



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.02.2022

DELIVERED ON : 04.03.2022

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

A.S(MD) .No.132 of 2016

and C.M.P(MD)Nos.9200 of 2016, 1650 and 1651 of 2022

P.Muruganantham

.. Appellant/Defendant

Vs.

Sivanammal

.. Respondent/Plaintiff

Prayer : This Appeal Suit is filed under Section 96 of the Civil Procedure Code r/w Order XLI Rule 1 of C.P.C, against the judgment and decree passed in O.S.No.96 of 2013 on the file of the Principal District Court, Tirunelveli, dated 10.03.2016.

For Appellant

: Mr.S.Ramesh

for Mr.V.Raghavachari

For Respondent

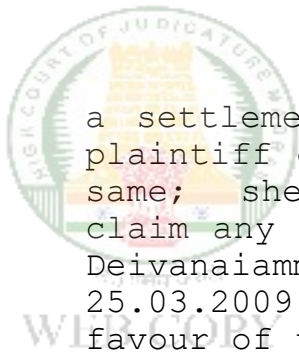
: Mr.Ananth C.Rajesh

J U D G M E N T

This Appeal Suit has been preferred challenging the judgment of the learned Principal District Judge, Tirunelveli, dated 10.03.2016 in O.S.No.96 of 2013. The appellant is the defendant.

2. The plaintiff in the suit is the sister of the defendant. The plaintiff has filed the suit stating that the suit properties belonged to their father N.Ponnaiah and he was in possession and enjoyment of the same. The said Ponnaiah died on 04.12.2008 leaving behind his wife Deivanaiammal, son/ the defendant herein and daughter/the plaintiff herein as his legal heirs. So, each of the legal heirs became entitled to 1/3rd share. The mother of the plaintiff Deivanaiammal settled her 1/3rd share in favour of the plaintiff by way of a registered sale deed dated 25.03.2009 and put her in possession. The settlement is accepted by the plaintiff as well. The defendant started to give disturbances to the plaintiff's joint possession of the properties. After exchanging legal notice between the parties, the plaintiff has filed the suit for partition of 2/3 share and separate possession.

3. The defendant contested the suit by stating that the plaintiff was given jewels and other Shridhana articles during her marriage; since the defendant did not have any permanent income, he alone collected rent from the tenants of the suit property and due to some misunderstanding between himself and his mother, his mother executed



a settlement deed in respect of her 1/3 share in favour of the plaintiff on 26.03.2009; however the plaintiff has not accepted the same; she had given assurance to the father that she would not claim any share in the family properties; on 31.01.2012, the mother Deivanaiammal registered a cancellation of the settlement deed dated 25.03.2009 and executed another settlement deed on 19.02.2012 in favour of the defendant; the defendant accepted the properties given to him by virtue of the settlement deed dated 19.02.2012; the plaintiff has no share in the suit property and hence, she is not entitled to get a decree as prayed for.

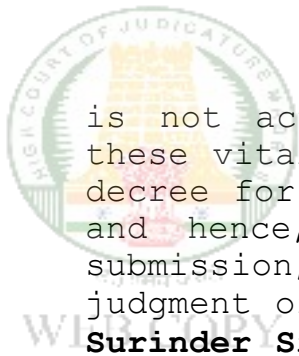
4. Based upon the abovesaid pleadings, the learned trial Judge has framed the following issues:

- i) Whether the plaintiff has 1/3 share in the suit properties after the demise of her father Ponnaiah?***
- ii) Whether the Settlement Deed dated 25.03.2009 executed by Deivanaiammal in favour of the plaintiff is valid and acted upon?***
- iii) Whether the cancellation deed dated 31.01.2012 executed by Deivanaiammal cancelling the settlement deed dated 25.03.2009 is true and valid?***
- iv) Whether the Settlement Deed dated 19.04.2012 executed by Deivanaiammal infavour of the defendant is true and valid?***
- v) Whether the plaintiff is entitled to partition of 2/3 share and separate possession of the suit properties?***
- vi) To what relief the plaintiff is entitled to?***

5. During the course of trial, on the side of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and Ex.A.1 to Ex.A.8 were marked. On the side of the defendant, two witnesses were examined as D.W.1 and D.W.2 and forty three documents were marked as Ex.B.1 and Ex.B.43.

