



S.A No.119 of 2013

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04 .2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

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M.P No. 1 of 2013

1.Balan
2.N.Gajendran(died)-
3.P.Maheswari
4.P.Indirani
5.Indhirani
6.Minor Thaanya (Appellants 5 and 6 brought on record as Lrs of the deceased 2nd appellant viz., N.Gajendran vide order of Court dated 01.04.2019 made in CMP No.5917, 5919 and 5922 in S.A No. 119/2013)
... Appellant

Vs.

1.Pongianna Gounder(died)
2.Ramasamy (died)
3.Rasathi
4.Rathinam(R3 and R4 brought to record as LRS of the deceased 1st respondent vide order of Court date 01.04.2019 made in CMP No.5966 if 2019 in S.A No. 119 of 2013.)
5.Thulasi Ammal(R5 brought on record as LRS of the the deceased R2 vide order of Court dated 12.02.2020 made in CMP No. 3202 of 2020 in S.A No. 119 of 2013.

...Respondents



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WEB COURT

PRAYER: This Second appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 20.03.2012 made in appeal A.S No. 28 of 2011 on the file of the First Additional Sub Court, Erode, confirming the judgment and decree dated 30.03.2011 made in O.S No. 1409 of 2004 on the file of the Principal District Munsif Court, Erode.

For Appellant: Mr. N.Manokaran
For R3, R4 :Mr.R.Agilesh
For R5 : Batta returned

JUDGMENT

The appellants herein are the defendants in suit O.S No. 1409 of 2004 filed by the respondent herein/plaintiffs, on the file of the Principal District Munsif, Erode, for the relief of partition. After considering the oral and documentary evidence the Trial Court decreed the suit in favour of the plaintiff. Aggrieved over the same the defendants preferred an appeal before the Sub Court, Erode, and the plaintiffs also filed cross appeal. Both the appeal were tried jointly and finally confirmed the findings of the Trial Court and cross appeal also dismissed. Challenging the same the defendants preferred this appeal.



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2. This Court admitted the appeal with the following substantial questions of law:

I. Whether the Courts below erred in law and misdirected themselves in granting the preliminary decree merely on the basis of Ex.A1 (05.07.1937) in the absence of any other oral or documentary evidence of prior title or claim beyond the extent conveyed under Ex.B5 (20.09.1935)?

ii. Whether the Courts below have committed an error in ignoring the title of the defendants under Ex.B1(01.08.1937) EX.B2 26.06.1936) and EX.B4 (07.11.1934) while granting the relief with respect to 2.93 acres in the absence of any evidence or explanation for entitlement of more than 1.41 acres when admittedly lessor extent is granted under Ex.B5 to the vendor of the plaintiffs' mother ?

Iii. Whether the Courts below erred in not taking into consideration or giving a specific finding on the question whether the property purchased by the plaintiffs' mother under Ex.A1 is different from the properties inherited by the 1st defendant and their predecessors?

3. The facts reveals that out of 5.27 acres in S No. 33 the plaintiffs branch claiming 3 acres, on the other side the defendants branch claiming equal share i.e., 2.63 ½ acres. The contention of the plaintiffs is that her mother Muthayammal purchased 3 acres land in I.S No. 33 of the Gangapuram Village through sale deed/Ex.A1 dated 05.07.1937 from one Karuppanna Gounder/Father in law hence she is entitled for 3 acres and also by way of inheritance Karuppana Gounder entitled to 50 cents as a legal heir and the same devolves upon her/Muthayammal. Therefore as a legal heir of the said Muthayammal the plaintiffs family entitled to 3.50 acres



