



A.S.No.69 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.01.2022

PRONOUNCED ON : 06.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

Appeal Suit No.69 of 2015

and

M.P.No.1 of 2015

N.Kalamani

.. Appellant

Versus

1. S.Velusamy

2. S.Chenniyappan

3. S.Rayappan

4. S.Subramaniam

5. S.Ponnusamy

.. Respondents

This Appeal Suit has been filed, under Section 96 & Order XLI Rule 1 of CPC as against the Judgment and decree dated 30.07.2014 passed in O.S No.646 of 2011 by the learned I Additional District Judge, Coimbatore.

For Appellant : Mr. G. Karthikeyan

For Respondents : Mr. C.R. Prasanan

JUDGMENT

(This case has been heard through Video Conferencing)

This appeal has been filed, challenging the Judgment and decree, dated 30.07.2014, passed in O.S.No.646 of 2011 on the file of the learned I Additional District Judge, Coimbatore.



A.S.No.69 of 2015

2. For the sake of convenience, the parties are hereinafter referred to

as "plaintiffs" and "defendant" as has been arrayed before the trial Court".

3. The case of the plaintiffs is as follows:

The property described in the plaint schedule is the self-acquired properties of late Kaliathal @ Kaliammal. The plaintiffs and the defendant are the children of late Kaliathal @ Kaliammal. On 12.12.2010, the said Kaliathal @ Kaliammal died intestate leaving behind the plaintiffs and the defendant as her legal heirs. The Plaintiffs further stated that their father predeceased their mother. Therefore, as per the Hindu Succession Act, the plaintiffs and the defendant are the legal heirs of late Kaliathal @ Kaliammal and they are entitled to 1/6th share each in the suit property. The plaintiffs and the defendant are the co-owners of the suit schedule property. It is stated that for a period of one year prior to the institution of the suit, the plaintiffs have been demanding the defendant to agree for amicable partition, but the defendant has been evading the same. Hence, the suit filed for partition.

4. The suit was resisted by the defendant by filing a written statement stating that the relationship between the parties are admitted.

However, the allegation that the plaintiffs and the defendant are the co-owners



A.S.No.69 of 2015

of the suit schedule property is false. It is stated that during her life time, her mother late Kaliathal @ Kaliammal, out of love and affection towards her, had executed a Gift Settlement Deed dated 29.07.2010 in her favour and handed over the possession of the suit schedule property to her. From the date of execution of Gift Settlement Deed, the defendant is in possession and enjoyment of the suit schedule property and also mutated her name in all the Revenue Records. The Plaintiffs are fully aware of the execution of the registered gift deed dated 29.07.2010, however, by suppressing the Gift Settlement Deed, the plaintiffs have filed the suit for partition. In view of the execution of the settlement deed in her favour, the suit for partition is not maintainable. The property described in the plaint is not feasible of division. The plaintiffs have no right to file the suit for partition as there is no cause of action for filing the suit. Hence, the defendant prayed for dismissal of the suit.

5. A reply statement was filed by the plaintiffs by stating that the Gift Settlement Deed dated 29.07.2010 said to have been executed by late Kaliathal @ Kaliammal in favour of the defendant is a forged and created document. The mother of the plaintiffs and defendant had not executed any such Settlement Deed in favour of the defendant. The said Kaliathal @ Kaliammal was in possession and enjoyment of the suit schedule property till her death.

After her death, both the plaintiffs and the defendant are in joint possession



and enjoyment of the suit schedule property.

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6. On the above pleadings, the following issues were framed by the Trial Court namely:-

- (i) Whether the defendant is entitled to the suit property as per the settlement deed dated 29.07.2010?
- (ii) Whether the suit property is available for partition ?
- (iii) To what other relief the plaintiffs are entitled to?

7. Before the Trial Court, on the side of the Plaintiffs, P.W.1 was examined and Exs.A1 to A3 were marked. On the side of the Defendant, D.W.1 to D.W.4 were examined and Exs.B1 to B31 were marked. Ex.X1 was also marked as Court document. The trial Court decreed the suit for partition. Aggrieved over the same, the defendant has preferred this present Appeal Suit.

