



Appeal Suit No.308 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	10.04.2023
Pronounced on	28.07.2023

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

Appeal Suit No.308 of 2015

and

M.P.No.1 of 2015

1.Periyanayagi @ Neela

2.Thirugnanam,

3.Datchinamurthy

....Appellants

Vs.

1.Canniammalee

2.Parvathy

3.Indra Gandhi (died)

4.Malathy

5.Muthulatchoumy

6.Vinayagavel

7.Bhuvaneshwari

8.Vadivelu

...Respondents

(R3 Died, RR 7 & 8 are brought on record as LR's of deceased 3rd



Appeal Suit No.308 of 2015

Respondent Viz., namely Indra Gandhi Vide Order of Court dt :31.10.2022 in AS.No. 308 of 2015.(DBCJ).)

Prayer: First Appeal has been filed under section 96 of CPC read with order 41 Rule 1 Civil Procedure Code, against the Judgement and Decree dated 25.03.2015 made in O.S.No.152 of 2012 on the file of the III Additional District Judge of Pondicherry.

For Appellant : Mr.R.Jayaprakash
For R1 to R8 : Ms.Sudharshana Sunder

J U D G M E N T

This appeal is directed against a judgment and decree dated 25.03.2015 passed by the learned III Additional District Judge, Pondicherry in O.S.No.152 of 2012.

2.The appellants are the defendants in O.S.No.152 of 2012 and plaintiffs 1 to 6 in the above suit, who are the respondents 1 to 6 herein. For the sake of convenience, the parties herein are referred to as they are ranked before the trial Court as plaintiffs and defendants.



WEB COPY 3. The case of the plaintiffs in brief:

The suit property originally belongs to one Dharmalingam, which is in Natham Patta No.296 N. The said Dharmalingam married the 1st plaintiff in the year 1986 and due to the lawful wedlock, four children were born to them, namely, Pooraniammal, Parvadhi, Indira Gandhi and Gopalakrishnan. Out of them, Pooraniammal and Gopalakrishnan died. The said Pooraniammal died leaving behind her daughter Malathi, the 4th plaintiff herein. The said Gopalakrishnan married the 4th plaintiff Malathi in the year 1987 and the said marriage was not registered before a Competent Authority. The plaintiffs 5 & 6 were born to them. The said Gopalakrishnan died on 02.05.2006 leaving behind his wife Malathi, daughter Muthulakshmi and son Vinayagavel as his legal heirs. The said Dharmalingam married one Krishanaveni as a second wife, the defendants 1 to 3 are the children born to them. Dharmalingam died intestate on 26.01.1979 at Pudhupet, Pondicherry and his death was not registered before Competent Authority. The plaintiffs were living in the thatched house situated in the suit property. The defendants 1 to 3 have driven the plaintiffs out of the suit property and they are in



possession of the same. In spite of the plaintiffs' request for division of the suit properties into two equal shares, the defendants 1 to 3 are evading the same. The defendants 1 to 3 are attempting to sell the suit properties without giving any share to the plaintiffs. Hence, the plaintiffs were constrained to file the above suit for partition.

4. In the written statement filed by the 2nd defendant adopted by 1st and 3rd defendant, the following contentions have been raised:

The defendants 1 to 3 would submit that Dharmalingam married one Krishnaveni as second wife and out of the wedlock the defendant 1 to 3 were born. The said Dharmalingam died on 26.11.1979 the defendants deny the allegations made by the plaintiffs that they were residing in a thatched house in the suit property and were driven out by the defendants. It is submitted that the plaintiffs have no right to reside in the suit property. The defendants would further submit that the said Dharmalingam was allotted only half share in the suit property by virtue of registered partition deed dated 23.04.1975 and another half share was allotted to his brother namely Krishnan. The half share of Krishnan was purchased by the defendant. Hence, the plaintiffs have



no right in the above half share of the suit property. It is further submitted that on 04.05.1993 the 1st wife of Dharmalingam namely Canniammalle and her son Gopalakrishanan have executed a release deed in favour of the sons of Dharmalingam in respect of the suit property for valid consideration. The said release deed was duly registered. The said Dharmalingam and his 2nd wife Krishanaveni had two daughters and four sons namely Dhanalakshmi, Lakshmikantham, Periyamayagi, Senathipathi, Thirugnanam and Dakchinamoorthy. On 20.06.97 the 2nd wife of Dharmalingam namely Krishnaveniammal and his sons Senathipathy, Dakchinamoorthy and Gopalakrishnan have executed another release deed in favour of the 2nd defendant by relinquishing their respective shares in the suit property for valid consideration. The brother of 2nd defendant namely Lakshmikandan died long back. His sons namely Shankar @ Arunachalam and Dhatchayani have executed a release deed in favour of the 2nd defendant on 05.11.2001, thereby relinquishing their suit property. Similarly, the 2nd defendant's brother Dakchinamoorthy also executed a release deed in favour of the 2nd defendant on 11.05.1995 relinquishing his rights in the suit property. Thus, all the legal heirs of Dharmalingam have relinquish their rights and shares in the suit



