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Appeal Suit No.494 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Appeal Suit No.494 of 2016

Murugaiyan

... Appellant

Versus

1.Sundarammal

2.Sivakumar

... Respondents

Appeal Suit is filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, against the Judgment and Decree dated 18.02.2016 passed in O.S.No.57 of 2011, on the file of the learned IV-Additional District Judge, Coimbatore, in so far as it relates to Item Nos. 'A' to 'C' of the suit schedule properties is concerned.

For Appellant : Mr.K.Govi Ganesan
For Respondents : Mr.N.Surya Senthil,
for M/s. Surana & Surana

JUDGMENT

This Appeal Suit is filed against the judgment and decree of the learned IV Additional District Judge, Coimbatore, dated 18.02.2016 in O.S.No.57 of 2011, in and by which, the suit filed for partition of four items of the suit schedule property was partly dismissed in respect of item



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Nos.2 & 3, while decreeing the suit, granting $\frac{1}{2}$ share of item Nos.1 & 4 of the suit properties. The aggrieved plaintiff has come up with the present Appeal Suit.

2.The case of the plaintiff is that the suit properties are joint family properties, originally, belonging to One *Onnappa Gowder* and his four sons. The four sons divided the properties as per the said partition deed dated 29.06.1949. As per the said partition deed the first item of the property which was mentioned in the suit schedule along with a house property was allotted to *Ramaiya Gowder*. The said *Ramaiya Gowder* is the father of the plaintiff and the first defendant. Thereafter, the said *Ramaiya Gowder* and his son, namely, the plaintiff, had jointly sold the house property under a registered sale deed, dated 06.06.1985. The first item of the property is fertile land and out of the income of the suit schedule property, item No.1 of the property, and item No.2 was purchased. The item No.3 of the suit schedule property was a *Nattham Poramboke* land occupied by the said *Ramaiya Gowder*. Item No.4 of the suit property was purchased by One *Mathakkal*, the mother of the plaintiff and the first defendant by way of a sale deed, dated 26.08.1956. The said *Mathakkal*, died on 17.10.1997.



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3.It is the further case of the plaintiff that the plaintiff came to understand that the said *Ramaiya Gowder*, executed two settlement deeds, dated 25.11.1999, one in favour of the 1st defendant with respect to item No.2 of the property and another one, in favour of the 2nd defendant, with respect to item No.3 of the suit property. Immediately thereof, the plaintiff issued a notice on 04.09.2000, calling upon the defendants to cancel the said documents. To the said notice the defendants sent a reply notice on 29.05.2000. It is further stated that subsequently, the plaintiff came to know that the settlement deeds were not true and were not executed by *Ramaiya Gowder*. Therefore, the settlement deeds are invalid. Hence the suit was filed claiming 3/4th share in items Nos.1 to 3 of the suit properties and one-half share in item No.4 of the suit properties.

4.The suit was resisted by the defendants by filing a written statement. According to the defendants, the agricultural lands in S.Nos.347/1 & 358/1, in all ad-measuring a total extent of 5.32 acres originally belong to one *Sivanakkal*, the grand mother of the plaintiff. She had purchased the same by a sale deed, dated 21.01.1916. Similarly, the agricultural lands situated in S.No.347/1A, and 358/1A were jointly purchased by the four brothers by a sale deed, dated 01.04.1939. The



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properties are self-acquired properties of *Ramaiya Gowder*. Since the female members were involved, the properties cannot be treated as joint family properties. Thus, item No.1 is not a joint family property, and the contention that the other items are also joint family property cannot be countenanced.

5.As far as, item Nos.2 and 3 are concerned, since they are self-acquired properties of *Ramaiya Gowder*. By virtue of two separate settlement deeds, executed by him on 25.11.1999 in favour of the defendants Nos.1 & 2, the defendants Nos.1 & 2 have become the absolute owners of those properties and hence, it is not available for partition. Even the first defendant had also mortgaged on 31.03.2003 to M/s. The Karamadai Co-operative Primary Agricultural and Rural Development Bank Ltd.

6.On the basis of the said pleadings, the Trial Court framed three issues which are hereunder:-

“ 1. Whether the Plaintiff is entitled for partition as prayed for ?



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2. *Whether the settlement deeds are true and genuine and binding on the Plaintiff?*

3. *To what other relief?*”

7. On the above issues, the plaintiff examined himself as P.W.1 and ***Exs.A-1 to A-13*** were marked. One *Marannan* was examined as D.W.1 and the second defendant/*Sivakumar* was examined as D.W.2 and One *R.Malathi* was examined as D.W.3 and ***Exs.B-1 to B-18*** were marked. This apart, the Report of the Tamil Nadu Finger Print Bureau with photocopies of the Finger prints, was summoned and marked as ***Ex.X-1***.

