



S.A.No.1016 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.12.2022

CORAM

THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.No.1016 of 2022

C.Poongodi

....

Appellant

Vs

1. Dhanakodi
2. Suseela
3. Jayalakshmi
4. Selvaraj
5. Mallika

....

Respondents

**Prayer :-** This Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the decree and judgment dated 05.11.2020 rendered in A.S.No.28 of 2020 on the file of the Principal District Judge, Salem confirming the decree and judgment dated 27.11.2019 rendered in O.S.No.215 of 2010 on the file of the Subordinate Judge, Attur by allowing this Second Appeal and to grant such other reliefs.

For Appellant : Mr.P.Subburaj

For Respondents : No appearance

**JUDGMENT**

This second appeal is directed as against the judgment and decree dated 05.11.2020 made in A.S.No.28 of 2020 on the file of the



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Principal District Judge, Salem, confirming the judgment and decree dated 27.11.2019 made in O.S.No.215 of 2010 on the file of the Subordinate Judge, Attur, thereby dismissed the suit for partition.

2. The appellant is the plaintiff and the respondents are the defendants. The case of the appellant is that the first respondent is the wife of Chellapillai and father of the appellant and the respondents 2 to 5 herein. The suit properties were originally belonged to her father who purchased it out of his own funds. While some portion of the suit properties were purchased by him vide registered sale deeds dated 19.07.1967 and 23.04.1969 and 28.08.2000, some of the properties were purchased in the name of the fourth respondent herein by a registered sale deed dated 23.06.1969. After the demise of her father, all were in joint possession and enjoyment of the suit property, without any division by metes and bounds. The appellant is having 1/6<sup>th</sup> share in the suit properties. However, the respondents not only evade but also, in order to defeat the lawful share of the appellant, the first respondent herein had executed a gift settlement deed on 24.09.2010, in favour of the fourth respondent herein in respect of the entire suit properties. Therefore, it is not valid and binding on the appellant, insofar as his share is concerned in the suit properties. She came to know



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about the gift deed on 15.10.2010 and immediately, she caused notice to the respondents calling upon them to divide the suit properties into six shares.

3. The respondents resisted the claim of the appellant by way of written statement and stated that except the relationship between them, the other averments were categorically denied by them. The father of the appellant had purchased the suit properties out of his own income. Therefore, the appellant is not entitled to have 1/6<sup>th</sup> share in the suit properties. The first respondent, her husband and her sister were in joint possession and enjoyment of the suit properties. The sister of the first respondent had executed a gift deed in her favour. The most of the suit properties were conveyed through gift settlement deed dated 19.07.1967 in favour of the first respondent herein and her sister. Thereafter, the sister of the first respondent had executed a settlement deed in favour of her mother Chellammal and one Thankkodi. Thereafter, the first respondent and her mother were in joint possession of the suit properties. Out of the income from the said property, the first respondent and her mother jointly purchased the property comprised in S.F.No.40/1 to an extent of 1.00 acre of land in S.F.No.37/1 of Punalvasal Village. Thereafter, the suit properties were purchased by the first respondent and the fourth respondent herein.



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Therefore, the appellant has no right to claim any share over the suit properties.

4. On the side of the appellant, she had examined P.Ws.1 to 3 and marked Exs.P1 to P16. On the side of the respondent, they had examined D.Ws.1 and 2 and marked Exs.D1 to D4. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court found that the plaintiff is not entitled for any share in the suit properties and dismissed the suit. Aggrieved by the same, the appellant preferred an appeal in AS.No.28 of 2020 before the Principal District Judge, Salem, and the same was dismissed and the judgment and decree passed by the trial Court was confirmed. Challenging the same, the present second appeal.

5. The learned counsel for the appellant has raised the following substantial questions of law:

- a) Is not the judgment of the lower courts vitiated by the reason that no proper delineation of the ownership of the properties had been properly arrived by the Courts ?
- b) Is not the judgment of the lower Courts



vitiated by the reason that simply because one among the properties under partition is in the name of the 1<sup>st</sup> and 2<sup>nd</sup> defendants, it is bad in law to dismiss the suit for partition, without giving due thoughts over the share of the other properties in which the plaintiff has share by virtue of being a class I heir ?

c) Is not the judgment of the lower Courts vitiated by the reason that the settlement deed made by the defendant No.1 is in valid as she is only co-owner of he properties mentioned in the sale deed ?

d) Is not the judgment of the lower Courts vitiated by the reason that the Courts have erred in concluding that the income earned from the properties in which the plaintiff's father is a co-owner is solely attributed to the defendant No.1 ?

e) Is not the judgment of the lower Courts vitiated by the reason that the properties which were exchanged between two parties through settlement deed were in essence a purchase of properties for consideration and the Courts have failed to take note of this ?

f) Is not the judgment of the lower Courts vitiated by the reason that the income eraned from such properties that stood in the name of one party



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is attributed to another party and by this sole reason rights are claimed over the entire property ?

g) Is not the judgment of the lower Courts vitiated by the reason that the insufficiency in Court fees can be rectified through a decree to pay insufficient Court fee ?

h) Is not the judgment of the lower Courts vitiated by the reason that lower Courts have failed to take up the issue of Court fee as a preliminary issue and pass any interim order that may have resolved the issue ?

i) Is not the judgment of the lower Courts vitiated by the reason that the party who was not added initially in the suit is concluded as essential party had deceased before the conclusion of the suit proceedings ?

6 . Heard, Mr.P.Subburaj, the learned counsel appearing for the appellant and this Court considered the rival submission made by the learned counsel for the appellant.

7. There is no dispute about the relationship between the appellant and the respondents. The case of the appellant is that her father purchased the suit properties and after his demise, she has 1/6<sup>th</sup> share in the



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suit property and as such, whatever the settlement deed executed by the first respondent in favour of the fourth respondent is not maintainable. The plaintiff was examined as P.W.1 and she deposed that the entire suit properties were purchased by her father and after his demise, she is entitled to get 1/6<sup>th</sup> share in the suit properties. However, in her cross-examination, she admitted that the sister of the first respondent had executed a settlement deed in favour of her father. Thereafter, the settlement deed was executed and as such, the suit properties were not purchased by her father from his own funds. That apart, the mother of the first respondent had executed settlement deed in favour of the first respondent. The sister of the first respondent also executed settlement deed in favour of the first respondent in respect of most of the suit properties. The settlement deed was marked as Ex.P1. It was executed by the mother of the first respondent herein in respect of the suit properties. Therefore, the appellant is not entitled to claim any share in the suit properties and the Courts below rightly dismissed the suit.

8. As such the Courts below have analyzed the evidences, both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and decreed the suit. Accordingly, this



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Court is of the considered opinion that no substantial question of law is involved in this appeal.

9. In view of above, this Second Appeal is dismissed and the judgment and decree dated 05.11.2020 made in A.S.No.28 of 2020 on the file of the Principal District Judge, Salem, confirming the judgment and decree dated 27.11.2019 made in O.S.No.215 of 2010 on the file of the Subordinate Judge, Attur, is confirmed. There shall be no order as to costs.

22.12.2022

Index : Yes/No

Internet : Yes/No

Speaking order/Non-speaking order

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To

1.The Principal District Judge, Salem.

2.The Subordinate Judge, Attur.



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**G.K.ILANTHIRAIYAN, J.**

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