



S.A.No.839 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.839 of 2023

and

C.M.P.Nos.26779 and 26682 of 2023

T.K.Loganathan

... Appellant

Vs.

1. T.K.Sekar
2. Vijayalakshmi
3. Saraswathi
4. Onasis
5. Rajammal @ Rasamani
6. Angamuthu
7. Mahendran
8. Sarasu @ Saraswathi
9. Maliga
10. Nallasivam
11. Thayammal
12. The Bank of Baroda,
Represented by its Branch Manager,
Perundurai Branch,
Perundurai,
Erode District.
13. The Periyar District Central Co-Operative Bank Limited,
Represented by its Branch Manager,
Perundurai Branch,
Erode District.

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 28.11.2022 made in A.S.No.44 of 2017 by the



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learned Principal District Judge, Erode, confirming the judgment and decree dated 09.03.2016 made in O.S.No.99 of 2009 by the learned Subordinate Judge, Perundurai.

For appellant : Mr.N.Manoharan

For respondents

For R2 : Mr.M.V.Venkateseshan

For R1 and R3-13 : No appearance

JUDGMENT

The unsuccessful plaintiff before the Courts below has filed this second appeal.

2. The facts necessary for deciding the appeal are set out hereinbelow and the parties are referred to in the same litigative status as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiff had filed a suit in O.S.No.99 of 2009 on the file of the Sub Court, Perundurai, for partition and separate possession of her 1/8th share in the suit items 1 and 2 and half share of the suit



items 3, 4, 5, 7 and 8 and 1/4th share in the 6th item of the suit properties and for injunction restraining the defendants from alienating and encumbering the suit properties including the share of the plaintiff with specific boundaries till final partition is effected.

2.2. It is the case of the plaintiff that one Chinnasamy Nadar had four children *viz.*, Kaliappan - the first defendant herein, late Chenniappan, late Ponnammal and Thayammal - the 12th defendant herein. Kaliappan - the 1st defendant herein and his wife late Chinnammal had three children *viz.*, Loganathan - the plaintiff, Sekar - the 2nd defendant and Vijayalakshmi - the 3rd defendant herein. The second son had died intestate leaving behind him surviving his wife - the 4th defendant and his son - the 5th defendant. The daughter Ponnammal and her late husband Palani Nadar died intestate leaving behind their children who had been arrayed as defendants 6, 9, 10 and 11 and one daughter Pavathal, who died intestate leaving behind her surviving her husband - the 7th defendant and her son Mahendran - the



8th defendant.

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2.3. The plaintiff would contend that Chinnaamy Nadar was the owner of the suit items 1 and 2 under two registered sale deeds dated 28.11.1951 and 11.03.1953 respectively. Chinnammal who is the plaintiff's mother owned the suit items 3 and 4, which she had purchased under various sale deeds. The 5th item of the suit properties was allotted to the share of the 1st defendant – the father of the plaintiff in the final decree proceedings in O.S.No.268 of 1994 on the file of the Court of the I Additional District Munsif, Erode. This item has been described as 'B' Schedule in that final decree. The 6th item of the suit properties was purchased jointly by the 1st defendant and his brother late Chenniappan from and out of the funds of the ancestral properties.

2.4. It is the case of the plaintiff that the 1st defendant, who is the karta of the family, had money deposits described as the 7th item of the suit properties with the 13th defendant and the 8th item with the 14th



defendant. The plaintiff would further contend that his mother Chinnammal had executed an unregistered will dated 21.08.1992, bequeathing the 3rd and 4th items of the suit properties on the plaintiff and the 2nd defendant herein. She had died on 04.01.2006. Thereafter, the 3rd defendant had executed a registered release deed dated 02.04.1996 and relinquished her right in the suit properties in favour of the plaintiff and the defendants 1 and 2. Therefore, the plaintiff and the 2nd defendant are entitled to 1/3rd share in the joint family properties and entire properties have been enjoyed by all in common.

