



S.A.No.50 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 08.11.2022

PRONOUNCED ON: 23.12.2022

CORAM

THE HON'BLE Ms.JUSTICE P.T.ASHA

S.A.No.50 of 2017

1.N.Nallasubramaniam
2.N.Rethinasamy
3.M.Suseela
4.M.Santhakumari

...Appellants

Vs.

P.K.Natarajan (died)

1.S.Selvakumar

2.P.Thangaraj

3.R.Somsundram

... Respondents



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PRAYER :- This Second Appeal is filed under Section 100 of the C.P.C, against the judgment and decree dated 16.09.2016 made in A.S.No.34 of 2015 on the file of the III Additional District Court, Dharapuram, Tiruppur District modifying the Judgement and Decree dated 02.09.2015 made in O.S.No.103 of 2006 on the Sub Court, Dharapuram, Tiruppur District.

For Appellants : Mr.T.Murugamanickan, Senior Counsel
for Mr.M.Guruprasad

For Respondents : Mr.V.Srikanth [R.1]
: Mr.N.Manokaran [R.2 & R.3]

J U D G M E N T

The plaintiffs are the appellant before this Court challenging the judgment and decree passed by the III Additional District Judge, Dharapuram in A.S.No.34 of 2015 in and by which the learned Judge has set aside the Judgment and Decree passed by the Sub Judge, Dharapuram in O.S.No.103 of 2006. The parties for the ease of understanding are given the same rank in the narration as before the Trial Court.

Plaintiff's case:-



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2. The plaintiffs have filed the suit for partition of their 1/5th share in the suit schedule property and thereafter for a final decree. The suit property consists of properties situate in 2 Survey Numbers:-

A) An extent of 3.51 acres out of a total extent of 11.64 acres comprised in S.No.146.

B) An extent of 1.38.5 hectares together with the tiled house bearing Door No.30/B comprised in S.No.146/2 together with Electricity Service Connection No.447 and the appliances attached therein as also a 1/4th right in the well situate in Survey No.146/3 for which there is a separate service connection bearing No.665. To this well there is a 5 H.P.Motor Pump Set fixed. This is also the subject matter of sale together with ridges and the regular pathways, tank etc; and a bore well installed in the Survey No.146/3 measuring 0.04.0 hectares and Survey No.166 measuring an extent of 1.23.0 hectares and the usufructs thereon, regular pathway etc.

3. It is the case of the plaintiff that the suit property is the ancestral



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property of the father of the 1st defendant one Kandasami Gounder. The plaintiffs are the children of the 1st defendant. They would submit that being an ancestral Hindu joint family property the plaintiffs and the 1st defendant were each entitled to a 1/5th share and that they are in joint possession and enjoyment of the suit property.

4. While so, the 1st defendant who was leading a wayward life was greatly influenced by his friends, defendants 2, 3 and 4. The 2nd and 3rd defendants were giving out in the village that they had a right to the property and frantic efforts were being made by the defendants 2 to 4 to take away the property. In the light of the above news the plaintiffs had made inquiries at the Sub Registrar's office where they came to learn that by orders in E.P.No.80 of 2004 in O.S.No.112 of 2001, on the file of the Sub-Court Dharapuram, a sale deed had been executed in favour of the 2nd defendant, Selvakumar. Further inquiries revealed that a sale agreement dated 08.02.2001 had been collusively created by defendants 1 and 2 and thereafter the 2nd defendant had filed a suit for specific performance in



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O.S.No.112 of 2001. Although, initially the suit was contested by the 1st defendant, later he had allowed an ex parte decree to be passed on 02.09.2002. On the basis of the ex parte decree, the 2nd defendant had filed E.P.No.80 of 2004 to execute the decree by having the sale deed executed in his name.

5. The plaintiffs would further submit that the suit property whose value was over Rs.3,00,000/- had been sold for a paltry sum of Rs.70,000/-. The plaintiffs would submit that they have not been made a party either to the agreement of sale or to the proceedings in O.S.No.112 of 2001 and also in the execution proceedings. It is their case that Kandasamy Gounder is the son of Kolandasamy and he had 2 wives Valliathal and Nallammal @ Nallathal. Through his 1st wife he has 2 sons, Murugasamy @ Kolandavel and Natarajan, the 1st defendant. Through his 2nd wife he has a daughter, Kulandhathal and the 3rd defendant is the son of Kulandhathal. On 03.12.1980, the daughter of Kandasamy Gounder through his 2nd wife had released her interest in the suit property in favour



