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A.S.No.700 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MRS.JUSTICE N.MALA

A.S.No.700 of 2014

and

M.P.No.1 of 2014

and

Cross Objection No.103 of 2022

A.S.No.700 of 2014

1. C.R.Palanisamy @ R.Palaniappa
S/o.Late Ranganna Gounder

2. P.Dhanapal
S/o.C.R.Palanisamy

3. Saraswathi Palanisamy
W/o.Late C.R.Palanisamy

...Appellants

A3 brought on record as legal heir of the deceased first appellant vide order dated 27.09.2022 made in C.M.P.No.9160 of 2022 in A.S.No.700 of 2014.

Vs.

1. Jothimani
W/o.Subramaniam



A.S.No.700 of 2014

2. Shanthamani
S/o.Shanmugasundaram

3. Dr.Velusamy Ravindran
S/o.T.S.Velusamy

4. Natarajan
S/o.Ranganna Gounder

... Respondents

Cross Objection No.103 of 2022

Dr.Velusamy Ravindran
S/o.T.S.Velasamy

... Cross -Appellant
/ third respondent

Vs.

1. Jothimani
W/o.Subramaniam

2. C.R.Palanisamy @ R.Palaniappa
S/o.Late Ranganna Gounder

3. P.Dhanapal
S/o.C.R.Palanisamy

4. Shanthamani
S/o.Shanmugasundaram

5. Natarajan
S/o.Ranganna Gounder

... Respondents

Prayer:-

Appeal Suit filed under Section 96 and Order XLI of C.P.C., against the judgment and decree dated 18.03.2014 made in O.S.No.621 of 2012 on the file



A.S.No.700 of 2014

of the IV Additional District and Sessions Court, Coimbatore.

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Cross Objections filed under Section 96 and Order XLI Rule 22(2) of C.P.C., against the judgment and decree dated 18.03.2014 made in O.S.No.621 of 2012 on the file of the IV Additional District and Sessions Court, Coimbatore.

For Appellants : Mr.K.R.Arunshabari
in A.S.No.700 of 2014
For R2 and R3
in Cross Objection No.103 of 2022

For R1 in A.S.No.700 of 2014 : Mr.L.Mouli
For R1 in Cross Objection No.103 of 2022

For R2 in A.S.No.700 of 2014 : Mr.KMC.Arunmogan
For R4 in Cross Objection No.103 of 2022

For R3 in A.S.No.700 of 2014 : Mrs.P.Yasmin Begum
For Appellant in Cross Objection No.103 of 2022

J U D G M E N T

[Judgment of the Court was made by **S.S.SUNDAR, J.,**]

The defendants 1 and 2 in the suit in O.S.No.621 of 2012 on the file of IV Additional District and Sessions Court, Coimbatore are the appellants in the above appeal. Since the 1st appellant who is the 1st defendant in the suit died pending appeal, the 3rd appellant who is the wife of deceased 1st appellant is



A.S.No.700 of 2014

impleaded as legal heir of 1st appellant. The 1st respondent is the plaintiff in the suit. Respondents 2 to 4 are defendants 3 to 5 in the suit. Cross Objection is filed by 4th defendant.

2. The 1st appellant is the father of the 1st respondent/plaintiff. The 2nd appellant/2nd defendant is the brother of the 1st respondent/plaintiff. The 2nd respondent, who is the 3rd defendant in the suit, is the sister of 1st respondent/plaintiff. The 4th defendant is the purchaser of second item of suit property. The 5th defendant is the brother 1st appellant/1st defendant.

3. The 1st respondent/plaintiff filed a suit in O.S.No.621 of 2012 for partition of 1/4th shares in all the suit properties and for consequential reliefs. The suit is also for a declaration that the Sale Deed executed by defendants 1 and 2 in respect of second item of the suit property in favour of the fourth defendant is null and void and for permanent injunction restraining the fourth defendant from alienating or encumbering the suit property and for granting relief of permanent injunction restraining the defendants from alienating or encumbering the entire suit property till separate allotment is given to the plaintiff. The suit properties consist of three items. In the plaint, it is stated that the suit properties are the joint



A.S.No.700 of 2014

family properties of the first defendant and his children.

