



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2022

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

A.S. (MD) No. 54 of 2016

I.Bhavani ... Appellant / 4th Defendant

Vs.

1. T.Girija Bai

2. C.Marimuthu

3. C.Sankar

... Respondents 1 to 3 / Plaintiffs

C.Narayanan ((died)

4. M.Valli

5. A.Bathumuthu

... Respondents 4 & 5/Defendants 2 & 3

(Respondents 4 & 5 are given up since they remained exparte)

PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code, 1908 against the judgment and decree of the learned I Additional District and Sessions Judge, Madurai, dated 22.01.2015 in O.S. No. 57 of 2012.

For Appellant : Mr.R.Balakrishnan

For Respondents : Mr.C.Jawahar Ravindran for R1 to R3

R4 & R5 - given up

J U D G M E N T

This Appeal has been preferred challenging the judgment and decree of the learned I Additional District Judge, Madurai, dated 22.01.2015 made in O.S. 57 of 2012.

2.The appellant is the fourth defendant in the suit; the respondents 1 to 3 / plaintiffs have filed the suit for partition and separate possession of their $\frac{3}{4}$ th share in the suit properties; the suit property originally belonged to the mother of the plaintiffs and the 1st defendant, namely, Saroja by virtue of a registered sale deed, dated 24.09.1984; during the life time of Saroja, she executed a registered general release deed on 07.03.1985 releasing all her rights in the suit properties in favour of the plaintiffs and the 1st



defendant; in pursuance of that, the plaintiffs and the 1st defendant have taken joint possession of the property, and they are in joint possession and enjoyment of the same; the 1st defendant has executed a sale deed in respect of his undivided 1/4th share on 22.05.2007 for a sum of Rs.12,000/- (Rupees Twelve Thousand only) in favour of the 2nd defendant by virtue of a registered sale deed; the 1st defendant had also executed another sale deed on 24.09.2007 in respect of the undivided 3/4th share in favour of the 3rd defendant; the 1st defendant did not have any right to pass title in respect of 3/4th share, which belonged to the plaintiffs; the 3rd defendant, in turn, has executed the sale deed, dated 19.11.2007 in favour of the 4th defendant, who is the appellant herein; the defendants conspired together and created false documents just in order to defeat the interest of the plaintiffs in the suit properties; hence, the plaintiffs have filed the suit for partition of their 3/4th share in the suit properties.

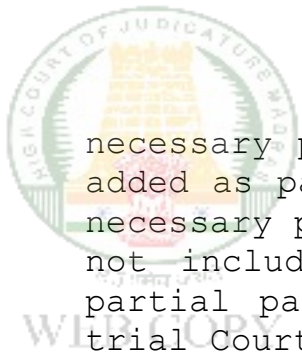
3.The defendants 1 to 3 remained exparte and the 4th defendant has filed the written statement by admitting the title of the original owner - Saroja and the execution of the registered release deed, dated 07.03.1985 in favour of her children, i.e., plaintiffs and the 1st defendant; but, the plaintiffs have executed a release deed in favour of the 1st defendant on 12.02.1992 in respect of their shares in the suit properties and from then onwards, the 1st defendant is in enjoyment of whole of the suit properties; hence, the 1st defendant is entitled to convey title in the suit property to the 3rd defendant; since the 4th defendant is the subsequent purchaser, he has right over the entire suit property; the 1st defendant died, however, his legal heirs were not impleaded as parties to the suit; in the suit for partition, the rest of the family properties was not included and hence, the suit is for partial partition.

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

- (i) Whether the plaintiffs are entitled to 3/4th share in the suit property?
- (ii) To what reliefs, the parties are entitled to?

5.During the course of trial, on the side of the plaintiffs, one witness was examined as PW1 and Exs.A1 to A7 were marked. On the side of the defendants, no oral or documentary evidence was adduced. On conclusion of the trial, the learned Judge decreed the suit and aggrieved over the same, the 4th defendant has preferred the Appeal Suit.

