevancy of other documents except the document namely the certified copy of the Partition Deed dated 21.05.1983. The Partition Deed dated 21.05.1983 indicates that there was a partition between the 1st plaintiff's husband with his father namely the 1st defendant and an extent of 16,662 Sq.ft. of land out of the total extent in item no.9 was allotted to the 1st plaintiff's husband. It is to be seen that in the Settlement Deed under Ex.A2, there is reference to this Partition Deed. The Settlement Deed is in respect of property that was allotted to the 1st defendant in the Partition Deed dated 21.05.1983. Since the document under Ex.A2 is admitted and proved, this Court is of the view that, the Partition Deed is also a genuine document. However the 1st defendant's counsel submits that an opportunity should be given to defendants 1 and 3 to question the genuineness and validity.

11. Considering the fact that all the other defendants remained ex parte even though they are also entitled to a definite share and the share claimed by the plaintiff is on the basis of oral relinquishment, this Court is unable to



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sustain the quantum of share claimed by the plaintiffs. The learned counsel for the plaintiffs / appellants is unable to justify his claim. Since there are so many other parties and the parties have no consensus, this Court leaves it to the Trial Court to determine / declare the share of plaintiffs in respect of items no.1 to 7 by treating them as the joint family properties of plaintiffs and defendants. As regards item no.9, the appellants are entitled to $\frac{2}{3}$ rd shares in respect of an extent of 944 Sq.ft. which is the property settled by the 1st defendant in favour of the 1st appellant. As regards an extent of 16,622 Sq.ft. in item no.9 which is stated to have been allotted to the 1st plaintiff's husband in the Partition Deed dated 21.05.1983, the matter is remitted to the Lower Court for framing the issue whether the Partition Deed dated 21.05.1983 is valid and binding on the 1st defendant or the 3rd defendant.

12. The learned counsel appearing for the 1st defendant however states that the Partition Deed dated 21.05.1983 cannot be accepted as additional documents especially since there is no pleading in the plaint. The learned counsel submits that an opportunity should be given to the 1st defendant to prove that the document was neither executed nor acted upon. The learned



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counsel requested this Court to give a direction to the Lower Court to consider the objections while remitting the matter to the Lower Court. In short, the 1st defendant's counsel contends that liberty should be given to the 1st defendant to raise all his objections as regards the Partition Deed.

13. Considering the peculiar facts and circumstances of the case, this Court is unable to ignore the submission of the learned counsel appearing for the 1st defendant/1st respondent. Hence the appeal is allowed and the judgment and decree of the Trial Court in O.S.No.5 of 2005 on the file of Additional District Court, Fast Track Court No.3, Dharapuram is set aside except item no.3. The suit stands dismissed as against item no.8. As regards other items the matter is remitted to the Trial Court. The Trial Court is directed to frame an issue about the validity and genuineness of the document namely the Partition Deed dated 21.05.1983. It is open to the 1st respondent/1st defendant or the 3rd respondent to raise all objections regarding the genuineness and validity of the document. The parties on either side are permitted to adduce fresh evidence on this issue. Depending upon the outcome of the findings of the genuineness and validity of the document, the share of plaintiffs in respect of an extent of 16,622 Sq.ft. in item no.9 shall be determined. As regards items no.1 to 7 are



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concerned, the Trial Court is directed to declare the shares of all the parties to the suit on the premises that the properties are the joint family properties of plaintiffs and defendants.

14. The Appeal is accordingly dismissed. The parties shall appear before the Lower Court by 14.12.2022. Registry is directed to sent the records to the Lower Court. No costs. Consequently connected miscellaneous petitions are closed.

[SSSRJ] [NMJ]

10.11.2022

cda



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To

- 1.The Additional District and Sessions Court /
Fast Track Court No.3,
Dharapuram.
- 2.The Section Officer, VR Records,
High Court, Chennai.

S.S.SUNDAR, J.,



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AND

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