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of the 1st defendant. It is also their case that there was a partition on 03.12.1980 between Kandasamy Gounder and his sons the 1st defendant and Kolandavel. To confirm the right of the 1st defendant to the suit property, he had instituted OS.No.230 of 1981 on the file of DMC, Dharapuram against Kandasamy Gounder and Kolandavel. On 09.07.1982, the suit was decreed ex parte. The 1st defendant had filed an application for setting aside the ex parte decree which was dismissed on 12.02.1986. On 05.09.1993, the suit filed by Kandasamy Gounder for partition in OS.No.147 of 1989 came to be dismissed for default. Meanwhile, the order setting aside the ex parte decree in OS.No.147 of 1994 was challenged before this Court in CRP.No.852 of 1994 which was also dismissed. The suit OS.No.230 of 1981 was filed based on the family arrangement which has been marked as Ex.A.1 in this suit. By decreeing the said suit the right of the 1st defendant and the plaintiffs to this property had become confirmed. The plaintiffs therefore pleaded a right of pre-emption, since the 1st defendant had sold the property to third parties as the defendants were not coming forward with the partition, the plaintiffs



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were constrained to file the present suit.

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Written statement of the 1st defendant:-

6. The 1st defendant had filed a counter inter alia admitting that the suit property was a Joint family property of the plaintiffs and himself. The 1st defendant would contend that he had availed a loan and constructed upon the lands measuring 55 cents comprised in Survey No.42/3 bearing patta No.110. It is his case that the suit property was offered as a security for a loan given by the 2nd defendant who was running a finance company in the name and style of Manivel Finance and the agreement of sale was offered only as a security and was never intended to be acted upon. He would submit that he had no objections to a suit for partition being decreed.

Written statement of the 2nd defendant:-

7. The 2nd defendant had entered into an agreement of sale with the



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1st defendant and since the 1st defendant was not coming forward to execute the sale deed by receiving balance sale consideration, the 2nd defendant was constrained to file a suit OS.No.112 of 2001 for specific performance. This suit was decreed and the decree executed in E.P.No.80 of 2004. The 2nd defendant would submit that the plaintiffs are very much aware about the execution of the sale deed in his favour since both the plaintiffs and the 1st defendant have jointly replied to the pre-suit notice issued by the 2nd defendant. Therefore, the plaintiffs cannot feign ignorance about the same. The execution proceedings were also allowed only after notice to the defendants. Therefore, it is the contention of the 2nd defendant that the plaintiffs and the 1st defendant were now attempting to collude and takeaway the property. He would also submit the allegations that the suit property is worth over Rs.3,00,000/- is totally false. The 2nd defendant would therefore submit that the property now having been sold through Court to the 2nd defendant, nothing survives for consideration in the above suit particularly, when the property that was



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sold to the 2nd defendant was only the individual property of the 1st defendant. The 2nd defendant would therefore seek to have the suit dismissed.

Written Statement of the 3rd and 4th defendants:-

8. It is the case of these defendants that on 06.01.1992, the 4th defendant had purchased 2/3rd share in Survey No.166 measuring 2.02 acres and 1/3rd share in Survey No.169 measuring 1.53 acres for a sum of Rs.25,000/- from the father of the 1st defendant, Kandasamy. Prior to this sale, Kandasamy and the 4th defendant had entered into an agreement of sale dated 24.08.1989. Similarly, the 3rd defendant had purchased 4.04 acres in Survey No.146 from Kandasamy under sale deed dated 06.01.1992. It is the further case of the defendants that the 3rd defendant is in possession of the property and the revenue records stand in his name. The Family arrangement dated 03.12.1980 between Kandasamy Gounder, his two sons Murugasamy @ Kolandavel and P.K.Natarajan which has



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been put forward is a forged document and the decree in O.S.No.230 of 1981 based on this deed does not bind defendants 3 and 4. That apart, they had taken a plea for partial partition, limitation and non-joinder of necessary party.

Trial Court:-

9. The learned Sub Judge, Dharapuram had framed the following issues;-

" எழு வினாக்கள்:

(1)தாவா சொத்து வாதியின் கூட்டுக்குடும்ப சொத்தா?

(2)தாவா சொத்துக்கள் வாதியின் கூட்டு அனுபவத்தில் உள்ளதா?

(3)வாதி கோரும் முதல்நிலை பாகப்பிரிவினை பரிகாரம் கிடைக்கத்தக்கதா?

