



S.A.No.1046 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2023
CORAM

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

S.A.No.1046 of 2012

1. Sithuraj (deceased)

2. S. Pappammal

3. Jayanthi

4. Kavitha

...Appellants

Vs

1. R. Bangaru

2. Selvaraj

3. Pushpa

4.V. Selvi

5. R. Nirmala

6. S. Ramkumar

... Respondents



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Prayer: This Second Appeal is filed under Section 100 of C.P.C to allow the above appeal by setting aside the Judgment and decree made in A.S.No.157 of 2010 dated 12.12.2011 on the file of I Additional Sub Court, Salem, confirming the Judgment and decree II Additional District Munsif Court, Salem made in O.S.No.222 of 2005 dated 18.11.2009 and pass orders.

For Appellants	:M/s. VJ. Latha
For Respondent-1	:Mr. T.S.Vijaya Raghavan
For Respondent-2	:No Appearance
For Respondents 3 to 5	: Set Ex-parte

JUDGEMENT

This second appeal is filed to set aside the Judgment and decree made in A.S.No.157 of 2010 dated 12.12.2011 on the file of I Additional Sub Court, Salem, confirming the Judgment and decree of II Additional District Munsif Court, Salem made in O.S.No.222 of 2005 dated 18.11.2009



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2. The plaint in brief:

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The Plaintiff and the first defendant are the brothers being sons of Ramasamy Reddy. Mr.Ramasamy Reddy had two brothers by name Sithu Reddy and Kandasamy Reddy. The second defendant herein is the son of Kandasamy Reddy. Since the plaintiff's father died when the plaintiff and the first defenant were very young, they were taken care of their paternal uncle/ Sithu Reddy. The said Sithu Reddy had no children of his own. The plaintiff further submits the suit property originally belongs to Chinna Kutty Reddy who is the grand father of the plaintiff and the first defendant. Subsequently, the said Chinna Kutty Reddy has mortgaged his property with one Senna krishna Chetty. In the mean time Chinna Kutty Reddy died. On payment of the mortgage amount, as agreed, the said Senna krishna Chetty had executed three sale deeds in favour of 3 persons namely Ramasamy Reddy, Sithu Reddy and Kandasamy Reddy. All the sale deeds are dated 16.04.1949. However, while executing sale deed in favour of Ramasamy Reddy, the first defendant R.Sithuraj was a minor then and he was also added as party to the sale deed, represented through his mother Rangammal. Subsequently, the said Sithu Reddy died in 1991 issue less and



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his wife had predeceased. Thus, the plaintiff's submitted that he is entitled to 1/2th share of the property of the Ramasamy Reddy, and 1/4th share in Sithu Reddy's property. Since, the second defendant who is the son of Kandasamy Reddy is not evincing any interest in getting his share in the suit property, the plaintiff came forward to file the suit for partition to divide the suit property into two equal shares and allot one such share to the plaintiff.

3. The Written statements in brief of the first Defendant :

The first defendant submits that Chinna Kutty Reddy sold the property not only to the Ramasamy Reddy, this defendant's paternal uncle/Sithu Reddy had also purchased the suit property by virtue of the sale deed dated 16.04.1949. Since the Sithu Reddy had executed a Will in favour of this defendant on 20.01.1982, the plaintiff has got no right in Sithu Reddy's property. Thus, it is the submission of the first defendant, that the plaintiff would only have 1/4th share in the property purchased by Ramasamy Reddy and Sithu Reddy qua the first defendant and there would



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be no share in the Sithu Reddy's property. Hence he prays to dismiss the suit.

4. Documents evidences and findings of both the Court below:

Before the Trial Court, the plaintiff himself was examined as P.W.1 and on behalf of the plaintiff ten documents have been marked as Ex.A1 to A10. On behalf of the defendants four witness were examined D.W.1 to D.W.4 and 18 documents have been marked B1 to B18. After considering the materials available on record, oral and documentary evidences, the trial Court concluded that the plaintiff is entitled to 1/2th share in the properties which stands in the name of the Ramasamy Reddy and the first defendant, and will have 1/4th share, being 50% of the 1/2th share devolved to Ramasamy Reddy as his legal heirs, in the Siddu Reddy's property. Thus, the suit was decreed as prayed for.

Aggrieved with the same, the first defendant preferred the first appeal in A.S.No.157 of 2010, and in the said appeal the findings of the Trial Court was confirmed and the first appeal was dismissed. Aggrieved with the said



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findings of the lower Appellate Court, the first defendant has approached this Court by way of this Second Appeal.

5. For the sake of convenience, the parties are referred to herein according to their litigative status as mentioned before the Trial Court.

