



THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
03-03-2022	29-04-2022

CORAM:

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

A.S.No.499 of 2013

P.Vijayalaxmi

... Appellant/2nd Plaintiff

Vs.

1. P. Kumaravel (Deceased) ... Respondent/Defendant
 2. K.Jothi ... Respondent/1st Plaintiff
 3. Sathya alias Evelyn
 4. Aarthi
 - 5.Aruna
- [R3 to R5 Lrs of the deceased 1st
Respondent brought into record vide
Court Order, Dt.27.04.2021] ... Respondents

PRAYER: Appeal Suit is filed under Order XLI rule 1 and Section 96 of the Civil Procedure Code to set aside the Judgment and Decree of the learned Additional District Judge/ Fast Track Court, Namakkal, dated 30.03.2010 in O.S.No.26 of 2007 (Namakkal Sub-Court O.S.No.33 of 2005)

For Appellants : Mr.V. Manohar

For Respondents: Mr.S.Senthil [for R3-R5]
R1 - died

J U D G M E N T

Challenging the dismissal of the Original Suit by the learned Additional District Judge, Fast Track Court, Namakkal in O.S.No.26 of 2007, the present Appeal Suit has been filed by the 2nd Plaintiff.

2. For the sake of convenience, the parties are referred to as per their litigative status in the suit as 'Plaintiff' and 'defendant'.



3. The brief facts leading to the filing of the appeal suit are as follows:

3.a. Plaintiffs are elder sisters of the Defendant. The suit properties, according to the plaintiffs, are owned by their father Mr. Palaniappa Gounder who got it under a registered partition between himself, his father and brothers on 20.06.1967. The Patta in respect of the suit property stood in the name of one Palaniappa Gounder and he was in possession and enjoyment of the suit properties till his death. His wife predeceased him. He died intestate on 19.12.2004 leaving behind the plaintiffs and defendant as his legal heirs and they were in joint possession and enjoyment of the suit properties.

3.b. The plaintiffs and the defendant, as legal heirs of Palaniappa Gounder are entitled to 1/3 share each in the suit properties. On 30.01.2005 when the Plaintiffs made a final demand to the Defendant for division of the suit properties, defendant proclaimed that Palaniappa Gounder had executed a deed of settlement on 11.08.2003 in his favour and the plaintiffs cannot claim any share in the suit properties. According to the plaintiff, Palaniappa Gounder had no right to execute the settlement deed in favour of the Defendant and it is void in law and not legally enforceable. The said settlement deed will not bind the plaintiffs to claim a share in the suit property. The defendant cannot take advantage of the said settlement deed and refuse to divide the suit properties. Hence, they are constrained to file this suit for partition and separate possession.

4. In the written statement filed by the Defendant, it is contended as follows:

4.a. The suit is false, frivolous, unsustainable in law and on facts. At the time of his death, Palaniappa Gounder was 80 years old and he was suffering from kidney failure two years prior to his death. The said Palaniappa Gounder had executed a registered settlement deed in respect of the suit property in favour of the defendant on 11.08.2003 itself, that is 16 months prior to his death. The plaintiffs were in the house when the said Palaniappa Gounder prepared the settlement in favour of the Defendant. They did not object the same and in fact, they have no right to object the same in law. The possession of the lands were also handed over to the Defendant on the day of execution of the settlement deed. The allegation that Palaniappa Gounder died intestate on 19.12.2004, is absolutely false and untenable.



The said Palaniappa Gounder did not possess any property at the time of his death.

4.b. The plaintiffs had never been in joint possession and enjoyment of the suit property. The Patta and Chitta transferred into the name of the Defendant and the Defendant is in exclusive possession and enjoyment of the entire suit property ever since from the date of settlement i.e., on 11.08.2003. The allegation that there is no division took place between Palaniappa Gounder and the Defendant, therefore the said Palaniappa Gounder has no right to execute the Settlement Deed in favour of the Defendant, is not legally sustainable. The Plaintiffs were given in marriage 12 years prior to the Amendment of Hindu Succession Act 1 of 1989. Hence, they have no share in the ancestral property and the Plaintiffs have no right to question the validity of the execution of Settlement deed executed by Palaniappa Gounder during his life time. The Plaintiffs have no right or interest to claim any share in the suit property and hence the Court fee paid by the plaintiffs are also not correct and suit is to be dismissed with exemplary costs.

4.c. Based on the pleadings, the trial court framed the following issues:

1. Whether the plaint has been properly valued?
2. Whether the Settlement Deed dated 11.08.2003 is true and Valid and binding on the plaintiffs?
3. Whether the plaintiffs are entitled to get share in the suit property? If so to what extent of the share?
4. To what relief the plaintiffs are entitled to?

5. Before the Trial Court, on behalf of the plaintiffs, 1st Plaintiff was examined as P.W.1 and Exs.A1 to A5 were marked. On behalf of the Defendant, D.W.1 to D.W.4 were examined and Exs.B1 to Ex.B5 were marked.