(4)வாதிக்கு கிடைக்கக்கூடிய வேறு ஏதேனும் பரிகாரங்கள் உள்ளதா?

கூடுதல் எழுவினாக்கள்

(1)வாதியின் வழக்கு பகுதி



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பாகப்பிரிவினை என்ற குறைபாட்டிற்கு

ஆளாகியுள்ளதா?

(2)வாதியின் கோரிக்கை கால

வரையறை சட்டத்தால் தடை

செய்யப்பட்டுள்ளதா?

(3)இவ்வழக்கு அவசிய தரப்பினரை சேர்க்காத

குறைபாட்டிற்கு ஆளாகியுள்ளதா?”

10. The 1st plaintiff had examined himself as P.W.1 and one Palanisamy as P.W.2 and marked Ex.A.1 to Ex.A.8. On the side of the defendants, the 2nd defendant examined himself as D.W.1, one Mohan Raj as D.W.2 and the 3rd defendant as D.W.3 and lastly D.W.4 is one Kolandavel, the brother of the 1st defendant. They have marked Ex.B.1 to Ex.B.23 to prove their case.

11. The learned Sub Judge on considering the evidence and other



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material available on record had decreed the suit as prayed for and passed a preliminary decree for partition. The suit was decreed on the ground that the sale in respect of entire property in favour of the 1st defendant was not maintainable and likewise the decree in the suit for specific performance was not binding on the plaintiffs, since the plaintiffs were not made parties to the proceedings. The learned Judge also held that the 3rd and 4th defendants had no right to the property on the basis of the decree in OS.No.230 of 1981, DMC, Dharapuram and the dismissal of the suit for partition filed by the vendors of the 3rd and 4th defendants Kandasamy Gounder in OS.No.147 of 1994. Challenging the said judgment and decree it was only the 3rd and 4th defendants who had challenged the decree in A.S.No.34 of 2015 on the file of the III Additional District Court , Dharapuram.



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Appellate Court:-

12. The learned Appellate Judge on considering the evidence on record allowed the appeal and modified the decree granting the plaintiffs a 1/12th share in the suit property and a 2/3rd share to the 3rd defendant. Aggrieved by this judgment the plaintiffs are before this Court.

Substantial Question of law:-

13. The appeal has been admitted on the following substantial question of law.

"1. Whether the first appellate Court is right in rejecting the family arrangement (Ex.B.1) made between Kandasamy Gouder, his sons viz., Murugasamy @ Kulandaivel and P.K.Natarajan (1st defendant herein) as inadmissible in law for the reason that it is unstamped and unregistered?

2. Whether the finding of the lower appellate Court in respect of limitation by invoking Article 110 of the



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Limitation Act as against the plaintiffs is correct?"

Thereafter, the appellants had filed a memo raising the following substantial questions of law. By consent on the date of argument in this Second Appeal, the said memo was allowed and the following Substantial questions of law were also included:-

"A. Whether the judgement of the lower Appellate Court is vitiated in that it has reversed the judgment of the Trial Court on a point which was not in issue before the Trial Court?

B. When Ex.A.1 decree in O.S.No.230 of 1981 has become final, whether the lower Appellate Court fell in error in setting aside this decree in unrelated proceedings?

C. When a settlement has been effected amongst family members under Ex.B.1, whether the lower Appellate Court acted in excess of jurisdiction in holding that this settlement is not valid ?"



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Submissions:-

14. Mr.T.Murugamanickam, the learned Senior counsel appearing on behalf of the plaintiffs would submit that the 1st defendant in the above suit is the father of the plaintiffs, the 2nd defendant is the purchaser of the suit property pursuant to the decree for specific performance in O.S.No.12 of 2001 and the 3rd and the 4th respondents are the purchasers under the father of the 1st defendant, Kandasamy Gounder.

15. It is the contention of the learned Senior counsel that under Ex.A.9, partition deed dated 10.09.1959 the suit property and other properties were divided amongst the 1st defendant's father Kandasamy and his brother Nachimuthu Gounder. Thereafter there was a family arrangement on 03.12.1980 between Kandasamy Gounder, the 1st defendant and his brother Murugasamy @ Kolandavel. 'B' Schedule therein (which is the suit property) was allotted to the share of the 1st defendant and the 'A' Schedule to Kolandavel. Kandasamy Gounder was given money. Thereafter the 1st defendant had filed OS.No.230 of 1981 against his father Kandasamy and his brother Kolandavel on the basis of



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Ex.B.1, partition deed. In the said suit Kandasamy Gounder remained ex parte and Kolandavel submitted to the decree. The decree came to be passed on 09.07.1982. Therefore, that the property is an ancestral property and that it was allotted to the share of the 1st defendant was confirmed. Consequently, the plaintiffs and the 1st defendant became jointly entitled to the said B schedule property in the suit OS.No.230 of 1981 which is the subject matter of the suit herein. After the decree in the suit OS.No.230 of 1981, Kandasamy Gounder had executed a sale deed in favour of the D.3 and D.4 both on 06.01.1992, under Ex.B.6.

