



S.A.No.1067 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

S.A.No.1067 of 2022
and C.M.P.No.22927 of 2022

Pachaiyammal (Died)

1. Saraswathi

2. Gnanavalli

3. P.Radhakrishnan

.. Appellants

Vs.

Santhi

.. Respondent

Prayer:- Second Appeal filed under Section 100 of CPC to set aside the Judgment and Decree dated 06.11.2019 made in A.S.No.16 of 2018 on the file Additional District Court (FTC), Arani, Thiruvannamalai District in confirming the Judgment and Decree dated 23.10.2017 made in O.S.No.8 of 2013 on the file of Sub Court, Cheyyar, Thiruvannamalai District and to allow the above Second appeal.

For Appellants : Mr.J.Prakasam

JUDGMENT

This second appeal has been filed as against the Judgment and Decree dated 06.11.2019 made in A.S.No.16 of 2018 on the file of the Additional District Court (FTC), Arani, Thiruvannamalai District, confirming the Judgment and Decree dated 23.10.2017 made in O.S.No.8 of 2013 on the file of



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Sub Court, Cheyyar, Thiruvannamalai District, thereby decreed the suit for partition.

2. The respondent is the plaintiff in the suit in O.S.No.8 of 2013 filed for partition. The case of the plaintiff is that the suit properties belong to her father-in-law. He purchased the first item of the suit properties from one Kanniammal by the registered sale deed dated 16.05.1955. The second item of the suit properties are ancestral properties. Her father-in-law was in possession and enjoyment of the suit properties and patta was also issued in his favour. The first defendant is the wife of one Perumal Gounder and the defendants 2 to 4 and one Govindan, who is the husband of the plaintiff and the plaintiff, are all legal heirs of the said Perumal Gounder. After his demise, all the legal heirs are enjoying the suit properties. The plaintiff and her husband were doing coolie work and also cultivating the lands in the village. While being so, the defendants 1 to 3 colluded with each other and entered into release deed dated 02.06.2008, thereby released their 3/5th share in respect of the suit property in favour of the fourth defendant. In the meanwhile, the said Perumal Gounder died on 04.11.2010 leaving behind the plaintiff as his only legal heir. Therefore, she filed a suit for partition.



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3. Resisting the same, the appellants herein filed their written statement stating that the respondent herein is not entitled for 1/5th share in the suit schedule property. The husband of the respondent i.e, the said Govindan borrowed loan and he could not repay the same. Therefore, he requested the fourth defendant/third appellant herein to settle the amount. Accordingly, the said loan was settled by the 4th defendant and he released the said Govindan's liability. Therefore, the respondent and her husband released their share in respect of the suit property in favour of the third appellant herein. Therefore, the respondent is not entitled for 1/5th share of the suit schedule property.

4. On behalf of the respondent she had examined P.Ws.1 and 2 and marked Exs.A1 to 12. On the side of the appellants, they had examined D.Ws.1 and 2 and marked Exs.B1 to 5. On a perusal of oral and documentary evidences, the Trial Court decreed the suit and allotted 1/5th share in the suit property in favour of the respondent herein. Aggrieved by the same, the appellants preferred appeal and the same was also dismissed confirming the Judgment and Decree passed by the Trial Court. Hence, this second appeal.



5. The appellants raised the following substantial questions of law,

“1. Whether suit is maintainable by the Respondent/Plaintiff when the Respondent/Plaintiff herself specifically admitted that there is already the partition between the 3rd Appellant and his elder brother, the respondent and her husband are in possession and enjoyment in their respective shares ?

2. Whether the Respondent/Plaintiff had pious obligation to settle the loan incurred by her husband?

3. When the Respondent/Plaintiff herself admitted the signature of her husband in the bond Ex.B4, which indicated the loan obtained by her husband and in such circumstances, the Trial Court and the 1st appellate court whether right in discarding the above stated document?

4. When feigned ignorance pleaded by the Respondent/Plaintiff about the loans incurred by her husband and in such circumstance whether the Trial Court and the 1st appellate court had right in decreeing the suit based on the feigned ignorance of the plaintiff?

5. Whether the Trial Court and the 1st appellate court in decreeing the suit in favour of the respondent without considering Section 25 of the Indian Contract Act, 1872?

6. Whether the 1st Appellate court right in confirming the Judgment and Decree of the Trial Court?”

6. The learned counsel for the appellants would submit that not only orally but also by a release deed, the respondent's husband had already relinquished his rights in respect of the suit property in favour of the third appellant herein. Therefore, the respondent is not entitled for any share in the



suit schedule property. In fact, P.W.2 categorically admitted that he does not know about the respondent's family and as such the respondent failed to prove her claim before the Trial Court. In fact, the respondent had already deserted her husband during the year 2000 and her husband was taken care by the appellants herein. Therefore, the respondent is not entitled for any share in the property.

7. Admittedly, the property belong to the father of the appellants 1 to 3 herein. The respondent is none other than the daughter-in-law of the deceased appellant. Her father-in-law died intestate leaving behind the respondent's husband and the appellants herein as his legal heirs. Therefore, they are entitled to have 1/5th share in the suit schedule property. Insofar as the deceased appellant and the appellants 1 and 2 herein are concerned, they had already executed a release deed in favour of the third appellant herein pertaining to their 1/5th share for the reason that the third appellant had repaid the debt incurred by them. In order to prove the case, the appellants marked Ex.B4 bond, in which the signature of the husband of the respondent was admitted and as such whatever the loan borrowed by him was settled by the third appellant herein. Therefore, the respondent's husband relinquished his right of 1/5th share in the suit schedule property. However, the third appellant failed to examine



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any witness to prove the same that he had repaid the amount which was borrowed by the husband of the respondent.

8. Therefore, the third appellant cannot claim any right over the suit schedule property, particularly the share of the respondent, viz., her 1/5th share in the suit schedule property. Therefore, both the Courts below rightly decreed the suit and allotted 1/5th share in favour of the respondent herein and this Court finds no substantial questions of law involved in this case and the second appeal is liable to be dismissed.

9. Accordingly, this Second Appeal is dismissed. Consequently, connected Miscellaneous petition is closed. No costs.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.

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To

1. The Additional District Court (FTC), Arani, Thiruvannamalai District.
2. The Sub Court, Cheyyar, Thiruvannamalai District.

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