



AS Nos.486 of 2016 & 216 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **12.10.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**
and
THE HONOURABLE DR.JUSTICE **D.NAGARJUN**

A.S.Nos.486 of 2016 & 216 of 2021
CMP No.6690 of 2018

AS No.486 of 2016

S.Shanmugam

... Appellant

Vs

1. Senthamizh Selvi

2. Varalakshmi

3. Bhavani

4. Jothiramalingam

5. V.S.Durai

6. Arulmozhi

7. The Manager,
Indian Bank Main Branch
Nehruji Road,
Villupuram Town

... Respondents

This appeal is filed under Section 96 of the Code of Civil Procedure, to set aside the judgement and decree dated 28.09.2015 and



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made in O.S.No.8 of 2011 on the file of the Principal District Court,
Villupuram District, Villupuram.

For Appellant : Mr.C.Munusamy

For Respondents : Mr.Prakash Adiapadam
for M/s. Achari & Antony, for RR1 to 4
Mr.M.Muthappan, for RR5 & 6

AS No.216 of 2021

1. V.S.Durai

2. Arulmozhi ... Appellant

Vs

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2. Varalakshmi

3. Bhavani

4. Jothiramalingam

5. S.Shanmugam

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For Appellant : Mr.M.Muthappan

For Respondents : Mr.Prakash Adiapadam
for M/s. Achari & Antony, for RR1 to 4

COMMON JUDGEMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

Both the Appeals arise out of a suit for partition in OS No.8 of 2011 on the file of the Principal District Court, Villupuram. While the second defendant is the appellant in AS No.486 of 2016, the first and third defendants are the appellants in AS No.216 of 2021.

2. The suit was filed by four siblings viz. the three daughters and one son of Subramania Pillai seeking partition of their 4/6th share in the suit properties. According to the plaintiffs, all the suit properties belonged to Subramania Pillai and his wife Mangaiyarkarasi, who died on 29.11.2009 and 24.06.2010 respectively. Contending that on their death, the properties devolved equally on the plaintiffs and defendants 1 and 2, who are the other sons of Subramania Pillai, the plaintiffs sought for partition. A prayer for



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declaration that a Sale Deed executed by Subramania Pillai in favour of the third defendant on 18.01.2008 is sham and nominal as it is not supported by consideration was also sought for.

3. The suit was resisted by the defendants contending that though the properties stood in the name of the father they were acquired by the joint efforts of the sons viz. the defendants 1 and 2. The third defendant contended that the Sale Deed was supported by consideration and the claim made that the Sale Deed is sham and nominal is not true. It was the further contention of the first defendant that he had purchased the gold chain weighing about 5 sovereigns and gifted it to his mother and therefore it should not form part of the partible estate. The second defendant filed a separate written statement contending that he had stopped his education at 8th standard and from the age of 13, he was assisting his father and the properties were acquired out of the joint exertions of the father and defendants 1 and 3. The first plaintiff, who was deserted by her husband, was taken care of by the family and her children were provided with the education by the family and therefore, the plaintiffs are not entitled to a share in the suit properties. He further claimed that the father and the defendants 1 and 2 are each entitled to 1/3rd share and the plaintiffs would



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be entitled to 1/6th share each in the 1/3rd share of the father.

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4. On the above pleadings, the learned Trial Judge framed the following issues

i) Whether the Sale Deed in respect of the 3rd item dated 18.01.2008 is sham and nominal;

ii) Whether the plaintiffs are entitled to 4/6th share in suit items 1 to 9;

iii) Whether the plaintiffs are only entitled to 1/18th share as claimed by the second defendant;

iv) Whether the movables viz. the jewels and silver articles are in the hands of the first defendant;

v) To what relief the plaintiffs are entitled to?

The following additional issues were framed:

(i) Whether the Court fee paid is correct; and

(ii) Whether the suit is bad for non joinder of necessary parties.

5. At trial, the third plaintiff was examined as P.W.1 and one

Azhagesan was examined as P.W.2. The first defendant was examined as



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D.W.1 and the second defendant was examined as D.W.4, three other witnesses were examined as D.Ws.2, 3 and 5. While Exhibits A1 to A13 were marked on the side of the plaintiffs and Exhibits B1 to B72 were marked on the side of the defendants.

6. We may, at the outset, point out that most of the documents, filed on the side of the defendants were the Property Tax Demand Notices, Property Tax receipts, Water Tax receipts issued by the Municipality and Electricity Bills for payment of electricity charges. Some of the documents related to medical expenses incurred for Subramania Pillai and the fourth plaintiff Jothiramalingam, who is admittedly a dumb and deaf person.

