



S.A.No.878 of 2002

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.878 of 2002

1.Rajambal
2.Andal
... Appellants
- Vs -

1.Sakunthala
2.Rajendran
3.Kamala
4.Ravi
5.Vijayalakshmi
6.Ramesh
7.Adhimoolam
8.Devaki(Died)
9.Haridoss (Died)
10.Meenakshi
11.Dhandapani(Died)
12.Sivagami
13.Thiruvengadam
14.Balu
15. Narayanan (Died)
16.Parthasarathy
17.Sasikala
18.Gouri
19.Mrs.Saraswathi
20.Ms.Uma
21.Krishnaraj



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[Respondents 13 to 15 brought on record as LRs of the deceased 8th respondent, viz., Devaki vide Court Order dated 30.01.2019 made in C.M.P.No.538 to 540 of 2013 in S.A.No.878 of 2002]

[Respondents 16 to 18 brought on record as LRs of the deceased 9th respondent viz., Haridoss vide Court Order dated 30.01.2019 made in C.M.P.No.541 to 542 of 2013 in S.A.No.878 of 2002]

[Respondents 19 to 21 brought on record as LRs of the deceased 11th respondent viz., Dhandapani vide Court Order dated 30.01.2019 made in C.M.P.No.525 to 527 of 2015 in S.A.No.878 of 2002]

[15th respondent died (unmarried) is recorded vide Court Order dated 28.11.2023 made in S.A.No.898 of 2023] ... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree and Cross Appeal dated 29.11.2001 in A.S.No.70 of 1996 on the file of the Subordinate Court, Panruti dismissing the appeal against the judgment and decree dated 14.02.1995 in O.S.No.469 of 1991 on the file of the District Munsif Court, Panruti.

For Appellants : Mr.R.Sunilkumar



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For Respondents : Mrs.R.Meenal
[R10, R12, R17 & R18]
R2, R3, R4, R6, R7, R13, R14,
R16, R19, R20 & R21 – Served –
No Appearance
R5 – Left
R1 – died – Steps taken
R8, R9, R11 & R15 - Died

JUDGMENT

The instant second appeal has been filed at the instance of the defendants 7 and 8. The respondents 1 to 6 are the legal heirs of the deceased plaintiff and the respondents 7 to 12 are the defendants 1 to 6 before the trial Court.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the trial Court.

3. The brief facts which gives rise to the instant second appeal is

that:



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According to the plaintiff, the suit property is the absolute property of mother of the plaintiff - Thaiyal Nayagi. After her demise, the plaintiff become entitled for 1/3rd share. On the date of the filing of the suit, among the 7 legal heirs of Thaiyal Nayagi, three legal heirs were alive and others died issueless. According to the plaint, the plaintiff is the son of Thaiyalnayagi and the defendants 1 to 6 are the grand children of Thaiyal Nayagi through the other sons and the defendants 7 and 8 are the grand daughters of Thaiyal Nayagi through her daughter Soramma.

4. The said suit was resisted by the defendants 1 to 8 on the specific contention that the Thaiyal Nayagi died before the enactment of Hindu Succession Act, 1956. Therefore, the property would devolve upon her only daughter of Soramma, hence, plaintiff is not entitled for decree of partition.

Evidence and documents:-

5. Before the trial Court, the plaintiff has examined three witnesses as PW1, PW2 and PW3 and defendants have examined six witnesses as



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WEB CO DW1 to DW6 and the plaintiff has marked six documents as Exs.A1 to A6. On behalf of the defendants, eleven documents have been marked as Exs.B1 to B11 and third party documents were marked as Exs.X-1 to X-11.

6. The trial Court while deciding the suit has framed the following issues:

- i) Whether the plaintiff is entitled for partition, if so his quantum of share is ?*
- ii) Whether the Court has jurisdiction?*
- iii) Whether the sale deed dated 15.3.1961 is true and valid ?*
- iv) To what other reliefs?*

7. Apart from that following additional issue was also framed by the trial Court on 21.10.1994, "whether the defendants 1 to 6 perfected title between adverse possession?"

Findings of the both the Courts below:-



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8. From the above issue, the trial Court has found that the plaintiff is not entitled for a decree of partition. In respect of issue No.3, namely Ex.B3, whether the sale deed dated 15.3.1961 is valid or not. The Trial Court gave findings that it is not valid. However, the decree of dismissal order is in favour of the all defendants 1 to 8.

9. Aggrieved with the same, the plaintiff has preferred an appeal against the dismissal of the partition suit. In the said appeal, the defendants 1 to 6 preferred a cross appeal against the findings for the issue No.3 in respect of the sale deed dated 15.3.1961.

10. The First Appellate Court while confirming the findings of the trial Court in respect of ultimate decision of dismissing the suit, in respect of issue No.3 with regard to the validity of sale deed dated 15.3.1961, the First Appellate Court reversed the findings and held that the sale deed dated 15.3.1961 is valid and binding and if at all, if any one have challenge the said document, they have to file a separate suit for setting aside the sale deed.



