



A.S.No.625 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :12.08.2022

PRONOUNCED ON : .10.2022

CORAM :
THE HONOURABLE MS.JUSTICE V.M.VELUMANI
AND
THE HONOURABLE MR.JUSTICE S.SOUNTHAR

A.S.No.625 of 2016
and C.M.P.No.17638 of 2016

1.D.Ramasamy
2.Saraswathy
3.Neelavathy

... Appellants/Defendants

Vs

1.Dhanalakshmi
2.D.Thangavel

... Respondents/Plaintiffs

Prayer: First Appeal filed under Section 96 r/w Order 41 Rule 1 of Civil Procedure Code, praying to set aside the judgment and decree dated 16.03.2016 passed in O.S.No.90 of 2014, on the file of the V Additional District Judge, Coimbatore.

For Appellants : Mr.R.Lakshmi Narasimhan

For Respondents : No Appearance
for R1 and R2



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JUDGMENT

S.SOUNTHAR, J

The defendants are the appellants. The respondents herein, who are the siblings of the appellants filed a suit for partition in O.S.No.90 of 2014, on the file of the V Additional District Judge, Coimbatore, claiming 3/6th share in the suit property. The said suit was decreed as prayed for. Aggrieved by the same, the defendants have come up with this first appeal.

2. Gist of the plaint averments:

According to the respondents, the parties to the suit are children of Devanasamy Gounder and Nanjammal. The suit properties were absolute properties of parents of Devanasamy Gounder, namely Karuppa Gounder and his wife Nanjakkal (mentioned as Nanjammal is plaint and Nanjakkal is Ex.A1-partition deed). After their demise on 16.12.1989 and 18.12.1989 respectively, their children namely Devanasamy Gounder, Rangasamy and Chinnaamy enjoyed the properties. The said Devanasamy Gounder and Rangasamy died on 29.09.1997 and 19.01.2004 respectively. Thereafter, the family properties



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enjoyed by them were partitioned among the heirs of Devanasamy Gounder (plaintiffs and defendants), heirs of Rangasamy and Chinnasamy by registered partition deed dated 16.11.2011 marked as Ex.A1. Under the “A” schedule of said partition deed, the suit property was allotted to the heirs of Devanasamy Gounder namely the plaintiff, defendants and their mother Nanjammal. Subsequently, said Nanjammal (Widow of Devanasamy Gounder) had settled her 1/6th share in the suit property in favour of respondents, who are the daughter and son of Nanjammal (under Settlement deed dated 29.08.2013, which was marked as Ex.A2). Therefore, the respondents/plaintiffs claimed 3/6th share in the suit property and laid the above suit for partition as appellants were not ready for amicable partition as demanded by respondents.

3. The Gist of averments found in the written statement:

The appellants/defendants filed a written statement admitting the allotment of suit properties to plaintiffs, defendants and their mother Nanjammal in the family partition marked as Ex.A1. However, the settlement deed executed by Nanjammal in favour of respondents was specifically denied. The appellants specifically averred in the written statement that the respondents



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in order to grab the property created the said settlement deed, when Nanjammal had no intention to execute the settlement deed. The appellants also averred that there was arrangement between the respondents/plaintiffs and their mother Nanjammal, where under, it was agreed that Nanjammal is entitled to Rs.10,00,000/- in-lieu of her share in the suit property and her maintenance and hence she executed a release deed in respect of her 1/6th share in favour of both plaintiffs and defendants. As per the arrangement, Rs.10,00,000/- was given to Nanjammal in the presence of well wishers of the family and she also agreed to settle her undivided right in favour of the defendants and plaintiffs. The mental capacity of said Nanjammal to execute settlement deed was also disputed by the appellants. On these pleadings the parties went to the trial, the 1st plaintiff/1st respondent was examined as PW.1 and the mother of the parties and settlor in Ex.A2-settlement deed namely Nanjammal was examined as PW.2. The partition deed under which suit properties were allotted to the parties to the suit was marked as Ex.A1 and the settlement deed allegedly executed by Nanjammal in favour of the respondents was marked as Ex.A2. On behalf of the appellants/defendants, first appellant was examined as DW.1. The cousin brother of the parties namely son of Rangasamy was examined as



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DW.2. Exs.B1 to B5 were marked on their side.

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4. The trial Court framed the following issues:

(i) Whether the settlement deed dated 29.08.2013 in favour of the respondents is true and valid?

(ii) Whether the suit is bad for non-joinder of Nanjammal as a necessary party?

(iii) Whether the respondents are entitled for the relief of partition of the suit properties as prayed for?

(iv) To what relief the respondents are entitled to?

5. The trial Court after consideration of oral and documentary evidence on record, came to the conclusion that settlement deed executed by Nanjammal in favour of respondents was valid and binding on the parties and consequently, decreed the suit, allotting 3/6th share to the respondents/plaintiffs. Aggrieved by the same, the appellants have come up with this appeal.

6. Heard the arguments of the learned counsel for the appellants. Though notice was served on the respondents and Mr.B.Srikrishnan, learned



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counsel has entered appearance for the respondents, there is no representation for respondents.

