



S.A Nos.613 and 614 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2022

CORAM:

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

S.A Nos.613 & 614 of 2013

1.Pandurangan

..... (Appellant in both the appeals S.A Nos.613 & 614 of 2013)

Vs

1.Sivakami Ammal

2.Rajamani

3.Radhakrishnan

...Respondents in S.A No.613 of 2013

1.Sivakami Ammal

...Respondent in S.A No.614 of 2013

PRAYER IN S.A No.613 OF 2013: This Second appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and decree dated 21.12.2012 passed in AS 49/2012 on the file of the Sub Court, Kallakurichi confirming the Judgement and the decree dated 30.04.2010 passed in O.S NO.832/2009 before the District Munsif's Court, Sanakarapuram.



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PRAYER IN S.A No. 614 OF 2013: This Second appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and decree dated 21.12.2012 passed in AS 49/2012 on the file of the Sub Court, Kallakurichi confirming the Judgement and the decree dated 30.04.2010 passed in O.S NO.832/2009 before the District Munsif's Court, Sanakarapuram.

For Appellants : Ms.R.Meenal

(In both the appeals)

For Respondents : Mr.R.Nandhakumar

(In both the appeals)

JUDGMENT

The second appeal in S.A No.613 of 2013 has been filed against the Judgment and decree dated 21.12.2012 passed in AS No.49/2012 on the file of the Sub Court, Kallakurichi confirming the Judgement and decree dated 30.04.2010 passed in O.S NO.832/2009 before the District Munsif's Court, Sanakarapuram.

2. The second appeal in S.A No.614 of 2013 has been filed against the Judgment and decree dated 21.12.2012 passed in AS. No. 50/2012 on the file of the Sub Court, Kallakurichi confirming the



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Judgement and decree dated 30.04.2010 passed in O.S NO.831/2009 before the District Munsif's Court, Sanakarapuram.

3.The appellant herein is the 3rd defendant in both the suits O.S No. 831 of 2009 and 832 of 2009 on the file of the District Munsif's Court, Sanakarapuram, filed by the plaintiffs for the relief of partition and also for the relief of declaration and permanent injunction by contending that the suit properties are the self acquired property of Gopal Gounder, husband of the first plaintiff, thereby claiming 11/16 shares in the suit properties 1st defendant is the son of Gopal Gounder remains exparte, second defendant also remains exparte. The purchaser of the suit properties third defendant contested the suit and submitted that as per the oral partition held between the plaintiffs and the first defendant 0.63 ¼ acre was allotted in favour of the first defendant and he sold property to the second defendant and after three years, the second defendant sold the property to the third defendant for valid consideration. Thereafter, he enjoyed the suit property. On considering the rival submissions in O.S No.832 of 2009 the trial Court concluded that plaintiffs are entitled to 11/16 share in the suit property and the same was decreed in favour of the plaintiffs. With regard to O.S No.831 of 2009, the



trial Court decreed the suit in favour of the plaintiff/Sivakami Ammal.

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4. Against which the 3rd defendant preferred appeals before the lower appellate Court in A.S No.49 & 50 of 2012, wherein the lower appellate Court independently analysed the facts and evidence confirmed the findings of the trial Court.

5. Challenging the same the third defendant preferred these second appeals, this Court admitted the appeals with the following questions of law:

(a) whether in law the Courts below are right in overlooking that the son's of Sivakami were divided and that Elumalaio was entitled to sell the share allotted to him in the family partition?

(b) Whether in law the Court below are right in omitting to see that the appellant is a bonafide purchaser for value, and in possession of the land and that land and that sivakami and her sons were colluding to get back the land.



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

Originally one Sanniyasi Gounder owned 1.90 acres of land with well in S.F No.47/4 in Aadhanjur Village and he died leaving his three sons Kannu Gounder, Gopal Gounder and Ramasamy Gounder. Thereafter, they orally partitioned the above said property as that of western 1/3rd portion with 1/3rd right in the well was allotted to Kannu Gounder. The immediate adjacent eastern 1/3 share was allotted to Gopal Gounder, and the remaining adjacent eastern most 1/3rd share was allotted to Ramasamy Gounder. The 1/3rd share of Ramasamy Gounder was purchased by Gopal Gounder under the sale deed dated 19.11.1963, and he was in possession and enjoyment of the same. Thus Gopal Gounder became entitled to 2/3rd share in survey No.47/4 with right to share in the well. The remaining Kannu Gounder's 1/3rd share was purchased by the 1st plaintiff, under the sale deed dated 14.08.1970. In the year 1975, Gopal Gounder died intestate, the plaintiffs and the 1st defendant are the legal heirs of Gopal Gounder and they were enjoyed the said property which is suit property herein along with well and electricity connection of 2/3 share. As per the lawful share, the 1st defendant is entitled only 0.38 acres but he sold the 0.63 1/4 acres to the



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first defendant and subsequently sold to the second defendant and he further sold to the third defendant. Hence the plaintiff in O.S No.831 of 2009 filed a suit for declaration of title and permanent injunction and also filed another suit O.S No.832 of 2009 along with his sons for the partition.