property in favour of the 2nd defendant. As such, the 2nd defendant became the absolute owner of the suit property and raised a pacca construction the suit property and he is in possession and enjoyment over the suit property. The second defendant also obtained a electricity service condition and water connection in his name also paying house tax paying to the Municipality. On 02.07.2007 the second defendant executed a registered settlement deed in favour of his son Balu in respect of 986 Sq.ft in the total extent in the suit property. On the same day, he executed another settlement deed in favour of his wife Sumathy in respect of another 986 sq.ft. Thereafter, the wife and son of the second defendant became absolute owner over the suit property and they are in peaceful possession and enjoyment of the suit property. Hence, the plaintiffs have no *locus standi* to file the above suit for partition when the 1st plaintiff and her son Gopalakrishnan having relinquished their shares in the suit property in favour of the second defendant. The suit is barred by limitation since the said Dharmalingam died 42 years back and no demand for partition was made for several years. Hence, the suit is liable to be dismissed.



5.The trial Court has framed the following issues:

- 1.Whether the suit is barred by limitation?*
- 2.Whether there is cause of action against the defendants?*
- 3.Whether the legal heirs of the deceased Dharmalingam have relinquished their rights to the defendant No.2?*
- 4.Whether the plaintiff have not properly valued the suit property and paid proper court fees?*
- 5.Whether the defendant No.2 who has lost his right in the property and settled the same in favour of his son and wife is valid or not?*
- 6.Whether the plaintiff is entitled for preliminary decree by allotting 1/6 share in 1½ of the schedule of property by metes and bounds?*
- 7.Whether the plaintiffs are entitled for permanent injunction for alienating the suit property in favour of third parties?*
- 8.To what other relief, the parties are entitled?*



6. After analysing the evidence on record, the learned III Additional District Judge, Pondicherry, passed preliminary decree for partition of plaintiffs 1/6th share in half share in the suit property. Aggrieved by this, the defendants have filed the above appeal.

7. The learned counsel appearing for the appellants/defendants would submit that the 1st plaintiff and her son Gopalakrishnan having relinquished their shares in the suit property by virtue of Ex.B2, it is not open to their legal heirs to file the above suit for partition. The trial Court without sufficient material erroneously came to a conclusion that the entire suit property belong to Dharmalingam. The documents filed on the side of the defendants as Ex.B1 to B7 was not considered by the trial Court in a proper prospective way, which ended up on miscarriage of justice. He would further submit that, the trial failed to take note of the fact that the plaintiffs have approached the Court by suppressing material fact and with unclean hands. The learned counsel for the appellants/defendants would submit that the suit for partition filed by the plaintiffs has been woefully barred by limitation. In furtherance, he would submit that the other legal heirs of Dharmalingam were not



impleaded as necessary parties and therefore the suit is barred for non-joinder of necessary parties. His further contention is that the plaintiffs failed to raise an objection before authorities even though they had knowledge about mutation of Revenue entries in the name of the 2nd defendant. Hence, the plaintiffs are estopped from claiming right over the suit property. Hence, the judgment and decree dated 25.03.2015 in O.S.No.152 of 2012 on the file of III Additional District Judge, Puducherry, is liable to be set aside by allowing this appeal. To support his contention the learned counsel for the appellants/defendants has relied upon the following decision cases reported in:

1. 2010(4) CTC 640

" Revenue entries were mutated in favour of the defendant- plaintiff failed to raise an objection before authorities, eventhough they had knowledge about mutation of revenue entries-plaintiff ought to have raised objection, otherwise he is estopped claiming right over property.

2. 2001(2) CTC 601

" Suit for partition against Purchaser from Co-sharer--non-impleadment of one of Co-sharer/transferor-- suit is liable to be dismissed.