2.5. The 1st defendant had developed an illegal intimacy with one Saraswathi and therefore, he orally relinquished his shares to the plaintiff and the 2nd defendant herein. The 2nd defendant had fraudulently obtained a registered settlement deed dated 22.09.2006 in his favour from the 1st defendant for the entire properties. The plaintiff would submit that the suit properties are undivided and he has a common half share. The settlement deed in the name of the 2nd



defendant would not bind the plaintiff and the plaintiff has 1/8th share in the 1st and 2nd items of the properties, half share in the 3rd and 5th items, 1/4th share of the 6th item and half share in 7th and 8th items. The defendants did not honour the demand of the plaintiff for partition and the 2nd defendant is attempting to make alienation. Therefore, the plaintiff has come forward with the suit for permanent injunction against the defendants.

3. The 3rd defendant alone has contested the suit. The other defendants remained *ex parte* in the suit.

3.1. It is the case of the 3rd defendant that the suit is neither maintainable in law nor on facts. The 3rd defendant had admitted the following facts.

- (i) the relationship of the parties;
- (ii) the 3rd and 4th items of the properties belong to Chinnammal;



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(iii) the 5th item of the suit property is allotted to the 1st defendant in the final decree in O.S.No.268 of 1994 and it is a separate property of the 1st defendant.

3.2. The 3rd defendant would submit that it is false to allege that out of the income from the ancestral properties, the 1st defendant and his brother, late Chenniappan, have jointly purchased the 6th item. It is the case of the 3rd defendant that the 6th item was purchased jointly by her father and her brother Chenniappan from and out of their own funds and the amounts shown in item 7 and 8 are separate fund of the 1st defendant and since the 1st defendant had died intestate on 17.04.2007, the 3rd defendant is entitled to 1/3th share in the suit items 1, 2, 5, 6, 7 and 8 and since Chinnammal died intestate on 04.01.2006, the 3rd defendant being her daughter, is entitled to 1/3rd share in 3rd and 4th items. The will dated 21.08.1992 executed by Chinnammal is a forged and fabricated one. The release deed executed



by the 3rd defendant would only operate against 1st and 2nd items being ancestral properties. However, on the death of the 1st defendant, the 3rd defendant being her daughter, is entitled to 1/3rd share in the 1st and 2nd items of the suit properties.

3.3. The 3rd defendant denied the alleged illegal intimacy of the 1st defendant and that he had orally relinquished his shares in the suit properties in favour of the plaintiff and the 2nd defendant. The 3rd defendant would also submit that the suit has not been properly valued and the Court Fee paid was also inadequate and therefore, she seeks to declare and allot her shares in the suit properties.

TRIAL COURT:

4. The Trial Court has framed the following issues:

“(1)Whether the suit properties are ancestral and joint family properties of the plaintiff?

(2)Whether the suit is hit by Doctrine of Res



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Judicata?

(3)Whether the court fee paid u/S 37(2) of TNCF is correct?

(4)Whether the plaintiff is entitled for partition as prayed for?

(5)Whether the plaintiff is entitled for a preliminary decree for partition?

(6)Whether the plaintiff is entitled for a relief of permanent injunction as prayed for?

(7)To what other relief is the plaintiff entitled?"

5. The plaintiff had examined himself as P.W.1 and marked Exs.A1 and A6. On the side of the defendants, the 3rd defendant examined herself as D.W.1 and no documents were marked.

6. The Trial Court has dismissed the suit with reference to permanent injunction and has granted a preliminary decree for partition declarating that the plaintiff and the 3rd defendant are entitled to 1/12th share each in the items 1 and 2, 1/3rd share each in the items 3, 4, 7 and 8 and 1/6rd share in the items 5 and 6.



7. Challenging the said judgment and decree, the plaintiff had filed A.S.No.44 of 2019. He had also taken out an application in I.A.No.8 of 2019 for receiving additional evidence viz., certified copy of the registered will dated 31.10.1979 said to be executed by the late Chinnammal.

8. The lower Appellate Court has framed about 12 points for determination and ultimately, by judgment and decree dated 28.11.2022, has dismissed the appeal on the following terms.

“(a)that the appeal suit filed by the appellant/plaintiff in A.S.No.44 of 2017 on the file of this Court is hereby dismissed,

(b)that the decree and judgment dated 09.03.2016 of the trial Court in O.S.No.99 of 2009, except with respect to 5th item of the suit properties, is hereby confirmed and modified,

(i)declaring that the appellant/plaintiff, the 1st respondent/2nd defendant and the 2nd respondent/3rd defendant shall have equal shares, namely, 1/3rd each, in 5th item of the suit properties,

(ii)allotting 1/3rd share each in 5th item of the suit



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properties to the appellant/plaintiff and the 2nd respondent/3rd defendant, and

(iii) declaring that the 3rd and 4th respondents/4th and 5th defendants shall have no shares in the 5th item of the suit properties and

(d) that considering the relationship between the parties, there shall be no order as to costs.”