6. Upon consideration of oral and documentary evidence, the learned trial Judge dismissed the suit filed by the plaintiffs by holding that the Plaintiffs are not entitled for partition of the suit properties and the settlement deed executed by the father in favour of the Defendant would bind them. Aggrieved over the findings of the learned trial Judge, the present Appeal Suit has been filed by the first plaintiff alone.

6.a. Mr.V. Manohar, learned counsel appearing for the Appellant would contend that the trial court erred in dismissing the suit for partition without appreciating the development in the Hindu Succession Act. It is his further contention that the



trial Court made a mistake in applying the law with regard to the Hindu Succession Act under Amendment Act 2005. The learned counsel would contend that the trial Court committed error in placing reliance on the settlement deed procured by the defendant by taking advantage of the illness of the father to deprive the right of the plaintiffs. The trial court has failed to appreciate the capacity of the executor to execute the settlement deed with regard to the ancestral property and its binding nature. It is also contended that the trial court erred in giving much importance to the interested witnesses who are all instrumental in creating the document.

6.b. The learned counsel would also point out that taking advantage of the illness of the father, the 1st Respondent with the help of close relatives got the settlement deed executed by the father Palaniappa Gounder. It is further contended that there was undue influence, fraud and coercion in getting the settlement deed and there are so many clouds in the execution of the settlement deed. Therefore, the learned counsel would contend that the judgment and decree of the trial court is to be set aside and 1/3 share of the suit property is to be ordered.

7.a. Per contra, Mr.S.Senthil, learned counsel appearing for the Respondent Nos.2 to 5 would contend that the father Palaniappa Gounder executed the registered settlement on his own volition on 11.08.2013, which is 16 months prior to his death and the witness who wrote the settlement deed was examined to prove the execution of the settlement deed by Palaniappa Gounder. There is no pleadings with regard to undue influence, fraud or coercion by the 1st Respondent in execution of the settlement deed put forth on the side of the appellant in the plaint. In the absence of such specific pleadings, the arguments on the side of the appellant is to be rejected. It is the further contention of the learned counsel for the Respondents 3 to 5 that the Appellant has not produced any oral and documentary evidence to prove that the settlement deed was executed under threat and coercion. She has also not proved that the property is a joint family property and the said Palaniappa Gounder did not die intestate on 19.12.2004 as he had already settled his property vide Settlement Deed, dated 11.08.2003 to the Defendant, his son.

7.b. It is further submitted by the learned counsel for the Respondent that prior to the Hindu Succession (Amendment) Act, 2005, the daughters were not treated as co-parceners. Since the date of death of Palaniappa Gounder is 19.12.2004 and the



Settlement Deed was executed on 11.08.2003, prior to the Amendment Act 2005, the Appellant cannot claim partition as per the above Act. Therefore the claim made by the Appellant is not maintainable and the appeal is liable to be dismissed with costs.

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7.c. In support of his contention learned counsel relied upon the following judgments:

1. Thamma Venkata Subbamma (dead) by LR vs. Thamma Rattamma and others [(1987) 3 Supreme Court Cases 294]
2. Placido Francisco Pinto (D) by Lrs. And Others vs. Jose Francisco Pinto and Another [2021 SCC Online 842]
3. M.R.Vinda vs. M.S.Susheelamma (D) by Lrs. And Others [2021 SCC Online SC 1258]

8. I have heard Mr.V. Manohar learned counsel for the Appellant and Mr.S. Senthil learned counsel for Respondents 3 to 5. Mrs.K.Jothi, 2nd Respondent appeared as party in person.

9. The point for consideration in this Appeal are:

1. Whether the appellant is entitled to claim partition in the suit property?
2. To what other relief the appellant is entitled to?

10. Though the Original Suit was filed by both sisters viz., Jothi and Vijayalakshmi, the 2nd Plaintiff i.e., Vijayalakshmi alone preferred the present appeal by arraying the 1st Plaintiff Mrs.K.Jothi as 2nd Respondent. In the suit, the plaintiffs have arrayed their brother as sole defendant. During the pendency of the appeal, the sole defendant died and therefore, his legal heirs were brought on record as respondents 3 to 5.

11. Admittedly, the suit properties belonged to Palaniappa Gounder ancestrally. He got the suit property through a registered partition deed between himself, his father and brothers on 20.06.1967. He was in possession and enjoyment of the suit properties till his death on 19.12.2004 leaving behind him, the plaintiffs and defendants as his legal heirs. These facts are not disputed by both sides.

12. The Plaintiffs stated that the said Palaniappa Gounder died intestate but the same was denied by the defendant by



stating that before his death, his father Palaniappa Gounder, executed a Settlement Deed in his favour and he did not die intestate. The Plaintiffs have not denied the execution of the Settlement Deed, dated 11.08.2003 but objected that Palaniappa Gounder has no right to execute the same.

