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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 11.03.2022	PRONOUNCED ON: 01.04.2022
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CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

A.S.NO.896 OF 2018

M.Mangai

... Appellant/1st Plaintiff

Vs.

1. Bhagyam (Deceased)
2. Pasupathi (Deceased)
3. Vanaja
4. S.Devi
5. Karian
6. M.Tamilselvan
7. Mathavan Krishnan

...Respondents/
Defendants 1 to 5 and 2nd Plaintiff

[R1 & R2 Deceased. R7 Brought into record. Vide court order dated 24.06.2021 passed in C.M.P.No.14035 of 2020 in A.S.No.896 of 2018]

Prayer: Appeal suit filed under Section 96 read with Order XLI-Rule 1 of CPC, against the judgment and decree of the learned Principal District Judge, Krishnagiri dated 04.07.2018 in O.S.No.55 of 2012.

For Petitioner : Mr.T.M.Hariharan

For Respondents : Mr.V.Nicholas [R3 to R5 & R7]
R1 & R2 - Died

JUDGMENT

The first plaintiff in O.S.No.55 of 2012, which was on the file of the Principal District Court, Krishnagiri, is the appellant herein. O.S.No.55 of 2012 has been filed by two plaintiffs viz., the daughter and son of late Marappa Gounder



against five defendants seeking a declaration that they are entitled to the suit property and for a consequential injunction restraining the defendants from interfering with peaceful possession and to declare three sale deeds executed by the first and second defendants of the suit properties in favour of the 3rd, 4th and 5th defendants respectively as null and void and seeking permanent injunction restraining the defendants from alienating the suit properties.

2. It was the contention of the plaintiffs that the suit properties along with other properties originally belonged to one Mara Gounder. After his death, his two sons viz., Thimmaraya Gounder and Mara Gounder @ Marappa Gounder divided the properties between themselves through an oral partition. Patta was granted and all revenue records also stood in their respective names. It was claimed that the oral partition had been acted upon.

3. Mara Gounder @ Marappa Gounder died on 02.05.1992 leaving behind his two wives, and a daughter and son. The daughter and son are the plaintiffs. Item No.IV of the suit properties is claimed to be the exclusive property of Mara Gounder @ Marappa Gounder. It was claimed that the plaintiffs had divided the properties by a registered partition deed dated 14.11.2003 with the consent of their mothers. The revenue records also stood in their names.

4. The first defendant is the wife of Krishnan, the son of Thimmaraya Gounder. It was claimed that the first and second defendants further executed sale deeds with respect to the suit properties in favour of 3rd, 4th and 5th defendants on 05.06.2012 and 22.06.2012. Claiming that the sale deeds should be set aside as null and void and seeking declaration of title and consequential injunction, the suit had been filed.

5. A written statement has been filed by the defendants denying that the suit properties belonged to Mara Gounder. They denied that Thimmaraya Gounder and Mara Gounder @ Marappa Gounder had divided the properties by oral partition. They denied that, under the said partition, the suit properties fell into the share of Mara Gounder @ Marappa Gounder. They denied and disputed the partition between the plaintiffs of the suit properties by registered partition deed dated 14.11.2003.

6. It was stated that the partition deed had been created fraudulently. It was stated that therefore, they have a right to deal with the properties and therefore, the first and second defendants had exercised that right and conveyed the properties to the third, fourth and fifth defendants.



7. It was stated that the second plaintiff, Tamilselvan and his Mother Venkatammal had filed a suit in O.S. No. 193 of 1998 in the District Munsif Court, Krishnagiri against the first plaintiff and her mother Samakkal for partition and other reliefs. In that suit, the defendants had stated that there was no oral partition between Mara Gounder @ Marappa Gounder and his brother Thimaraya Gounder. They had stated that both the brothers were living jointly. It was also stated in the written statement that partition had been effected among the first plaintiff and her Mother and Krishnan S/o Thimmaraya Gounder and the properties had been divided by a registered partition deed dated 22.08.1994. It had been stated that Krishnan was put in separate possession and enjoyment of the properties pursuant to the said partition deed and he was enjoying the property exclusively. His mother died and thereafter, he had been in enjoyment. Thereafter, on the death of T.Krishnan, his legal representatives, the first and second defendants continued to enjoy the properties and conveyed the said property by registered sale deed to the 3rd to 5th defendants. It was therefore stated that the suit has to be dismissed.