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and remaining extent alone near about 1.60 acres is belongs to the defendants family but they are claiming more than that extent. Hence the suit. The defendants contested the suit stated that originally G.S No. 33 of Gangapuram Village, Erode, was having an extent of 5.27 acres. Subsequently it was sub divided as 33/1, 33/2 and 33/3. 33/1 is corresponding to Old S.F No.87/2 having an extent of 4.88 acres, 33/2 covers an extent of 0.14 acres which is P.W.D channel. 33/3 covers an extent of 0.12 acres presently the old S.F NO. 87/5. In the re-survey there is shortage of 0.17 acre now the total extent available as per record is only 5.10 acres. Half share in the above said land originally belonged to one Nachimuthu Gounder. He had three sons namely Karumanda Gounder, Karuppanna Gounder and Chinneyan. The said Chenneyan relinquished his share to the said Karumanda Gounder. Thereafter, the said Karumanda Gounder sold his share 1.75 $\frac{4}{6}$ acres to the Karupanna Gounder through sale deed dated 07.11.1934. Thus the Karupanna Gounder entitled to half share in G.S No. 33 of Gangapuram Village. Thereafter the said Karuppanna Gounder mortgaged the property in favour of one Kuppa Boyan on 12.05.1944 and the same was reedemed on 23.04.1951. The Karupanna Gounder father-in-law of the Muthayamal was entitled to an extent of 1.50



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acres based on sale deed dated 23.09.1935 in which he sold 0.09 acres in S.F.No.33 for formation of pathway through sale deed dated 26.06.1936 in favour of Chinnapa Gounder. The said extent was sold within specified boundaries which clearly indicates that there was a clear division of properties. Having sold said 0.09 acres Karupanna Gounder is entitled to 1.41 acres. But on 05.07.1937 he executed a sale deed in favour Muthayammal in S.F No. 33 and other survey numbers wherein he falsely stated that S.F No.33 has 3 acres. But the said Muthayammal executed a mortgage deed dated 10.08.1937 in favour of Perumal in that she clearly mentioned that 2.63 ½ acres alone. It clearly falsify extent covenyed by Karuppanan Gounder through sale deed dated 05.07.1937. Furthermore, in release deed dated 04.11.1992 Karuppan Gounder's land was mentioned as boundaries which indicate that suit survey field was divided and the parties are enjoying their shares separately. Therefore the defendants entitled to ½ share in the suit property.

4. Heard the learned counsel for the appellants and the learned counsel for the respondents. Parties are denoted as per the suit.



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5. Now the point to be decided is whether the plaintiffs are entitled to half share in survey No. 33 out of total 5.27 acres or more than that?

6. Originally totally 5.27 acres in S.F No. 33 belongs to jointly sons Karrupannan Gounder and Nachimuthu Gounder is admitted fact Karupanna Gounder had one son Sengoda Gounder and her daughter in law Muthayammal. Hence each entitled to half share in 2.63 acres i.e $1.31 \frac{3}{4}$ acre. Subsequently son Sengoda Gounder sold share his to his father/Karuppana Gounder through Ex.B5 dated 20.09.1935 in which an extent is mentioned as 1.50 acres instead of $1.31 \frac{3}{4}$ acres hence Karupanna Gounder held entire extent of $2.63 \frac{1}{2}$ acre. Thereupon, the said Karuppana Gounder sold the said property to his daughter in law/Muthyamal through sale deed/Ex.A1 dated 05.07.1937 in which extent is mentioned as 3 acres instead of $2.63 \frac{1}{2}$ acres. When the total extent of property in S.F No. 33 is 5.27 acres in which Karuppana Gounder is having half share($2.63 \frac{1}{2}$ acre) but in the sale deed Ex.A1 and Ex.B5 larger extent was mentioned(i.e., 3 acres) then his actual share. Though in the sale deed Ex.A1 dated 05.07.1937 it was mentioned as 3 acres, it was only $2.63 \frac{1}{2}$ acres. By