8. The learned counsel appearing for the defendant-appellant would submit that the defendant has clearly proved that on 29.07.2010, a Gift Settlement Deed under Ex.B4 was executed in her favour which was registered as document No. 8808 of 2010. However, the plaintiffs have not challenged the Gift Deed in a manner known to law. When the plaintiffs have admitted the existence of Gift Deed dated 29.07.2010, without challenging it, they are



A.S.No.69 of 2015

estopped from filing the present suit for partition. The suit property is not available for division in as much as it is in the absolute possession and enjoyment of the defendant as a lawful owner. The defendant also mutated the revenue records on the strength of the Gift Settlement Deed dated 29.07.2010. The execution of Gift Settlement Deed dated 29.07.2010 in favour of the defendant is a bar for the plaintiff to file the suit for partition. The trial Court, without considering the above, has erroneously decreed the suit and it calls for interference by this Court.

9. Per contra, the learned counsel for the plaintiffs/respondents would contend that the Gift Deed dated 29.07.2010 is a sham and nominal document and it will not bind the plaintiffs in any manner. Their mother Kaliyathal never executed any document dated 29.07.2010. Even without admitting the Gift Deed dated 29.07.2010, it is stated that such a Gift Deed might have been obtained by force and coercion and therefore, it is not a valid conveyance. The trial Court, therefore, rightly held that the Gift Deed will not bind the plaintiffs and granted a decree for partition. Such a well considered Judgment of the trial Court requires no interference.

10. This Court heard the submissions of the learned counsel for the



A.S.No.69 of 2015

appellant / defendant as well as the learned counsel for the respondents /
plaintiffs and perused the materials placed on record.

11. The point for consideration in this appeal is

- (i) Whether the Gift Settlement Deed under Ex.B4 is a bar for the plaintiffs to maintain the suit for partition?
- (ii) Whether the failure on the part of the plaintiffs to challenge Ex.B4 would disentitle them to get a decree for partition?
- (iii) Whether a partial partition sought for by the plaintiffs without including the other properties of their mother is maintainable?

12. It is not in dispute that the plaintiffs and the defendant are the children of Late. Kaliyathal. The husband of Kaliyathal pre-deceased her. The mother Kaliyathal died on 12.12.2010. According to the plaintiffs, their mother died *intes tate* and therefore, the suit property is available for partition.

13. On notice, the defendant filed a written statement stating that her mother Kaliyathal did not die *intes tate*. On the other hand, she had executed a Registered Gift Deed dated 29.07.2010 in her favour in respect of the suit property and the suit property is her exclusive property. It is also stated that



A.S.No.69 of 2015

the defendant had mutated the revenue records and therefore, without challenging the Gift Deed dated 29.07.2010, the Plaintiffs cannot seek for partition of the suit property.

14. It is seen from the written statement that the defendant has categorically stated that her mother executed a Registered Gift Deed dated 29.07.2010 in her favour and it was also marked as Ex.B4. The defendant also stated that the plaintiffs were fully aware of the execution of the gift deed in her favour. The plaintiffs also filed a rejoinder in which they have simply stated that the Gift Deed dated 29.07.2010 is sham and nominal document and it will not bind her. Thus, it is not the case of the plaintiffs that there was no gift settlement deed executed in favour of the defendant by their mother, but the said gift settlement deed is a sham and nominal document and it will not bind them. If it is so, the plaintiffs ought to have either amended the plaint to include a relief of declaration to declare the gift settlement deed under Ex.B4 as null and void. However, the plaintiffs have not taken any steps to challenge the Gift settlement Deed under Ex.B4. They have not filed any application for amendment of the plaint. They have merely stated that the Gift Deed under Ex.B4 is not a valid document and it will not bind them. When the defendant has come forward with a categorical statement that her mother did not die *intes*



A.S.No.69 of 2015

tate and she had executed the Gift Deed under Ex.B4 in her favour, the plaintiffs ought to have subjected it to challenge in a manner known to law and established that the suit property is available for partition. However, the plaintiffs miserably failed to do so. In fact, in the plaint, it was stated that their mother died *intestate* but it was disproved by the defendant by marking Ex.B4, registered gift settlement deed in her favour. Therefore, it can be construed that the plaint has been filed by misrepresentation without disclosing the gift settlement deed under Ex.B4 in favour of the defendant.