8. The learned Principal District Judge, Krishnagiri, on the basis of the pleadings, framed the following issues at trial:

1. Whether the plaintiffs are entitled for the declaration of title as per the partition deed dated 14.11.2003?
2. Whether the first and second defendants are in peaceful and possession and enjoyment of the suit properties as per the partition deed dated 22.08.1994?
3. Whether the 2nd Plaintiff is the legal heir of Mara Gounder?
4. Whether the plaintiff are entitled for the declaration to declare?
 - (i) Sale deed dated 05.06.2012 (Doc.No.985 / 2015)
 - (ii) Sale deed dated 05.06.2012 (Doc.No.986 / 2012)
 - (iii) Sale deed dated 22.06.2012 (Doc.No.1098 / 2012)executed by D1, D2 in favour of D3 to D5 is null and void?
5. Whether the Plaintiffs are entitled for the Injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit properties?
6. Whether the Plaintiff is entitled for the Injunction restraining the defendant from



alienating the suit properties to third parties?

8. To what other reliefs?

9. The parties were invited to adduce evidence. During the course of trial, the first plaintiff Mangai was examined as P.W.1, Mangammal was examined as P.W.2 and Venkatammal, the second wife of Mara Gounder @ Marappa Gounder was examined as P.W.3. The plaintiffs marked Exs. A1 to A15. The exchange deed was marked as Ex.A1, the sale deed was marked as Ex.A2 and the partition deed was marked as Ex.A3. The sale deeds in favour of defendants 3 to 5 were marked as Exs.A7 to A9.

10. On the side of the defendants, the defendants 1 and 3 to 5 were examined as D.W.1 to D.W.4. Two other witnesses were examined as D.W.5 and D.W.6. Exs.B1 to B28 were marked. These included the sale deed in favour of Mara Gounder @ Marappa Gounder as Ex.B1, sale deed in favour of T.Krishnan as Ex.B3, written statement in O.S.No.193 of 1998 as Ex.B5; the kist receipts as Exs.B10 to Ex.B20, Ex.B22 and Ex.B23 and sale deed in favour of the third, fourth and fifth defendants as Exs. B25 to B27.

11. On the basis of the evidence adduced, the learned Principal District Judge examined issues 1 to 3. These included whether the plaintiffs were entitled for declaration of title in accordance with partition deed dated 14.11.2003 and whether the first and second defendants were in possession and enjoyment of the properties in accordance with partition deed dated 22.08.1994 and whether the second plaintiff was a legal heir of Mara Gounder.

12. The learned Principal Judge found as a fact that, in Ex.B6, partition deed dated 22.08.1994, between Krishnan, husband of the first defendant and the father of the second defendant and Samakkal, the mother of the first plaintiff and the first plaintiff, which partition deed was a registered document No.525/1994, it was stated that item nos. 1 to 4 and 6 to 9 were allotted to T.Krishnan and the first plaintiff and her mother were allotted item No.5. Therefore, it was stated that the document reflected that the suit properties had already been partitioned among the 1st plaintiff and her mother and T.Krishnan in the year 1994 and that the partition deed, had not been set aside.

13. The learned Principal District Judge, therefore, stated that in the light of the said partition, the plaintiffs cannot again partition the same properties under Ex.A3 dated 14.11.2003. It was also stated that Samakkal, mother of the



first plaintiff had not been added as a party to the present suit. The said Samakkal has not challenged the earlier partition till date. Even the first plaintiff, who was a party to the partition deed dated 22.08.1994 had not questioned the said partition. She only claimed that she was paid only Rs.50,000/- and the document had been obtained by fraud, but there was no pleading to that effect.

14. It had also been found that in the written statement in O.S.No.193 of 1998, it had been very specifically stated that the second plaintiff was not born to Mara Gounder @ Marappa Gounder and it was denied that there was an oral partition.

15. In view of the aforesaid findings, the Trial Court held that the properties had already been partitioned between Krishnan / husband of first defendant and father of second defendant, Samakkal/ mother of first plaintiff and Mangai /first plaintiff. The learned Principal Judge held that the relief of declaration of title cannot be granted and also held that the first and second defendants had sold the properties, which had been allotted to Krishnan by way of partition deed dated 22.08.1994 and therefore, the sale deeds in favour of the defendants 3 to 5 were perfectly valid. In view of these reasons, the suit was dismissed.

16. Questioning the dismissal of the suit, the first plaintiff alone had filed the present first appeal.

17. Heard Mr.T.M.Hariharan, learned counsel for the appellant and Mr.V.Nicholas, learned counsel for respondents R3 to R5 & R7.

18. It is the contention of Mr.T.M.Hariharan, learned counsel for the appellant that the properties originally belonged to Mara Gounder. He had two sons namely Thimmaraya Gounder and Mara Gounder @ Marappa Gounder. Mara Gounder @ Marappa Gounder had two wives Samakkal and Venkatammal. The first plaintiff was the daughter of Samakkal. The second plaintiff was the son of Venkatammal. It was also contended that the son of Thimmaraya Gounder was one Krishnan, whose wife is the first defendant and whose son is the second defendant. It was stated that there was a division between the first and second plaintiffs in the year 2003 by Ex.A3. It was also stated that the first and second defendants denied the earlier oral partition. The learned counsel stated that there was a partition already in the year 1994 under Ex.B6 and the suit properties were also said to be allotted to Krishnan. It is the contention of the learned counsel that the earlier partition was not acted upon and therefore, the learned Principal District Judge should



have examined whether the earlier partition was a valid partition or not. The learned counsel further stated that the learned Principal Judge has not appreciated the facts in proper perspective and hence, urged that the judgment requires to be interfered with.

