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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

SA.No.107/2022 & CMP.No.2307/2022

[Physical Hearing]

1.Duraikannu
2.Senthamarai ... Appellants / Defendants 4 & 5

Vs.

1.Sangeetha ... 1st Respondent/Plaintiff
2.P.Jagadeesan
3.Sakthivel
4.Subramanian ... Respondents 2 to 4 / Defendants 1 to 3

Prayer:- Second Appeal preferred under 100 of CPC against the decree and judgment in AS.No.51/2019 dated 01.11.2021 passed by the learned Principal Sub Judge at Ariyalur confirming the decree and judgment in OS.No.24/2012 dated 22.03.2019 passed by the learned Additional District Munsif, at Ariyalur.

For Appellants : Mr.C.Samivel

JUDGMENT

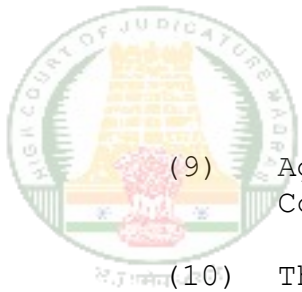
- (1) Defendants 4 and 5 in the suit in OS.No.24/2012 before the learned Additional District Munsif, Ariyalur, are the appellants in the above Second Appeal.
- (2) The 1st respondent herein, as plaintiff, filed the suit in OS.No.24/2012 for partition of her 1/4th share in the suit properties which are described as item Nos.1 to 7 and which are located in Kilimangalam Majra, Palayakkudi Village.
- (3) Brief facts that are necessary for the disposal of this Second Appeal are as follows.
- (4) The 1st defendant is the father of the plaintiff and the plaintiff and defendants 2 and 3 are his children. The



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suit properties are the joint family properties belonging to plaintiff and defendants 1 to 3. Stating that defendants 1 to 3 are trying to create fictitious documents in the name of the 4th defendant and that the 4th defendant has also created subsequent documents in the name of his daughter, namely the 5th defendant, the plaintiff was constrained to file the suit for partition of her 1/4th share.

- (5) The suit was contested only by the 4th defendant mainly on the ground that the suit properties though are joint family properties, the same were alienated in favour of the 4th defendant for family necessity and for legitimate expenses of the joint family. Stating that the entire sale consideration was spent only for necessary expenses of the family, it is contended that the plaintiff is not entitled to file the suit for partition after getting the benefit out of sale consideration.
- (6) The Trial Court framed a specific issue namely 'whether the suit property items No.1 to 6 were sold in favour of the 4th defendant for the benefit of the family and for the legal expenses for the family.' The Trial Court, after going through the entire evidence, found that the 4th defendant has not let in any evidence to show that the Sale Deed was executed for the benefit of family.
- (7) Since the Trial Court held that the plaintiff has proved the character of the suit properties and that the Sale Deed in favour of the 4th defendant is invalid, the suit for partition was decreed by granting 1/4th share to the plaintiff. Aggrieved by the judgment and decree declaring plaintiff's 1/4th share in all the suit properties, defendants 4 and 5 preferred an appeal in AS.No.51/2019 before the learned Principal Sub Judge, Ariyalur.
- (8) The Lower Appellate Court also confirmed the findings of the Trial Court and dismissed the Appeal Suit. One of the arguments advanced by defendants 4 and 5 before the Lower Appellate Court was that the plaintiff and the defendants 1 to 3 have colluded together and that the suit itself was engineered by the defendants. The Lower Appellate Court considered not only the issues that arise for consideration based on the pleadings but also the arguments made on behalf of the appellants therein with regard to specific pleadings and evidence.



(9) Aggrieved by the concurrent judgments and decrees of the Courts below, the present Second Appeal is preferred.

