



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: **07.03.2022**

Pronounced on: **18.04.2022**

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THE HONOURABLE MS. JUSTICE R.N.MANJULA

A.S (MD) .No.226 of 2021
and
C.M.P (MD)No.7248 of 2021

1.Vasanthal
2.Gandhi
3.Rani

... Appellants/Plaintiffs

Vs.

1.Ramu
2.Varadharajan
3.Ganeshan
4.Shanmugavalli

... Respondents/Defendants

Prayer : This Appeal Suit is filed under Section 96 of the Civil Procedure Code against the judgment and decree dated 28.09.2020 made in O.S.No.54 of 2014 on the file of the court of Principal District Judge, Sivagangai.

For Appellants : Mr. M.Arjun Varman
For Mr.T.Lajapathi Roy

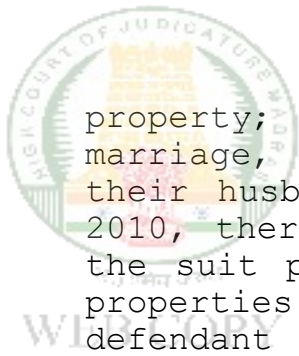
For R1 : No appearance

For R2 to R4 : Mr.V.Meenakshi Sundaram
for Mr.G.Mohankumar

J U D G M E N T

This Appeal Suit has been preferred challenging the judgment and decree of the learned Principal District Judge, Sivagangai, dated 28.09.2020 in O.S.No.54 of 2014.

2. The plaintiffs are the appellants. The appellants/plaintiffs have filed the suit for the relief of partition and separate possession of $\frac{3}{4}$ shares in the suit property and also for permanent injunction restraining the defendants from removing the timber in the suit property or from altering the physical features of the suit property; the plaintiffs and the first defendant are the daughters of one VendiyappaThevar, who was in possession and enjoyment of the suit property along with other properties; the character of the properties is ancestral in nature and hence, it is joint family



property; patta stood in the name of VendiyappaThevar; after marriage, the plaintiffs and the first defendant were living with their husbands in their respective matrimonial homes; in the year 2010, there was a family arrangement; under the said arrangements, the suit properties alone were kept as joint properties and other properties were divided into 5 shares; plaintiffs and the first defendant were given with four shares and the remaining one share was kept for VendiyappaThevar; on 13.08.2014, VendiyappaThevar died; subsequent to the death of VendiyappaThevar also, the plaintiffs and the first defendant were enjoying the suit property jointly, however, the first defendant colluded with the defendants 2 to 4, had attempted to create documents and deprived the plaintiffs' right to get the share in the suit properties; hence, the plaintiffs requested the first defendant to partition the suit properties and allot their $\frac{3}{4}$ share; since the first defendant refused, the plaintiffs filed the present suit for partition.

3. The first defendant remained ex-parte. The third defendant filed the written statement, which was adopted by the defendants 2 and 4; the third defendant resisted the suit by denying his collusion with the first defendant; as per the contention of the third defendant, VendiyappaThevar had entered into a sale agreement with the second defendant on 24.01.2010 and agreed to sell the suit properties to him or his nominees for a valid consideration; on 09.11.2001, he also executed a general power of attorney in favour of the second defendant and recognized her as his power agent; it was told by the plaintiffs' father that the sale was made for the joint family expenses; in fact, a house was also built by the father VendiyappaThevar with the sale proceeds and the marriage expenses of his daughters was also met; in view of the power deed given in favour of the second defendant, he executed the sale deed in favour of the third defendant and possession was also given to him; the revenue records have also been mutated in the name of the third defendant; the third defendant executed a settlement deed on 06.12.2010 in favour of the fourth defendant and the fourth defendant had taken possession and enjoyment of the suit property; the oral partition as alleged by the plaintiffs is false; the plaintiffs have colluded with the first defendant and filed the suit for getting unlawful enrichment; the plaintiffs are not in joint enjoyment of the suit property and hence, the court fee paid is not correct.

