



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.04.2022

CORAM

**THE HONOURABLE MS.JUSTICE R.N.MANJULA**

A.S. (MD)No.175 of 2020

Vijayalakshmi

... Appellant/2<sup>nd</sup> Defendant

**Vs.**

1.Sangaiah

2.Naachammai

3.Annapoornam

4.Ponnalagu

... Respondents 1 to 3/Plaintiffs

... 4<sup>th</sup> Respondent/1<sup>st</sup> Defendant

**Prayer :** Appeal Suit filed under Section 96 of Civil Procedure Code, against the judgment and decree dated 26.02.2020 in O.S.No.61 of 2015 on the file of the learned Additional District and Sessions Judge, Sivagangai, insofar as preliminary decree granting 1/4<sup>th</sup> share to the plaintiffs in the suit schedule properties.

For Appellant : Mr.VR.Shanmuganathan

For Respondents : Mr.D.Srinivasa Ragavan for R1 to R3

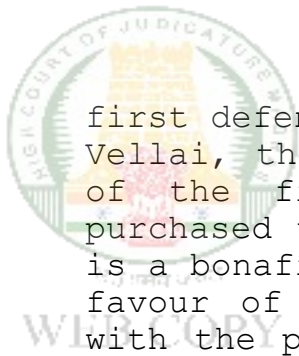
No appearance for R4

### **JUDGMENT**

This Appeal Suit has been preferred challenging the judgment and decree of the learned Additional District and Sessions Judge, Sivagangai, dated 26.02.2020 made in O.S.No.61 of 2015.

**2.**The appellant is the second defendant in the suit; the plaintiffs have filed the suit for partition and declaration that the sale deed executed in favour of the second defendant dated 19.05.2006 is null and void; the plaintiffs and the first defendant are siblings and children of one Vellai; the suit property belonged to the said Vellai and he was in enjoyment of the same; he died intestate on 01.09.2003; his wife/Pappathi predeceased him; since the plaintiffs and the first defendant are children of the deceased Vellai, they are entitled to inherit the properties of their father/Vellai; however, the first defendant sold the first item of the suit property in favour of the second defendant on 19.05.2006 without the knowledge of the plaintiffs; when it came to the knowledge of the plaintiffs, they have filed the suit for declaration that the said sale deed is null and void and also for the relief of partition and separate possession of their 3/4<sup>th</sup> share in the suit property;

**3.**The first defendant remained ex-parte; the second defendant resisted the suit by filing written statement stating that the first item of the suit property was not enjoyed by the plaintiffs and



first defendant jointly; out of the ancestral properties belonged to Vellai, the first item of the suit property was given to the share of the first defendant and from whom, the second respondent purchased the same; so far as the second defendant is concerned, he is a bonafide purchaser for value; after having sold the property in favour of the second defendant, the first defendant now colluded with the plaintiffs and filed the suit; after taking possession of the first item of the suit property, the second defendant had made lot of improvements on the same; since the first defendant was enjoying the first item of the suit property by ousting the other sharers namely, the plaintiffs and also got it to his share, the sale deed executed in favour of the second defendant on 19.05.2006 is valid and enforceable; since the suit had been filed after nine years from the date of sale, it is barred by limitation; hence, the suit should be dismissed as against the first item of the suit property.

**4.**Basing of the above pleadings, the learned trial Judge framed the following issues:-

*"1.Whether the plaintiffs are entitled for partition as claimed for?*

*2.Whether the sale deed dated 19.05.2006 executed by the 1<sup>st</sup> defendant in favour of the 2<sup>nd</sup> defendant is null and void?*

*3.Whether there was a earlier partition?*

*4.Whether the suit is bad for not adding all the properties of Vellai, the father of the plaintiffs?*

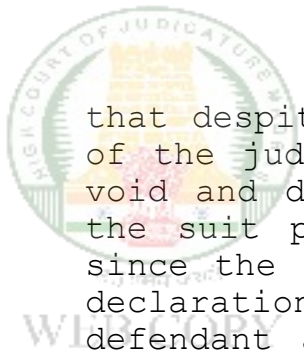
*5.To what other reliefs are the plaintiffs entitled to?"*

**5.**During the course of trial, on the side of the plaintiffs, two witnesses were examined as P.W.1 and P.W.2 and Exs.A1 to A7 were marked. On the side of the defendant, one witness was examined as D.W.1 and Exs.B1 to B8 were marked.

**6.**At the conclusion of the trial and on considering the evidence available on record, the learned trial Judge had granted the preliminary decree for partition and separate possession by holding that the plaintiffs and the first defendant are entitled to 1/4<sup>th</sup> share each. The relief of declaration with regard to the sale deed was negatived. It is also observed that the second respondent is at liberty to workout her remedies in final decree proceedings. Aggrieved over the same, this second defendant has preferred this Appeal Suit.

**7.**Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 3 and went through the evidence on record.

**8.**Mr.VR.Shanmuganathan, learned counsel for the appellant submitted  
<https://hcservices.ecourts.gov.in/hcservices/>



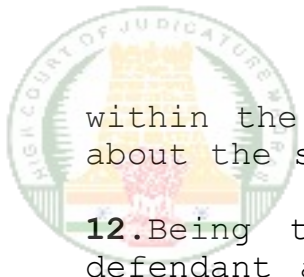
that despite the learned trial Judge had observed in the discussion of the judgment that the sale deed cannot be declared as null and void and denied the said relief, shares have been allotted in all the suit property including the first item of the suit property; since the learned trial Judge had chosen to negative the prayer of declaration of the sale deed executed in favour of the second defendant as null and void, no share should have been granted in respect of the first item of the suit property; the learned trial Judge had further observed in Paragraph No.11 that the second defendant can workout her equity in which the first item of the suit property should be allotted in the share of the first defendant; but such observation can be of no use, if the entitlement of the share of the first defendant is restricted to 1/4<sup>th</sup> share and the plaintiffs were also given 3/4<sup>th</sup> share in the first item of the suit property; hence, the appeal should be allowed in terms of the observation of the learned trial Judge made in Paragraph No.11.

