



AS. No.697 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MRS. JUSTICE N.MALA

AS. No.697 of 2014

K.Eshwaran
Appellant

..

Versus

1.S.Rajeshwari
2.K.Kanagarajan
3.K.Lakshmi
4.K.A.K.Veer Cheety @ Ravi

.. Respondents

PRAYER: First Appeal filed under Section 96 of C.P.C., against the judgment and decree dated 29.07.2013 in O.S.No.180 of 2011 on the file of I Additional District Judge, Salem.

For appellant	:	M/s.P.Jagadeesan
For respondents	:	
for RR1 and 2	:	No Appearance
for R3	:	Died
for R4	:	Mr.C.K.M. Appaji



WEB COPY



AS. No.697 of 2014

J U D G M E N T

(Judgment of the Court was delivered by S.S.SUNDAR, J)

This appeal is filed against the judgment and decree dated 29.07.2013 in O.S.No.180 of 2011 on the file of the I Additional District Judge, Salem.

2. The appellant herein filed the suit in O.S.No.180 of 2011 for partition and separate possession of his 1/5th share in the suit properties and for a declaration that the partition deed, which was registered as document No.1410 of 1980 before the Sub Registrar Office, Magudanchavadi (McDonald's Choultry) among the plaintiff and defendants is inoperative, unenforceable and not binding on the plaintiff and also for other consequential reliefs.

3. The suit properties are valuable properties situated in Vembadithalam Village, Salem District. It is admitted that the suit properties are owned by the plaintiff's father by name K.A.Kandasamy through purchase and by partition. He was in actual physical possession and enjoyment of the properties till his death on 31.05.1980. The first defendant is plaintiff's sister and second defendant is his brother. Plaintiff and defendants 1 & 2 are the children of



AS. No.697 of 2014

K.A.Kandasamy through his first wife Palaniammal. Third defendant is the junior wife of K.A.Kandasamy and fourth defendant is her son. It is the plaintiff's case that he was brought up and educated at Bangalore as his father was running a textile business in Bangalore. Though the plaintiff's father shifted his business and residence to Salem in 1979, it is contended that the plaintiff continued to live in Karnataka along with his wife and children and he knew only English and Kannada.

4. It is the specific case of the plaintiff that though he was able to understand and speak in Tamil, cannot read or write. It is contended by the plaintiff that all the suit properties are joint family properties and they are managed and looked after by the defendants 2 and 3 after the death of plaintiff's father. It is contended by the plaintiff that he used to visit Vembadithalam Village very rarely for family functions and festivals and taking advantage of the same, the defendants used to get signatures in various documents under the pretext of proper maintenance of the properties and business. The documents were in Tamil and the plaintiff could not read and understand the contents. It is stated by the plaintiff that believing the words of the defendants, who are his blood relatives, he used to sign all the documents whenever they demanded. The plaintiff further contented that when he learnt



AS. No.697 of 2014

that the defendants 2 and 3 were trying to alienate some of the joint family properties to third parties, he demanded partition and it was at that time, the defendants told the plaintiff about the partition in the year 1980. It is further stated by the plaintiff that thereafter, he applied for certified copy of the partition deed on 05.08.2011 and realised that his brothers and step mother had deceived him after fraudulently obtaining signatures without revealing the contents of the documents. It is the specific case of the plaintiff that contents of the partition deed were never read over to him and he was made to sign the documents without knowing the contents.

5. It is also contended by the plaintiff that the partition is unfair as the defendants got major portions of the joint family properties worth crores of Rupees and he has been given a meagre share of 2 house plots as per the A-schedule in the partition deed. The sum and substance of the plaintiff's case in the plaint is that he was not a consenting party to the partition and the signatures were obtained in the documents only by misrepresentation. The plaintiff also contended that he made an attempt for compromise before filing the suit, but it ended in vein. Hence, the present suit has been filed for partition of his 1/5th share and for declaration to declare the partition deed dated 11.12.1980 as inoperative, unenforceable and not binding on the plaintiff.



AS. No.697 of 2014

WEB COPY 6. The first defendant, who is the sister of the plaintiff, filed a written statement and supported the case of the plaintiff. Even according to the first defendant, the plaintiff was allotted only a meagre share and to her not even a single paise was given. Hence, she also contended that the partition deed is a fraudulent one and the plaintiff and the defendants are entitled to get equal share.

7. The other defendants are set exparte before the Trial Court. The Trial Court, though the suit was not contended by other defendants, dismissed the suit. Aggrieved by the same, this appeal is filed.

8. The learned counsel appearing for the appellant filed a memo, dated 09.11.2022 before this Court reporting the death of the third respondent and it is admitted that her husband K.A.Kandasamy predeceased her. The third respondent's only son by name K.A.K.Veeri Chetty @ Ravi is already on record as fourth respondent in the appeal who is also the fourth defendant in the suit and hence, the fourth respondent is recorded as legal representative of the third respondent. This appeal is contested only by the fourth respondent.