(10) The learned counsel for the appellants submitted that the Courts below have failed to appreciate the oral and documentary evidence in a proper perspective. It is admitted by the plaintiff and defendants 1 to 3 that several properties of the family were dealt with by the plaintiff and defendants 1 to 3 and that those properties which were alienated by them, have not been shown as properties in the present suit. By this, the learned counsel for the appellants suggested that the suit is bad for partial partition as many of the properties belonging to the family were not included in the suit. This submission is devoid of any merits. It is not in dispute that the plaintiff and defendants 1 to 3 are members of the joint family and everyone is entitled to their respective share in the property as found by the Courts below. Merely because all the parties have joined together and sold some of the properties in favour of strangers and that, those properties alienated by the family have not been shown in the suit for partition, there cannot be a defence that the suit is bad for partial partition.

(11) The defence on the ground of partial partition can be raised only when several properties which are available for partition are not included in the suit for partition. In the instant case, the properties which are alienated by the family members long back cannot be a reason to non suit the plaintiff on the ground of partial partition.

(12) The learned counsel then submitted that the Courts below have found in favour of the appellants that the Sale Deed in favour of the 4th defendant was for legal necessity. This submission of the learned counsel for the appellants is contrary to the findings recorded by the Courts below. The Trial Court has specifically rendered a finding that the 4th defendant has not proved his case. It is to be noted that the parties have jointly dealt with a few items of the joint family properties earlier. It is seen that all the parties including plaintiff are shown as executants of the documents. However, the 1st defendant executed a Sale Deed in favour of the 4th defendant without the knowledge of the other sharers. The recitals of the document does not help the defendants 4 and 5 to sustain the plea that the Sale Deed was for family necessity. The



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4th defendant who has purchased the property is unable to establish that the sale consideration was used for the benefit of family. In the absence of a scrap of paper as evidence to establish the case of the appellants, this Court is unable to sustain the arguments of the learned counsel for the appellants on the question of legal necessity.

- (13) The learned counsel for the appellants then submitted that the plaintiff and defendants 1 to 3 have colluded together after selling the property in favour of the 4th defendant and the Court should interfere with the findings of facts. The learned counsel further submitted that the plaintiff has approached the Court suppressing several alienations and therefore, this Court cannot exercise its discretion in her favour.
- (14) None of the submissions made by the learned counsel for the appellants has merits. It is an admitted fact that the plaintiff is entitled to 1/4th share in all the suit properties as member of the family. The character of the properties is admitted to be ancestral. The plaintiff filing the suit for partition is not asking for any equitable relief and the entitlement to the relief does not depend upon the Court's discretion. The plaintiff has filed the suit to enforce her common law right. Therefore, there is no question of any discretion coming in the way of granting the relief in favour of the plaintiff. As regards collusion, the plea was not properly raised by the defendants in the written statement. However, the Trial Court as well as the Lower Appellate Court has considered the plea on the basis of the available materials and found that there is no basis for such allegation and that it is the father who has made the alienation to defeat the rights of the plaintiff who is entitled to 1/4th share.
- (15) Since the Courts below have concurrently found that the Sale Deed in favour of the 4th defendant is invalid and not binding on the plaintiff, the plaintiff is entitled to 1/4th share as held by the Courts below. The Courts below have considered the evidence in the light of the pleadings and held that the plaintiff is entitled to 1/4th share as member of family. The declaration of 1/4th share in favour of the plaintiff is based on admitted facts.



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(16) When the substantial questions of law raised by the appellants are considered in the light of factual findings of the Courts below, this Court finds no substance in the substantial questions of law now raised in this Second Appeal.

(17) Hence, this Court is not inclined to entertain this Second Appeal in view of the limited scope under Section 100 of CPC.

(18) In the result, the Second Appeal is dismissed confirming the decree and judgment dated 01.11.2021 made in AS.No.51/2019 by the learned Principal Sub Judge at Ariyalur, confirming the decree and judgment dated 22.03.2019 in OS.No.24/2012 by the learned Additional District Munsif, at Ariyalur. No costs. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1.The Principal Sub Judge,
Ariyalur.

2.The Additional District Munsif,
Ariyalur.

3.The Section Officer,
VR Section, High Court,
Chennai.

+1cc to M/s.C.Samivel, Advocate SR.11472

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