



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A No.425 of 2013

Veerasamy

... 1st Defendant/1stAppellant/Appellant
Vs.

1.Rani

2.Manjula

... Plaintiffs/Respondents 1 & 2/ Respondents

3.Veerammal

4.Rasu

5.Ramalingam

6.kaliamoorthy

7.Rangan @ Ranganathan

8.Revathy

9.Avaranam

10.Kanagavalli

11.Minor. Sathiakumar

... Defendants-2 to 12/Appellants 2 to 10/Respondents

PRAYER: This Second appeal filed under Section 100 of the Code of Civil Procedure against the judgement and decree dated 24.01.2012 in A.S No.58 of 2011 on the file of Additional Sub Ordinate Judge, Vriddhachalam confirming the Judgement and Decree dated 23.12.2010 in O.S No. 156 of 2002 on the file of the IInd Additional District Munsif, Vriddhachalam.



For Appellant : M/s.A.L. Gandhimathi
For R1 to R2 : Mrs.V.Srimathi
For R3 to R11 : No appearance

JUDGMENT

The appellant Veerasamy is the first defendant in suit O.S No. 156 of 2002 filed by the respondents 1 and 2 herein/ plaintiffs for the relief of partition in the suit properties, by contending that the first item of the suit property is belongs to one Govindan and item No. 2 to 4 of the suit properties are belongs to Govindan's wife Raathinambal as absolute properties. The said Govindan died intestate leaving behind Rangan, Veeramsamy and Veeramal as legal heirs, they are entitled to 1/3 share in the first item of the suit properties. Further in item No. 2 to 4 of the suit properties the said Rathinambal settled the property in favour of Rengan and Veerasamy through settlement deed dated 04.05.1973. Therefore, the plaintiffs as legal heirs of the said Rengan they are entitled to 1/3 share in the first item of the suit property and ½ share in the second item of the suit property hence they filed the suit for partition. The defendants 1 and 2 admits property belongs to their parents Govindan and Rathinambal but denied the plaintiffs right over the property by submitting that after the death



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of her husband in the year 1975 the first plaintiff left the family and went to her native place at Thirunelveli and stayed there. Thereafter, the defendants openly enjoyed the suit property and prescribed the title over the first item by adverse possession and with regard to item No. 2, 3 and 4 of the suit property during the life time of Rathinambal, she executed a Will dated 13.06.2001 with regard to the said portion of the property and sold some of the properties to third parties for her needs. Hence, the defendants claimed absolute right over the entire suit properties and denied the plaintiffs right over the suit property.

2. The Trial Court framed three issues and on considering the evidence as well as the documents held that defendants are not perfected their title over the suit property by way of adverse possession, as per the sale deed/Ex.A1 first item is³² the absolute property of the Govindhan in which plaintiffs and the defendants 1 and 2 each entitled to 1/3 share. Further, with regard to item No. 2 and 3 as per the settlement deed/Ex.A2 executed by their mother Rathinambal in the year of 1973 is valid and as his legal heir plaintiffs entitled to half share and remaining half share goes to first defendant alone in respect of item No. 2 and 3. With regard to item No.4 it belongs to Rathinambal absolutely as per the sale deed executed in



favour of the fourth defendant he became the absolute owner of that property hence the plaintiffs not having right regard to item No.4. Thus the suit decreed in favour of the plaintiff.

3. Aggrieved over the same the defendants 1 to 10 preferred an appeal in A.S No. 58 of 2011 before the Sub court Villupuram. Wherein, the lower appellate Court independently analysed the facts and evidence and framed separate issues concluded that the plaintiffs having 1/3 share in first item of the suit property and also having half share in the item 2 and 3 of the suit property, not entitled to any share in fourth item of the suit property, also held that adverse possession pleaded by the defendants was not proved and dismissed the appeal by confirming the Lower Court findings.

4. Challenging the concurrent findings of the Courts below the defendants preferred this second appeal by submitting that both the Court below failed to appreciate the fact that plaintiffs left the family immediately after the death of her husband Rengan within nine months of their marriage they never be in joint possession of the suit properties but it was not appreciated by the Court below. Further, the learned counsel for the appellant/defendant contended that settlement deed dated 04/05/1973



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executed by Rathinambal was not acted upon. For the reason that, subsequently, she herself sold portion of the property in item No.2, 3 and 4 of the suit property to third property through registered sale deed dated 01.07.199 and 24.06.199 and also executed Will in favour of Grand children on 13.06.2001 which itself proves that it was not acted upon. But the Court below failed to take note the said fact, erroneously decreed the suit in favour of the plaintiff as such it is not unfair, unjust, prayed to set aside the same. This Court admitted the second appeal with the following substantial questions of law:

- i. Whether the Court below are correct in finding that Ex.A2 is a settlement and not a will?
- ii. Whether the Courts below are correct in finding that the settlement has been acted upon and the subsequent Will is not valid?
- iii. Whether the Courts below are correct in not considering the issue of ouster?