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relying Ex.B5 and Ex.A1 plaintiffs claiming 3 acres in the suit property but to disprove the same the defendant relied mortgage deed executed by the plaintiffs mother Muthyammal dated 10.08.1937 and same was marked as Ex.B1 in which she mentioned an extent as 2.63 1/2 acres in survey No. 33. On perusal of the said mortgage deed property mortgaged in favour of the third parties to the extent of 2.63 acres i.e half share in total extent of 5.27 acres in that mortgage deed her father in law Karupanna Gounder signed as witness which was not denied by the plaintiffs. Further, the defendants to prove their family share i.e., 2.63 1/2 acres they relied the sale deed/Ex.B4 dated 07.11.1934 which is earliest document through which the defendants father Karuppana Gounder purchased 1.75 4/6 acres from his co-sharers/brother along with his share totally 2.63 1/2 acres. In fact, the defendants are coming from Nachimuthu Gounder branch the said Nachimuthu Gounder had three sons namely Karumada Gounder, karuppana Goundar, Chinnaiyan @ Military out of his share 2.63 1/2 acres each sons entitled to 0.87 cents. Chinnayan relinquished his share in favour of another share Karumanda Gounder hence he entitled to 1.75 4/6 acres along with his share subsequently said Karumanda Gounder sold his share to Karuppana Gounder through sale deed Ex.B4/07.11.1934.



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Therefore the the father of defendants' Karuppana Gounder became owner of 2.63 1/2 acres the document relied by the defendants is much earlier to the sale deed relied by the plaintiffs. From the document Ex.B4/sale deed dated 07.11.1934 the defendants established that Nachimuth Gounder branch is entitled to 2.63 1/2 acres based upon the above sale transactions father of the karuppana Gounder owned 2.63 1/2 acres in survey No. 33 of Gangavaram Village. Therefore, in the year of 1934 itself 5.27 acres equally devolves upon two shares Nachimuthu Gounder branch and Karuppana Gounder branch. But through document Ex.B5 dated 20.09.1935 subsequent to the defendants document Ex.B4 the sale was held in the family of the plaintiffs branch conveyed 1.50 acre by **Karuppana Gounder son Sengoda Gounder to his father Karuppana Gounder** is erroneous one for the reason that out of 2.63 1/2 acres the said Sengoda Gounder is entitled to only 1.30 3/4 acres and not 1.50 acres, though 1.50 acres is mentioned in Ex.B5 but his vendor is holding only 1.30 3/4 acres in field. Furthermore, through E.A1/sale deed the mother of the plaintiff Muthayammal purchased three acres but as per the share belongs to her vendor Karuppana Gounder he has entitled to only 2.63 acres not a extent



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of 3 acres. Therefore it is clear that in the sale deed Ex.B5 and Ex.A1 the extent was mentioned wrongly as 1.50 and 3.00 acres respectively instead of 1.31 $\frac{3}{4}$ and 2.63 $\frac{1}{2}$ acres. Moreover, as per the mortgage deed executed by the plaintiffs mother/Muthayammal dated 10.03.1937/Ex.B1 in which she mortgaged 2.63 $\frac{1}{2}$ acres in favour of the three parties, further it is pertinent to note that her father-in-law/Karupanna Gounder was a witness to the said documents. Therefore, even though their sale deed contains extent of 3 acres but they enjoyed only 2.63 $\frac{1}{2}$ and the same is proved by their own document Ex.B1/10.08.1937. Thus defendants clearly established that their branch entitled to 2.63 $\frac{1}{2}$ acres and the plaintiff branch entitled to 2.63 $\frac{1}{2}$ acres.

7. Another contention put forth by the defendants is that already properties were divided equally among the Karuppana Gounder and and Nachimuthu Gounder so the plaintiffs is not entitled to division of the property to prove division they relied sale deed executed by the plaintiffs vendor Ex.B2 dated 20.06.1936, however this document not denied by the plaintiff on perusal of the said document plaintiffs grandfather Karupanna Gounder sold 7 cents in respect of cart track lies in between the properties in favour of the Chinappa Gounder in which the property of the defendants