6. Submission of the either side counsel:-

The learned counsel for the appellant would vehemently contend that the very letter which is marked as A10 will in no way deny the appellant's right. It is the further submission of the appellant that by virtue of the bar of Benami transactions, the plaintiff and the first defendant will become the owner of the 1/2th share of the property under Ex.A4. Therefore, would contend that after the demise of the Ramasamy Reddy the plaintiff can only claim 50% of the remaining 1/2th share of the Ramasamy Reddy's property. Thus, the appellant would submit that he is entitled to 3/4th share, whereas, the plaintiff is entitled only for 1/4th share. Therefore, he prays to allow the second appeal.



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7. Per Contra, the learned counsel for the respondent would vehemently submits that though the property under Ex.A4 was purchased in the name of Ramasamy Reddy and Sithu Reddy, the suit property was dealt as Joint Family property. Since because the Sale Deed was executed in the name of the First defendant that will not confer any seperate right in favour of the first defendant, as the first defendant was minor then. It is the further submission of the respondent that the Sithu Reddy who is the paternal uncle of the plaintiff as well as the first defendant did not execute any Will in favour of the first defendant. Therefore, contended that even in the Sithu Reddy's property both the plaintiff and the first defendant is entitled to have share equally. Thus, it is the submission of the learned counsel for the respondent that the very findings recorded by the Trial Court as well as the first Appellate Court is well merited and does not require any interference by this Court.

8. While admitting this second appeal this Court has framed following substantial questions of law:



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1. Whether a letter by the first defendant would operate as resjudicata in denying claim to the property by the plaintiff?

2. Whether the first defendant is not entitled to the property absolutely when it stands in his name by virtue of abolition of Benami Transaction Act ?

3. Whether a letter would nullify the existence of a will or disprove the will when otherwise the will is proved.

9. Discussion

Let us consider the substantial questions of law one after another. In respect of the first substantial question of law, the same deals about the principles of res judicata which has been defined in Section 11 of CPC, Wherein it mandates the order of the former suit in issue substantially similar in the subsequent suit. In this case admittedly there is no previous suit between the parties in respect of the relief of partition. However it is the contention of the first defendant that, the mere letters of the first defendant



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will not extinguish the entitlement of the defendant from the Joint Family property as they will in no way construe passing of title to the plaintiff. To put it in a nutshell, it is the submission of the first defendant that through the letter Ex.A8 and A10 the right conferred upon the first defendant through Ex.A4/ sale deed cannot be transferred to the plaintiff. This Court is not persuaded with the above submission made by the learned counsel for the defendant.

10. Here what was the contention put fourth by the plaintiff is that, though the property stands in the name of the first defendant as well as their father Ramasamy Reddy, the same are joint family property, and that the Sithu reddy will have no extra right over the same. The said contention has been indicated through the various correspondence sent by the first defendant to the plaintiff. Therefore, when the defendant through his various letter himself accepted that the suit property is a Joint Family property and has written numerous letters expressing his intention of treating the property as Joint Family property and expressing no objection



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for the plaintiff to have equal right over the same, it should only be construed and reflect the intention of the party in dealing the ownership of the property.

11. Further, through the letter Exs.A8 and A10, this Court can find the overwhelming intention of the first defendant in treating the property dealt in Ex.A4/ sale deed as a Joint Family Property.

12. It is pertinent to mention here that at the time of purchase of the property through Ex.A4/Sale deed, the first defendant did not have own source of income, as he was a minor then. Here the plaintiff seeks the relief of partition, not the entire property of late Sithuraj on the basis of Benamie Transaction Act. Therefore, the reference of Benamie Transaction (Prohibition) Act, 1988 is out of context. Once the property is Joint family property, then the plaintiff is entitled to have share in the property covered in Ex.A4/Sale deed as prayed for by virtue of the Hindu Succession Act. Therefore, the substantial question of law is liable to be rejected.



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13. At this juncture it is relevant to refer to the Judgment of the Hon'ble Supreme Court in the case of *Vathsala Manickavasagam and others Vs N. Ganesan and Another reported in 2013(5) CTC 884* Wherein, it was held that the tacit admission voluntarily made by the party in a letter with regard to the nature of the suit property would become a crucial piece of evidence. Here all those letters of the first defendant is marked as Exs.A8 to A10. The plaintiff and the first defendant all along referred the suit property as a Joint Family Property. As a matter of fact, the first defendant did not refer about the Will executed by the Sithu Reddy who is the paternal uncle of both the plaintiff and first defendant.

14. Here the first respondent would set up a defence of testamentary succession. But such contention was negated by both the Courts. There was a finding of the fact by both the Court below that the execution of the alleged Will has not been proved in a manner known to law. There is absolutely no material to deviate from the said well merited finding.



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15. Therefore, when there is a finding of fact that the Will is not proved, as a natural concomitant, the plaintiff is entitled to have a partition as prayed for. Therefore, the substantial question of law is answered against the appellant. Thus, there are no merits in the Second Appeal. In the result this second appeal stands dismissed. No order as to Costs.

20.10.2023

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Index : Yes/No

Speaking order/non-speaking order



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C.KUMARAPPAN, J.,

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To,

1. The I Additional Sub Court, Salem
2. The II Additional District Munsif Court, Salem

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