5.The brief facts of the case are as follows:

The first item of the suit property belongs to one Govindan and item No. 2 to 4 of the suit properties belongs to Govindan's wife Raathinambal as absolute properties. The said Govindan died intestate leaving behind Rangan, Veeramsamy and Veeramal as legal heirs entitled to 1/3 share in the first item of the suit properties. Further in item No. 2 to 4 of the suit properties the said Rathinambal settled the property in favour of



Rengan and Veerasamy through settlement deed dated 04.05.1973.

Therefore, the plaintiffs are legal heirs of the said Rengan they are entitled to 1/3 share in the first item of the suit property and 1/2 share in the second item of the suit property hence they filed the suit for partition. Further, the item No.1 of the suit property belongs to Govindan by way of purchase through sale deed dated 29.03.1951 marked as Ex.A1. The suit item 2,3,4 belongs to Rathinambal by way of purchase through sale deed Ex.B5 dated 21.04.1949 hence the suit item absolutely belongs to Govindammal and Rathinamal and those facts are not disputed by both the parties.

6. The case of the plaintiff is that Rengan who is legal heir of the Govindan and Rathinambal, husband of the first plaintiff, and he died intestate hence she entitled to 1/3 share in first item of the suit property and 1/2 share in the 2 to 4 item of the suit property but defendants denied the plaintiffs contention that immediately after the demise of her husband Rengan plaintiffs left matrimonial home and went to her native earlier in the year 1975, thereafter the defendants openly enjoyed the item No. 1 with the knowledge of the plaintiff by way of adverse possession item No. 1 as absolutely belongs to them. However the contention of the defendant is that after the death of her husband, first plaintiff left the matrimonial house in the



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year 1970, but based on the pro note Ex.B2 produced on the side of the defendants it was alleged that he borrowed a sum of Rs. 800/- for the purpose of Rangan's marriage in the year 1988 from one Anjalai Ammal, so based upon the Ex.B2/Pro note the Court below rightly concluded that the marriage of the Rangan was performed in the year of 1988 that being so, the contention of the defendants that plaintiff left the matrimonial home in the year 1970 is totally false and improper. Thus, the evidence and documents itself proves that the first plaintiff not left the matrimonial home in the year of 1970. On the other hand plaintiffs along with defendants 1 and 2 enjoyed the item No.1 of the suit properties and even the joint patta Ex.B4 reveals that the first plaintiff enjoyed the item No.1 of the suit property along with defendants 1 and 2, hence the Court below rightly rejected the claim of the adverse possession as pleaded by the defendants 1 and 2 and rightly granted 1/3 share to the plaintiffs and the remaining 1/3 share belongs to the first and second defendants is sustainable one which needs no interference. Accordingly, question of law C is answered.

7. With regard to item No. 2,3 and 4 of the suit properties which belongs to Rathinambal. P.W.1 stated that said Rathinambal executed



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a settlement deed/Ex.A2 dated 04.05.1973 in favour of her son Rengan and Veerasamy. When they were minors, as the guardian she maintained the properties till they attained majority thereafter they became absolute owner thereby Rangan is entitled half share and the first defendant Verasamy is entitled to half share after the demise of her husband Rangan. Both the plaintiffs entitled to half share in the second and third item of the suit properties but the contesting defendants though admits the execution of the settlement deed by Rathinambal contend that said settlement deed was not act upon, Even after the said execution, Subsequently she enjoyed the properties as absolute owner and sold some of the properties to third parties in order to discharge the debts and also executed the Will in favour of her grand children. Hence, plaintiffs not entitled to claim half share in the properties belong to Rathinambal. Further the learned counsel for the defendants argued that both the Court below failed to appreciate that Ex.A2 Will. By considering the entire recitals and the said document. Moreover she given up the said settlement/Ex.B1 by executing the another Will in the year of 2001 but the Court below erroneously granted the relief in item NO. 2 and 3 in favour of the plaintiff as if settlement Ex.A2 is valid document.