9. Challenging the same, the plaintiff is before this Court.

10. The learned counsel appearing for the appellant would submit that the Court below has committed a grave error in dismissing the application in I.A.No.8 of 2019 and thereby, not taking on file the will dated 31.10.1979 and that since the 3rd defendant who was the only contesting defendant had admitted the release deed – Ex.A5, wherein, she had relinquished her right in the family properties in favour of the 1st and 2nd defendant and the plaintiff, she had no right in the ancestral properties. He would also contend that the properties are ancestral properties and therefore, the plaintiff along with the defendants 1 and 2 are entitled to 1/3rd share in the joint family properties.



11. Heard the learned counsel appearing on either side and perused the materials available on record.

DISCUSSION:

12. The Courts below have relied upon the evidence of P.W.1 and have come to the conclusion that there was no ancestral joint family nucleus. P.W.1, in his cross-examination, stated that the items 1 and 2 of the suit schedule properties have been purchased by his grandfather and that prior to the purchase of these items of the properties, there was no ancestral property available to Chinnasamy Nadar. Once there is no evidence to show that there is an ancestral nucleus which would have contributed to the purchase of the other properties, then, the properties have to be necessarily held to be individual property of Chinnasamy Nadar. Further, the items 3 and 4 are admittedly the properties of the plaintiff's grandmother Chinnammal.



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13. The plaintiff, in his pleadings and evidence, has relied upon the will dated 21.08.1992. This document which is unregistered has been filed along with the plaint. However, the same has not been marked.

14. In the lower Appellate Court, the plaintiff has taken out an application in I.A.No.8 of 2019 to receive the registered will dated 31.10.1979. However, there is no reference about this will dated 31.10.1979 in the plaint. The plaintiff has filed I.A.No.8 of 2019 for receiving the additional document to which a counter has also been filed by the 3rd defendant. A perusal of the affidavit filed in support of this application would indicate that nowhere has the plaintiff referred to the will dated 21.08.1992 in her pleading. In the counter which has been filed by the 3rd defendant, she has stated that in the suit, the plaintiff had taken out an interlocutory application in I.A.No.562 of 2015 seeking leave of the Court to file a reply statement referring to



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this will dated 21.08.1992 and after a detailed enquiry, this application was dismissed and the same has not been challenged. This is now sought to be re-introduced in the form of additional evidence.

15. The lower Appellate Court has dismissed the said I.A.No.8 of 2019 along with the appeal suit. The fact that the plaintiff has put forward two wills, one dated 31.10.1979, the subject matter of I.A.No.8 of 2019 in A.S.No.15 of 2017 and another will dated 21.08.1992 which has been filed as document no.13 along with the plaint and the pleadings have been raised with reference to this document. Therefore, I see no reason to disagree with the judgment and decree of the lower Appellate Court especially when the plaintiff has put forward two wills. The Court has to take consideration only the will dated 21.08.1992 which has been referred to in the pleading.

16. As regards the release deed pleaded by the plaintiff – Ex.A5, the 3rd defendant would claim right to the properties on



account of her being the legal representative of the 1st defendant. The 3rd defendant would admit that she has executed the release deed in favour of her father, however on the death of her father, she is entitled to his share and therefore, she is entitled to 1/9th share in the items 1 and 2 of the suit properties and this submission has been taken into account by the Courts below. Therefore, I see no reason to reconsider the well-considered judgment and decree of the Courts below.

17. The lower Appellate Court has also taken note of the submission and modified the judgment and decree, particularly, with reference to item 5 of the suit schedule properties. The plaintiff has neither made out any case for the interference of this Court nor has made out any substantial question of law and the objection is purely factual which has already been addressed by the Courts below.

Accordingly, this second appeal stands dismissed. Consequently, the connected C.M.P. stands closed. No costs.



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Index : Yes/No
Speaking order/non-speaking order
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To

1. The Principal District Judge, Erode.
2. The Sub Judge, Perundurai.
3. The Section Officer,
V.R.Section, High Court, Madras.

P.T.ASHA, J.,

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