



S.A No.651 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2023

CORAM:

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

S.A No.651 of 2013

M.P No. 1 of 2013

Murugesan

... Appellant

Vs.

1.Murugan
2.Murugammal
3.Rani

...Respondents

PRAYER: This Second appeal filed under Section 100 of the Code of Civil Procedure against the Judgement and decree dated 19.07.2011 passed in A.S No. 5 of 2009 by the Principal District Judge, Krishnagiri, Confirming the judgment and decree dated 31.10.2008 passed in O.S No.200 of 2003 passed by the Subordinate Judge, Krishnagiri.

For Appellant: Mr. T.Panchatsaram
For R1 to R3 :Mr.S.Mukunth



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for M/s.Sarvabhauman Associates

JUDGMENT

This second appeal has been filed against the Judgement and decree dated 19.07.2011 in A.S No. 5 of 2009 passed by the Principal District Judge, Krishnagiri, Confirming the judgment and decree dated 31.10.2008 passed in O.S No.200 of 2003 by the Subordinate Judge, Krishnagiri.

2.The brief facts of the plaintiff case are as follows:

The suit properties are originally belonged to the joint Hindu Family consisting of first plaintiff's father Vedi and his two brothers who are the defendants 1 and 2 and their father Ramar. The 2nd plaintiff is the daughter and 3rd plaintiff is the wife of said Vedi respectively. The said Vedi died 23 years back leaving the plaintiffs herein and his mother Padavattammal as his legal heirs. At the time of death, the said Vedi was entitled to 1/4 share in the suit properties. Vedi's father Ramar died 12 years back leaving behind the plaintiffs and the defendants 1 to 3 and his wife



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Padavattammal as his legal heirs. As per the Hindu Succession Act, the plaintiff's are entitled to 570/1920 shares. After the death of Ramar 1" defendant had been acting as manager of the joint family consisting of the plaintiffs and defendants and enjoying the properties and income from the same amicably till the death of Padavattammal. After his death troubles started and defendants creating false entries in the revenue records with the connivance of revenue officials. Hence, the plaintiffs are constrained to issue notice to the defendants and demanding partition of their shares in the suit properties. Further, the plaintiffs came to know that properties were conveyed transferred in the name of the defendants 4 and 5 and they have been added as defendants.

3. The case of the defendants:

The defendants admitted relationship with regard to relationship and coparcenary property and after the death of said Vedi, since his heirs were not amicable with other joint family members, item No.9 of the suit properties was allotted to them and they have been enjoying the same separately and the defendants 1 and 2 and their father are allotted remaining portions of the suit properties. In the year 1986 during the life time of their father, except item No.9, properties were divided almost



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equally and allotted to the defendants 1 and 2, and enjoying the same as a separate property. Since already the family properties have been divided by way of family arrangement long back now the plaintiffs are not entitled for partition. Further, the 4th defendant stated in his written statement that as per the oral partition in the family property defendants 1 and 2 and their father and his brother have divided the properties and enjoying the same separately. From the 2 defendant, as his separate property by way of partition, 4th defendant purchased. Hence, the suit has to be dismissed.

4. On the basis of averments in the plaint and the written statement and on the basis of arguments of both the counsels, the learned Subordinate Judge, Krishnagiri has decreed the suit.

5. Aggrieved by the decree and judgment the defendants preferred appeal in A.S No.5 of 2009 before the Principal District Court, Krishnagiri, after considering oral and documentary evidence the lower appellate Court dismissed the appeal. Challenging the same this appeal has been filed by the defendants. Appellant herein is defendant and respondent herein is plaintiff.



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

i. Whether the Courts below are correct in discarding the exhibits B1 and B7 filed on the side of the defendants to prove his possession, without assigning legal reasons.

ii. Whether the Courts below have properly appreciated the oral and documentary evidences adduced by the defendants.

7. The learned counsel for the appellants submitted that both the Court below failed to take note of the fact that oral partition in the year of 1986 proved by the defendants, in spite of that the suit was decreed in favour of the plaintiffs such is unjust and liable to be set aside. Further the Trial Court failed to take note of the fact that recitals of Ex.B2, B3 wherein alleged oral partition was mentioned but in spite of that suit was decreed as such is totally misconception of law and facts. Hence he prayed to allow this petition.

8. The learned counsel for the respondents submitted that both the Court below rightly allowed the suit which needs no interference. Hence he prayed to dismiss this petition.



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9. The relationship between the parties are admitted and the nature of the properties also admitted by both the parties. According to the plaintiffs/respondents, Ramar have three sons and one daughter, after his demise all his legal heirs entitled to each $\frac{1}{4}$ share. One of the legal heir is Vedi and other legal heirs are defendants 1,2 and 3. The said Vedi died long back leaving behind plaintiffs as legal heirs, the plaintiffs claiming $\frac{1}{4}$ share in the suit property against the defendants 1,2 and 3. The suit property was enjoyed without any division hence the plaintiffs prayed for partition. The defendants 1, 2 and 3 admitted the relationship with the plaintiffs but they denied joint enjoyment of the suit properties. As per the contention of the defendants the suit properties was orally divided in the year 1986 in the oral partition item No.9 of suit property was allotted to the first plaintiff's father and other item belongs to the defendants 1, 2 and the revenue records stands in their name. Thereafter gift deed and sale deed was executed those documents were marked as Ex.B1 to B8. The defendants 1,2 contended that as per the oral partition except item No.9 of the suit property other properties are in their enjoyment and possession. Admittedly, the defendants



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1 and 2 not adduced evidence to prove the said oral partition in the year 1986, as rightly pointed out by the Court below and the revenue records are still stands

in the name of the Raman, there is no records with regard to partition in favour of the defendants 1 , 2.

10. Though the defendants 1,2 executed gift deed and settlement deed among themselves which were marked as Ex.B1 to B4 wherein there is no recital about the alleged oral partition effected between the family members. The Court below rightly appreciated this facts and also the documents would not bind the plaintiff's. Thus findings of the Trial Court needs no interference. It is settled proposition that to plead oral partition party bound to prove the same but the defendants 1 and 2 contend that oral partition effected in the year 1986 but it was not proved, if oral partition is not proved properties deemed to be joint family properties the court below rightly appreciated those facts which needs not interference. Furthermore, since the properties are joint in nature therefore the alleged gift deed and settlement deed would not bind the plaintiffs as rightly concluded by the Trial Court hence the suit properties deemed to be joint family properties plaintiff's entitled for partition. The Court below rightly



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appreciated this fact and allotted the shares to the plaintiff's needs no interference. Accordingly question of law are answered.

11. In view of the above and for the reasons stated above, this second appeal is dismissed as no merit. No costs. Consequently connected miscellaneous petition is closed.

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T.V.THAMILSELVI,J.

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To

1. The Principal District Judge, Krishnagiri.
2. The Subordinate Judge, Krishnagiri .
3. The Section Officer,
V.R Section,

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