



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 14.07.2022

CORAM: JUSTICE N.SESHASAYEE

S.A(MD).No 425 of 2015

S.Sriram

.. Appellant/6th Defendant

Vs

1. Manikumar

.. Respondent No.1/1st Plaintiff

2. P.Vigneshkumar

3. R.Saranya Lakshmi

4.S.Meganathan

5.M.Thenmozhi Ammal

6.Micheal Xavier Raja

7. R.Subbiah

8. Pushparaj

9.P.Jeyarajakani

10.T.Murugan

11.S.Sudalaikannan

..Respondents2 to 11/defendants/

Respondents 2 to 10 ex-parte in lower court

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 27.10.2014 in A.S.No.8 of 2014 on the file of the Principal District Judge, Tirunelveli, confirming the judgment and decree dated 22.10.2013 in O.S.No.28 of 2010 on the file of the Principal Subordinate Judge, Valliyoor.

For Appellant	: Mr.S.Mani
For R1	: Mr.S.Kumar
For R11	: Mr.H.Arumugam
For R3 & R10	: No appearance
R9	: Dispensed with vide order dated 29.06.2022
For R7	: Mr.P.Pethu Rajesh



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JUDGMENT

The sixth defendant in a suit for partition in O.S.No.28 of 2010 is the appellant herein. The suit was decreed and the 6th defendant challenged the same in A.S.No.8 of 2014 but was unsuccessful before the First Appellate Court. The parties would be referred to as per their rank before the trial court.

2. The facts may be stated very briefly. There are three schedules of properties with a combined total extent of 6.66 acres. Of them, Schedule 1 and 2 are in Thirukkurungudi, Ervadi Village, and the 3rd Schedule is in Thalapathy Samudhram Part II Village, Nanguneri Taluk. The details are tabulated below:

Schedule I	Survey Nos. 198 & 199 in having a total extent of 1 acre 35 cents.
Schedule II	Survey Nos. 193, 194/1, 194/2, 194/3, 1961, 196/2, 204/1 2 acres 88 cents.
Schedule III	Survey Nos. 17/1A, 17/1B, 17/2 Valioor, having a total extent of 2 acres 43 cents

3. All the aforesaid properties originally belonged to a certain Vincent. He was stated to be a Hindu, and died as a Hindu though he had a Christian name. He was first married to Backiyathai. The plaintiff was born to him through Backiyathai. Thereafter, Vincent had married one Punithavathi through whom he had 2 children and they are the defendants 1 and 2. The other facts involved in this case is now

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- (*) On 20.02.1988, Vincent had executed a Will, under which he had granted life estate over all the three schedules of properties to his wife Punithavathy and the remainder estate to his three children equally including his only son born to him through his first wife Backiyathai. Couple of months after the execution of the Will, on 15.04.1988, he died.
- Be that as it may, Punithavathi, the life-estate holder had executed few sale deeds with regard to all the three schedules of properties. The defendants 1 and 2 were minors then, but the alienations were made without obtaining necessary leave of the Court under Sec. 8 of the Hindu Minority and Guardianship Act. The details of alienations are as below:

Property involved	Alienees	Relevant Document	If contested
Schedule I (Entirely)	3 rd and 4 th defendant who in turn sold to 5 th defendant	Ext .A1 sale deed dated 11/05/1994 and Ext.A2 sale deed dated 03/02/2003	Not contested
Schedule II Items 1,2,4 and 7 (Total extent 1.82 acres)	6 th Defendant in turn sold to seventh defendant	Ext.A3 sale deed dated 11/08/1995 and Ext.A4 11/05/2007	D6 Alone contested. D7 remained exparte. And, D6 alone preferred the 1 st appeal
Schedule III (Extent 1.215 acres)	8 th defendant in favour of 9 th defendant	Document not produced	Not contested



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Schedule III (Extent 2.385 acre)	10 th defendant who in turn to sold 11 th defendant	Ext.A6 dated 13/08/1997 and Ext.A8 dated 07/09/2009	D10 Contested
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4. The plaintiff claims that he had obtained 1/3rd share under Ext.A.14 Will of his father and seeks partition of his share in the suit.

5. On appreciation of evidence, the trial court granted decree declaring plaintiff 1/3rd share in the suit properties. In the context of this appeal, it may have to be stated that the trial court has held that Ext.A.3 sale deed executed by Punithavathy, the life estate holder under the Will in favour of the sixth defendant is void. Its reasons are two fold:

- a) that Punithavathy was only a life estate holder and she could not alienate;
and
- b) that she had sold on behalf of the defendants 1 and 2, who are minors and without obtaining sanction from the court under Section 8 of the Hindu Minority and Guardianship Act, and that the sale was not for the welfare of the minors.