4. On the basis of the above pleadings, the learned trial Judge has framed the following issues:

- i. *Whether the plaintiffs are entitled to $\frac{3}{4}$ share in the properties?*
- ii. *Whether defendant No.4 is entitled for right in the suit schedule properties?*
- iii. *Whether the court fee paid is correct?*
- iv. *To what other relief the plaintiffs are entitled to?*



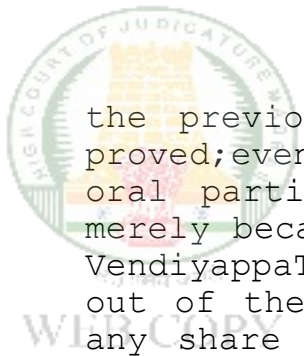
5. During the course of trial, on the side of the plaintiffs, three witnesses were examined as P.W.1 to P.W.3 and two documents were marked as Ex.A.1 and Ex.A.2. On the side of the defendants, three witnesses were examined as D.W.1 to D.W.3 and eleven documents were marked as Ex.B.1 to Ex.B.11. At the conclusion of the trial and on considering the materials available on record, the learned trial Judge has dismissed the suit. Aggrieved over that, the plaintiffs have preferred this appeal.

6. The learned counsel for the appellants/plaintiffs submitted that the first defendant alone had joined with her father, VendiappaThevar while executing the power deed in favour of the second defendant; since the plaintiffs are also sharers of the suit property, no valid power can be given by VendiappaThevar and the first defendant; since the plaintiffs have no knowledge about Ex.B.1 to Ex.B.3, they could not challenge the same; the learned trial Judge omitted to consider the above fact; the validity of Ex.B.1 to Ex.B.3 could be only in respect of the respective shares of the father VendiappaThevar and the first defendant; the ancestral nature of the property was not disputed and the recitals of Ex.B.2 itself would state so; the learned trial Judge has misconceived the facts and law and come to a wrong conclusion that the suit properties are not the ancestral properties and hence this Appeal Suit should be allowed.

7. The learned counsel for the respondents 2 to 4/defendants 2 to 4 submitted that even if the suit properties are considered as ancestral properties of VendiappaThevar, the said VendiappaThevar being the kartha of the family, had got the right to sell the property for the benefit of the joint family; since he had four daughters, he needed to sell the suit property for the purpose of raising money for celebrating their marriages; the co-parcenary rights granted to the daughters by virtue of the Hindu Succession Tamil Nadu Amendment Act, 1989, would be available only to those daughters, who were not married on or before 25.03.1989.

7.1. Even if the Appellants are considered as co-parceners by virtue of the Hindu Succession Tamil Nadu Amendment Act, 1989, they cannot deny the right of their father VendiappaThevar, who is the eldest male member and kartha of the joint family; the said VendiappaThevar had executed a power of attorney along with the first respondent in favour of the second respondent; and the second respondent as power agent sold the suit property in favour of the third respondent for a valid consideration; the appellants were silent about these transactions and did not seek a prayer to declare them as null and void.

7.2. When the appellants have not questioned the sale deeds, the legal necessity for the kartha to prove alienations will not arise;



the previous oral partition as alleged by the plaintiffs is not proved; even the witnesses of the plaintiffs did not speak about the oral partition said to have been taken place in the year 2010; merely because the patta for the suit property stood in the name of VendiyappaThevar, it cannot be presumed that the property was left out of the oral partition; the plaintiffs did not choose to claim any share allotted to their father in the alleged oral partition held in the year 2010; the learned trial Judge is right in denying the relief of partition and it does not require any interference.

8. Considering the rival submissions of the parties, I feel that the following points for consideration are relevant to decide this Appeal:

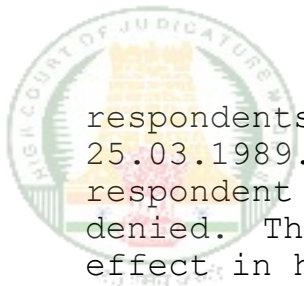
- i) Whether the plaintiffs, as daughters of the deceased VendiyappaThevar, have got the shares in the suit properties?*
- ii) Whether the judgment of the trial court in denying the reliefs claimed by the plaintiffs is fair and proper?*

9. The fact that VendiyappaThevar was the owner of the suit properties is not in dispute. The character of the suit properties is of ancestral in nature and that fact also not denied. In Ex.B.1 sale agreement in favour of the third respondent itself, the suit properties have been described as ancestral properties of VendiyappaThevar. The appellants and the first respondents are the daughters of the late VendiyappaThevar.