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8. By way of reply the learned counsel for the plaintiff submitted that recitals of the settlement Ex.A2 itself clearly reveals that the Rathinambal conveyed second and third item in favour of his minor sons Rengan and Veerasamy absolutely and she appointed herself as guardian to look after the properties, so it would not confer her any right to cancel the said document. hence alleged Ex.B1/Will executed by the Rathinambal is not valid document. Therefore with regard to item No. 2 and 3 of the suit properties, that after execution of the settlement in the year of 1973 she has no independent right over the said property. The learned counsel for the respondent relied the Judgments reported in ***Numburi Basava***

Subrahmanyam Vs Alapatti Hymavathi and others AIR 1996 2220 (5):

The said recital clearly would indicate that the settlement deed executed on that date is to take effect on that day. She created rights thereunder intended to take effect from that date, the extent of the lands mentioned in the Schedule with the boundaries mentioned thereunder. A combined reading of the recitals in the document and also the schedule would clearly indicate that on the date when the document was executed she had created right, title and interest in the property in favour of her second daughter but only on her demise she was to acquire absolute right to enjoyment, alienation etc. In other words, she had created in herself a life interest in the property and vested remainder in favour of her second daughter. It is settled law that the executant while divesting herself of the title to the property could create a life estate for her enjoyment and the property would devolve on the settle with absolute rights on settlor's demise. A reading of the documents together with the Schedule would give an indication that she had created right and interest in presenting in favour of her daughter Vimlavathy in respect of the properties mentioned in the schedule with a life estate for her enjoyment during her life time. Thus, it could be construed rightly as a settlement deed but not as a will. Having divested self thereunder, right and title thereunder, she had, thereafter, no right to bequeath the



same property in favour of her daughter Hymavathy. The trial Court and the learned single Judge rightly negated the claim. The Division Bench was not, therefore, correct in law in interfering with the decree of the trial Court.

9. The above Judgements is squarely applicable to the facts of the present case. The initial burden is on the plaintiff to prove that settlement deed executed by the Rathinambal was marked as Ex.A2 acted upon or not. Both the parties admitted the execution of the settlement deed by the Rathinamal. As per the said document Rathinambal conveyed item No. 2 and 3 of the suit properties in favour of her minor son Rengan and Veerasamy in the year 1973 as they were minors at that time by appointing her as guardian to manage the property until they attain majority. The recitals in Ex.A2 indicates that the said Rathinambal as a guardian of the minors bound to manage the properties concerned in the gift deed upto they attained majority and also after her life time her two sons entitled to $\frac{1}{2}$ share equally and to enjoy the same absolutely. Moreover, patta also transferred on the same day itself, besides she agreed that for any cause she has no power to cancel the document. Therefore in all aspects Rathinambal executed the settlement thereby conveyed half share each of her two minor sons absolutely, recitals also clearly established that it is gift deed and it is not a Will as alleged by the defendants. Therefore, she has no right to cancel



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the settlement deed through alleged Will in the year of 2001 marked as

Ex.B1 indeed it would not bind the plaintiffs as well as the settlement deed Ex.A2. Therefore, the ratio relied by the plaintiffs is squarely applicable to the facts of this case. Hence, immediately after execution of settlement deed/Ex.A2 it was acted upon and husband P.W.1 Rengan is entitled half share in item No.2 and 3 of the suit properties and remaining half share goes to 1 and 2 defendants to that effect the findings of the Court below is just and valid which needs not interference. Accordingly, question of law "A" and "B" is answered. Furthermore, with regard to item No. 4 it is absolute property of the Rathinambal therefore the findings of the Court below also found correct. Ex.B1 will also accepted by the plaintiffs with regard to item No. 4 hence in item No.4 plaintiffs have no rights. Therefore as per the settlement deed Ex.A2 the husband of the P.W.1 Rengan entitled to half share, the first defendant entitled to half share in item No. 2 and 3 of the suit property hence the findings rendered by the Court below with regard to item No.2 and 3 needs no interference.

10. Thus, with regard to item No. 1 both plaintiffs entitled to



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1/3 share and defendants 1 and 2 each entitled to 1/3 share in respect of item No. 2 and 3 both the plaintiffs totally entitled to ½ share and first defendant entitled to ½ share. But in item No. 4 plaintiffs have no share. Accordingly the findings rendered by the Court below is confirmed second appeal is dismissed as devoid of merits findings rendered by Trial Court is confirmed thereby suit is decreed as follows:

11. In respect of item No. 1, the plaintiffs are entitled to 1/3 share and in respect of item No. 2 and 3 the plaintiffs are totally having half share and with regard to item No. 4 plaintiffs has no rights. Accordingly, In respect of item No. 1 to 3, suit is decreed as prayed for and in respect of Item No. 4 suit is dismissed. Accordingly preliminary decree is passed, thus second appeal is dismissed. No costs.

14.10.2022

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T.V.THAMILSELVI,J.



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To

1. The Additional Sub Ordinate Judge, Vriddhachalam .
2. The IInd Additional District Munsif, Vriddhachalam.

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