16. The learned Senior Counsel would submit that the cause of action for filing the suit for partition was the decree for specific performance obtained by the 2nd defendant in OS.No.112 of 2001 which has also been executed in E.P.No.80 of 2004 despite the earlier decree in OS.No.230 of 1981 and the judgment in OS.No.147 of 1989 all of which would go to show that the suit property was the joint family property of the plaintiffs and the 1st defendant.



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17. The learned Senior counsel would submit that the Trial Court had discussed threadbare the evidence on record taking into considering the fact that there was no dispute with regard to the identity of property, no dispute with reference to the genealogy and admission on the part of the defendants that the property in question were ancestral properties. He would submit that the once the ancestral nature of the property has been recognized, then the only course open to the Court below was to decree the suit, which it has.

18. The learned counsel would submit that the Appellate Court had raised certain points for consideration which were not at all in issue before the Trial Court and consequently, the decree that has now been granted by the Court is one that has not even been prayed for. The suit has been filed seeking a partition of the plaintiffs 1/5th share in the suit property. However, now the decree has been granted in favour of the 3rd defendant as well. In support of this contention the learned senior counsel has relied



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upon the judgment reported in **[1965] 0 AIR 1874 - Nirmala Bala Ghose Vs. Balai Chand Ghose.**

19. He would further submit that the partition of the year 1959, was followed by the family arrangement between Kandasamy and his sons on 03.12.1980. After the family arrangement the said Kandasamy Gounder and the 1st defendant have alienated the share of the plaintiff as well. In support of this argument he would rely upon the judgment of the Hon'ble Supreme Court reported in **[1976] 3 SCC 119 - Kale & Others Vs. Deputy Director of Consolidation & Others** and the judgment reported in **[2020] 1 CTC 321 - Bharathidasan Vs. Shanmugavel.** The learned Senior counsel would submit that the properties which were obtained under Ex.A.9 was subsequently re-distributed amongst the co-owners under Ex.B.1 which was also confirmed by the judgement and decree in OS.No.230 of 1981. The learned Senior counsel would submit that the decree of the Trial Court is a well considered one. The Appellate Court has relied upon facts not pleaded to allow the appeal and is therefore liable to be set aside.



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20. Per contra, Mr.N.Manokaran, learned counsel appearing on behalf of the respondents 2 and 3 would submit that once the property had been partitioned it transforms into an absolute property of the parties to the partition. He would submit that once the partition on 10.10.1959 has taken place and the property had fallen to the share of Kandasamy it would become his absolute property. He would further submit that Ex.B.1 is a fabricated document, since there is no plea to show that after the partition the joint family property was once again enjoyed in common and there has been a blending of properties. The plaint is totally silent about the same. The suit which has been filed by the 1st defendant namely OS.No.230 of 1981 appears to be a collusive suit.

21. He would further submit that not only is the ex parte decree a collusive one but it is also a bald and non-speaking judgment and is void in the light of the judgment reported in **[2013] 4 CTC 145 - D.Srinivasan and others Vs.D.Chairman and others, 2013 (4) CTC 545 - Chitrakala**



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Vs. P.Mahesh and Others, 2015 (6) LW 241 - S.Arul Dhas V. F.Hubert, 2015 (6) MLJ 562 - Commissioner, Remeshwaram Municipality, Ramanathanpuram District Vs.Subbuthayammal and Others, 2020 (5) LW 361 - Shantimali Trust Rep. by its Managing Trustee Shiva Nagar, Thiruvanamaly Vs. Arunachala Education and Environment Development Trust (AEED Trust) Rep. by its Managing Trustee, Fr.Pancras and others, 2020 (7) MLJ 722 - Ramachandran and Others Vs. Balakrishnan and Others. The learned counsel would submit that the 1st defendant's suit for declaration and permanent injunction in OS.No.85 of 1992 has been dismissed for default and after being restored and it was once again dismissed. The learned counsel would submit that under Ex.B.10 and Ex.B.12 the said Kandasamy Gounder had a 2/3rd share and therefore only a 1/3rd share can be divided among the plaintiffs.