6. At the conclusion of the trial and on considering the evidence available on record, the learned trial Judge had passed the preliminary decree for partition and separate possession of the plaintiff's 2/3share in the suit schedule property. Aggrieved over that, the defendant has preferred this Appeal Suit.

7. During the course of arguments, the learned counsel for the appellant submitted that so far as items 1 to 4 of the suit properties are concerned, they are ancestral properties and items 5 and 6 are the properties purchased by the defendant's father by virtue of a registered sale deed; but it was from the income earned by both the defendant and his father; since item Nos.1 to 4 are the ancestral properties of the defendant's father, the mother of the plaintiff has got no right to settle 1/3 share in the above properties in favour of the plaintiff; further, the settlement deed



is not acted upon; the learned trial Judge, without considering these vital aspects of the case, had wrongly passed the preliminary decree for partition in respect of 2/3 share in the suit properties and hence, the appeal should be allowed. In support of his submission, the learned counsel for the appellant relied on the judgment of the Hon'ble Supreme Court of India in **Rohit Chauhan Vs. Surinder Singh and others** reported in **(2013) 9 Supreme Court Cases 419**.

8. The learned counsel for the respondent/plaintiff submitted that even at the time of executing the settlement deed dated 25.03.2009, the properties in item Nos.1 to 4 were held by the plaintiff's mother as a share inherited from her husband's property; items 1 to 4 had lost its ancestral nature after they had been allotted to the share of her husband in the family partition dated 24.12.1958; since the father of the plaintiff died intestate, the plaintiff's mother, the plaintiff and the defendant would inherit 1/3 share in the suit property; hence, the settlement deed executed by the mother of the plaintiff in respect of her 1/3rd share in favour of the plaintiff is valid and enforceable.

9. In the light of the rival submissions of the parties, the following points for consideration are relevant to decide this Appeal Suit:

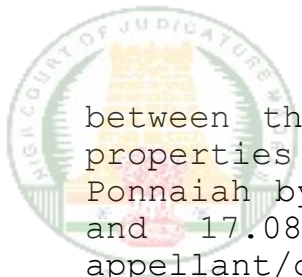
i) Whether the mother of the plaintiff Deivanaiammal has got 1/3 rd right in whole of the suit properties in order to execute a settlement deed in favour of the plaintiff?

ii) Whether the executant of the settlement deed dated 25.03.2009 namely Deivanaiammal has got the right to cancel the settlement deed dated 25.03.2009 by virtue of executing a cancellation deed dated 21.03.2012?

iii) Whether the defendant is entitled to the suit properties by virtue of another settlement deed dated 19.04.2012?

iv) Whether the preliminary decree passed by the learned trial Judge by allotting 2/3 rd share in the suit property is legally correct and valid?

10. The relationship between the appellant/defendant and the respondent/ plaintiff as brother and sister was not denied. The fact that the suit properties belonged to the father of the parties to the suit is also not in dispute. The executant of the settlement deed dated 25.03.2009/Ex.A1 Deivanaiammal, is the mother of the respective parties. The respondent claims her right and title towards 1/3rd of the suit properties by virtue of inheritance and another 1/3 share in the suit properties by virtue of the settlement deed dated 25.03.2009/Ex.A.1. The suit items 1 to 4 were the properties allotted to the father of the parties to the suit namely Ponnaiah by virtue of a partition deed dated 24.02.1958 entered into



between the joint family members. Item Nos.5 and 6 of the suit properties were the self acquired properties of the deceased Ponnaiah by way of purchase through the sale deeds dated 03.11.1967 and 17.08.1971. These facts were also not denied by the appellant/defendant.