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4. It is the case of plaintiff that there was a partition between her grandfather and his sons namely, first defendant and his brother, who is also fifth defendant in the suit. It is further contended that under a Registered Partition Deed dated 27.08.1986, the first defendant was allotted the 'B' schedule property therein consisting of first item. It is further stated that the item No.3 of suit scheduled property was kept in common to be divided between defendants 1 and 5.

5. It is also stated in the plaint that a substantial part of suit first item which was allotted to 1st defendant in the partition was sold by the plaintiff along with defendants 1 to 3 for a value of Rs.4,62,000/- and that out of the sale proceeds, suit second item property was purchased in the name of defendants 1 and 2 under the Document of Sale dated 09.04.2003 for a total consideration of Rs.3,10,000/-. It is further stated that ancestral property was sold, vide document dated 09.04.2003, in order to purchase another property, by specifically referring to the fact that the Joint family did not get any income from the portion of the property that was sold to the third party. Stating that the second item was



A.S.No.700 of 2014

purchased out of the sale proceeds by selling portion of first item, plaintiff contended that she is entitled to equal share in all the Joint family properties.

Defendants 1 and 2 sold suit second item in favour of 4th defendant. Though the Sale Deed shows the consideration as Rs.1,70,29,400/- it is stated in the plaint that the actual consideration was more. Plaintiff stated in the plaint that defendants 1 and 2 wilfully suppressed the right of plaintiff and the sale is not binding on her.

6. From the averments in the plaint, it is seen that the plaintiff claimed 1/4th share by virtue of Hindu Succession (Amendment) Act, 2005 in respect of item Nos.1 and 2 and the plaintiff claimed 1/8th share in respect of third item of suit scheduled property. The defendants 1 and 2, with reference to the sale an extent of 2.92 acres of land, out of suit first item, contended that the property was sold for a sum of Rs.15,00,000/- and that the plaintiff had received her share of sale consideration from the purchaser. Therefore, it was stated by defendants 1 and 2 that the property purchased by defendants 1 and 2 namely, item No.2 of suit property is a separate property of defendants 1 and 2 as they utilized not only their share out of sale proceeds of item No.1 but also their savings from their business. As regards item No.1, it is contended that the property had been sold.



A.S.No.700 of 2014

Regarding item No.3 of suit scheduled property, it is the case of defendants 1 and

2 that the suit property was not available for partition as the plaintiff's paternal grandfather bequeathed the said property to his children through a Will dated 16.07.1986. As regards enjoyment, it is the case of the appellants that item No.2 is in exclusive possession and enjoyment of appellants 1 and 2 ever since they purchased the property and that the plaintiff is not in possession of any of the properties which are the subject matter of the suit. Stating that item No.2 is the separate property of defendants 1 and 2, it is contended that the sale of item No.2 in favour of 4th defendant is valid and the plaintiff cannot question the alienation. The third defendant filed a written statement supporting the case of defendants 2 and 3. As far as the fourth defendant is concerned, it is contended by him that he is a *bona fide* purchaser and that the plaintiff cannot seek partition in the property purchased by him. Pointing out that the plaintiff has come forward with the suit several years after the sale in favour of fourth defendant, it was further contended by the fourth defendant that the sale proceeds in respect of item No.1 of the suit property was paid to all the sharers separately and therefore, the properties purchased by defendants 1 and 2 are their absolute properties which they can deal with as absolute owners. It was also contended that the plaintiff is not in joint possession of properties. Before the Trial Court plaintiff examined herself as



A.S.No.700 of 2014

P.W.1 and marked Exs.A1 to A17. Defendants 2 and 3 were examined as D.W.1

and D.W.2. Son of 4th defendant was examined as D.W.3. Exs.B1 to B12 were marked by defendants. The trial Court, after framing necessary issues, held that the plaintiff is entitled to 1/4th share in respect of item Nos.1 and 2 of suit scheduled properties. As regards item No.1, the trial Court found that the plaintiff is entitled to 1/4th share in an extent of 46 cents in S.F.No.808/1. As regards item No.3, the trial Court granted a decree declaring 1/8th share to the plaintiff in respect of an extent of 3.70 acres in S.F.No.742. The trial Court also granted consequential reliefs. Aggrieved by the same, defendants 1 and 2 have filed the above appeal and fourth defendant has preferred cross objection.