AS. No.697 of 2014

9. Before the trial Court, the plaintiff examined himself as P.W.1 and marked documents Ex.A1 to A17. The first defendant alone was examined as D.W.1 and no document is marked on the side of defendants. The trial Court framed necessary issues and after appreciation of admitted facts, pleadings and evidence, came to the conclusion that the plaintiff failed to prove the previous registered partition under Ex.A1 was executed by misrepresentation. Since the plaintiff is a party to the partition, the trial Court observed that the suit for declaration that the partition deed is not binding on the plaintiff without a prayer to set aside the document is not maintainable. Finding that the partition deed is binding on plaintiff, the suit was dismissed by the trial Court.

10. Having regard to the pleadings and findings of the trial Court, points that arise for consideration are (a) Whether the previous partition under Ex.A1 is in operative to bind the parties; (b) Whether the plaintiff is entitled to seek fresh partition despite the admission of previous registered partition under Ex.A1; (c) whether the suit for partition is maintainable without a prayer to set aside the partition deed by praying Court fee for the value of plaintiff's share.

Points (a), (b) and (c)

11. The plaintiff admitted the execution of registered partition deed and



the certified copy of which is marked as Ex.A1. The suit was not contested by defendants. The first defendant filed a written statement supporting the case of plaintiff. She deposed as D.W.1 and supported the plaintiff's case.

12. The partition deed is a registered document dated 11.12.1980, which was duly signed by plaintiff and defendants. It is alleged that the partition deed was fraudulently created. In para VI of the plaint it is stated as follows:

"VI. Since the joint family properties, suit properties are situated in Vembadithalam Village, Salem District, they are all managed and looked after by the 2nd and 3rd defendants after the death of plaintiff's father. Plaintiff was used to visit Vembadithalam Village only occasionally for family functions and important festivals. Whenever plaintiff came to Vembadithalam, the 2nd and 3rd defendants used to get signatures of the plaintiff in various documents by saying that it is necessary for the proper management of the properties and business. Considering the close relationship and believing the representation made by his step mother and brother, the plaintiff signed all the documents whenever they demanded. The documents are all written in Tamil and never read over to the plaintiff. The plaintiff used to sign all of the documents without knowing the contents of the same. Till recently the plaintiff was in the firm belief that the joint family properties are properly managed."

13. Thereafter it is stated that the plaintiff was told about the partition of 1980 only when the plaintiff asked the defendants to divide the suit properties into 5 shares and to allot one such share to plaintiff. He submitted that he applied for certified copy of the partition deed on 05.08.2011 and obtained a



AS. No.697 of 2014

copy on 11.10.2011. The specific case of the plaintiff is that believing the representation of his own brothers and step mother, he signed the partition deed without reading it. The plaintiff/appellant questioned the document only on the ground that his signature was obtained as if some registered document is necessary to furnish to Government authorities in connection to the running of textile business. In other words, it is contended that the defendants have obtained the plaintiff's signatures by fraudulent misrepresentation and undue influence. It is not the case that the partition deed was not acted upon. The partition deed is also questioned on the ground of unfair allotment of properties. The plaintiff stated that he has no knowledge of any partition deed and entitled to a declaratory relief to declare that the 1980 partition deed is inoperative, unenforceable and not binding on the plaintiff as if the relief is consequential to the relief of partition.

14. When the partition deed is challenged on the ground of fraud, misrepresentation and undue influence, there must be a specific prayer to set aside or cancel the instrument by paying Court fee for the value of property. The plaintiff who has come forward with a prayer to ignore the registered instrument of partition has failed to explain how the plaintiff went to Registration office and signed before the Sub-Registrar. The first defendant in



AS. No.697 of 2014

her written statement further stated that the properties allotted to the plaintiff as 'A' schedule properties in the partition deed were also sold by getting the signatures of plaintiff. Therefore the story of plaintiff and first defendant are unbelievable. After admitting that other defendants are in enjoyment of the suit properties, the plaintiff has filed the suit by paying fixed Court fee and by valuing the relief for declaratory relief at Rs.1000/-. This Court is in agreement with the finding of the trial Court that the declaratory relief without a prayer to set aside the partition deed cannot be granted especially when the plaintiff has admitted his signature in the document. The plaintiff cannot be permitted to seek a prayer now to set aside the instrument in view of limitation. The plaintiff is educated and carrying on business in the neighbouring State. He is the eldest son of Sri.K.A.Kandasamy and supposed to be the Head of family. This Court is unable to find any error or illegality in the findings of trial Court and its conclusion in dismissing the suit. There is no merit in the Appeal and hence this Appeal is dismissed. However, there is no order as to costs.

(S.S.S.R.J.) (N.M.J.,)
17.11.2022

Speaking Order : Yes / No
Index : Yes / No
pvs



AS. No.697 of 2014

To

1. The I Additional District Judge, Salem

2. The Section Officer,

V.R.Section, High Court, Madras



WEB COPY



AS. No.697 of 2014

S.S.SUNDAR, J.
and
N.MALA, J.

pvs

AS. No.697 of 2014

17.11.2022