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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2022

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.NO.333 OF 2020

AND

C.M.P.NO.6803 OF 2020

1. S.Balasundaram
2. S.Rameshkumar

... Appellants/Defendants

.Vs.

1. Chellammal
2. Kannagi
3. Chitra
4. Santhi
5. R.Muralikumar
6. Kamaladevi
7. V.Gowtham
8. V.Anish

... Respondents/Defendants

1 to 4 & 5 to 9

PRAYER:-

Second Appeal is filed under Section 100 of C.P.C against the judgement and decree dated 22.08.2019 made in A.S.No.64 of 2018 on the file of the Second Additional District Court, Erode confirming the judgment and decree dated 05.04.2018 made in O.S.No.226 of 2012 on the file of the Second Additional Sub Court, Erode.

For Appellants : Mr.N.Manoharan

JUDGEMENT

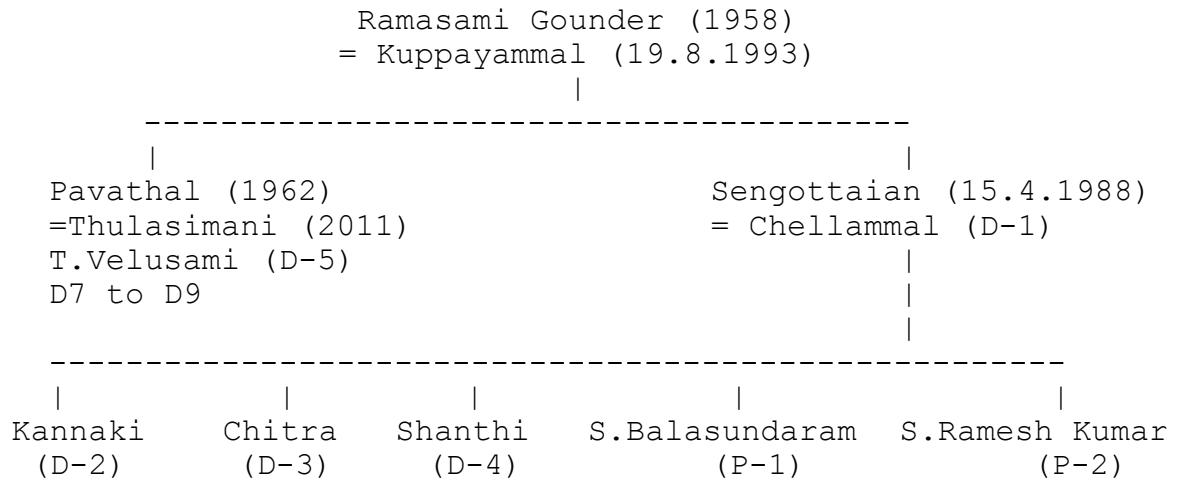
The above appeal is filed challenging the concurrent judgment and decree in A.S.No.64 of 2018 on the file of the II Additional District Judge, Erode, confirming the judgment and decree in O.S.No.226 of 2012 passed by the II Additional Subordinate Judge, Erode.

2. The brief facts necessary for disposing of the above Second Appeal are herein below narrated.



The case of the Plaintiffs:

(i) The plaintiffs and the defendants 2 to 4 are the sons and daughters of the first defendant and the deceased Sengottaian. The 5th defendant is the son of the deceased Pavathal. The Genealogy for morefully understanding the relationship between the parties is herein below reproduced:



(ii) The plaintiff would contend that the II item of the suit schedule properties is the ancestral property of the said Ramasamy Gounder, the plaintiff's grand father and his brother Muthu Gounder. It was the case of the plaintiffs that from and out of the income derived from the ancestral properties, the said Ramasamy Gounder and his brother had jointly purchased Item I of the suit schedule properties under a Sale Deed dated 05.02.1932. The said Muthu Gounder died in the year 1957, leaving behind his brother, Ramasamy Gounder as his sole legal heir. Therefore, Ramasamy Gounder became the owner of the suit I and II item of the suit schedule properties.