6. The matter was taken in first appeal by the 6th defendant and before the First Appellate Court the 6th defendant relied on Sec. 14 of the Hindu Succession Act and claimed that Punithavathi had obtained a limited estate under Sec.14(1) and that it



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was enlarged into her absolute property and justified her alienation in his favour, but lost on this point before the first appellate Court. This is now under challenge.

This Second Appeal is not yet admitted. All the counsels were heard.

7. This Court is plainly not in agreement with the finding of the courts below that Ext.A3 sale deed is void, but also does not find any reason to disturb the decree granted to the plaintiff either. It can be explained:

a) So far as the schedule I is concerned, the plaintiff was granted a decree for 1/3 share and this is not a subject matter of this appeal. So is schedule-III since both the plaintiff and the defendants 10 and 11 are stated to have compromised the issue.

b) So far as Schedule -II properties are concerned, there are 7 items of properties with a combined total extent of 2.88 acres. In this, the plaintiff is declared to have 1/3 rd share and in terms of extent, it would come to 96 cents. However, under Ext.A.3 the 6th defendant had purchased 1.82 acres (*) over item Nos.1, 2, 5 and 7 of schedule - II. This implies that there still 1.06 acres which is left to satisfy the plaintiff in terms of the extent. But the properties may have to be divided by its value.

8. Turning to the findings of the Courts below that the sale deed in favour of the sixth defendant is invalid, it needs to be reiterated that in law a life estate holder has



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every right to alienate her interest in the property during her life time and hence Ext.A.3 is valid. Turning to sale of the properties by Punithavathy belonging to defendants 1 and 2 under Ext.A3, neither of these defendants contested the suit. At any rate, if at all they want to challenge Ext.A3, they should have filed a suit to set aside the alienation made by their mother in terms of Article 60 of the Limitation Act, the suit has to be filed within 3 years of they attaining majority, and today they cannot challenge it as it is plainly barred by limitation.

9. Turning to the plaintiff's entitlement to his share is concerned, ultimately it has to be worked out before the trial court in the final decree proceedings. It is made clear that in the final decree application, the sixth defendant and the seventh defendant are entitled to seek an equitable allotment of the property covered under Ext.A.3 and Ext.A.4 to their share, if in terms of the valuation of the property it could be so allotted. If however, the extent of property that could be allotted to the plaintiff without disturbing Ext.A3 and Ext.A4 sale deeds, the difference in value may be compensated by owelty. These are the options open to the trial court and it is left to it to decide the issues during final decree proceedings.

(*)(*)10. In fine, this Court partially allows this appeal and holds that the 7th defendant would be entitled to 2/3rd share of 1.82 acres under Ext.A.3 (Item Nos.1, 2, 5 and 7 of Schedule-II) and the balance 1/3rd share in these items of properties



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will go to the plaintiff. As to the rest, the judgment and decree of the trial Court is confirmed. As to how the property in which the 6th and 7th defendants have right must be divided between them and the plaintiff is concerned, the equity may have to be balanced in the final decree proceedings. The judgment and decree of the first appellate Court is thus modified to the extent indicated above.

No costs.

Sd/-

Assistant Registrar (AS)

(*)Deleted as per the order of the court dated 14/06/2024 in SA(MD) No.425 of 2015

(*)(*)Corrected as per the order of the court dated 14/06/2024 in SA(MD) No.425 of 2015

(*)(*)(*)Amended as per order of this Court dated 14/06/2024 by replacing marked para in SA(MD)No.425 of 2015

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2023

Sub Assistant Registrar(CS)

CM

To:

(*)To be substituted to the decree which is already despatched on 26/06/2023

- 1. The Principal District Judge, Tiruneveli.**
- 2. The Principal Subordinate Judge, Vallioor.**

Copy to:

The Section Officer,

V.R. Section,

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

- +1 CC to M/s.H.ARUMUGAM, Advocate (SR-32354[F] dated 18/07/2022)
+1 CC to M/s.P.PETHU RAJESH, Advocate (SR-32191[F]
dated 18/07/2022)
+1 CC to M/s.S.KUMAR, Advocate (SR-31876[F] dated 15/07/2022)
+1 CC to M/s.S.MANI, Advocate (SR-31839[F] dated 15/07/2022)

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SI/(19.06.2023) 8P 9C

MGJ(30.07.2024) 8P 9C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023