



S.A.No.1 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No. 1 of 2018
and
C.M.P.No.26 of 2018

C.Valarmathi

...Appellant

Vs.

Kulandayammal (died)

1.P.Selvaraj

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dismissing the A.S.No.16 of 2016 dated 01.07.2017 on the file of the I Additional Subordinate Judge, Erode confirming the Judgment and decree in O.S.No.42 of 2014 dated 01.12.2015 on the file of I Additional District Munsif at Erode.

For Appellant : Mr.Prakash Goklaney

For Respondent : Mr.T.Gowthaman

JUDGEMENT

The unsuccessful plaintiff in the suit for partition is the appellant. The appellant filed a suit for partition claiming $\frac{1}{2}$ share in the suit property against



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the respondents/ her deceased mother Kulandayammal. The suit was dismissed by the Trial Court and the first appeal filed by the appellant was also dismissed. Challenging the concurrent findings against her, the appellant has come before this Court by way of second appeal.

2. According to the appellant/plaintiff, the suit property originally belonged to her paternal grandfather Vaiyapuri Mudaliar. He died 40 years ago leaving behind his wife Palaniammal, three sons namely Palaniappan, Sundaram, Manickam and four daughters namely Angayammal, Kamalammal, Mangayarkarasi and Jothimani. The said Palaniappan died intestate 37 years ago leaving behind the appellant/plaintiff, his wife Kulandayammal who was arrayed as 1st defendant and 2nd respondent/2nd defendant. The daughters of Vaiyapuri Mudaliar executed a Release Deed on 02.02.1976 releasing their right in the property in favour of their brothers and heirs of deceased brother Palaniappan. Thereafter, there was a partition in the family between minor plaintiff, respondents, paternal uncles Sundaram and Manickam and in that partition, plaintiff was represented by her natural gaurdian and mother Kulandayammal, the 1st defendant. In the said partition, the suit properties were allotted to Kulandayammal for life with vested remainder in favour of 2nd defendant. It was



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averred by the appellant/plaintiff that natural guardian of plaintiff namely Kulandayammal had no right to release estate of the minor plaintiff in respect of the suit property and hence, the same was not valid and binding on her. Therefore, the plaintiff was constrained to file a suit for partition claiming $\frac{1}{2}$ share ignoring the partition entered into between plaintiff, defendants and paternal uncles of plaintiff dated 02.02.1976.

3. The respondent/2nd defendant filed a written statement denying the plaint allegations. The suit was mainly resisted by the respondent on the ground of limitation. The respondent also contended that plaintiff being a *eo-nominee* party to the partition deed dated 02.02.1976 cannot maintain the present suit for partition without seeking cancellation of the partition deed. It was also contended that in pursuance of the partition, the defendant had taken possession of the property and he had been in possession and enjoyment of the suit property for decades. It was also contended that partition deed dated 02.02.1976 cannot be ignored and the suit for partition is not maintainable after several years.

4. Before the Trial Court, the plaintiff was examined as P.W.1 and three documents were marked on her side as Ex.A1 to Ex.A3. On behalf of the



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respondent, the 2nd defendant was examined as D.W.1 and no document was marked on behalf of the respondent.

5. The Trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiff failed to exercise the option of avoiding the partition within three years from the date of attaining majority and having failed to do so, the suit filed by the plaintiff after 37 years was not maintainable and hence, dismissed the suit. Aggrieved by the same, the appellant preferred an appeal in A.S.No.16 of 2016 on the file of the I Additional Sub-Court, Erode. The First Appellate Court also confirmed the findings of the Trial Court. Aggrieved by the concurrent findings, the appellant is before this Court.

6. The learned counsel for the appellant submits that natural guardian of the minor has no right to give up the right of minor over the suit properties by entering into registered partition deed with sharers. The learned counsel by taking this Court to Section 8 of Hindu Minority and Guardianship Act, 1956 submitted that partition is not a transfer of property as contemplated under Section 8 sub-section 2(a) of Hindu Minority and Guardianship Act, 1956.