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8. On the other hand, the learned counsel appearing for the respondents would submit that the alleged partition deed dated 23.04.1975 was not marked before the trial Court. It goes to show that the entire suit property stands in the name of Dharmalingam. The alleged release deeds marked Exs.B.1 to B.7 are not valid in the eye of law for the reason that the alienation made by the legal heirs of Dharmalingam in respect of the suit property in favour of the 2nd defendant and the alienation made by the 2nd defendant in favour of his wife and son would not bind the other co-parceners and legal heirs. The plaintiffs and the defendants were in joint possession and enjoyment of the suit property till the plaintiffs were driven out from the suit property by the defendants. The trial Court after considering the materials placed on record has rightly passed preliminary decree for partition which calls for no interference and the appeal is liable to be dismissed.

9. Heard on both sides, records perused.

10. The points for consideration:-



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1. Whether the plaintiffs are entitled for 1/6 share in the half share of the suit property ?

2. Whether the suit is barred by limitation?

3. Whether the suit is bad for non joinder of necessary parties?

4. Whether the appeal can be allowed or not?

Point No:1

11. According to the plaintiffs, the suit property originally belongs to one Dharmalingam. The 1st plaintiff is the 1st wife of Dharmalingam and had four children namely Pooraniammal, Parvadhi, Indira Gandhi and Gopalakrishnan. The Pooraniammal died leaving behind her daughter Malathi who was married to the Gopalakrishnan. The said Malathi is the 4th plaintiff, the said Gopalakrishnan also died leaving behind his wife Malathi, daughter Muthulakshmi, the 5th plaintiff herein and son Vinayagavel the 6th plaintiff herein. The further contention of the plaintiffs is that, they were residing in a thatched house in the suit property until they were driven out by the defendants after the death of Dharmalingam. The plaintiffs would submit



that the said Dharmalingam died intestate and the plaintiffs as legal heirs of Dharmalingam they are entitled for a share in the suit property.

12. Whereas, the contention of the defendants is that, the said Dharmalingam married one Krishnaveni as 2nd wife and the defendants and in the said wedlock six children were born including the defendants herein. The suit property was divided into two halves by virtue of a partition deed dated 23.04.1975 and one half share was allotted to Dharmalingam and another half share was allotted to his brother Krishnan. The half share of Krishnan was purchased by the 2nd defendant. After the demise of Dharmalingam, his legal heirs relinquished their rights in the half share of Dharmalingam in the suit property. He had raised a pucca construction in the suit property. The 2nd defendant has executed two settlement deeds in favour of his wife and sons in respect of the suit property and the revenue entries were mutated in their favour. They are in possession and enjoyment of the suit property. Though the plaintiffs had knowledge about mutation of revenue entries failed to raise any objection before the concerned authorities and therefore, the plaintiffs are estopped from claiming any right over the suit property.



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13. According to the defendants, the suit property was originally partitioned between their father Dharmalingam and his brother Krishnan, by virtue of a partition deed, dated 23.04.1975. Therefore, only half share in the suit property belong to Dharmalingam. Whereas the contention of the plaintiffs is that the entire suit property originally belong to their father Dharmalingam. While so, the alleged partition deed dated 23.04.1975 is not filed by the defendants to establish that the said Dharmalingam owned only half share in the suit property. The 2nd defendant examined as D.W.1 also admitted in the cross examination that Natham Patta was issued to the suit property. On perusal of Ex.A.6 Natham patta No.296, it is found that the same stands in the name of Dharmalingam. Ex.A.7 is the settlement extract for patta No.296 N, which also stands in the name of Dharmalingam. Therefore, the plaintiffs have established that the entire suit property originally belongs to Dharmalingam. The defendants would further state that the legal heirs of Dharmalingam have relinquished their rights in the suit property in favour of the 2nd defendant. The defendants have produced Ex.B.1 to B.7 certified copies of the release deeds. Though, D.W.1 admitted in his



evidence about the availability of the original release deeds, the same is not produced. Therefore, in the absence of the original documents, the certified copies of the release deeds cannot be given much importance **[Ref : 2005 (1) CTC 1]**. Even admitting that, the legal heirs of Dharmalingam have relinquished their rights in the suit property, as rightly held by the learned trial Judge, they have no right to relinquish their shares in the undivided coparcenary property. Such relinquishment made by the legal heirs of Dharmalingam is not valid **[Ref : 2009 (5) MLJ 862]**.