13. During the course of argument, the learned counsel for the appellant would contend that taking advantage of the illness of the father the settlement deed was procured and the same would not bind the appellants. If it is so, the plaintiffs ought to have sought for a declaration to declare the settlement deed dated 11.08.2003 as null and void. In fact, on notice in the plaint, the defendant had specifically raised a defence that his father had executed a settlement deed in his favour. It has been specifically stated that the father suffered from kidney failure two years prior to his death and he was taken care by the defendant. However, the plaintiffs have not taken any steps to seek for amendment of the plaint. This is fatal to the case of the plaintiffs. The plaintiffs, without challenging the validity of the settlement deed, cannot be heard to contend that the settlement deed was obtained by fraud and coercion and it had deprived their right in the suit property. The plaintiffs, nowhere in the plaint have averred that the settlement deed was executed by taking advantage her father's illness.

14. It is pertinent to note that P.W.1 in her evidence has deposed that at the time of execution of settlement deed, both the plaintiffs were in the house of their father. The above evidence would categorically prove the case of the defendant that when the settlement deed was executed, both the plaintiffs were very well available in the house and they have not made any objections to that. On perusal of the testimony of the witnesses, it is made clear that without any pleadings in the plaint, questions were put to the witnesses on the defendant side that Palaniappa Gounder was not in sound state of mind while executing the settlement deed. In the absence of any pleadings with regard to the illness and unsound mind of Palaniappa Gounder in executing the settlement deed, the allegations that the settlement deed was procured from Palaniappa Gounder by taking advantage of his illness and unsound mind, cannot be countenanced. It is well settled that evidence or arguments advanced without pleading has to be simply rejected.

15. DW2 is one of the attestors of the settlement deed and DW4 is the scribe. DW3 is the Village Administrative Officer who has deposed about the Revenue Records in the name of



Palaniappa Gounder and the defendant based on the documents. The appellant has claimed shares in the suit property in view of the amended Act of Hindu Succession Act.

16. At this juncture, it is relevant to refer to Section 6 of the Hindu Succession Act, 1956. The said Section was amended by the Hindu Succession (Amendment) Act, 2005, (Act 39 of 2005). It reads as under:

'Section 6: Devolution of interest in coparcenary property :-

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005*, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall, -

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener: Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005*, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and, -

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-



this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property, which had taken place before the 20th day of December, 2004. But in this case, the plaintiffs have miserably failed to question the settlement deed executed by her father in favour of her brother, knowing fully well that it would affect and deprive their right. They have simply filed the present suit for partition. The settlement deed in this case would operate as a legal bar for the plaintiffs to file the present suit for a partition simplicitor.

18. Admittedly, the settlement of suit properties took place on 11.08.2003 which was much prior to 20.12.2004, when the amendment to the Hindu Succession Act came into force. Even assuming that the suit property is a coparcenary property in view of proviso to Section 6 (1), the appellant is not entitled to any share as the amendment will not affect the registered settlement deed which took place prior to 20.12.2004.

19. It is mainly contended by the learned counsel for the Appellant that as per the Hindu Succession (Amendment) Act, 2005 the appellant being the daughter of the Palaniappa Gounder, to be treated as Coparcener from the commencement of the Act. It is pertinent to note prior to the Amendment Act in a joint family, a female could not be a coparcenary. Even though the intention of the amended provisions is to confer better rights on the daughters, it cannot be treated to the extent of holding that the succession which had opened prior to coming into force of the amended Act are also required to be re-opened. In the case on hand, the Settlement Deed was executed before the amendment of the Act and the appellant also knows very well about the execution of the settlement deed and she has not objected the same at the time of execution leaving the defendant to become the absolute owner of the suit property. It is admitted that the revenue records also stood mutated in the name of respondent.

20. Considering the facts that the registered settlement deed was executed as early as on 11.08.2003 and the allegations that the settlement deed was procured by taking advantage of the illness or unsound mind were not even pleaded by the plaintiffs and also in view of the proviso class in Section 6 of the amended Act, the appellant is not entitled to claim partition in the suit property. The Judgment and decree of the trial Court, therefore, needs no interference by this Court. The appellant is also not entitled to any other relief and the point framed for determination in this appeal are answered accordingly.



21. In the result, the judgment and decree dated 30.03.2010 in O.S.No.26 of 2007 (Namakkal Sub-Court O.S.No.33 of 2005) on the file of Additional District Judge/ Fast Track Court, Namakkal is confirmed. The Appeal Suit is dismissed. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

ggs/vum
To

1. The Additional District Judge
/ Fast Track Court, Namakkal.
2. The Section Officer,
VR Section, Madras High Court,
Chennai.

+1cc to Mr.V.Manohar, Advocate Sr.29803
+1cc to Mr.S.Senthil, Advocate Sr.30408

A.S.No.499 of 2013

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