(iii) It is the further case of the plaintiffs that Ramasamy Gounder died intestate in the year 1958 leaving behind him surviving his wife, named Kuppayammal, daughter, named, Pavathal, and son, named Sengottaian (father of the plaintiffs and defendants 2 to 4). The said Kuppayammal died in the year 19.08.1993 and her daughter died intestate in the year 1962, leaving behind her surviving her husband, Thulasimani and her son, the 5th defendant as her legal heirs to succeed her estate. The said Thulasimani also passed away in the year 2011 and the father of the plaintiffs died on 15.04.1988. Therefore, the plaintiffs and defendants 2 to 4 alone are members and co-parceners of the Hindu undivided Family.



(iv) The plaintiffs, in the 3rd week of April 2012, had approached the Indian Bank, Erode Branch for availing certain loan facilities for their agricultural activities. The Bank had requested them to obtain a legal opinion from the panel Advocate. The panel Advocate therefore directed the plaintiffs to obtain the Encumbrance Certificate in respect of the suit properties. Only when they had obtained the Encumbrance Certificate, the plaintiffs had come to know that their father had executed a registered Release Deed dated 23.02.1981 in favour of his mother, Kuppayammal with reference to the suit properties. The said Kuppayammal had in turn settled these properties on the 5th defendant the son of her daughter Pavathal under two Settlement Deeds dated 04.10.1989 and 06.10.1989. The plaintiffs would therefore contend that on the date of the execution of the Release Deed, they were aged 10 and 11 years respectively and since the properties were ancestral, one of the sharers cannot execute a release deed in respect of these properties. Therefore, the release deed is not binding upon the plaintiffs. The subsequent Settlement Deed executed by the said Kuppayammal consequently would also not bind the plaintiffs. Considering the fact that the suit properties are ancestral and joint family properties of plaintiffs and defendants 1 to 5, the plaintiffs are entitled to a 21/108 share, the 1st defendant is entitled to a 12/108 share, defendants 2 to 4 are entitled to a 12/108 share and the 5th defendant is entitled to a 18/108 share in the suit properties. The plaintiffs had come to know that the 5th defendant was taking steps to alienate the properties with an intent to alter the existing features. Therefore, the plaintiffs had come forward with the above suit, seeking partition of their 42/108 contiguous share in the suit schedule properties. Pending suit, the 5th defendant died and his legal representatives were brought on record as defendants 7 to 9.

3. The written statement of the defendant-5

The 5th defendant prior to this death had filed a written statement inter-alia admitting the relationship between the parties, but however, contending that the allegation that the plaintiff and the defendants 1 to 4 are the members and co-parceners of the Hindu undivided Family, was totally a false statement. The 5th defendant would submit that the plaintiffs are guilty of suppression in as much as they had not made averments about the earlier partition suit filed by them in O.S.No.245/76 on the file of the Principal Subordinate Court, Erode, in which, a compromise decree was passed. By reason of this partition, the co-parcenary nature of the property had ceased to exist. On the basis of this compromise decree in O.S.No.245 of 1976, the plaintiffs had also alienated certain items allotted to them each would clearly show that the compromise was given effect to. The 5th defendant would submit that the plaintiffs and the



defendants 1 to 4 have no right, title or interest to the suit properties. The suit properties were in the exclusive possession and enjoyment of the Kuppayammal till the settlement Deed was executed in favour of the 5th defendant. Thereafter, the 5th defendant was enjoying the property by mutating the revenue records, electric motor service connection etc., The defendants would further contend that the Release Deed dated 23.02.1981 is a written document acknowledging the oral family arrangement entered into between the father of the plaintiffs, Sengottaian and his mother, Kuppayammal. The defendants had also submitted that the suit is bad for partial partition and is therefore, liable to be dismissed.

4. Additional Written Statement of the defendant-5

An additional written statement was filed by the 5th defendant on 04.03.2014, wherein, the 5th defendant had pleaded that the deceased Muthu Gounder, the brother of Ramasamy Gounder, had bequeathed his share in favour of plaintiff's father Sengottaian under a Registered Will dated 04.09.1944. The grand father of the plaintiffs, Ramasamy Gounder was no more, which is evident from a perusal of the Will dated 04.09.1944. After the death of Ramasamy Gounder, his wife Kuppayammal and son Sengottaian derived a 1/2 share respectively in the suit properties and after the coming into force of the Hindu Succession Act, 1956, the life estate of Kuppayammal had enlarged into her absolute properties. On 23.02.1981, Sengotaiyan had also executed a Release Deed in favour of his mother, Kuppayammal, who in turn, had settled the properties in favour of the 5th defendant. Therefore, the 5th defendant is the absolute owner of the suit properties.