22. The learned counsel would lay emphasis on the fact that Kandasamy Gounder had sold the property to defendants 3 and 4 as early as on 06.01.1992, whereas, the suit has been filed only on 11.09.2006. In



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support of this argument, he would rely on the judgment *reported in 2010 (7) MLJ 52 - T.A.Yuvaraj Vs. T.Balakrishna and 2010 (4) CTC 640 - Venkataramana Vs. N.Munuswamy*. He would therefore submit that the decree passed by the Appellate Court is very much in order and can be sustained.

Discussion:-

23. The plaintiffs have filed the suit for partition contending that the property belongs to them and the defendants. They claimed the above right on the basis of Ex.A.9, Ex.B.1, family arrangement dated 03.12.1980, Ex.A.1, ex parte decree dated 09.07.1982 in suit O.S.No.230 of 1981 and Ex.A.8, judgment in OS.No.147 of 1989. The admitted facts are that the property belonged to Kolandasamy Gounder whose sons Kandasamy Gounder and Nachimuthu Gounder had partitioned the property under Ex.A.9, partition deed dated 10.09.1959.

24. The plaintiffs have pleaded a family arrangement between



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Kandasamy Gounder and his two sons Murugasamy @ Kolandavel and P.K.Natrajan, the 1st defendant. The family arrangement is disputed by the defendants 2 to 4. However, on the basis of this family arrangement, the 1st defendant had filed suit OS.No.230 of 1981 on the file of the District Munsif, Dharapuram which is evidenced by Ex.A.1. The suit has been filed to confirm the possession of the 1st defendant under the family arrangement. An ex parte decree came to be passed on 09.07.1982 under Ex.A.1, in and by which the 1st defendant who was the plaintiff in that suit had his right confirmed over the A schedule property in the suit which was the B schedule property in Ex.B.1, family arrangement. It appears that Kandasamy Gounder had filed I.A.No.1577 of 1984 to set aside the ex parte decree. Murugasamy @ Kolandavel, the brother of the 1st defendant submitted to the decree since under the family arrangement he had been allotted the A schedule property. The application filed by Kandasamy Gounder to set aside the above ex parte decree came to be dismissed on 12.02.1986 and there was no further challenge to the said order.



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25. The said Kandasamy Gounder, thereafter had filed a suit OS.No.147 of 1989 against his son, the 1st defendant for partition of his 2/3rd share in the suit schedule property in the said suit. A perusal of Ex.A.8, which is the suit extract in OS.No.147 of 1987 would indicate that the said Kandasamy Gounder claims a right to a 2/3rd share in the suit schedule property on the basis of Ex.B.10, B.11 and B.12. The suit extract would further show that Kandasamy Gounder had acknowledged the execution of Ex.B.1, family arrangement but would however state that the said agreement had not been given effect to and partition effected. However, this suit was allowed to be dismissed for default on 19.11.1996. The suit OS.No.147 of 1989 was decreed ex parte on 06.12.1989. Although, a petition to set aside the ex parte decree had been filed by the 1st defendant, Kandasamy Gounder proceeded to sell the property to the 3rd and 4th defendants under Ex.B.5 and Ex.B.6. Thereafter, the ex parte decree was set aside on 21.01.1992 and on 05.03.1993 the same was dismissed for default. The said petition was restored to file on 12.10.1993



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to be once again dismissed for default on 19.11.1996 and that dismissal order has attained finality.

26. The statement that the family arrangement was not given effect to may not be correct, since the 1st defendant had filed the suit OS.No.230 of 1981 to confirm his possession under the family arrangement. The said suit had been filed against Kandasamy Gounder and the Murugasamy @ Kolandavel. Murugasamy @ Kolandavel has submitted to the decree and it was only the father of the 1st defendant i.e; Kandasamy Gounder who had contested the said suit by filing an application to set aside the ex parte decree in IA.No.1577 of 1984. This application was dismissed on 12.02.1986 and thereafter no steps were taken to restore the application. Kandasamy Gounder had not filed any application challenging the same, therefore, the decree in OS.No.230 of 1981 has attained finality.

