



A.S(MD)No.164 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S(MD)No.164 of 2010
and
M.P.(MD) Nos.1 & 2 of 2010

Selvarani

...Appellant/ Plaintiff

Vs.

1.Ravichandran

2.Selvaraj

3.Valliammai

4.Sugarno

5.Kasi

6.Pandi

...Respondents / Defendants

PRAYER: Appeal Suit filed under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 24.02.2010 passed in O.S.No.3 of 2007, by the learned District Judge, Sivagangai.



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For Appellant : Mr.T.S.Mohammed Mohidheen

For Respondents 1, 3 to 6: Mr.S.Srinivasa Raghavan

JUDGMENT

The appellant is the plaintiff in O.S.No.3 of 2007 on the file of the learned District Judge, Sivagangai. The respondents 1 & 2/ defendants 1 and 2 are brothers. The third respondent/ third defendant is the mother of the appellant / plaintiff and respondents 1 and 2/ defendants 1 and 2. The respondents 4 to 6 are the purchasers from the respondents 1 to 3/ defendants 1 to 3.

2. The original suit has been filed by the appellant / plaintiff for partition of her 1/4th share in the suit properties. The said suit was dismissed. Challenging the said judgment and decree dated 20.04.2015, the plaintiff has filed the present appeal as appellant.

3. It is the case of the plaintiff that the plaintiff is the daughter and the defendants 1 and 2 are sons of the deceased Ponnambalam Asari and his wife third defendant. The said Ponnambalam



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Asari has purchased the suit property as a vacant site and constructed eight (8) shops and started to run a Saw Mill in the name and style of Andavar Saw Mill. He has also constructed a house in the said property, in which, he along with his family members resides.

4. On 15.05.1998, the said Ponnambalam Asari died, leaving behind the plaintiff and the defendants 1 to 3 as his legal heirs and they are in joint possession of the same. Out of the above said eight (8) shops, they have sold five (5) shops to one Ganesan by sale deed, dated 13.06.2001. The plaintiff has got undivided 1/4th share from the said properties. The defendants 4 to 6 tried to defeat the rights of the plaintiff in getting 1/4th share in the suit properties and hence, she had issued a legal notice on 13.10.2004 to the defendants 1 to 3. But the defendants 1 to 3 gave a reply stating that there is an execution of partition deed dated 25.09.2003 in this regard. However, the defendants 1 and 2 had fraudulently tried to make mutation of revenue records in the name of the third defendant and fraudulently obtained the signature of the plaintiff in the alleged partition deed. Hence, it is legally not valid and the said partition deed was not in force. Though the defendants 4 to 6 have no right, in collusion with the defendants 1 to 3 tried to create sham and



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nominal documents in respect of the suit properties. Hence, the plaintiff has filed the suit for partition claiming 1/4th share in the suit properties.

5. The defendants 1, 3 to 5 filed a written statement, which reads as follows :

The suit is not maintainable both in law and on facts. The suit property in Door No.155/1 absolutely belongs to Ponnambalam Asari - father of the plaintiff and the defendants 1 and 2 and husband of the third defendant. After the demise of Ponnambalam Asari, without partitioning the suit property, the first defendant has constructed an upstairs. While so, on 15.05.1998, the said Ponnambalam Asari died and thereafter, the parties to the suit have registered a partition deed on 25.09.2003. The plaintiff, who is the daughter of Ponnambalam Asari, has been given sufficient sreedhana articles during her marriage and hence, she accepted the partition deed and received a sum of Rs.10,000/- towards her share. Thereafter, defendants 1 and 2 got mutation of revenue records in respect of the suit properties and sold it to the defendants 4 to 6. Having the knowledge of the partition deed and accepted the partition deed, the plaintiff has no right to agitate the same. Further, the suit filed by the plaintiff was not filed within three years



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from the date of partition and it is filed only to extract money from the first defendant with false allegations and hence, the same may be dismissed with costs.

6. The sixth defendant has filed a written statement which reads as follows :

The suit is not maintainable both in law and on facts. After the death of Ponnambalam Asari, the plaintiff and the defendants 1 to 3 divided the properties by way of registered partition deed, dated 25.09.2003. So, the plaintiff is estopped from making any plea as against the partition. She has no cause of action to file the suit and the same is barred by limitation. The plaintiff is not entitled to make any claim and hence, the suit may be dismissed with costs.