7. Before the trial Court, 1st defendant remains exparte, 2nd defendant is the another co-sharer of Kannu Gounder remain exparte. 3rd defendant/purchaser contested the suit who submitted that already oral partition was effected between the plaintiffs and the 1st defendant though which the share was allotted to 1st defendant, from him, third defendant purchased the suit property for valid consideration. Further he contended that property purchased by the first plaintiff also enjoyed and owned along with suit property. Thereby the first defendant entitled to 1/4 share.

8. One Sanniyasi owned 1.90 acres in S.No.47/4 in Aadhanmur village after his demise his three sons Kannu Gounder, Gopal Gounder and Ramasamy Gounder each got 1/3 share along with well. The plaintiff and the 1st defendants are the legal heirs of the Gopal Gounder during his life time Gopal Gounder purchased the another 1/3 share from his brother



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Ramasamy Gounder so the plaintiffs family owned 2/3 share which is shown as suit property herein. While so, in the year 1963 the first plaintiff purchased remaining 1/3 share from the Kannu Gounder through sale deed/Ex.A1 and she became the absolute owner of that share. The present case is that 1st defendant entitled to 0.38 acres in the suit property but he sold 0.63 1/4 acres as if he owned in the suit property to the 2 defendant in turn he sold to the 3 defendant with specific boundaries for which he is not entitled, because properties enjoyed under him is without division. Hence the suits. The purchaser 3rd defendant contested the suit. The another co-sharer remains exparte.

9. The third defendant submitted that through oral partition 0.63 1/4 acres was allotted to first defendant which was purchased by him under valid consideration. Initially, the burden is on the plaintiff to prove that the suit property is joint family property in nature. Defendants also admitted that Gopal Gounder had 2/3 share in the suit survey. It is settled proposition that admitted fact need not be proved. It is bound to be decided is whether the 1st defendant entitled to 0.63 1/4 acres in the suit property. As per the defendants contention property purchased by the 1st plaintiff is



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purchased out of joint family funds and the same also enjoyed along with suit properties but admittedly as per Ex.A1 1/3 share was stands in the name of the first plaintiff the trial Court also rightly appreciated this aspect hence which needs no interference. Therefore, the remaining 2/3 share is shown in the suit schedule is belongs to Gopal Gounder. Further, the 3rd defendant/purchaser contended that oral partition held between the family members but there is no proof to that effect. Furthermore, the first defendant who is entitled only 0.38 acres in the suit property but he sold near about 0.63 1/4 acres to the second defendant who in turn sold to the 3rd defendant. Now, the 3rd defendant claiming through sale deed in respect of 0.63 1/4 acres in suit survey No.47/4. Furthermore, 2/3 share in eastern portion was belong to Gopal Gounder and 1/3 share in the suit survey No.47/4 on the western portion is belongs to first plaintiff wife of Gopal Gounder. When there is no proof with regard to oral partition held between the family members both the Court below rightly held these aspects and granted 11/16 share to the plaintiffs which is sustainable one and the first defendant entitled to 5/16 share and at the time of the final decree the allotment of the property to be appreciated that under equity in eastern portion of the may be share allotted to the first defendant's share which goes to third defendant under equity. As



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discussed above, both A and B questions of law are answered. Accordingly these second appeals are dismissed. However, the oral partition pleaded not been proved by the defendant so also there is no collusion between the plaintiffs and the first defendant and trial Court rightly concluded this aspect which needs no interference. Hence, both the appeals are dismissed as no merits and both the suits are allowed as prayed for with an observation of allotment of share to the third defendant under equity in the final decree proceedings. No costs.

09.09.2022

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To

1. The Sub Court, Kallakurichi.
2. The District Munsif's Court, Sanakarapuram.
3. The Section Officer,
V.R Section.



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T.V.THAMILSELVI,J.

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