

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.NO.557 OF 2019
AND
C.M.P.NO.16743 OF 2019

B.Nandagopal

... Appellant

.Vs.

1. Bhakthavatchalam

2. B.Sekar

3. B.Kothandapani

4. B.Parthasarathy

5. B.Yoganathan

6. Santhi

7. S.Sekar

8. D.Thiruvengadam

9. Radhakrishnan

... Respondents

PRAYER:-

Appeal Suit filed under Section 96 of C.P.C. against the judgment and decree dated 05.10.2018 passed by the I Additional District Judge, Tiruvallur in O.S.No.93 of 2013.

For Appellant : Mr.M.Manivannan

For Respondents : No Appearance
For R1 to 6

Mr.A.R.Suresh
For R7 & 8

R9 - Unclaimed

JUDGMENT

[Judgment of this Court was delivered by T.RAJA, J.]

This appeal has been brought up before us by the unsuccessful appellant/plaintiff for partition of the suit property, challenging the correctness of the judgment and decree dated 05.10.2018 passed by the I Additional District Judge, Tiruvallur in O.S.No.93 of 2013.

2. Learned counsel appearing for the appellant submitted that the Trial Court, having come to the conclusion that the suit schedule properties are proved as ancestral properties and the sale deed dated 18.08.2006 is allegedly based on the oral sale, which is not valid in the eye of law, ought to have decreed the suit. Learned counsel for the appellant further submitted that defendants 7 and 8 neither filed any document nor adduced any oral evidence to establish their defence averred in their written statement. When the burden of proof lies on respondents 7 and 8 regarding the alleged possession and that they are failed to get into the witness box for cross examination and no such recitals as alleged in the written statement have been produced by defendants 7 and 8 to prove that item No.1 of the suit property was sold orally by one Perumal Naicker/grand father of the plaintiff and defendants 2 to 6 to one Gurusamy Naicker/grand father of defendants 7 and 8 and that the first defendant as Kartha of the joint family had executed the said sale deed dated 18.08.2006, the Trial Court, without appreciating the case of the appellant, has wrongly come to the conclusion that in the cross examination of P.W.1/the appellant has inferred that he was well aware about the sale deed dated 18.08.2006. Therefore, the decree and judgment passed by the Trial Court are liable to be set aside.

3. Heard the learned counsel appearing for the appellant and the learned counsel appearing for respondents 7 and 8.

4. Originally, the plaintiff/appellant has filed a suit in O.S. No.93 of 2013 before the Principal District and Sessions Judge, Thiruvallur seeking a decree and judgment in favour of him in respect of 1/6th share in the suit property. Subsequently, he has filed an amended plaint including his sister, who was not

made as a party in the original plaint and accordingly, amended his prayer for 1/7th share. D1 is the father of the plaintiff and defendants 2 to 6. Defendants 2 to 5 are the brothers of the plaintiff. D6 is the sister of the plaintiff and defendants 2 to 5 and daughter of the first defendant. D7 and D8 are the joint purchasers of item No.1 of the suit property. D9 is the joint vendor with D1 of the item No.1 of the suit property.

5. The claim made by the plaintiff/appellant is that when he demanded several times to make an amicable partition to give his share in the suit property, defendants 1 to 5 were evading and postponing to make any amicable partition on the suit properties. Subsequently, the plaintiff appellant came to know in the first week of September 2010 that defendants 7 and 8 have purchased item No.1 of the suit property by virtue of the sale deed dated 18.08.2006/Ex.A4 bearing document No.8821 of 2006 registered in the office of the Sub Registrar, Thiruvallur from D1 and D9, without the consent and knowledge of the plaintiff. As the said alienation is not valid in law and not binding upon the plaintiff, he has been advised to issue a legal notice dated 12.11.2010 to defendants 1 to 5 and 7 to 9 claiming an amicable partition in the suit properties. Although defendants 1 to 5, 7 and 8 had received notice, the envelope addressed to the ninth defendant was returned with an postal remark 'no such person'. Defendants 2 to 5 also sent their reply on 10.01.2011 through their lawyer.

6. Opposing the above claim made by the plaintiff/appellant, a joint written statement dated 27.01.2014 was filed by defendants 7 and 8. Defendants 1 to 6 neither filed their written statement nor took part in the proceedings before the Trial Court either accepting the claim or disputing the same. It is the claim of defendants 7 and 8 that defendants 1 and 9 had executed a registered sale deed dated 18.08.2006 in their favour and the same was also known to the plaintiff and defendants 1 to 6. After the execution of the sale deed dated 18.08.2006, the plaintiff/appellant waited for more than 4 years and 4 months to issue collusive notice in collusion with defendants 1 to 6 to extract some amount from them, due to the sudden steep increase in the price of Item No.1 of the suit property. In the written statement, it has been further averred by defendants 7 and 8 that the suit itself is liable to be dismissed in limine for non inclusion of 18 other items of the property belonging to the same family.

7. On the above pleadings and written statement filed by the plaintiff and defendants 7 and 8, the Trial Court, after framing the following issues, has come to the conclusion that the plaintiff has not bring all the joint family properties in the

suit and therefore, the suit is bad for partial partition and the same is not maintainable:

- '1. Whether the suit properties are ancestral properties of 1st defendant?
2. Whether the oral sale in respect of suit item No.1 by Perumal Naicker to Gurusamy Naicker for valid consideration is true and binding on plaintiff and defendants?
3. Whether plaintiff and defendants 1 to 5 are in joint possession and enjoyment of suit properties?
4. Whether the sale deed dated 18.08.2006 executed by defendants 1 and 9 in favour of the defendants 7 and 8 is valid in law?
5. Whether the suit is bad for partial partition?
6. Whether the suit is bad for non-joinder of necessary parties?
7. Whether the plaintiff is entitled to partition in respect of suit properties as sought for?
8. To what relief, the plaintiff is entitled to?'