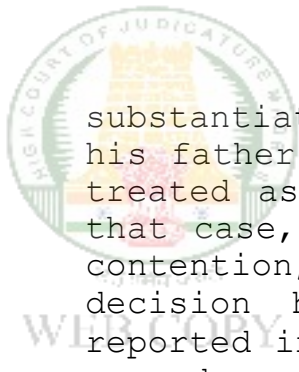
11. It is claimed by the appellant/defendant that item Nos.1 to 4 of the suit properties are ancestral properties and hence, his mother would not have any right to settle 1/3rd share in favour of his sister/the respondent/ plaintiff. Since the character of the suit items 5 and 6 were not in dispute and the father of the parties died intestate, it can be safely concluded that the wife and children of the deceased are entitled to 1/3 share in accordance with Sections 8 and 10 of the Hindu Succession Act. Despite it is claimed by the appellant/defendant that he had contributed the sale proceeds for the above said two purchases made by his father in respect of items 5 and 6, the said fact was not proved. Hence, the wife and children of the deceased Ponnaiah have got equal shares in respect of the item Nos.5 and 6 purchased by him. Since the mother of the plaintiff has got 1/3 share in respect of item Nos. 5 and 6, she is entitled to convey the same by virtue of a registered settlement deed in favour of her daughter, who is the plaintiff herein.

12. So far as item Nos. 1 to 4 of the suit properties are concerned, it is claimed by the appellant/defendant that they are the ancestral properties of his father and hence, his mother does not have any right to settle 1/3 share in favour of the plaintiff.

13. The learned counsel for the respondent/plaintiff submitted that once partition was effected and the shares have been allotted to the parties to the partition deed, from then onwards, the properties allotted to the respective sharers will become their respective self acquired properties. In other words, it is submitted that items 1 to 4 had lost their ancestral character subsequent to the partition dated 24.02.1958 and hence, they have to be considered as the self acquired properties of the father of the plaintiff and hence, in those items also, the wife and the children of Ponnaiah will have equal share. So it is claimed by the respondent/ plaintiff that the mother of the respondent has got right to settle the 1/3 share in items 1 to 4 also in favour of her daughter.

14. In respect of the above contention, the learned counsel for the respondent cited a decision of the Hon'ble Supreme Court of India in **Radha Bai Vs. Ram Narayanan and others** reported in **CDJ 2019 SC 5019**. In the above said judgment, it is held that after partition, the joint family properties would cease to be the ancestral property and the sharer to whom the property was allotted in the partition would become its exclusive owner.

15. The learned counsel for the appellant submitted that the suit items 1 to 4 in the hands of the father of the defendant can be treated as a separate property of his father only as against the other relatives, but, not as against the defendant. It is further

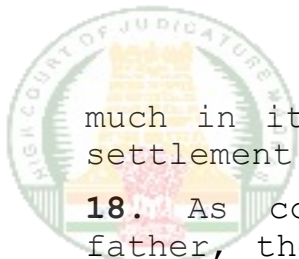


substantiated that when a son is born, the property in the hands of his father which he got out of the joint family partition should be treated as co-parcenary property of the father and the son and in that case, the father would become the 'kartha'. In support of his contention, the learned counsel for the respondent cited the decision held in **Rohit Chauhan Vs. Surinder Singh and others** reported in 2013 (9) SCC page 419. In the said judgment, it is held as under:

"We have bestowed our consideration to the rival submissions and we find substance in the submission of Mr.Rao. In our opinion coparcenary property means the property which consists of ancestral property and coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. Coparcenary is a narrower body than the joint Hindu family and before the commencement of the Hindu Succession (Amendment) Act, 2005, only male members of the family used to acquire by birth any interest in the coparcenary property. A coparcener has no definite share in the coparcenary property but he has an undivided interest in it and one has to bear in mind that it enlarges by deaths and diminishes by births in the family. It is not static. We are further of the opinion that so long, on partition, an ancestral property remains in the hands of the single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but if a son is subsequently born, the alienation made before the birth cannot be questioned. But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener".

16. After Hindu Succession Amendment Act 2005, the daughter will also become an equal co-parcener along with the son for the ancestral properties. Even if the father of the appellant/defendant got the suit items 1 to 4 by virtue of a family partition, the character of the above properties would continue to remain the same as against the plaintiff and the defendants, who are co-parceners in their capacity as the son and daughter.

17. If a notional partition is operated, during the life time of the father of the appellant/defendant, along with the plaintiff and the defendant, each of them would get 1/3 share in items 1 to 4 of the suit properties. Since the father of the appellant died intestate, his 1/3 share in items 1 to 4 would be succeeded by the plaintiff, the defendant along with the mother in equal shares. Thus the plaintiff, the defendant and their mother would inherit the father's 1/3rd share equally among themselves as clause-I heirs as per Sections 8 and 10 of Hindu Succession Act and get 1/9 each in items 1 to 4. So the mother of the plaintiff would be entitled to only



much in items 1 to 4 in favour of the plaintiff by virtue of the settlement deed dated 25.03.2009.