6.The learned counsel for the appellant / 4th defendant submitted that since the legal heirs of the deceased 1st defendant are



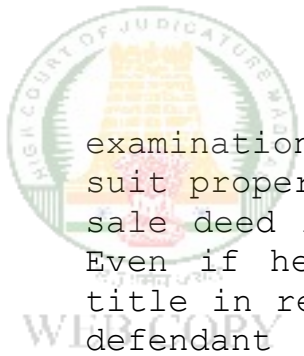
necessary parties in the suit for partition and they have not been added as parties to the suit, the suit is barred for non-joinder of necessary parties; there are other family properties which were also not included in the suit for partition and hence, the suit for partial partition is not maintainable; hence, the judgment of the trial Court should be set aside.

7. The learned counsel for the respondents submitted that even though the appellant had filed the written statement by alleging about some documents in favour of the 1st defendant dated 12.02.1992, the same was not produced; in fact, no oral or documentary evidence was adduced from the side of the appellant; it is true that the 1st defendant died during the pendency of the suit; since the 1st defendant already sold his undivided share of 1/4th in favour of the 2nd defendant and in their capacity, as subsequent purchasers the defendants 2 to 4 were added as parties to the suit; there is no necessity to implead the legal heirs of the deceased 1st defendant; the appellant, being the 3rd party, cannot take up the plea of partial partition; the learned trial Judge has decreed the suit and does not call for any interference.

8. On the basis of the rival submissions, the following points for consideration are found to be relevant for the purpose of this appeal:

- (i) *Whether the finding of the trial Judge that the plaintiffs are entitled to 3/4th share in the suit property is fair and proper?*
- (ii) *Whether the judgment of the trial Court is fair and proper?*

9. The fact that the suit property belongs to the mother of the plaintiffs and the 1st defendant, by virtue of a registered sale deed, dated 24.09.1984 is not disputed. Mother Saroja has also executed the general release deed on 07.03.1985 in favour of all her children and the said fact is also admitted. So, naturally, all the four children of Saroja, namely, the plaintiffs and the 1st defendant would get undivided 1/4th share each in the suit properties. Since the 1st defendant has title in respect of his undivided 1/4th share, he is entitled to execute the sale deed in respect of that share alone in favour of the 2nd defendant. The rest of the undivided 3/4th share in the suit property would belong to other children, namely, the plaintiffs. Though it is claimed by the 4th defendant, who is the appellant herein that the plaintiffs also executed some document of title in favour of the 1st defendant, it is not explained clearly. The description of the document is not stated and the same was also not produced before this Court. In fact, none of the defendants has come to the box and subjected themselves for



examination. When the 1st defendant did not have any title over the suit property, beyond his undivided 1/4th share, he cannot effect any sale deed in favour of any third parties in respect of 3/4th share. Even if he executed any sale deed, that will not pass any valid title in respect of 3/4th share. So the sale deed executed by the 1st defendant in favour of the 3rd defendant on 24.09.2007 is of no consequence. And hence neither the 3rd defendant nor his subsequent purchaser, i.e., 4th defendant can claim any title in respect of 3/4th share. By virtue of the release deed executed by Saroja which is marked as Ex.A2, all her children have got equal right and so the plaintiffs have got 3/4th share in the suit properties. **Thus the point No.1 is answered.**

10.The learned trial Judge appreciated the facts and evidence and given a correct finding as to the entitlement of the plaintiffs in the suit property. The 4th defendant being a stranger to the family of the plaintiffs, cannot raise the plea for partition in the suit filed by the plaintiffs for partition. Since the 1st defendant had executed the sale deed in favour of the 2nd defendant in respect of his undivided 1/4th share in the suit property and his purchaser is impleaded as a party to the suit, the suit will not be hit for not impleading the legal heirs of the deceased 1st defendant. Hence, I find no reason for interfering with the judgment of the trial Court. **Thus point No.2 is answered.**

In the result, this Appeal Suit is dismissed and the judgment and decree in O.S.No. 57 of 2012 on the file of the I Additional District and Sessions Court, Madurai, dated 22.01.2015, is hereby confirmed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vji

To

1. The learned I Additional District Judge,
Madurai.



2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. **(2 copies)**

A.S. (MD) No. 54 of 2016
29.03.2022

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TR (07.06.2022) 5P 4C