7. The Trial Court relying on the admission of the defendants that the suit properties belonged to Subramania Pillai and Mangaiyarkarasi concluded that the plaintiffs are entitled to the shares as claimed by them in Suit Item Nos.1, 2, 4, 5, 6 and 7. The Trial Court declined the claim for partition as regards Item Nos.3, 8 and 9, while Item No.3 is the property that the subject matter of the Sale Deed dated 18/01/2008, Item Nos. 8 and 9 are the debts allegedly due from defendants 1 and 2 and house hold articles. As regards Item No.3, the learned Trial Judge concluded that the Sale Deed is supported by consideration and it is also in evidence that after expending



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certain monies for his own medical expenses, the balance amount was deposited by Subramania Pillai in Banks and Post Office Saving Scheme Deposits. On the said finding, the learned Trial Judge up held the Sale Deed. The plaintiffs have not filed any Appeal against the rejection of the relief in respect of Item Nos.3, 8 and 9. These Appeals are by the defendants 1, 2 and 3.

8. We have heard Mr.C.Munusamy, learned counsel appearing for the appellant in AS No.486 of 2016, Mr.M.Muthappan, learned counsel appearing for the appellants in AS No.216 of 2021 and Mr.Prakash Adiadam, learned counsel appearing for the respondents 1 to 4 in AS No.486 of 2021 in both the Appeals.

9. Mr.C.Munusamy, learned counsel appearing for the appellant in AS No.486 of 2016 would vehemently contend that the Trial Court must have accepted the plea of the second defendant that the properties were acquired out of the joint efforts of Subramania Pillai, the first defendant and the second defendant and therefore, Subramania Pillai had only a 1/3rd share in the properties and hence the plaintiff would each be entitled to only a 1/18th share.



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WEB COPY 10. Mr.M.Muthappan, learned counsel appearing for the defendants 1

and 3 would contend that the defendants 1 and 3 had contributed a sum of Rs.3,00,000/- towards construction of the house and one item of jewellery which was purchased by the first defendant and handed over to his mother as a gift should be allotted to them.

11. Contending contra, Mr.Praksah Adiapadam, learned counsel appearing for the respondents/plaintiffs would contend that once it is admitted that the jewellery was given as a gift, it belonged to the mother and therefore, it became a partible estate among the heirs of the mother. As regards the claim of contribution, the learned counsel would point out that there is no iota of evidence to establish the fact that contribution was made by the first defendant. As regards the claim of the second defendant, the learned counsel would submit that the properties stood in the name of Subramania Pillai and Mangaiyarkarasi and they were their self acquisitions. The defendants cannot lay a claim on the ground of joint exertions.

12. We have considered the rival submissions.



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13. The following points arise for determination in these Appeals;

(1) Whether the defendants 1 and 3 have proved the case of contribution pleaded by them;

(2) Whether the first defendant has proved that the jewellery was purchased by him and was entrusted with the mother;

(3) Whether the second defendant had established that the properties were purchased out of the contributions made by defendants 1 and 2.

Point Nos.1 & 2;

14. Admittedly the jewellery which is a 5 sovereign chain had been purchased by the first defendant. He has produced the receipt for the purchase of the same. At the same time, it is also admitted by him that he had gifted it to his mother, once a movable jewellery is gifted to a person that becomes the possessor's property and the person who made the gift cannot seek return of it that too in a suit for partition. Once it is admitted that the jewellery was purchased and handed over to the mother it would become her property and it is partible like any other property possessed by her. The Trial Court has rightly rejected the claim in respect of the jewellery.



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15. As regards contribution of Rs.3,00,000/- as rightly pointed out by Mr.Prakash Adiapadam, there is no evidence. Though the defendants have filed so many documents most of them are receipts for payment of House Tax, Water Tax and Electricity Charges. These documents would not establish the fact that the defendants have contributed for purchase of the property. Hence both the Point Nos.1 and 2 are answered against the appellants in AS No.216 of 2021.

Point No.3;

16. Adverting to the third point, it is the second defendant's contention that he had contributed for purchase of these properties. It is claimed that he stopped his education at 8th standard and he was working with his father from the age of 13. The sons participating in the family affairs with the father happen in every family, no importance can be attached to such contribution, more so, when the Sale Deeds of the properties stand in the name of the father, the Court cannot presume contribution by the sons in the absence of concrete evidence. In the case on hand except the evidence of the second defendant we do not find any evidence to show contribution. In fact the first defendant, who is the elder



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brother, has not come up with such plea. We are therefore unable to accept the contention of Mr.C.Munusamy, the learned counsel appearing for the appellants in AS No.486 of 2016 that the second defendant has proved contribution and therefore, the property must be treated as a property belonging to Subramania pillai and his two sons and the plaintiffs would be entitled to only 1/18th share.

17. We therefore do not see any merit in the Appeals, Appeals fail and they are dismissed. However, in view of the relationship between the parties, there will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(R.SUBRAMANIAN, J .) (D.NAGARJUN, J.)
12.10.2023

jv
Index : No
Internet : Yes
Speaking order
Neutral Citation: No

To
The Principal District Court,
Villupuram District,
Villupuram.



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