10. The suit property situated in the State of Tamil Nadu. The Hindu Succession Tamil Nadu Amendment Act, 1989, which came into force on 25.03.1989 (Act No.1 of 1990) and by virtue of the same daughters also become co-parceners by birth. By virtue of introducing Chapter - II-A after Chapter II of Hindu Succession Act, 1956 (Central Act 13 of 1956) equal rights to daughters in the co-parcenary properties have been given. As per Section 29-A of the Hindu Succession Act, daughter of a co-parcener by birth shall become the co-parcener in her own right in the same manner as that of a son and has the same right in the co-parcenary property.

11. However, Chapter II-A of The Hindu Succession (Tamil Nadu Amendment) Act, 1989 will not be applicable to daughters, who got married before the commencement of the State amendment Act. Since the amendment Act came into force on 25.03.1989, the daughters who got married before 25.03.1989 will not be eligible to get the benefit of the Act.

12. The second appellant was said to have got married in the year 1992 and the third appellant and the first respondent got married after the second appellant. Though the date of the marriage of the first appellant was not available, it was not objected by the



respondents themselves that the first appellant got married before 25.03.1989. So, the entitlement of the appellants and the first respondent to become co-parceners with their father cannot be denied. The trial judge has rightly made an observation to that effect in his judgement

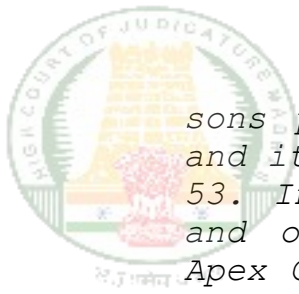
13. The father of the appellants namely, VendiyappaThevar did not have any male child. So, the joint family was comprised of the father and his four daughters namely, the appellants 1 to 3 and the first respondent. The sale of the suit properties was made on 24.03.2004, which is obviously subsequent to the commencement of the Hindu Succession TamilNadu Amendment Act, 1989. Hence, in usual context, the sale deed will not affect the interest of the appellants, who are not parties to the sale and that will not bind their interest.

14. But the respondents 2 to 4 have stated that VendiyappaThevar, being the kartha of the family, had the right to encumber the ancestral properties for the benefit of the joint family. It is claimed by the respondents 2 to 4 that they were told by VendiyappaThevar and the first respondents that they intended to sell the suit property for the joint family expenses and to discharge the marriage expenses of the appellants

15. The learned trial Judge has observed that the appellants have not chosen to challenge the sale deed and seek a prayer to declare the same as null and void and hence their claim for partition is not maintainable. The learned counsel for the respondents submitted that the father, as the head of the joint family can make alienation, even without any legal necessity and the said sale is only voidable and not void. It is further submitted that the alienation made by kartha would bind the interest of the joint family members, if the property is sold for legal necessity or benefit of the estate.

16. In support of his he cited the judgment of this court held in **Mariammal and another Vs. Subbuthai and others** reported in **2013 (5) CTC 49**. In the said judgment, the learned single Judge has made reference about the previous judgments of the Hon'ble Supreme Court of India as well as the Division Bench of this Court. The relevant portion of the judgement is extracted as under:

52. In 1997 L.W 217 (SampoornaAmmal V. Asokan and others) the Division Bench of this Court has held as follows: The manager or kartha of joint Hindu family has the power to alienate the joint family property for value so as to bind the interest of adult and minor coparceners in the property provided the alienation is made for legal necessity or for the benefit of the estate. A Hindu father has also the special power to sell or mortgage ancestral property including the interest of his sons to discharge a debt contracted by him for his own personal benefit and that such alienation will be binding on the



sons provided the debt was antecedent to the alienation and it was not incurred for any immoral purposes.

