



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.04.2022

CORAM

WEB COPY

THE HONOURABLE MS.JUSTICE R.N.MANJULA

A.S. (MD) No.71 of 2017
and
C.M.P. (MD) No.4937 of 2017

1.M.Sapoor Alikhan
2.M.Sahul Hameed
3.M.Abdul Jaffar

... Appellants/Defendants 1, 3 & 4
Vs.

1.R.Kamarunnisa Begam
2.M.Mumtaj Begam
3.Andiyappan
4.Murali
5.Thangavelu
6.SP.Vellaichamy
7.AP.N.Palaniappan

... 1st Respondent/Plaintiff

... Respondents 2 to 7/
Defendants 2, 5 to 9

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code, against the judgment and decree of the learned District Judge, Sivagangai in O.S.No.7 of 2010 on 23.12.2016.

For Appellants : Mr.R.Sundar Srinivasan

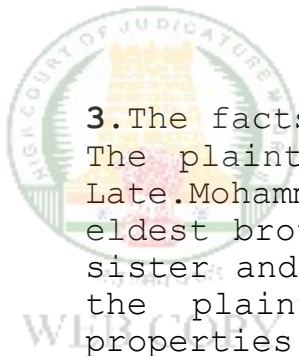
For Respondents : Mr.D.Venkatesh for R1

No appearance for R2 to R7

JUDGMENT

This Appeal Suit has been preferred challenging the judgment and decree of the learned District Judge, Sivagangai, dated 23.12.2016 made in O.S.No.7 of 2010.

2.The appellants are the defendants 1, 3 and 4 in the suit; the suit has been filed by the first respondent/plaintiff for the relief of partition and separate possession of her 1/8th share in the suit property.



3.The facts of the case runs as under:-

The plaintiff and the defendants 1 to 4 are the legal heirs of Late.Mohammed Mydeen and Jemila Beevi; the first defendant is the eldest brother of the plaintiff; the second defendant is her eldest sister and the third and fourth defendants are younger brothers of the plaintiff; the suit properties and some properties were properties belonged to the parents of the parties and some of the properties were sold in the year 1988 for the purpose of paying the estate duty; the balance amount was divided among the plaintiff and the defendants 1 to 4; no partition was effected in respect of the suit property; the defendants 1, 3 and 4 got the signature of the plaintiff and her husband in some white papers for changing the name of the heir and paying tax and change of name in the electricity connection in the year 1990; believing their words, the plaintiff and her husband put their signatures in the white papers; however, the defendants 1 to 4 attempted to sell the property in favour of the defendants 5 and 6; so the parties gave mutual paper publication; thereafter, the plaintiff made paper publication in Dina Malar newspaper on 01.04.2009; thereafter, the first defendant alone gave refusal notice in Dina Malar newspaper stating that no partition or settlement was made in respect of suit property; the plaintiff came to know that the defendants 1, 3 and 4 attempted to sell the property to the defendants 5 and 6 by creating bogus documents; when the plaintiff approached the defendants 1 to 4 in the year 2000 for partition of her 1/8th share in the suit property, the defendants 1 to 4 refused to do; as per the Muhammadan Law, the plaintiff is entitled to 1/8th share in the suit property, hence, she filed the suit for partition.

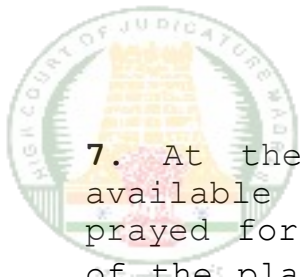
4.The defendants 3 and 4 resisted the suit by stating that there was family arrangement, in which, the plaintiff had received a sum of Rs.1,60,000/- in respect of her share in the suit property; she received the amount in the presence of notary Public and executed a release deed; the second defendant also executed release deed in favour of the defendants 1, 3 and 4 on 24.04.2009; hence, the plaintiff is barred by estoppel by her conduct and the plaintiff is not entitled to any share in the suit property; hence, the suit should be dismissed.

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

"1.Whether the plaintiff is entitled to claim partition of 1/8th share in the suit properties as claimed?

2.To what relief, the plaintiff is entitled?"

6. During the course of trial, on the side of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and Exs.A1 to A11 were marked; on the side of the defendants, three witness were examined as D.W.1 to D.W.3 and Exs.B1 to B5 were marked.



7. At the conclusion of the trial on considering the evidence available on record, the learned trial Judge decreed the suit as prayed for and granted preliminary decree for partition in respect of the plaintiff's 1/8th share in the suit property; aggrieved over that, the defendants 1, 3 and 4 had filed this Appeal Suit.

8. The learned counsel for the appellants submitted that the first respondent/plaintiff had executed a release deed by receiving a sum of Rs.1,60,000/- and the said deed was attested by her husband also; in view of the said family arrangement, the first respondent/plaintiff is not entitled to any share in the suit; the learned trial Judge failed to ignore the reliability of Ex.B2 and decreed the suit; even though Ex.B2 is an unregistered document, which is still admissible in evidence for certain purposes; the learned trial Judge had not appreciated the evidence in proper perspective and decreed the suit; hence, the appeal should be allowed.

9. The learned counsel for the first respondent/plaintiff submitted that the learned trial Judge is correct in coming to the conclusion that Ex.B2 is invalid for the reason that it is an unregistered document; the notary Public, who had affixed the seal himself does not have authority to act as notary Public on 28.11.1990; the document itself is not a valid one and it was concocted for the payment in order to defeat the interest of the first respondent/plaintiff and her sister; no legal validity can be given to Ex.B2 and hence, the learned trial Judge is correct in granting the relief of preliminary decree for partition as prayed by the plaintiff and hence, it does not require any interference.