8. Thereafter, the Trial Court proceeded to consider the case of the parties and by a Judgment, dated 18.02.2016, the Trial Court found that the plaintiff failed to prove that suit properties are ancestral properties and that the properties were purchased out of the joint family nucleus and as such are self acquired properties. Being self-acquired properties, when the plaintiff's father himself had dealt with the items Nos.2 & 3 of the suit schedule properties by way of two separate settlement deeds dated 25.11.1999 to the knowledge of the plaintiff and came to the conclusion that the items Nos.2 & 3 of the properties are not available for partition. In



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respect of items Nos.1 and 4 of the suit properties, having held that the same is available for partition, the Trial Court passed a preliminary decree for half share for the plaintiff and half share to the first defendant. Aggrieved by the same, the present Appeal Suit is filed before this Court.

9.Heard *Mr.K.Govi Ganesan*, learned Counsel appearing for the Appellant/plaintiff and *Mr.N.Surya Senthil*, learned Counsel appearing for the Respondents/defendants.

10.The learned Counsel for the plaintiff would submit that in this case, in any event, the settlement deeds are disputed and have not been acted upon. When the plaintiff has specifically disputed the settlement deeds and has disputed that the plaintiff's father had even executed the same, the defendants have not properly proved the settlement deeds. Therefore, the Trial Court ought to have decreed the suit in respect of all the four suit properties.

11.Per contra, the learned Counsel for the defendants would submit that, the settlement deeds were validly executed and as a matter of fact, it has been duly acted upon. The first defendant had also mortgaged the



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property given to her. The defendants Nos.1 & 2 were enjoying the property as it was their exclusive property to the knowledge of the plaintiff. The defendants have produced the Patta Passbook and the Property Tax receipts and the EB Service Connection cards etc., to show their exclusive possession. Therefore, the plaintiff having been silent about the same for a period of about 12 years from the date of execution of settlement deeds, and also considering that the settlement was not being questioned by way of separate relief prayed for in the suit, the Trial Court has rightly dismissed the suit with respect to item Nos.2 & 3 of the suit properties.

12.I have considered the rival submissions made on behalf of either side and perused the material records of the case.

13.As far as the decree granted in respect of item Nos.1 & 4 of the suit properties, the same has been accepted by the defendants. The only question which is to be decided in this Appeal Suit is the grievance of the plaintiff/appellant that the Trial Court ought to have decreed the suit in respect of item Nos.2 & 3 of the suit properties also. In this regard, even though the plaintiff has disputed the execution, even the fingerprint record



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that was made by the father during execution of the said settlement has been summoned and marked as **Ex.X-1** and the attesting witness of the settlement deed was examined D.W.3. Thus, on a perusal of the evidence on record, the settlement deeds are proved in accordance with law and the plaintiff has not done anything to further dislodge due execution of the settlement deeds. Therefore, I hold that the settlement deeds have been duly proved by the defendants. This apart, the first defendant had even further mortgaged the property and the parties have further acted upon and even the revenue records stood mutated. In that view of the matter, the plaintiff had been silent and keeping quiet even after coming to know of the said settlement deeds, filing a suit only in the year 2011 is hopelessly barred by limitation. The Trial Court has rightly found that the suit properties are the self-acquired properties. The Appeal Suit is bound to fail as without any merits. Accordingly, I find that the findings of the Trial Court in respect of all the issues as correct, I answer the issue Nos.1 to 3 accordingly.

14.In the result,

(i) The Appeal Suit in A.S.No.494 of 2016 is dismissed;



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(ii) Since the preliminary decree is passed in respect of items Nos.1 & 4 of the suit schedule property, in view of the Judgment of Hon'ble Supreme Court of India in ***Kattukandi Edathil Krishnan v. Kattukandi Edathil Valsan***¹⁵, as per the Judgment of the Hon'ble Supreme Court of India, the Trial Court shall continue the proceedings without awaiting application for the final decree from the parties and therefore, post this matter for hearing before the Trial Court for Final Decree proceedings in respect of item Nos.1 & 4, on 23.11.2022;

(iii) It is made clear that the parties shall appear before the Trial Court without any further notice, and the matter will be taken up for final decree proceedings;

(iv) There shall be no orders as to costs.

26.10.2022

Index : yes/no

Speaking/Non-speaking order

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To

1.The IV-Additional District Judge, Coimbatore.

2.The Section Officer, V.R. Section, High Court of Madras.

¹⁵ 2022 SCC OnLine SC 737



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D.BHARATHA CHAKRAVARTHY, J.

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