19. Mr.V.Nicholas, learned counsel for respondents R3 to R5 and R7, disputed that particular assertion and pointed out that the status of the second plaintiff itself is questionable. He stated that there was an earlier suit in O.S.No.193 of 1998, where the first plaintiff Mangai and her mother Samakkal had disputed the status of the second plaintiff. The learned counsel stated that in that particular suit, in the written statement, they had also denied the oral partition between Thimmaraya Gounder and Mara Gounder @ Marappa Gounder. The learned counsel stated that partition had been effected only in the year 1994 and the properties had been allotted to all the parties and therefore, the learned Principal District Judge had dismissed the suit and had refused to grant the relief of declaration of title. Learned counsel justified the said judgment.

20. I have carefully considered the arguments and perused the materials placed before this Court.

The points for consideration under Order 41 Rule 31 CPC are:

- i. In the absence of any relevant documents is it reasonable to set aside the partition deed dated 22.08.1994 entered into among Krishnan, Samakkal, the mother of the first plaintiff and the first plaintiff.
- ii. Whether the written statement filed by Sammakkal, the mother of the Plaintiff and the first plaintiff in O.S.No.193 of 1998 would bind the 1st plaintiff/appellant?

21. The suit properties are said to have been originally belonged to Mara Gounder. He had two sons Thimmaraya Gounder and Mara Gounder @ Marappa Gounder. It is alleged by the appellant herein that there was an oral partition between Thimmaraya Gounder and Mara Gounder @ Marappa Gounder. There is no evidence for such oral partition and no materials speak about the oral partition. As a matter of fact in an earlier suit in O.S.No.193 of 1998 filed by the second plaintiff Tamilselvan and his mother Venkatammal against the first plaintiff Mangai and her mother Samakkal, the first plaintiff and her mother Samakkal had denied such oral partition in their written statement and they also stated in the written statement that there was a partition among T.Krishnan s/o.Thimaraya Gounder representing the family of the



Thimaraya Gounder and the first plaintiff Mangai and her mother Samakkal representing the family of Mara Gounder @ Marappa Gounder by a registered partition deed dated 22.08.1994, which was registered as document No.525 of 1994.

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22. In view of that particular document, whereby, parties have been granted rights unless that deed is questioned and relief is sought to set aside that particular document, the plaintiff cannot maintain a suit for declaration of title for the very same properties.

23. Under the said partition deed dated 22.08.1994, Krishnan had been allotted Item Nos. 1 to 4 and 6 to 9. The first plaintiff and her mother had been allotted with Item No.5. Further, the first plaintiff and her mother Samakkal had also in the written statement, in O.S.No.193 of 1998 questioned the claim of oral partition between Thimaraya Gounder and Mara Gounder @ Marappa Gounder. Therefore, I hold there is no evidence to prove partition between Thimaraya Gounder and Mara Gounder @ Marappa Gounder. Even if there had been oral partition, there is no evidence to prove the same and it had not been proved in manner known to law. The document dated 22.08.1994, shows that there was a partition deed between the family Thimaraya Gounder and the family of Mara Gounder @ Marappa Gounder. Thus, the suit is not maintainable without seeking a declaration that the partition deed dated 22.08.1994 has to be set aside.

24. Without claiming such a relief the plaintiff can never seek for declaration of title. The partition dated 14.11.2003 between the first and second plaintiffs is only a self serving document and does not create any right since they had no right, in the first instance, to partition the properties.

25. The stand taken in the written statement in O.S.No.193 of 1998 questioning the status of the second plaintiff also binds the first plaintiff. The first plaintiff, in her written statement, along with her mother had denied the oral partition between Thimaraya Gounder and Mara Gounder @ Marappa Gounder. A different stand cannot be taken in a later suit.

26. In view of these reasons, I would answer the first point for consideration that the suit is not maintainable without seeking the relief of declaration that the partition deed dated 22.08.1994 as null and void. I also hold that the written statement in O.S.No.193 of 1998, acts as an estoppel against the first plaintiff from claiming a right again over the suit properties.



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27. The judgment and the decree dated 04.07.2018 in O.S.No.55 of 2012 is upheld. The Appeal Suit stands dismissed. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

mp/sp

To

1. The Principal District Judge,
Krishnagiri.
2. The Section Officer,
V.R.Section,
Madras High Court.

+1cc to M/s.T.M.Hariharan, Advocate, S.R.No.22515

+3ccs to M/s.V.Nicholas, Advocate, S.R.No.22308

A.S.No.896 of 2018

BR(CO)
RLP(18/05/2022)