



S.A.No.59 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.59 of 2021

and

C.M.P.No.1405 of 2021

Vimala

... Appellant

Vs.

1.Suriya Gandhi,
2.Vedavalli,
3.Sundarambal,
4.Vijayarani.

... Respondents

PRAYER: Second Appeal filed under section 100 of the Civil Procedure Code to set aside the judgement and decree passed by the learned Principal District Judge, Thiruvarur in A.S.No.10 of 2018 dated 21.12.2019 confirming the Judgement and Decree passed by the learned Sub Judge, Mannargudi in O.S.No.81 of 2011, dated 21.03.2016.

For Appellant : Mr. S.Parthasarathy

For Respondents

R1,R2 & R4 : M/s. M.Sujithra

for M/s.P.T.Ramadevi

R3 : No appearance



JUDGMENT

The 4th defendant who unsuccessfully challenged the judgment and decree in O.S.No.81 of 2011 of the Sub Court Mannargudi, before the Principal District Judge, Thiruvarur in A.S.No. 10 of 2018, is the appellant before this Court.

2. For the ease of understanding, the parties are referred in the same array as before the Sub Court, Mannargudi.

FACTS OF THE CASE:

3. The plaintiff has filed a suit for partition of her 1/4th share in the suit property. It is her case that the suit properties belonged to one, Ramaiyan who is the father of the plaintiff and the defendants 1 to 3. Ramaiyan died intestate in the year 1993 and a year later, his wife followed him. Therefore, the plaintiff and the defendants 1 to 3 who are the daughters, had inherited 1/4th share each in the properties. The deceased Ramaiyan has no male heir.



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4. The plaintiff would submit that after the marriage of the plaintiff and the defendants 1 and 3, they have left for their matrimonial home and the second defendant is residing at the old tiled house situated at North Street, Eda Melaiyur Village in the Survey Nos.281/11 B2, 281/14A, 281/14C and 281/14B and maintaining the suit properties.

5. The properties are in the joint possession and enjoyment of the plaintiff and the defendants 1 to 3. It appears that without the knowledge of the other co-sharers, the second defendant had executed some arrangement in favour of the fourth defendant. The fourth defendant, in turn, without obtaining permission from the plaintiff and the defendants, had demolished the old tiled house in the property and had left the same as a vacant site and she had also filed a caveat against the plaintiff and the defendants 1 to 3 at the District Munsif Court, Mannargudi.



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6. The plaintiff would submit that they are the co-sharers in the property and the second defendant cannot alienate their share in the property to the fourth defendant without the consent of the other sharers. When questioned, the second defendant replied that only she had right in the property left by their father. On 28.10.2011, the plaintiff had formally requested for partition and it was refused by the second defendant and therefore, this suit in question.

7. The written statement had been filed by the third defendant which was adopted by the first defendant who has adopted the pleadings of the third defendant and sought for partition of their 1/4th share. The second defendant was set *ex-parte*. The fourth defendant had filed a written statement *inter-alia* denying the contention of the plaintiff and putting the plaintiff to strict proof of the contents.

8. It is the case of the fourth defendant that on 22.10.2009, the



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second defendant had executed a sale agreement in respect of the suit properties which she had obtained through oral partition in favour of the fourth defendant for a sum of Rs.3,12,000/- and advance of Rs.3,00,000/- was paid to the second defendant according to the agreement and the sale deed was to be executed by the second defendant on receiving the balance of sale consideration. She would contend that the present suit is a collusive one instituted for the purpose of avoiding execution of the sale deed in favour of the fourth defendant.

TRIAL COURT:

9. The trial Court had framed the following issues and additional issues which had been translated in the English language from the vernacular language.

“Issues:

- 1. Whether the Plaintiff is entitled to claim 1/4th share in the suit property?*
- 2. To what other relief, the plaintiff is*



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entitled to?

Additional Issues:

1. Whether item No.1,2 and 3 properties are not joint properties?

2. Whether the Court fee paid is insufficient?

3. Whether the suit is not maintainable?

4. Whether the suit is bad or non-jointer of parties?”

10. The plaintiff had examined herself as P.W.1 and marked Ex.A1 to Ex.A10. On the side of the defendants, the defendant had examined herself as D.W.1 and no document was marked on their side. The fourth defendant had not entered the box.

11. Heard the learned counsel on either side and perused the materials available on record.

12. Aggrieved by the said judgment and decree, the fourth



defendant has preferred an appeal in A.S.No.10 of 2018 on the file of the Principal District Judge, Thiruvarur. The learned Judge also confirmed the judgement and decree and dismissed the appeal with costs. Aggrieved by the same, the fourth defendant is before this Court.

13. When the matter had come up on 04.02.2021 for admission, this Court has ordered notice to the respondents. The respondents 1,2 and 4 have entered appearance through their counsel. As against the third respondent, the second appeal is dismissed and steps have not been taken to restore the appeal against the third respondent.

14. Mr.S.Parthasarathy, learned counsel appearing on behalf of the appellant would submit that the second defendant had sold the property to the fourth defendant on the basis of the oral partition entered into the children of Ramaiyan. On the basis of this oral arrangement, the share that has been allotted to the share of the second defendant has been sold to the fourth defendant.



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15. He would submit that the fourth defendant has filed a suit for specific performance in O.S.No.89 of 2012 on the file of the Sub Court, Mannargudi and for damages against the second defendant and the said suit has been decreed on 25.04.2018 and there has been no challenge to the said judgement and decree.

16. He would therefore contend that in the final decree proceedings, the appellant should be allotted the 1/4th share that falls to the share of the second defendant.

17. The learned counsel appearing for the first respondent/plaintiff would contend that the plaintiff is not a party to the proceedings and therefore, unaware about the same. Further, pendency of the suit was not brought to the notice of the plaintiff in the earlier proceedings. The fact is that the fourth defendant has filed a suit only against the second defendant.



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18. Heard the learned counsel on both sides and perused the materials available on record.

19. Though it is claimed that the suit for specific performance had been filed after the suit for partition was instituted by the plaintiff who is the first respondent herein, no proof of the same is filed. The plaintiff in the instant suit, OS.No.81 of 2011 is admittedly not made a party to the suit O.S.No.89 of 2012. Therefore, the judgment and decree in the suit O.S.No.89 of 2012 would not be binding on the plaintiff in the instant suit O.S.No.81 of 2011. Both the Courts below have come to the conclusion that the plaintiff is entitled to 1/4th share in the suit property and the fourth defendant who had pleaded an oral arrangement amongst the sisters has not been able to sustain the said claim. She has not been able to make out the case for reversing the concurrent judgment and decree of the Courts and no substantial questions of law have been set out by the appellant.



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20. Therefore, the second appeal has to necessarily fail and accordingly, it is dismissed. It is needless to state that if the fourth defendant is able to prove that he has obtained a decree for specific performance against the second defendant then, as and when the final decree proceedings are initiated and the fourth defendant proves the decree in O.S.No.81 of 2011 then, this Court shall consider allotting the second defendant shares' to the fourth defendant in equity.

In the result, this second appeal is dismissed. Consequently, connected C.M.P stands closed. No costs.

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Index : Yes/No
Speaking order/non-speaking order
ssa

To

1. Principal District Judge,
Thiruvavur

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2.The Sub Judge,
Mannargudi.

3.The Section Officer, V.R.Section, High Court, Madras

P.T.ASHA, J.,

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and



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