7. The learned counsel appearing for the appellants submitted that the trial Court failed to consider Section 8 of Hindu Succession (Amendment) Act, 2005 as female heirs are not entitled to get share in the joint family properties. It was then contended that item No.2 of suit scheduled property is the self-acquired property of the defendants 1 and 2 as the Sale Deed itself shows that the property was purchased exclusively for themselves and not on behalf of the family. It is also contended that the plaintiff did not claim any right over item No.2 for three decades, and that she is not entitled to file a suit for partition claiming a share in



A.S.No.700 of 2014

the exclusive property of the defendants 1 and 2. The learned counsel pointed out that the alienation of the appellants in favour of fourth defendant was long back and that the total inaction on the part of the plaintiff was not considered by the trial Court while granting the decree for partition in respect of item No.2.

8. Having regard to the pleadings and grounds raised by the appellants, this Court has framed the following points for consideration in this appeal:

(a) whether item Nos.1 and 2 are the joint family properties and defendants 1, 2, 3 and 5?

(b) whether the item No.2 of the suit scheduled property is the exclusive property of the appellants?

(c) whether the Sale Deed executed by the defendants 1 and 2 in favour of fifth defendant by document dated 02.07.2012 is valid and binding on the plaintiff?

9. The fact that the suit properties are the joint family properties of first defendant and his brother and that item No.1 of the suit scheduled property was allotted to first defendant in the family partition that took place in 1986 by registered partition deed dated 27.08.1986 is admitted. It is also admitted that item No.3 of the suit property was kept in common between the two members of the joint family consisting of defendants 1 and 5. In the course of evidence , it is



A.S.No.700 of 2014

also admitted that the sister of defendants 1 and 5 relinquished her right and therefore, the properties were divided only between defendants 1 and 5. Since item No.3 of the suit scheduled property is also the joint family property which was kept in common, the plaintiff is entitled to share along with defendants 1, 2, 3 and 5. The trial Court, therefore, has rightly granted a decree for partition in respect of item Nos.1 and 3. As regards item No.1, the plaintiff is entitled to 1/4th shares. As regards item No.3, the plaintiff is entitled to 1/8th shares. The main issue in this appeal is about item No.2 of suit scheduled properties. While it is the case of the plaintiff that item No.2 was purchased on behalf of plaintiff and defendants 1 to 3, out of the sale proceeds by selling a valuable joint family property, namely substantial extent in suit first item, it is contended by the defendants that the plaintiff was given her share when the joint family property was sold in 2003.

10. The fact that an extent of 2.92 acres of land in S.Nos.526, 527 and 527/3C, which was the joint family property, was sold by a Document of Sale dated 09.04.2003 is admitted. It is also admitted that the recitals in the Sale Deed executed by plaintiff and defendants 1 and 2 shows that the property is sold for



A.S.No.700 of 2014

purchasing another property. Though the plaintiff states that a sum of Rs.4,64,000/- was received by way of consideration, defendant 1 and 2 would contend that the total sale consideration was Rs.15,00,000/-. Therefore, the family had the resources to purchase the property is not in dispute. The case of the appellants that the plaintiff was given her share out of the sale proceeds has been examined by the trial Court on the basis of pleadings and evidence on record. On proper appreciation of evidence, the trial Court came to the conclusion that the appellants have not proved that the plaintiff was paid her share when the other family property was sold vide Sale Deed dated 19.03.2003. In the course of evidence, the second defendant, who was examined as D.W.1, admitted to the effect that his father had paid him the share out of the sale proceeds and obtained a receipt. However, no receipt was produced by defendants to show that the plaintiff had also obtained her share out of sale proceeds from her father. It is not the case of second appellant that he paid the amount. It is the common case of the appellants that the first appellant, (their father) made the payment. The appellants have admitted that the total sale consideration received from the sale of joint family property was Rs.15,00,000/-. In the said circumstances, the failure to examine the first appellant's father is fatal to the case especially when no other evidence is produced by the appellants to