**9.**Mr.D.Srinivasaragavan, the learned counsel for the respondents 1 to 3/plaintiffs submitted that even though the relief of declaration to declare the sale deed as null and void is negatived, the learned trial Judge got convinced that the plaintiffs have got 1/4<sup>th</sup> share each in the first item of the suit property; since the suit property belonged to the father of the plaintiffs and the first defendant and the father died intestate, the plaintiffs and the first defendant would entitle to 1/4<sup>th</sup> share in the suit property including the first item of the suit property and hence, the judgment and decree of the learned trial Judge does not require any interference.

**10.**Point for consideration:

*"Whether the judgment and decree of the leaned trial Judge in partly decreeing the suit by granting the relief of preliminary decree for partition and denying the relief of declaration of the sale deed dated 19.05.2006 as null and void is fair and proper?"*

**11.**The fact that the plaintiffs and the first defendant are siblings and they are children of one Vellai is not disputed. The fact that the properties belonged to Vellai is also not in dispute. Despite the properties belonged to Vellai and he died intestate, the first defendant alone had dealt the first item of the suit property by way of selling the same in favour of the second defendant. The contention of the learned counsel for the respondents 1 to 3/plaintiffs in the suit was that being the legal heirs of Vellai, they are also entitled to 3/4<sup>th</sup> share in the first item of the suit property and hence the sale in favour of the second defendant will not bind their interest in the first item of the suit property. It is seen from the judgment of the learned trial Judge that there is no issue framed with regard to the point of limitation, though it is pleaded that the relief to declare the sale as null and void is

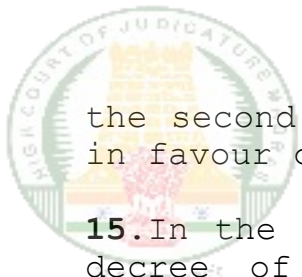


within the period of limitation from the date of getting knowledge about the sale deed.

**12.**Being the children of Vellai, the plaintiffs and the first defendant are entitled to 1/4<sup>th</sup> share each in the suit properties. However, the first defendant sold the entire first item of the suit property in favour of the second defendant. Since the first defendant had sold the shares of the plaintiffs also, without their participation, the sale in favour of the second defendant would not pass him the entire title in respect of the first item of the suit property.

**13.**However, it is claimed by the second defendant that there was a partition held in the family and in the said partition, the first item was allotted to the share of the first defendant and only in view of his exclusive right in respect of the first item of the suit property, he sold the same to the second defendant and hence, the sale deed can be declared as null and void. In Paragraph No.11 of the judgment of the trial Court, the learned trial Judge had made an observation that the first defendant remained ex-parte by colluding with the plaintiffs. It is further observed that since the second defendant had purchased the first item of the suit property for a valuable consideration, the second defendant should be allotted to the share of the first defendant in terms of equity and that would protect the interest of the second defendant. Having observed so, the sale was allowed to remain valid but the prayer to declare the sale deed as null and void was negatived. It is to be noted that the second defendant did not file any suit to declare herself as the owner of the first item of the suit property. Nor the plaintiffs have come on appeal to challenge the contraction between observation and the relief granted by the learned trial Judge. During the course of arguments, when it was suggested by this Court that decree can be modified to the extent of declaring the validity of the sale deed only in respect of 1/4<sup>th</sup> share of the first defendant, the learned counsel for the appellant objected that such a modification would be advantageous to the respondents 1 to 3, who did not challenge the decree.

**14.**This kind of confusion would not have caused, if the learned trial Judge clarified as to the binding nature of the sale deed/Ex.B1 in unequivocal terms. It would have been made more clear, had the second defendant filed a counter suit for declaration about her title in respect of the first item of the suit property. In such circumstances, in order to clarify the doubts and ambiguity surrounding the observation made in the judgment of the learned trial Judge and its impact, I feel that it is appropriate to remand the matter to the learned trial Judge himself. Only then, the learned trial Court could re-appreciate the evidence on record and render a clear finding with regard to the first item of the suit property and also validity of the sale deed executed in favour of



the second defendant. Thus the point for consideration is answered in favour of the appellant.

**15.**In the result, this Appeal Suit is allowed and the judgment and decree of the learned Additional District and Sessions Judge, Sivagangai, dated 26.02.2020 made in O.S.No.61 of 2015 is set aside and the matter is remanded back to the file of the learned Additional District and Sessions Judge, Sivagangai to re-appreciate the evidence and render a clear finding as to the entitlement of the plaintiffs and the first defendant in respect of the first item of the suit property and also the validity of the sale deed in respect of the first item of the suit property executed in favour of the second defendant in clear terms.

**16.**The learned trial Judge is directed to complete the trail within a period of one month from the date of receipt of a copy of this judgment. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To:

The Additional District and Sessions Court,  
Sivagangai.

**Copy to:**

The Record Keeper,  
V.R. Section,  
Madurai Bench of Madras High Court,  
Madurai. (2 COPIES)

+1 CC to M/s.VR. SHANMUGANATHAN, Advocate ( SR-17752[F] dated 11/04/2022 )

+1 CC to M/s.D. SRINIVASARAGAVAN, Advocate ( SR-17650[F] dated 08/04/2022 )

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