14. Furthermore, one coparcener cannot alienate his share in the coparcenary property without the consent of all other coparceners. In this case, Exs.B.1 to B .7 are executed by coparceners in favour of other coparceners without the consent of other coparceners **[Ref: 2004 (3) CTC 92]**. Therefore, the alleged release deeds are not valid and the release deeds executed by the 2nd defendant in favour of his wife and son are also not valid in the eye of law. Moreover, some discrepancies are found in the above



release deeds marked as Ex.B.1 to B.7. In Ex.B.1 release deed, which was

alleged to have been executed in the year 1978, it is mentioned that, “காலம்

சென்ற K.தர்மலிங்கம் குமாரர்கள்.” Whereas the said Dharmalingam died

26.11.1979. This would create a serious doubt over Ex.B.1 release deed as to

whether the same is genuine or not. Likewise, in Ex.B.6 & B.7 release deed it

is mentioned as “உடன் பிறந்த சகோதரர் கோபால்.”. But the said Gopal is the

son born to Dharmalingam and his first wife. This also creates doubt about

the execution of Exs.B.6 and B.7 release deeds. The 2nd defendant failed to

examine the legal heirs of Dharmalingam to establish the fact that the above

release deeds were executed by them in favour of the 2nd defendant. Hence,

the alleged release deeds cannot be taken into consideration. The alleged

partition between Dharmalingam and his brother Krishanan by virtue of a

partition deed dated 23.04.1975 also not established by the defendants. It is

crystal clear that no partition has taken place in respect of the suit property.

The learned counsel appearing for the respondents would contend that the

Revenue entries were mutated in favour of the 2nd defendant his wife and son

and at that time, the plaintiff failed to raise any objection before the



authorities, even though they had knowledge about mutation of Revenue entries. The plaintiff ought to have raised objection, otherwise he is estopped from claiming right over property. To support his contention, he has relied upon the judgment reported in **2010 (4) CTC 640**.

15.In the case on hand, the defendants failed to establish that the plaintiff had knowledge about mutation of Revenue entries in favour of the 2nd defendant, his wife and son. Unless the plaintiffs had knowledge about mutation of Revenue entries they cannot raise any objection before the authorities. Moreover, the mutation of Revenue records in the name of the 2nd defendant alone do not confer any title on the 2nd defendant or his wife and son. Hence, the plaintiffs as legal heirs of the said Dharmalingam are entitled for 1/6 share in the half share of the suit properties. Accordingly, this point is answered.

Point No:2

16.According to the defendants, the said Dharmalingam died intestate on 26.11.1979 i.e., 42 years back and the plaintiffs have filed the suit for



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partition only in the year 2012. After execution of release deed by the 2nd defendant in favour of his wife and son which had given rise to further transactions such as mutation of Revenue entries. The plaintiffs ought to have filed the above suit for partition immediately after the demise of their father Dharmalingam. Hence, the suit is barred by limitation.

17. To support his contention, he has relied upon the judgement of this Court in S.A.No.605 of 2012 in which it was held that the plaintiffs ought to have filed the partition suit immediately. According to the plaintiffs, they were in joint possession in the suit property along with the defendants until they were driven out from the suit property by the 2nd defendants in the year 2010. Thereafter, when the defendants tried to alienate the suit property to 3rd parties, the plaintiffs demanded for partition. The plaintiffs further submit that the suit was filed within two years from the date of dispossession. The plaintiffs have caused a legal notice on 27.08.2012 for which there is no reply on the side of the defendants. Therefore, the suit is not barred by limitation. Accordingly, this point is answered.



Point No:3

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18. The learned counsel appearing for the appellants/defendants at the time of his arguments submitted that the other legal heirs of Krishna Gounder were not added as necessary parties in the suit. He would submit that the respondents 1 to 6/plaintiffs have filed a suit for partition in which all the co-sharers are necessary parties. In the event of non-impleadment of some of the co-sharers, the suit is liable to be dismissed. To support his contention, he has relied upon the decision reported in **2001 (2) CTC 601**. Surprisingly, the defendants neither in the written statement nor in the grounds of appeal stated about the particulars of other co-sharers or raised the issue with regard to non-joinder of necessary parties. Only at the time of arguments in this appeal suit, the issue of non-joinder of necessary parties is raised. This issue cannot be raised at this stage without any pleadings. Moreover, the Court cannot take any initiative on its own under Order 1 Rule 10(2) of CPC in absence of proper particulars relating to all parties, who are left over. Therefore, the contention made by the learned counsel for the appellants/defendants cannot be accepted. Accordingly, this point is answered.



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Point No:4

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28 .07.2023

vsn/cp
Internet:Yes/No
Index:Yes/No
Speaking/Non-speaking order

To
III Additional District Judge,
Pondicherry.



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Appeal Suit No.308 of 2015

K.GOVINDARAJAN THILAKAVADI, J.

vsn/cp

PRE- DELIVERY JUDGEMENT MADE IN

Appeal Suit No.308 of 2015

and

M.P.No.1 of 2015

28.07.2023