27. The learned counsel for the defendant had questioned this



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decree on the ground that it was a non-speaking one and therefore cannot be treated as a judgment for which he had relied upon several judgments. However, in the instant case, the only difference is that the defendant had filed an application to set aside the ex parte decree which was also dismissed and there was no challenge to this dismissal. Therefore, it would not lie in the mouth of the vendor from the 1st defendant therein to now challenge the decree in OS.No.230 of 1981. The fact that Kandasamy Gounder had not chosen to file further appeals against the order passed in I.A.No.1577 of 1984 in O.S.No.230 of 1981 is further confirmed by the fact that Kandasamy Gounder had filed a suit for partition in OS.No.147 of 1989 and the suit was decreed ex parte on 16.12.1989. Thereafter, the defendants have immediately taken steps to restore the petition, however, in the interregnum the said Kandasamy had alienated the properties to the 3rd and 4th defendants under Ex.A.5 and Ex.A.6 respectively.

28. The 1st defendant had taken out an application to set aside the ex parte decree which was allowed on 21.01.1992 and thereafter the suit



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OS.No.147 of 1989 was dismissed for default, the same was restored to file on 12.10.1993 and once again dismissed for default on 19.11.1996.

The fact that the said Kandasamy Gounder had sold the properties to defendants 3 and 4 pending the suit in OS.No.147 of 1989 is evident from the fact that in the recitals in Ex.B.5 and Ex.B.6, Kandasamy Gounder had added a clause wherein he had directed the alienee to continue the proceedings in OS.No.147 of 1989. However, neither the 3rd nor the 4th defendants had taken steps to restore the OS.No.147 of 1989 which was dismissed for default on 19.11.1996. Therefore, the sale in favour of the defendants 3 and 4 during the pendency of the proceedings and the decree in O.S.No.230 of 1981 and O.S.No.147 of 1989 would go to show that the suit property is the joint family property of the plaintiffs as well as the 1st defendant and the vendors of the defendants 3 and 4 had no right to the property and consequently did not have a right to alienate the property in favour of defendants 2 and 3.

29. Considering the fact that the 2nd defendant has not challenged



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the decree in the instant suit, no discussion is required with reference to the sale in favour of the 2nd defendant, as the suit is decreed against the 2nd defendant. Ex.B.1, disputed family arrangement, upon which the suit OS.No.230 of 1981 had been filed and in the said suit this family arrangement has been upheld. The said document no doubt is an unstamped and an un-registered document, however, pursuant to the said document, the 1st defendant had filed the suit OS.No.230 of 1981 and obtained a decree confirming the family arrangement and this decree has been confirmed by the decree made in OS.No.230 of 1981. Therefore, the Appellate Court has committed an error in rejecting the family arrangement by Ex.A.1, ex parte decree in OS.No.230 of 1981. Though the ex parte decree had been challenged, the challenge was dismissed on 12.02.1986, therefore, the division of the property in terms of Ex.B.1 has been confirmed. Therefore, the 1st substantial question of law is answered against the defendant. As regards the issue of limitation, the specific plea of the plaintiffs is that they had come to know about the various transactions only when they had received a notice in the execution



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proceedings and immediately steps have been taken by them by filing the suit. Therefore, the 2nd substantial question of law is also answered in favour of the plaintiff.

30. The learned appellate Court, in the instant case, had framed an issue "*as to whether the suit was maintainable without setting aside the sale in favour of the 3rd defendant*". This issue has neither been pleaded nor raised as an issue before the Trial Court, for the 1st time the same has been taken up for consideration only by the Appellate Court. Further, even under the sale deeds executed by Kandasamy Gounder in favour of the defendants 3 and 4 there is a specific recital that except for the suit OS.No.147 of 1989 there are no other encumbrances in respect of the property and further the vendor therein namely the Kandasamy Gounder had directed defendants 3 and 4 to continue the proceedings in O.S.No.147 of 1989. Therefore, it is implied that the purchase of defendants 3 and 4 is subject to the result of the suit OS.No.147 of 1989. This suit has been dismissed for default under Ex.A.8 on 19.11.1996 but



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the defendants 3 and 4 have not thought it fit to prosecute the proceedings after they had purchased the property. Therefore, on the facts of the case the judgments relied upon by the respondents/defendants will not come to their aid. Therefore the substantial question of law subsequently framed (*namely A, B & C*) are also answered in favour of the plaintiffs. Consequently, the Second Appeal stands allowed. No costs. Consequently, the connected Miscellaneous Petition is closed, if any.

23.12.2022

Index : Yes / No
speaking Order : Yes / No
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To,

- 1.The III Additional District Court, Dharapuram, Tiruppur District
2. The Sub Court, Dharapuram, Tiruppur District.

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Pre-delivery Judgment in
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