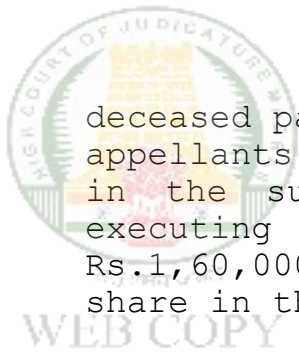
10. Point for Consideration:-

"Whether the judgment and decree of the learned trial Judge is fair and proper?"

11. Heard the learned counsel for the appellants and the learned counsel for the first respondent and went through the evidence on record.

12. The relationship between the plaintiff and the appellants is not in dispute. The fact that the suit property was originally belonged to the parents of the plaintiff and the appellants also not in dispute. Since the parents of the appellants and the first respondent/plaintiff namely, Mohammed Mydeen and Jamila Beevi died intestate, both the appellants and the first respondent/plaintiff are entitled to inherit their properties as their legal heirs.

13. There is no dispute as to the apportionment of share in the suit property between the sons and daughters of the plaintiff as per Mohammedan Law between the sons and daughters of the



deceased parents. The only contention of the learned counsel for the appellants is that the entitlement of the first respondent/plaintiff in the suit property had been relinquished by her by way of executing a release deed dated 28.11.1990 after receiving a sum of Rs.1,60,000/- and in view of the same, she is not entitled to any share in the suit property.

14. On a perusal of Ex.B2, it is seen that it is an unregistered partition deed and in which right in respect of immovable property is spoken about. No doubt, unregistered deeds cannot be considered as valid deed of conveyance in respect of immovable property. However, the learned counsel for the appellant submitted that as per the decision of the Honourable Supreme Court in the case of **Civil Appeal No.8441 of 2015, dated 08.10.2015 (Yellapu Uma Maheswari and Another Vs. Buddha Jagadheeswararao and Others)** even unregistered documents can be relied for certain limited purposes. In the said judgment, it is held as under:-

"17. It is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question. A thorough reading of both Exhibits B-21 and B-22 makes it very clear that there is relinquishment of right in respect of immovable property through a document which is compulsorily registerable document and if the same is not registered, becomes an inadmissible document as envisaged under Section 49 of the Registration Act. Hence, Exhibits B-21 and B-22 are the documents which squarely fall within the ambit of section 17 (i) (b) of the Registration Act and hence are compulsorily registerable documents and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties. We are of the considered opinion that Exhibits B 21 and B22 are not admissible in evidence for the purpose of proving primary purpose of partition.

18. Then the next question that falls for consideration is whether these can be used for any collateral purpose. The larger Bench of Andhra Pradesh High Court in Chinnappa Reddy Gari Muthyala Reddy Vs. Chinnappa Reddy Gari Vankat Reddy , AIR 1969 A.P. (242) has held that the whole process of partition contemplates three phases i.e. severancy of status, division of joint property by metes and bounds and nature of possession of shares. In a suit for partition, an

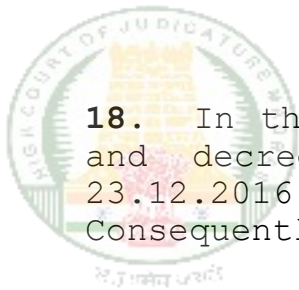


unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellants/defendants want to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the Trial Court is at liberty to mark Exhibits B-21 and B- 22 for collateral purpose subject to proof and relevance."

15. The Honourable Supreme Court made it very clear that as per Section 49 of the Registration Act, any unregistered conveyance in respect of immovable property is an inadmissible evidence. In the case in hand, for the purpose of proving the primary fact of partition, it is claimed that the share of the plaintiff was relinquished and it was released in favour of the appellants vide Ex.B2 release deed. As per Section 49 of the Registration Act, no validity can be given to Ex.B2 and it cannot be considered as valid document of conveyance. The release deed would come within the purview of Section 17 (1)(b) of the Registration Act and it ought to have been registered. If such a type of transaction is not done through a registered document, then the natural legal sequences is that it has to be considered as invalid and it is incapable of transferring any title.

16. It is true that an unregistered deed can be taken as evidence for the purpose of collateral purposes, provided if stamp duty penalty is paid by impounding the document. Ex.B2 also impounded and stamp duty penalty was paid and only thereafter, it was admitted in evidence. Since Ex.B2 can only be relied for collateral purposes like severance of title, nature of possession etc., it cannot be viewed as a document or as proof to show either for division of property by metes and bounds or for releasing of right in favour of the appellants.

17. The learned trial Judge has rightly appreciated the fact and law and arrived at a right conclusion that in view of Ex.B2, the entitlement of the plaintiff's share in the suit property cannot be denied. In my considered view, the judgment and decree of the learned trial Judge granting preliminary decree for partition in respect of 1/8th share of the first respondent/plaintiff on the basis of the above finding does not suffer from any factual or legal infirmity and it does not warrant any interference. **Thus the point for consideration is answered against the appellants.**



18. In the result, this Appeal Suit is dismissed and the judgment and decree of the learned District Judge, Sivagangai, dated 23.12.2016 made in O.S.No.7 of 2010 is confirmed. No costs. Consequently, Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

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To:

The District Judge,
Sivagangai.

Copy to:

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R. SUNDAR SRINIVASAN, Advocate (SR-17431[F] dated 08/04/2022)

A.S.(MD)No.71 of 2017
08.04.2022

MGJ(03.06.2022) 6P 5C