15. The plaintiffs have filed the suit property for partition against the defendant, thereby, indirectly, they have admitted the possession of the suit property by the defendant. Further, when the defendant has come up with a written statement and disclosed about the settlement Gift Deed under Ex.B4 in her favour, it amounts to disproving the plaint averments. In such event, the burden of proof shifted on the shoulders of the plaintiffs. The Plaintiffs have miserably failed to prove that the settlement deed is not valid and it will not bind them. A mere assertion on the part of the plaintiffs that Ex.B4 is an invalid document and it will not bind them in any manner is grossly insufficient for the plaintiffs to get a decree for partition. In fact, the defendant examined DW4, Rajeswari, who had attested Ex.B4, gift settlement deed. DW4 in her



A.S.No.69 of 2015

deposition has categorically stated that at the request of the defendant and the deceased Kaliyathal, she had attested the gift settlement deed. That apart, the defendant also examined Geetha Samuel, DW3, who is the document writer. Furthermore, DW2, Senthil Kumar, an official witness from the office of the Sub-Registrar was examined to prove the registration of the gift settlement deed under Ex.B4. When that be so, it is clear that the defendant had discharged her initial burden and the burden of proof shifted to the shoulders of the plaintiffs to prove that the Gift Settlement Deed under Ex.B4 is a sham and nominal document or it has been made to be executed by force etc., As mentioned above, the plaintiffs failed to disprove the validity or enforceability of Ex.B4 and therefore, they are not entitled for a decree for partition. In any event, Ex.B4 is a registered document and it had partaken the character of a valid document unless the contrary is proved.

16. The trial court has considered the mutation of revenue records and the inclusion of the name of the deceased Kaliyathal as well as the defendant to conclude that the suit property has not been conveyed or stood transferred in the name of the defendant. This finding is erroneous and legally not sustainable. First of all, the suit was filed by the plaintiffs for partition and the defendant has defended it on the ground that under Ex.B4 the suit property has



been conveyed to her and therefore the question of partition of the suit property will not arise. When Ex.B4 is a registered gift settlement deed by which the defendant acquired title to the suit property, the trial court, placing reliance on the entries relating to revenue records for issuance of patta or chitta etc., is insignificant for consideration.

17. The learned counsel for the appellant-defendant also contended that the suit for partial partition is bad and it is not maintainable. Before the trial court, the defendant had contended that some other properties of the deceased Kaliyathal are also available but the plaintiffs failed to include those properties also in the suit for partition. However, the trial court grossly ignored the same by rendering a finding that if it is so, it is open to the defendant to seek for partition of those properties in a manner known to law. This finding of the trial court cannot be countenanced inasmuch as it is well settled that a decree for partial partition is not legally sustainable. When a suit for partition is filed, all the properties which are liable for division among the parties have to be included. In this context, the learned counsel for the appellant-defendant placed reliance on the decision of the Honourable Supreme Court in the case of **Kenchegowda (since deceased) by LRs vs. Siddegowda @ Motegowda** reported in **1994 (4) Supreme Court Cases 294** wherein it was held that a suit



A.S.No.69 of 2015

for partial partition, in the absence of inclusion of other joint family properties,
is not warranted in law.

18. In the light of what is stated above, the points framed for determination in this appeal are answered in favour of the appellant-defendant and against the respondents-plaintiffs.

19. In the result, the Judgment and decree, dated 30.07.2014, passed in O.S.No.646 of 2011 on the file of the learned I Additional District Judge, Coimbatore is set aside. The appeal suit is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

06.06.2022

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

ssi

1. I Additional District Judge,
Coimbatore.
2. The Record Keeper, VR Section,
Madras High Court.



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A.S.No.69 of 2015

A.A.NAKKIRAN, J.

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Pre-Delivery Judgment made in
A.S.No.69 of 2015

06.06.2022