7. The parties went into trial and the learned District Judge, Sivagangai, had framed the following issues for consideration:-

1. Whether the plaintiff is entitled to 1/4th share in the suit properties ?
2. Whether the partition deed, dated 25.09.2003 is true and valid or it has been brought about fraudulently by misrepresentation ?



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3. Whether Door No.155/1 has been built by the first defendant ?

4. Whether the defendants 4 to 6 are *bonafide* purchasers for lawful consideration ?

5. To what relief, if any, is the plaintiff entitled?

8. During trial, on the side of the plaintiff, the plaintiff examined herself as P.W.1 and documents Ex.A1 to Ex.A5 were marked. On the side of the defendants, first defendant examined himself as D.W.1 and one Gajanapar Alikhan was examined as D.W.2 and documents Ex.B.1 to Ex.B8 were marked.

9. On consideration of the oral and documentary evidence, the learned District Judge, Sivagangai, had dismissed the suit. Challenging the said judgment and decree, dated 20.04.2015, the plaintiff has filed the present appeal as appellant.

10. The appellant is the plaintiff in O.S.No.3 of 2007 on the file of the learned District Judge, Sivagangai. The respondents 1 & 2/ defendants 1 and 2 are brothers. The third respondent/ third defendant is the mother of the appellant / plaintiff and respondents 1 and 2/



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defendants 1 and 2. Respondents 4 to 6 are the purchasers from the respondents 1 to 3/ defendants 1 to 3.

11. The original suit has been filed by the appellant / plaintiff for partition of her 1/4th share in the suit properties. The said suit was dismissed. Challenging the said dismissal judgment and decree dated 20.04.2015, the plaintiff has filed the present appeal as appellant.

12. The plaintiff is in appeal as against the said judgment and decree.

13. The learned counsel for the appellant would submit that the appellant is the daughter and respondents 1 and 2 are the sons of the third respondent. The appellant is the daughter and she is entitled for partition in the scheduled mentioned properties. When the appellant sent a notice to the respondents, they have sent a reply stating that they referred to the partition deed dated 25.09.2003. Though in the partition deed, it is mentioned only about the consideration of Rs.10,000/- (Rupees Ten Thousand only) and whereas the worth of the properties is Rs.31,75,837/- (Rupees Thirty One Lakhs Seventy Five Thousand Eight



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Hundred and Thirty Seven only). They obtained the signature only under the impression that they would change the joint patta whereas misused the signature as if they have entered into a partition deed. Therefore, the partition deed did not bind the appellant. Though the respondents sent a reply notice, in the reply notice, they have stated about the partition deed and since the partition deed has not been acted upon and it is also not properly worked out and the worth of the property is not given and in the partition deed, only the share allotted for her is only Rs.10,000/- (Rupees Ten Thousand only). Therefore, it will not bind the appellant. The Trial Court failed to appreciate the oral and documentary evidence and considered the content of the partition deed which itself shows that it would have been acted upon and before the judgment of the Trial Court is set aside and the plaintiff has to be allotted her share of 1/4th share in the suit property.

14. Learned counsel for the respondents 1, 3 to 6 would submit that even soon after receiving the suit notice, the respondents have responded to the said notice and by way of reply notice, they have clearly stated about the registered partition deed, dated 25.09.2003, which has been marked as Ex.A.1 in the suit. The partition deed has



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been acted upon and based on the partition deed, the respondents 1 to 3 sold some of the properties to the respondents 4 to 6. Even the appellant has stated about the partition deed and reply notice, in the plaint paragraph No. 7 itself, however, he neither challenged the partition deed nor challenged the subsequent sale deed in favour of the respondents 4 to 6. The Trial Court also clearly made observation regarding the sale and also the partition deed has not been challenged within the period of limitation i.e., three years from the date of registered partition deed. Since the appellant is a party to the registered partition deed, the appellant ought to have challenged the partition deed within three years from the date of the said sale deed. Since she is also a party to it and signed it and also admitted in the plaint and D.W.2 is also one of the attesting witnesses to the said partition deed and therefore, the appellant cannot now say that it did not bind her without challenging the partition deed.