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11. Again the defendants 7 and 8 who are aggrieved with the order of the First Appellate Court in respect of dismissal of the suit in O.S.No.469 of 1991 has preferred this second appeal against the reversal finding recorded by the First Appellate Court in the Cross Appeal as to the validity of the sale deed dated 15.3.1961, which allegedly executed by the defendants 7 and 8 in favour of one Kausalya Ammal who is the mother of the defendants 1 to 6.

12. From the above discussion, it is clear that the decree of dismissing the partition suit is in favour of the defendants 1 to 8. However, against the order of the cross appeal by the defendants 1 to 6, the instant second appeal has been filed by the defendants 7 and 8. This second appeal is only in respect of the validity of the sale deed executed *inter se* between the defendants 7 and 8 are on one side, and the defendants 1 to 6 on the other side. According to the defendants 7 and 8, the sale deeds stand in the name of the defendants 1 to 6's mother Kausalya is *void ab initio*. Whereas, the defendants 1 to 6 states that the



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sale deed is true and valid. Aggrieved with the same, the defendants 7 and 8 are before this Court by way of this Second Appeal.

13. This Court while admitting the second appeal has framed the following substantial questions of law :

"1. Whether the sale of the suit item inclusive of the share of the minor Andal represented by Ramakrishnan who was the maternal uncle without the permission of the court under the provisions of Guardian and Wards Act and the Hindu Minority and Guardianship Act not void ab initio.

2. Whether the finding of the validity of the sale exhibited as B3 which purported to contain the thumb impression of Rajambal, even without examination of any independent witnesses when the execution of the document had been specifically denied in the written statement is not vitiated?"

14. After hearing both sides, this Court deems it to appropriate that the substantial question of law framed on 28.06.2002 is to be modified as:



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Whether the findings recorded by the trial Court in respect of the issue arising inter se defendant is necessary for deciding the suit?

Analysis of the submissions:-

15. This Court is of the firm view that, the issue in respect of the validity of the sale deed dated 15.3.1961 is arising only *inter se* defendants. From the perusal of the written statement filed by both the defendants, they categorically pleaded that the suit property originally belonged to their mother Thaiyal Nayagi and that, on the death of Thaiyal Nayagi prior to the enactment of Hindu Succession Act, 1956, the property devolved upon the only daughter Soramma. Upto this level, there is no controversy or difference of opinion, between plaintiff, defendants 1 to 6 on one side, and the defendants 7 and 8 are on the other side. In order to decide the partition suit, a material issue to which the trial Court as well as the First Appellate Court found that, Thaiyal Nayagi died before the commencement of Hindu Succession Act, 1956. As such, the property has rightly devolved upon the Soramma, and eventually dismissed the suit for partition.



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16. At this juncture, this Court deems it appropriate to extract
Order XIV Rule 1 CPC.

***SETTLEMENT OF ISSUES AND
DETERMINATION OF SUIT ON ISSUES OF LAW OR
ON ISSUES AGREED UPON***

(1) Framing of issues— (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of distinct issue.

(4) Issues are of two kinds :

(a) issues of fact,

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and [after examination under Rule 2 of Order X and after hearing the parties or their pleaders,] ascertain upon what



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material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

17. According to Order 14 Rule 1 CPC, in a suit, issue would arise only in respect of fact or law affirmed by one party and denied by other party. To put it in other words, fact or law pleaded by the plaintiff, and denied by the defendant would become an issue. Therefore, if a fact or law affirmed by one of the defendant or disputed by the other defendant will never be an issue under Order 14 Rule 1 CPC. However, the trial Court has framed a wrong issue in respect of validity of the sale deed dated 15.3.1961 which is an issue inter se defendants. The plaintiff has not at all raised this aspect in his plea. Therefore, the findings in respect of sale deed dated 15.03.1961 is an unwarranted finding, which resulted in filing of the cross appeal by the defendants 1 to 6, and the instant second appeal by the defendants 7 and 8.



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18. As discussed herein above, the appellant herein as well as the contesting respondents are sailing together in respect of the dismissal of the partition suit. As stated supra, the issue in respect of sale deed is *inter se defendant* not necessary for deciding the partition suit. As such the issue regarding validity of sale deed has been framed in contravention to the provision of Order 14 Rule 1 CPC. Therefore, this Court is of the firm view that the finding of the trial Court in respect of issue No.3 is unwarranted. Therefore, the same is liable to be set aside. If that being the case, as concomitant, the finding recorded by the First Appellate Court in the cross appeal is also liable to be set aside. As such, the modified substantial question of law is answered. Hence, the second appeal is liable to be allowed. It is made clear that both the parties are at liberty to challenge the sale deed dated 15.03.1961 according to law.

19. In the result, this second appeal is allowed and the judgment and decree of the Cross Appeal dated 29.11.2001 in A.S.No.70 of 1996 on the file of the Subordinate Court, Panruti is set aside. Thereby finding



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in respect of issue No.3 by the trial Court and First Appellate Court is set aside, leaving the parties to workout their remedy separately. There shall be no order as to costs.

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Index : yes/no

Speaking/Non Speaking Order

Neutral Citation Case: Yes/No



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To

1. The Subordinate Court,
Panruti.
2. The District Munsif Court,
Panruti.



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C.KUMARAPPAN, J.,

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