8. Learned counsel appearing for the plaintiff/appellant argued that when the Trial Court has accepted Item No.1 of the suit property as the ancestral property, it ought to have partitioned the same among the plaintiff and defendants 1 to 6. But, we are unable to accept the arguments of the learned counsel for the appellant for the following reasons:

In this regard, this Court frames the following questions:

1. Whether the suit has been filed with collusion with plaintiff and D1 to D6?
2. Whether the suit is liable for dismissal due to non inclusion of 18 more items of the same family?

9. It is not in dispute that Item No.1 of the suit property belongs to the family property of the plaintiff and defendants 1 to 6. But the crucial legal aspect, which has been completely overlooked by the plaintiff and defendants 1 to 6 is that Item No.1 of the suit property, having an extent of 77 cents covered in S.No.141/2, was sold away by the grandfather of plaintiff and defendants 2 to 6 to the grandfather of defendants 7 and 8 orally for a sum of Rs.95/- for about 78 years ago. When it has been claimed by defendants 7 and 8 in the written statement that Item No.1 of the suit property has been sold away 78 years ago by the grandfather of the plaintiff and defendants 2 to 6 to the grandfather of defendants 7 and 8 orally for a sum of Rs.95/- for about 78 years ago and from the date of said purchase, one Gurusamy Naicker and his 4 sons have been in possession and enjoyment of the said property and it has been proved that the execution of the sale deed dated 18.08.2006, marked as Ex.A4, stands in the name of defendants 7 and 8, it goes without saying that the father of the plaintiff and defendants 2 to 6, who was the first defendant and kartha of the joint family, had executed the sale deed dated 18.08.2006, which is legally binding the plaintiff and defendants 2 to 6 and the same clearly shows that the suit has been filed by the plaintiff in collusion with defendants 1 to 6. Hence, it is answered against the plaintiff/appellant.

10. Coming to the second issue, defendants 7 and 8 in their written statement filed before the Trial Court, has specifically pleaded that the plaintiff has conveniently omitted and excluded 18 items of property, which are given as under:

1.	Dry Survey No.	325/10	-	0.09.0	Hectares
2.	Dry Survey No.	325/11	-	0.08.5	Hectares
3.	Dry Survey No.	325/12	-	0.03.0	Hectares
4.	Dry Survey No.	325/14	-	0.12.0	Hectares
5.	Dry Survey No.	325/15	-	0.11.5	Hectares
6.	Dry Survey No.	325/1A	-	0.03.0	Hectares
7.	Dry Survey No.	325/6	-	0.20.5	Hectares
8.	Dry Survey No.	325/7	-	0.05.5	Hectares
9.	Dry Survey No.	325/8	-	0.05.0	Hectares
10.	Dry Survey No.	325/9	-	0.08.5	Hectares
11.	Dry Survey No.	329/10	-	0.14.5	Hectares
12.	Dry Survey No.	329/11	-	0.11.5	Hectares
13.	Dry Survey No.	329/12	-	0.14.0	Hectares

1.	Dry Survey No.	325/10	-	0.09.0	Hectares
14.	Dry Survey No.	329/9	-	0.35.0	Hectares
15.	Dry Survey No.	383/2	-	1.23.0	Hectares
16.	Wet Survey No.	230/4	-	0.18.0	Hectares
17.	Wet Survey No.	237/3	-	0.18.0	Hectares
18.	Grama Natham site measuring North to South 100', East to West 11' to the South of Pillaiyar Koil Street, Opposite to Suit Item 10				

11. For making amicable partition among plaintiff and defendants 1 to 6, a peculiar stand was taken by the plaintiff deposing before the Trial Court that above Items 1 to 18 could not be included for partition, since they are self acquired property of the first defendant, but no evidence either oral or documentary was produced. Therefore, the Trial Court has rightly come to the conclusion that there was no pleading that the first defendant had purchased some other properties out of his own income and they are the self acquired properties of the first defendant. We are also unable to see any error in the findings reached by the Trial Court. Hence, the second issue is also answered against the Appellant.

12. Moreover, a perusal of Ex.A14/reply notice sent by defendants 2 to 5 would show that the suit has been filed by the appellant in collusion with the family members. Since this Court is able to see from Ex.A14 that the suit has been filed in collusion with the family members, we are inclined to dismiss this appeal by imposing a cost of Rs.25,000/- to the appellant. Accordingly, this appeal is dismissed with costs of Rs.25,000/- to be payable by the appellant to the Pondicherry Advocate Clerks' Association within a period of four weeks from the date of receipt of a copy of this order. Consequently, C.M.P.No.16743 of 2019 stands closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vga

To

The I Additional District Judge,
Tiruvallur.

Copy To:-

1. The Section Officer,
V.R. Section,
High Court,
Madras.
2. The Secretary,
The Advocate Clerk's Association,
Pondicherry.

+3ccs to Mr.M.Manivannan, Advocate, S.R.No.479
+1cc to Mr.A.R.Suresh, Advocate, S.R.No.287

A.S.NO.557 OF 2019 AND
C.M.P.NO.16743 OF 2019

SSV(CO)
PBS/17/05/2022