15. The Trial Court has rightly observed the same and also found that the parties already entered into the registered partition deed and the partition deed has also been acted upon and it would bind the appellant also. The appellant had not challenged the said partition deed



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within the limitation period. Therefore, they now cannot say that it would not bind the appellant. The partition deed - Ex.A.1 has been acted upon and also they sold some of the properties to the respondents 4 to 6. Even during the pendency of the suit, they sold the property and the copy of the sale deed was also filed and the appellant has not challenged the same. Therefore, there is no perversity in the judgment of the Trial Court and there is no reason to interfere with the judgment and hence, the appeal has to be dismissed.

16. Heard the learned counsel on either side and perused the materials available on record.

17. Admittedly, the appellant and respondents 1 and 2 are sister and brothers. The third respondent is the mother of the appellant and respondents 1 and 2. The appellant filed a suit for partition.

18. Admittedly, the properties belonged to the father of the respondents 1 and 2 and husband of the third respondent. On a perusal of the pleadings of both the parties, the relationship of the parties is not in dispute and Ex.A.1 registered partition deed is also not denied. Once



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the signature is admitted and the execution is admitted, the appellant cannot go against the said contention. When she has taken a stand that the partition deed has not been acted upon, it is for the appellant to establish the same. When the respondents 1 to 3 have specifically stated even in their reply notice that they entered into the registered partition deed, dated 25.09.2003, the same was acted upon and also even prior to the suit, they sold some of the properties and during the pendency of the suit also, they have sold some of the properties and even in the written statement, they have stated that they sold some of the properties. The appellant was aware of all the proceedings, namely, the partition deed and also selling of properties to the third parties. The appellant has not challenged the said partition deed as well as the subsequent sale deed in favour of the third parties. Therefore, in the absence of challenging the partition deed, the appellant is not entitled to the relief sought for.

19. Based on the pleadings and oral and documentary evidence, the Trial Court has come to the conclusion that the registered partition deed, dated 25.09.2003 - Ex.A.2 was not denied by the appellant and therefore, once the signature and execution of the document has not been denied by the parties to the documents and not



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challenged the said document, it will bind all the parties and therefore, under these circumstances, the appellate Court as also a fact finding Court, can reappraise the oral and documentary evidence adduced and produced by the parties and can give an independent finding.

20. On applying the facts and oral and documentary evidence, this Court also finds that the appellant has admitted the registered partition deed, dated 25.09.2003 which has been marked in the suit as Ex.A.2 and the appellant has also not challenged the said document and since the appellant is also a party to the said document and the respondents as the defendants have examined one of the attesting witnesses to the said registered partition deed as D.W.2. D.W.2 has clearly deposed that there was a partition between the parties, namely, the plaintiff and the defendants 1 to 3 and therefore, under these circumstances, this Court also finds that already there was a registered partition deed between the parties and the subsequent sale of the property clearly shows that the partition deed has been acted upon and the respondents 1 to 3 sold some of the properties to the third parties i.e., the respondents 4 to 6 and that the sale deed is also not challenged by the appellant.



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21. Even though the respondents 1 to 3 sold the property to the third parties/respondents 4 to 6, who are in possession, the appellant has only valued the suit under Section 37(2) of Tamil Nadu Court Fees and Suit Valuation Act, as if they are in joint possession as well as the appellant is in constructive possession, which itself clearly shows that the appellant has not approached this Court with correct facts and unless the appellant challenged the registered partition deed, in which, she is also party to the partition deed and she is not entitled to get a share. Since the Trial Court already found that the partition had already taken place between the appellant and the respondents 1 to 3, the appellant has not proved any contra to that registered partition deed. Therefore, this Court finds that there is no merit in the appeal and there is no reason to interfere with the judgment and decree passed by the Trial Court.

22. Consequently, on analysis of the documentary and oral evidence, I hold that the reasons afforded by the trial Judge in decreeing the suit does not suffer from any legal infirmity and consequently, I uphold the said judgment and decree and the appeal is to be dismissed.



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23. In the result, this Appeal Suit is dismissed. Considering the relationship between the parties, there is no order as to costs. Since the main appeal itself is disposed of on merit, the interim order granted by this Court in M.P(MD)No.1 of 2020 stands vacated and accordingly, M.P(MD)Nos.1 and 2 of 2010 are closed.

10.06.2022

Index:Yes/No

Internet:Yes/No

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To

- 1.The District Judge,
Sivagangai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.

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