53. In (1996) 8 Supreme Court Cases 54 (Sri Narayan Bal and others Vs. Sridhar Sutar and others), the Hon'ble Apex Court has held that "Karthā of Hindu joint family is having unfettered right of alienation of joint family property and the same is binding upon other members."

54. In 1971 Supreme Court 776 (Raghubanchmani Prasad Narain Singh V. Ambica Prasad Singh (dead) by his legal representatives and others) the Hon'ble Apex Court has held that "alienation by father manager of joint Hindu family even without legal necessity is voidable and not void."

17. The learned counsel for the appellants submitted that the recitals of Ex.B.4 does not read that the property was sold for any legal necessity or the family expenses and in the absence thereof, it cannot be presumed that the alienation was made for any legal necessity and the burden is on the alienee to prove the same. In support of his contention that the burden to prove the legal necessity is on the alienees, he relied on the judgement of the Supreme Court held in **Smt. Rani and another Vs. Smt. Santa Bala Debnath and others** reported in (1971) AIR (SC) 1028. It would be appropriate to reiterate the relevant portion of the judgment.

"Legal necessity to support the sale must however be established by the alienees. Sarala owned the land in dispute as a limited ,owner. She was competent to dispose of the whole estate in the property for legal necessity or benefit to the estate. In adjusting whether the sale conveys the whole estate, the actual pressure on the estate, the danger to be averted, and the benefit to be conferred upon the estate in the particular insistance must be consi- dered. Legal necessity does not mean actual compulsion : it means pressure upon the estate which in law may be regarded as serious and sufficient. The onus of providing legal necessity may be discharged by the alienee by proof of actual necessity or by proof that he made proper and bona fide enquires about the existence of the necessity and that he did all that was reasonable to satisfy himself as to the existence of the necessity"

18. There is no disagreement on the point that the kartha of the joint family has got enormous power to alienate or encumber the joint family properties for legal necessity or for the benefit of the joint family estate. But as per the settled legal position, the burden is on the alienees to prove the same. When contesting respondents claim that the sale was executed, it is for them to prove about the legal necessity for the sale.



19.The sale deed does not read that VendiyappaThevar wanted to sell the suit property for the purpose of any joint family expenses. Admittedly, the Appellants have been living separately with their respective husbands after their marriage. They could not have known about the power deed in favour of the second respondent and the sale executed by him in favour of the third respondent. As against the appellants the sale deed is *non-est* and they can ignore it. Only if the plaintiffs had the knowledge about the sale and allowed it to happen, they are estopped to file a suit for partition without praying a relief to declare the sale is null and void.

20.The respondents 2 to 4 did not establish that the appellants had the knowledge about the sale. The learned counsel for the respondents 2 to 4 submitted that the registration of the sale deed would itself amount to notice against the persons, who are interested in the suit properties. To emphasize the above point, he cited the judgement of the Supreme Court held in **Janardhanam Prasad Vs. Ramdas** and reported in **2007(3) MLJ 721**.

21.The above judgment should be read in the context of its own facts of the case. If a person acquired any share or interest in a property by way of a registered instrument and got its possession, as against the subsequent alienees or any other interested persons, the registration of the instrument would amount to notice of the earlier transaction.

22.The appellants have not acquired any share or interest subsequent to a registered instrument. They have undivided share in the joint family properties and by virtue of their birth. They have filed this suit for partition just to settle their apportionment in the properties. Hence, the appellants cannot be treated like persons who acquired share or interest subsequent to the registration. The respondents 3 and 4 have attempted to acquire share or interest from a few members of the joint family, namely, the father and one of his daughters through Ex.B4. Even prior to Ex.B.4 sale deed, the appellants have their entitlement and share in the suit properties.

23.In that context of the above facts, it is wrong to hold that without challenging the sale made in favour of third parties by some of the joint family members, the other members cannot file a suit for partition. Since it is pleaded by the respondents 2 to 4 that the suit properties have been sold by the kartha in their favour through their power agent for some legal necessity, that has to be proved by the respondents 2 to 4/defendants 2 to 4. Sale made by the kartha, even without a legal necessity is not void but voidable. But the option to exercise the right to declare the sale as void can be exercised only when the member of the joint family acquired knowledge. But it is pleaded by the contesting respondents that the sale was executed by by the kartha of the family for the family



necessities. And the said fact was not proved.