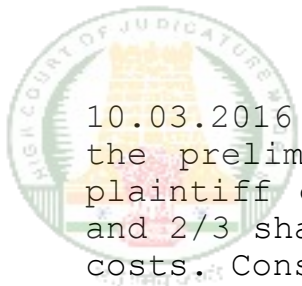
18. As co-parcener along with the appellant/defendant and her father, the plaintiff would be entitled to $\frac{1}{3}$ share in items 1 to 4. After the demise of her father, she would get $\frac{1}{9}$ share along with the defendant and his mother. By virtue of the settlement deed dated 25.03.2009, she would get another $\frac{1}{9}$ share in items 1 to 4. So the entitlement of the plaintiff in respect of the suit items 1 to 4 would be $\frac{1}{3} + \frac{1}{9} + \frac{1}{9} = \frac{5}{9}$ and the share of the defendant in respect of items 1 to 4 would be $\frac{1}{3} + \frac{1}{9} = \frac{4}{9}$. But the learned trial Judge has wrongly allotted $\frac{2}{3}$ share in respect of items 1 to 4. To that extent, the judgment and decree of the trial court needs to be modified. Since Deivanaiammal has got $\frac{1}{9}$ right only in respect of items 1 to 4 and $\frac{1}{3}$ share in respect of items 5 and 6, she could execute settlement deed in favour of the plaintiff only in respect of the said shares. **Thus, point No.1 is answered.**

19. However, it is claimed by the appellant/defendant that the settlement deed Ex.A.1 did not come into force and it was subsequently revoked by virtue of a cancellation deed dated 31.01.2012. The recitals of Ex.A.1 settlement deed would show that the executant did not reserve any right to cancel the same at any future point of time. Since Ex.A.1 is an unconditional settlement deed, the settlor does not have any right to cancel the same and hence, the cancellation deed dated 31.01.2012 cannot have any legal validity. For the same reason, no legal validity can be attached to the second settlement deed dated 19.04.2012 executed by Deivanaiammal in favour of the appellant/ defendant. **Thus point Nos. 2 and 3 are also answered against the appellant.**

20. It is claimed by the appellant/defendant that the settlement deed did not come into force because of the non-acceptance of the same by the plaintiff. At no point of time, it was stated by the respondent/plaintiff that she did not accept the settlement made in her favour. In fact, on 01.06.2010 itself, the plaintiff has given a paper publication by asserting her right over $\frac{3}{2}$ share in the suit properties. Though it is claimed by the appellant/defendant that the respondent/plaintiff had relinquished her interest in the family properties, no release deed has been executed by the respondent/plaintiff to that effect. Since it is proved before the trial court that the mother of the plaintiff, namely, Deivanaiammal had got $\frac{1}{9}$ share in the suit items 1 to 4 and $\frac{1}{3}$ share in respect of items 5 and 6 and she had executed a settlement deed in favour of her daughter/plaintiff, the plaintiff is entitled to get $\frac{5}{9}$ share in respect of items 1 to 4 and $\frac{2}{3}$ share in respect of items 5 and 6, the learned trial court ought to have passed a preliminary decree only in respect of the above shares in favour of the plaintiff.

Thus, point No.4 is answered.

In the result, this Appeal Suit is partly allowed and the judgment of the learned Principal District Judge, Tirunelveli, dated



10.03.2016 made in O.S.No.96 of 2013 is modified to the extent that the preliminary decree for partition is passed in favour of the plaintiff only in respect of 5/9 share in respect of items 1 to 4 and 2/3 share in respect of items 5 and 6 of the suit properties. No costs. Consequently, connected miscellaneous petitions are closed.

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Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

CM

To,

1.The Principal District Court, Tirunelveli.

2.The Section Office,

VR Section,

Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.V.RAGHAVACHARI, Advocate (SR-10392[F] dated 07/03/2022)

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and 1651 of 2022

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