A.S.No.700 of 2014

prove their claim. The trial Court has rightly come to the conclusion that the property though purchased in the name of defendants 1 and 2, the property was purchased from the sale proceeds derived from the sale of joint family property consisting of plaintiff and defendants 1 to 3. It is not the case of defendants that there was division in status. Therefore, the decree granted by the trial Court in respect of 1/4th share in respect of item Nos.1 and 2 of the suit scheduled property cannot be faulted.

11. As regards, item No.3, the plaintiff was given only 1/8th shares in the property of the joint family consisting of defendants 1 and 5.

12. The fourth defendant, who is the purchaser of the property from defendants 1 and 2 / appellants had preferred the cross objection against the decree with regard to item No.2 of suit scheduled properties. The trial Court has given a finding that the sale in favour of fourth defendant is not valid to the extent of plaintiff's 1/4th share. Therefore, the plaintiff was given the declaratory relief declaring the Sale Deed as invalid insofar as it affects the right of the plaintiff regarding her 1/4th share.



A.S.No.700 of 2014

13. In the grounds of appeal, the fourth defendant has raised several grounds which are quite contrary to the facts pleaded by the plaintiff/first respondent. One of the main grounds raised in the cross objection/appeal is that the property was purchased by defendants 1 and 2 in the year 2002. It is also stated that the fourth defendant has prescribed title by ouster. The grounds of cross objection are on the assumption that the plaintiff had admitted the receipt of the amount towards her share out of the sale proceeds realised by defendants 1 and 2 by selling the joint family properties and that Item No.2 of the suit scheduled property was purchased by the cross-appellant by a Sale Deed dated 02.07.2012 from defendants 1 and 2 who are the exclusive owners. This Court is unable to find any substance in the grounds raised in the cross appeal having regard to the admitted facts.

14. The learned counsel appearing for appellants contended that the suit is filed only after the registration of Sale Deed in favour of the fourth defendant /cross-appellant and therefore, the trial Court ought to have held that the cross-appellant is a *bona fide* purchaser of the property for a value.

15. The cross appellant namely the purchaser has advanced an argument



A.S.No.700 of 2014

that the plaintiff has filed the suit only after the registration of Sale Deed in favour of the fourth defendant/cross-appellant and therefore, the sale in favour of cross-appellant cannot be invalidated. The question whether the cross-appellant is a bona fide purchaser or not is not relevant. The question that should be decided is whether the property purchased in the name of the appellants is the property of plaintiffs and appellants. The Court has held that the properties are joint family property of plaintiffs and defendants, and that the plaintiff is entitled to 1/4th share. Merely because the other two co-owners have dealt with the property and executed a sale deed in favour of the cross-appellant, that does not bind the plaintiff nor deprive the right of plaintiff to seek partition of her legitimate share in the property. Therefore, the Lower Court is right in granting a decree. In other words, the Sale Deed executed by the appellants is binding on the appellants but will not affect the share of plaintiffs.

16. In view of the above conclusion, this Court find no merits in the appeal as well the cross objection. Accordingly, both the appeal and cross objection are dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.



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A.S.No.700 of 2014

[SSSRJ] [NMJ]

29.11.2022

S.S.SUNDAR, J.,

AND

N.MALA, J.,

cda/mk



A.S.No.700 of 2014

To

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1. IV Additional District and Sessions Judge,
Coimbatore.
2. The Section Officer, VR Records,
High Court, Chennai.

A.S.No.700 of 2014

29.11.2022