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Hence, the partition entered into by natural guardian cannot be treated as voidable one at the instance of minor. The learned counsel further submitted that natural guardian of the minor has no right to enter into the registered partition deed on behalf of the minor and therefore, the said document shall be treated as void document.

7. Section 8 of Hindu Minority and Guardianship Act, 1956 reads as follows:-

“8. Powers of natural guardian.- (1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court,- (a) mortgage or charge, or transfer by sale, gift, exchange or otherwise any part of the immovable property of the minor or (b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.



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(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor.

(5) The Guardians and Wards Act, 1890 (8 of 1890), shall apply to and in respect of an application for obtaining the permission of the court under sub-section (2) in all respects as if it were an application for obtaining the permission of the court under section 29 of that Act, and in particular- (a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof. (b) the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act; and (c) an appeal lie from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section to the court to which appeals ordinarily lie from the decisions of that court.



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(6) In this section, "Court" means the city civil court or a district court or a court empowered under section 4A of the Guardians and Wards Act, 1890 (8 of 1890), within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate”.

8. A reading of the above provision would make it clear that natural guardian of the minor shall not, without previous permission of the court, mortgage or charge, or transfer by sale, gift, exchange or otherwise any part of the immovable property of the minor. Section 8(3) of Hindu Minority and Guardianship Act, 1956 reads that any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.

9. Section 6 of Hindu Minority and Guardianship Act, 1956 reads as follows:-

“6 . Natural guardians of a Hindu minor.- The natural guardians of a Hindu, minor, in respect of the minor's person as well as in respect of the minor's



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property (excluding his or her undivided interest in joint family property), are-

(a) in the case of a boy or an unmarried girl-the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b) in the case of an illegitimate boy or an illegitimate unmarried girl-the mother, and after her, the father;

(c) in the case of a married girl-the husband;

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section-

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi)

Explanation.- In this section, the expressions 'father' and 'mother' do not include a step-father and a step-mother''

A reading of above provision read with Section 8 would make it clear that Section 8 is not applicable to minor's interest in joint family property. Hence argument advanced by learned counsel for appellant based on Section 8 of said



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Act is rejected.

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10. It is settled law minor can be represented by natural guardian mother in a family partition in the absence of father. It would be appropriate to refer to the full bench decision of this Court in ***Thavva Rangasayi Vs Thavva Nagarathnamma*** reported in ***1933(65) MLJ 630=MANU/TN/0064/1933***.

“27. It is open to the adult coparceners to express their intention to separate from the others, and even though some coparceners were minors, such intention to separate may be communicated to the mothers or other natural guardians of the minors. A partition effected by the adult coparceners with the mothers or other natural guardians of the minor coparceners representing the minors would be a valid partition, and would be binding upon the minors. (Emphasis Supplied by this Court) No doubt it would be open to the minors when they come of age to take steps to have such a partition modified if their proper shares of the joint family property had not been secured to them; but they cannot impugn the partition on the simple ground that it ought not to have been entered into when they were minors. It is a right of the adult members, including the kartha or the manager,



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to claim partition with a view to have their shares separated. The result in such a case would be that the minor also is separated from the other members and his share ascertained and taken charge of by his mother or other natural guardian. The kartha or the manager of the whole family, when he himself is claiming separation from the minor, could not represent the minor's interests in such a partition. The practice in such cases is to have the minor's interests represented by the minor's mother or other near relation interested in the minor whose interests are not adverse to the minor”.

11. If minor member of joint family represented by mother in family partition is aggrieved by terms of partition or he decides to challenge it as unfair, he has to challenge partition within three years from date of attaining majority. This position has been very well explained in ***Meenambal and others Vs Chockalinga Chettiar and others*** reported in ***AIR 1978 Mad 230=1978 (1) MLJ 398***. In the said case law this Court by referring to above mentioned full bench decision categorically held that in cases where minor wants to set aside the partition to which he was made as *eo-nominee* party, the limitation is three years from the date of attaining majority. The relevant observation of this Court reads as follows;