7. The learned counsel for the appellants assailed the judgment passed by the trial Court mainly on the ground that the settlement deed Ex.A2 executed by Nanjammal in favour of respondents is not a valid document in view of the settled proposition of law that the Co-parcener cannot settle his undivided interest without consent of other Co-parceners. He relied on the decision reported in 2004(3) CTC 92 in Shanmugaiah and another vs Thirumalayandi Pandaram and 5 others, in support of his contention. The learned counsel submitted that if the settlement deed executed by Nanjammal is held to be invalid, then all the parties are entitled to 1/6th share equally and hence the trial court erred in allotting 3/6th share to the respondents, instead of 2/6th share.

8. On the basis of the pleadings of the parties available on record and contention of the learned counsel of the appellants, the following points are arising for consideration:



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(i) Whether Ex.A2-settlement deed executed by Nanjammal is valid or not?

(ii) Whether the judgment of the trial Court allotting 3/6th share to respondents/plaintiffs is liable to be set aside?

9. Points No.1 and 2:

With regard to the only contention raised by the learned counsel for the appellants that the Co-parcener cannot settle his undivided interest in Co-parcenary, without getting consent of other Co-parceners is concerned, this Court has no quarrel. The core point to be decided in this case is whether undivided interest settled by Nanjammal constitute her undivided interest in Co-parcenary. As far as execution of the settlement deed is concerned, the settlor herself entered into box as PW.2 and admitted execution of settlement. Therefore, the execution of the settlement is duly proved and the same was not disputed by the learned counsel for the appellants at the time of arguments. His only contention is legal validity of Ex.A2- settlement deed and entitlement of Nanjammal, to settle her undivided share in the suit properties. As per the admitted case of the parties, the properties belong to Karuppasamy Gounder



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and Nanjakkal. Reading of Ex.A1 partition deed, makes it clear that the properties dealt with therein, consist of self acquired properties of Nanjakkal and also Karuppa Gounder. Admittedly, they died on 16.12.1989 and 18.12.1989 respectively. On their death, by virtue of operation of Section 8 of Hindu Succession Act, their children namely Devanasamy Gounder, Rangasamy and Chinnasamy succeeded to the suit properties and other properties. Devanasamy Gounder died on 29.09.1997, leaving behind his widow Nanjammal, appellants and respondents. On death of Devanasamy Gounder, by operation of Section 8 of Hindu Succession Act, his widow Nanjammal and children namely the appellants and respondents in this appeal succeeded to his estate. Therefore, by intervention of Section 8 of Hindu Succession Act, the properties in the hands of Nanjammal and other heirs of Devanasamy Gounder had retained the character of self acquired properties. The heirs succeeded to the estate of Devanasamy Gounder on his death as tenants in common not as Joint tenants. On death of Devanasamy Gounder, Nanjammal succeeded to 1/6th share of his estate in her capacity as one of six surviving class-I heirs. In other words, on the death of Devanasamy Gounder, Nanjammal is entitled to 1/6th share in his estate and the same got crystallized.



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Recognising her equal right as Class-I heir, in Ex.A1 partition, “A” schedule properties were allotted to all the Class-I heirs of Devanasamy Gounder including Nanjammal. Hence, there is no *iota* of doubt in concluding that the suit properties are not Co-parcenery properties, but only separate properties in the hands of Nanjammal. All the Class-I heirs of Devanasamy Gounder succeeded to suit properties only as tenants in common not as Joint tenants. Therefore, the settled principle of law, a Co-parcener cannot settle his undivided interest in Co-parcenery property in favour of another person without consent of other co-parceners, cannot be applied to the facts of the present case. Nanjammal succeeded to 1/6th share of her husband's estate in her capacity as a Class-I heir and whatever she got from her husband by way of succession is only her separate property.

10. We would like to add that even Devanasamy Gounder and his brother Rangasamy and Chinnaasamy succeeded to the estate of their parents namely Karuppasamy Gounder and Nanjakkal only as Class -I heir by operation of Section 8 of Hindu Succession Act. As per the pleadings and also



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recitals in Ex.A1, the suit properties were self acquired properties of Karuppa Gounder and Nanjakkal and on their death, their sons Devanasamy Gounder and others succeeded to their estate by operation of Section 8 of Hindu Succession Act. On death of Devanasamy Gounder, Nanjammal and her children succeeded to the share of Devanasamy Gounder by operation of Section 8 of Hindu Succession Act. Therefore, by no stretch of imagination, the suit properties can be treated as co-parcenary properties and the subject matter of the settlement deed can be treated as an interest in the co-parcenary. Hence, we reject the contention of the learned counsel for the appellants. Therefore, we hold that Nanjammal is entitled to settle her undivided share in favour of respondents. Consequently, we do not find any reason to interfere with the conclusion of the trial Court allotting 3/6th share to the respondents/plaintiffs.

11. In the result, the appeal is dismissed. Taking into consideration, the close relationship of the parties, there shall be no order as to costs.



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12. In fine:

- (i) The appeal is dismissed by confirming the judgment and decree dated 16.03.2016 passed in O.S.No.90 of 2014, on the file of the V Additional District Judge, Coimbatore.
- (ii) There shall be no order as to costs.
- (iii) Consequently, connected miscellaneous petition is closed.

(V.M.V.J) (S.S.J)

.10.2022

Internet : Yes / No

Index : Yes / No

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To

The V Additional District Judge,
Coimbatore.

V.M.VELUMANI, J.
and
S.SOUNTHAR, J.
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