24.It is pertinent to note that the power of attorney was executed by the father VendiappaThevar along with one of his daughters. So the sale deed Ex.B4 executed by their power agent can only be a sale by two members of the joint family. If VendiappaThevar had intended to alienate the properties for the joint family necessity, the same would have been found place in the sale deed itself. The inclusion of the first respondent in the power deed would only show that VendiappaThevar and the first respondent who was living with him had assumed the entire right upon themselves by depriving the other family members, namely the plaintiff.

25.The sale deed is of the year 2004. Before the advent of Central Amendment Act 2005, Hindu Succession Tamilnadu Amendment Act, 1989 had come into force. By virtue of the same the daughters who were not married before 25.03.1989 have become co-parceners. When the power deed was executed by VendiappaThevar along with one of his daughter/first defendant, it is stated the subject property was the ancestral property. Under such circumstances, the vendees ought to have enquired about other family member of the VendiappaThevar. The learned trial Judge has given much importance to the non-filing of the reply statement to the written statement filed by the defendants 2 to 4. When the sale deeds do not bind the interest of joint family members and the suit for partition has already been filed, it is fine for the joint family members to ignore the sale deeds, except when it is proved that the members had the knowledge about the sale.

26.The second respondent who was the power agent of VendiappaThevar and the first respondent was examined as DW1. It is strange to note that DW1 could produce Ex.B.4 sale deed by himself.The third respondent to whom the sale was executed was examined as DW2. During the cross examination DW2 he has stated that he did not know who had produced Ex.B.4 before the court. So the type of transaction made by the second respondent in favour of the third respondent and their evidence would only show that they have some vested interest between themselves. The second defendant seemed to have got power of attorney from several other persons and executed one sale deed in favour of third respondent in respect of all the properties. So the said transaction has the colour of a real estate transaction and not a bonafide sale. Had the respondent was a bonafide purchaser he would have made enquiries about the other joint family members of VendiappaThevar.

27.The learned trial Judge has further observed that the appellants have not chosen to include the rest of the properties in their suit for partition. The plea for partial partition cannot be raised by third parties like the contesting respondents. The first respondent, who is a co-sharer, has not raised any dispute as to the properties, which have been settled by oral partition.Hence non-inclusion of the



father's share in the properties subjected to the oral partition in this suit for partition cannot be a bar for granting the relief of partition. Further, it is always possible to include any other joint family property during the final decree proceedings, once their entitlement and the extent of share is determined.

28.In an ancestral property like the suit property, in view of the Hindu Succession Tamilnadu Amendment Act, 1989, the appellants have also got equal right as members of co-parceners. So any alienations made by VendiyappaThevar and one of his daughter (the first respondent) in favour of any third parties will only bind their undivided share of 2/5. Since the appellants are not parties to Ex.B4, the alienee namely the third respondent cannot get title in the suit property, beyond the share of his vendors. The sale in favour of third respondent will not bind the appellants' 3/5 share in the suit property. Hence the appellants are entitled to get 3/5 share in the suit properties. **Thus, point No.1 is answered accordingly.**

29.Since the learned trial judge has not appreciated the facts and law correctly even after accepting the appellants as co-parceners, it warrants interference. **Thus, point No.2 is answered.**

In the result, this Appeal Suit is allowed and the judgment of the learned Principal District Judge, Sivagangai, dated 28.09.2020, made in O.S.No. 54 of 2014 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

CM

To

1.The Principal District Judge, Sivagangai.

2.The Section Office, VR Section,

Madurai Bench of Madras High Court, Madurai.(2 copies)

+1 CC to M/s.T. LAJAPATHI ROY, Advocate (SR-19221[F] dated 19/04/2022)

+1 CC to M/s.G. MOHAN KUMAR, Advocate (SR-19245[F] dated 19/04/2022)

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