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“23. In Chanvirapa v. Danava ILR(1894) 19 Bom 593 it was held that partition made by a mother as guardian of her minor son is valid, that if it is just and legal it will bind the minor, that when the minor arrives at full age, he can however have it set aside if it can be shown to be illegal or fraudulent, and that a suit to set aside a partition by a minor is governed by Article 91 or 95. Schedule II of the Limitation Act 15 of 1877 and must be brought within three years after the minor attained majority. In Balkishan Das v. Ram Narain Sahu ILR (1903) Cal 738 the Privy Council observed:--

"The question upon which their Lordships have felt most difficulty is whether the document can be considered as binding upon the coparceners, who were minors at the date of it. But they think that in these proceedings they must treat it as binding upon them. There is no doubt that a valid agreement for partition may be made during the minority of one or more of the coparceners. That seems to follow from the admitted right of one co-parcener to claim a partition; and (as has been said) if an agreement for partition could not be made binding on minors a partition could hardly ever take place. No doubt if the partition was unfair or prejudicial to the minor's interests, he might, on attaining his majority, by proper proceedings, set it aside so far as regards himself." In Rangasayi v.



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Nagarathnamma, ILR Mad 95 : MANU/TN/0064/1933 : AIR 1933 Mad 890 a Full Bench of this Court pointed out that a valid partition could be made outside the Court by the members of a joint family though some were minors at that time, that it is open to the adult coparceners to express their intention to separate from others, that even though some coparceners are minors such intention to separate may be communicated to the mothers or other natural guardians of the minors, that a partition effected by the adult coparceners with the mothers or other natural guardians of the minor coparceners representing the minors would be a valid partition and would be binding on the minors though it would be open to the minors when they come of age to take steps to have such a partition modified if their proper shares of the joint family property have not been secured to them. From the above decisions it is clear that the plaintiff in this case cannot ignore the earlier transaction of partition to which he was eo nomine a party and proceed to ask for a fresh partition without setting aside the earlier partition either on the ground of fraud or illegality or on the ground that it is unfair and unequal and prejudicial”.

“24. If the earlier partition is to be set aside by the plaintiff, the question is as to what is the period of



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limitation for such a suit. According to the learned counsel limitation will begin from the date of knowledge of the illegality or unfairness and not from the date of the plaintiff attaining majority. It is said that the plaintiff became aware of the fact that the partition is unfair and unequal only on 16-2-1060. I am not inclined to agree with the learned counsel that the three years will not commence from the date of the plaintiff attaining majority. The minor, as soon as he attains majority should be taken to have knowledge of the transactions entered into by the guardian during his minority. Therefore, the plaintiff should be taken to have had knowledge of the transaction on his attaining majority. Therefore, the period of limitation before which he should file a suit for setting aside the document of partition will be three years of his attaining majority”.

12. In the case on hand, in the partition deed dated 02.02.1976 marked as Ex.A3, the age of the plaintiff was mentioned as 13 years. Therefore, even as per the document of the plaintiff, she would have attained majority in the year 1981. However, the present suit has been filed by the appellant/plaintiff on 24.01.2014 nearly after 33 years. Therefore, the Courts below rightly came to the conclusion that present suit filed by the appellant/plaintiff is hopelessly barred by limitation



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and dismissed the same.

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13. In such circumstances, I do not find any substantial question of law arising for consideration in this second appeal to interfere with the conclusion reached by the Courts below that the suit is barred by limitation.

14. Accordingly, the second appeal stands dismissed.

a) by affirming the judgment and decree passed in A.S.No.16 of 2016 dated 01.07.2017 on the file of the I Additional Subordinate Judge, Erode confirming the decree and judgment passed in O.S.No.42 of 2014 dated 01.12.2015 on the file of I Additional District Munsif, Erode.

b) In the above facts and circumstances of the case, there will be no order as to costs.

c) Consequently, connected miscellaneous petition is closed.

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Index : Yes
Internet : Yes
Neutral Citation Case : Yes
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To

1. The I Additional Subordinate Judge, Erode .
2. The I Additional District Munsif, Erode.

S.SOUNTHAR, J.
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