



S.A.No.1351 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2023

CORAM

THE HONOURABLE Mr. JUSTICE V. LAKSHMINARAYANAN

S.A.No.1351 of 2008

R.Subramani

...Appellant/Appellant/Defendant

Vs.

1.Saraswathi

2.Sivaganam (died)

3.R.Thilagam

4.R.Sugumar

5.R.Kolanthairaj

...Respondents/Respondents/Plaintiffs

(R3 to R5 brought on record as legal representatives of the deceased 2nd respondent vide order of this Court dated 22.07.2022 in C.M.P.Nos.13010, 13011 and 13013 of 2019 in S.A.No.1351 of 2008)

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 30.01.2006 in A.S.No.111 of 2003 on the file of the learned Principal District Judge, Krishnagiri, Dharmapuri, confirming the Judgment and Decree dated



S.A.No.1351 of 2000

19.09.2003 in O.S.No.160 of 1998 on the file of the learned
Subordinate Judge, Dharmapuri.

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For Appellant : Mr.N.Damodaran
For Respondents : Ms.Shri Varshini.V.
for Mr.I.Abrar Md.Abdullah

JUDGMENT

The defendant in O.S.No.160 of 1998 on the file of the learned
Subordinate Judge, Dharmapuri, is the appellant before this Court.

2.This is a simple suit for partition between the siblings. The
appellant is the eldest brother. He has two siblings, by name,
Saraswathi and Sivaganam who are the plaintiffs. The case of the
plaintiffs is that the suit schedule mentioned property was purchased by
their father Rangasamy Gounder on 07.11.1960 and what remained to
the family is an extent of 29 cents. On the death of Rangasamy
Gounder all the three succeeded to the property and each claimed 1/3
share.



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S.A.No.1351 of 2000

3.The case of the defendant is that he admits the relationship between the plaintiffs and the defendant, but would plead that what is available to the family was not 29 cents but only 3 cents. During the course of trial, Ex.A.1 - Sale Deed which was purchased by Rangasamy Gounder was filed. It is also evident that 5 cents of property was given away to one Mohammned Kasim under Ex.A.2 and purchased by the father-in-law of the defendant under Ex.B.1. The father-in-law in turn had executed Ex.B.2 to an extent of 3 cents in favour of his son-in-law and Ex.B.7 to an extent of 2 cents in favour of his daughter Manimekalai. It was projected by the defendant that 7 cents have been sold by Rangasamy Gounder in favour of one Beerubi Ammal and therefore, what remained in the family is only 17 cents. Both the Courts below have granted a Preliminary decree and as against the concurrent finding, this Second Appeal has been filed.

4.Heard the learned counsels appearing on either side and perused the papers.



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S.A.No.1351 of 2000

5.At the time of passing of the Preliminary Decree, the Court is concerned only with the declaration of the share of the suit property. The relationship having not been denied, I declare that each of them is entitled to 1/3 share in the schedule mentioned property.

6.The learned counsel for the appellant would vehemently contend that what is available for partition is only 3 cents and not 15 cents. That is a matter which he has to prove in the final proceedings. Here is a case where it is admitted that Rangasamy Gounder had purchased the property on 07.11.1960 and the suit was presented on 11.11.1998. What is on record is that the alienations have been made by Rangasamy Gounder to one Mohammed Kasim and further from Mohammed Kasim to Manickam and thereafter, to the appellant and his wife.

7.Insofar as the property for Beerubi Ammal is concerned, I cannot accept the same as it does not tally with the suit schedule



S.A.No.1351 of 2000

properties. If any alienations have been made after 11.11.1998, the same will not be binding as it will be hit by the doctrine of *lis pendens*.

The purchasers are always entitled to claim equity on the properties sold by any of the parties in their favour pending the litigation and that can be done at the time of Final Decree proceedings. I am only concerned with respect to the shares. The share has been rightly found by the Trial Court as well as the Lower Appellate Court. The appellant has not made out any question of law much less the substantial question of law warranting interference by this Court.

This Second Appeal is dismissed. Considering the relationship between the parties, I am not inclined to impose costs.

03.04.2023

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps



S.A.No.1351 of 2000

To
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1.The Principal District Judge,
Krishnagiri,
Dharmapuri.

2.The Subordinate Judge,
Dharmapuri.



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S.A.No.1351 of 2008

V. LAKSHMINARAYANAN, J.

mps

S.A.No.1351 of 2008

03.04.2023