5. Trial Court:

The II Additional Subordinate Judge, Erode had framed the following issues, which are herein below extracted:

- 1) Whether the plaintiff is entitled to the relief of partition as prayed for?
- 2) Whether the plaintiff is entitled to 56/108 shares as prayed for?
- 3) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for against 5th defendant?
- 4) Whether the compromise decree passed in O.S.No.245/76 is true?



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5) Whether the suit is not maintainable for bring his entire property for partition in this suit?

6) To what relief the plaintiff is entitled for?

Thereafter, the learned Judge had framed the following additional issues:

Additional issues:

1) Whether the suit as framed is maintainable?

2) Whether the suit is bad for non joinder of parties?

6. The second plaintiff examined himself as P.W-1 and marked Exhibits A1 to A20. On the side of the defendants, 8th defendant examined as D.W.1 and one Sengottaian had adduced evidence as D.W-2 and Exhibits B1 to B17 were marked.

7. The learned Subordinate Judge, Erode on an elaborate consideration of the evidence on record held that the plaintiffs had failed to prove the ancestral nucleus and that there was a surplus from the same, which provided the consideration for the purchase of the other properties. The learned Judge held that the plaintiffs had miserably failed to prove that this is an ancestral nucleus and in the absence of the same, the plaintiffs cannot succeed with their case that the properties were ancestral. That apart, the trial Court has relied upon Exs.B-1 and B2, which are the plaint and decree in the suit O.S.No.245 of 1976 filed by the plaintiffs on the file of the Subordinate Court, Erode for partition. The said suit was compromised between the parties. The plaintiffs, who have come forward with the suit for partition, have not included those properties, which are the subject matter of earlier suit O.S.No.245 of 1976, which would clearly show that the compromise decree had been acted upon. The learned Judge ultimately dismissed the suit. Aggrieved by the above judgment and Decree, the plaintiff had filed A.S.No.64 of 2018 on the file of the II Additional District Court, Erode. The learned Judge also concurred with the judgment and decree of the trial Court and dismissed the appeal. Aggrieved by the same, the plaintiffs are before this Court.

8. Heard Mr.N.Manoharan, who made his submissions seeking to admit the above Second Appeal.

9. A perusal of the records, particularly, the pleadings and the judgment of the Courts below, show that the plaintiffs' case



is that the suit II item of the properties, which is ancestral, had formed the nucleus for the purchase of the properties described as Item No.II in the suit schedule properties. The II item of the suit properties is a house site measuring an extent of 1200 sq.ft. The plaintiffs have not established that this house site yielded the income, which was utilised for the purchase of Item 1 of the suit schedule properties. In the absence of this proof, the plaintiffs' contention that the I Item of the suit properties, was purchased from the ancestral nucleus, has to necessarily fail. Further, the plaintiffs have not denied the earlier suit for partition in O.S.No.245 of 1976, which had ended in compromise. Pursuant to this, their father has executed a Release Deed in favour of their mother. On the basis of this Release Deed, Kuppayammal, the plaintiffs' grand mother, had also executed a Settlement Deed in favour of the 5th defendant. The Release Deed has been executed by the plaintiffs' father as early as in the year 1981. This Release Deed is not sought to be set aside by the plaintiffs. Both the Courts below had extensively considered the evidence to come to the conclusion that the plaintiffs are not entitled to a decree for partition. The plaintiffs have not been able to establish that the findings of the Courts below are perverse and requires re-consideration. The plaintiffs have also not made out any question of law, much less a substantial question of law, to persuade this Court to admit this Second Appeal.

10. In the result, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

srn

To

1. The II Additional District Judge,
Erode.
2. The II Additional Subordinate Judge,
Erode.



3. The Section Officer,
V.R. Section,
High Court, Madras.

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+1cc to Mr.N.Manoharan, Advocate, S.R.No.33304

S.A.NO.333 OF 2020 AND
C.M.P.NO.6803 OF 2020

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