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family has been shown as eastern boundary mentioned by relying the said document the defendants contended that since the case property was orally divided among Karuppana Gounder and Nachimuth Gounder branch when the portion of the property sold by the plaintiffs' vendor Karuppana Gounder the property belongs to the Nachimuth gounder was shown as boundary which itself showing that already property were divided. Considering the said submissions on perusal of Ex.B2 admittedly plaintiffs grandfather sold portion of the property with four boundaries specifically one such boundary is mentioned as defendants branch (Nachimuth Gounder). **Moreover, the said document relied in the year 1936 much earlier to purchase of the plaintiff's mother the plaintiffs was partly divided among the two sharers Karuppana Gounder and Nachimuthu Gounder could be inferred from the said document.** If the property was not divided as to how the Karuppan Gounder sold 7 cents for the purpose of pathway to third parties which clearly shows that property has already been divided among them for his convenience sake the said Karuppana Gounder sold 7 1/2 cents for the purpose of cart track to the third parties. **Therefore, execution of the document in the year 1936 through Ex.B2 clearly**



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established that properties were already divided among the Karuppan Gounder and Nachimuthu Gounder branch said document/Ex.B2 itself falsifies plaintiff's case properties are not been divided equally among the sharers, however long back in the year 1936 it could be inferred that the properties equally divided between the Karuppana Gounder and Nachimuthu Gounder.

8. Admittedly in that document Ex.B6 total extent of the land is mentioned as 5.27 acres. The plaintiffs mother Muthayammal purchased property in the year of 1937 so at that time itself the suit property divided among the sharers could be inferred from the document Ex.B2 & Ex.B4. Even though the extent of 3 acres is mentioned in the deed belongs to Nachimuthu Gounder/ Ex.A1 they are only entitled 2.63 ½ acres not 3.50 acres as claimed by the plaintiffs claiming more extent without any material evidence in S.F No.33. Admittedly in all the documents total extent of property was mentioned as 5.27 acres it is also admitted fact that two shares Karuppana Gounder and Nachimuthu Gounder each entitled 2.63 ½ acres. But the Court below failed to appreciate this evidence erroneously without



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any material document held the plaintiff branch entitled to extent of 3 acre as such is unfair. As discussed above, both parties entitled to 2.63 ½ acres each. But the Court below failed to take note of the above facts indeed erroneously held that by relying Ex.A1 as if plaintiffs is entitled for three acres. The larger extent mentioned in the sale deed as 3.00 acres to the plaintiff but their vendor is having title only for 2.63 acres that was not taken note by the Court below it is liable to be set aside. Furthermore evidence of the document clearly established that much prior in the year 1934 property divided among the Karupanna Gounder and Nagamuthu Gounder branch so that only plaintiffs vendor's property shown as one of the boundaries with specific extent to third parties for cart track which itself clearly established that he enjoyed his half share 2.63 ½ acres by division also itself clearly proves that already property were divided. **Hence the plaintiff not entitled to claim partition they will be estopped by their conduct.** But the Court below failed to appreciate all these facts and evidence erroneously held that plaintiffs entitled to only 3 acres. Accordingly question of law (1) and (2) is answered. Therefore both the plaintiffs and defendants entitled to each only 2.63



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1/2 acres out of 5.27 acres, now available only 5.10 acres remaining are

lands are used for channel purpose both the plaintiffs and defendants entitled to half share because already partition held among the members of the defendants in which suit s survey No.33 both the parties equally entitled to half share in the extent 5.10 acres. Though there is joint patta it will not support case of the plaintiffs but the Trial Court failed to appreciate this aspect. Furthermore as per the release deed executed by the Ramasamy/ second plaintiff in favour of first plaintiff dated 04.11.1992 in respect of suit survey No. new survey No. 91 in which one of the boundaries mentioned first defendant namely Ramasamy as western boundary, shows that since because properties were divide among the plaintiffs and the defendants the share allotted to the defendants is shown as one of the boundary, so documents relied on the side of the plaintiffs itself clearly established that properties were already divided, plaintiffs branch entitled to only 2.63 acres and more than that he is not entitled but the Court below failed to appreciate all these facts erroneously decreed suit in favour of the plaintiffs as such is erroneous unjust and unfair and liable to be set aside. Consequentially suit is dismissed.



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10. In result, the second appeal is allowed. There shall be no order as to cost. Consequentially connected miscellaneous petition is closed.

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T.V.THAMILSELVI,J.

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To

1. The First Additional Sub Court, Erode.
2. The Principal District Munsif Court, Erode.
3. The Section Officer,
V.R Section.

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