



S.A.No.208 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 22.12.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.208 of 2021
and
C.M.P.No.4162 of 2021

1.Pushparani
2.Rajalakshmi
3.Ashokan

... Appellants

Vs.

Ramasamy (deceased)

1.Natarajan

2.Raja

3.Tamil Nadu Industrial Investment Corporation,
Dr. Sankaran Road,
Kaspa Namakkal Town,
Namakkal Taluk through its Branch Manager.

4. Chinnusamy

5.Rajamani @ Angammal

6.Alamelu

... Respondents

Prayer:- Second Appeal is filed under Section 100 of C.P.C against



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the Judgement and Decree dated 06.02.2020 made in A.S.No.8/2019 on the file of Sessions (Fast Track Mahila) Judge, Namakkal confirming the judgement and decree in O.S.No.97 of 2005 dated 07.12.2018 on the file of Principal Subordinate Judge, Namakkal.

For Appellant : M/s.K.S.Karthik Raja

JUDGEMENT

The unsuccessful plaintiffs before the Courts below have preferred the above Second Appeal. The plaintiffs have challenged the judgement and decree of the Sessions (Fast Track Mahila) Judge, Namakkal in A.S.No.8 of 2019 in and by which the learned Judge has confirmed the Judgement and Decree passed by the Principal Sub Judge, Namakkal in O.S.No.97 of 2005.

2. The facts which have given rise to the above Second Appeal are herein below briefly set out and the parties are referred to in the same ranking as before the Trial Court.



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3. The plaintiffs had filed a suit for partition and separate possession of the suit properties and for a permanent injunction restraining the 4th defendant from bringing the suit properties to auction. The 4th defendant is the Tamil Nadu Industrial Investment Corporation.

4. It is the contention of the plaintiffs that the suit properties belonged to their father, Veerasamy and the deceased 1st defendant, who is none else than the brother of the plaintiffs' father. The suit properties were purchased by both of them under sale deeds dated 30.12.1985, 06.01.1994, 01.10.1985 and 02.10.1985. They have contended that the suit properties were purchased from out of the sale consideration received from the sale of the ancestral properties. The 1st item of the schedule property is agricultural land and the 2nd item is a dwelling house.



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5. Their contention is that on 20.06.1940, the plaintiffs' grandfather, Venkatachalam, his wife Rangamanl, the plaintiff's father, Veerasamy and the 1st defendant had sold the properties to one Angammal, wife of Sanjeevi Boyan. From the money obtained from this sale, the suit properties had been purchased in the joint names of the plaintiff's father and the 1st defendant. The 2nd and the 3rd defendants are the sons of the 1st defendant.

6. The plaintiffs would further submit that the suit properties were being enjoyed without division. They would state that they are carrying on agricultural activities on the 1st item of the property and living in the 2nd item of the property.

7. It is the case of the plaintiffs that their father, Veerasamy died on 02.03.2000 leaving behind the plaintiffs as his legal heirs. The plaintiffs and defendants 1 to 3 are members of a joint Hindu family. The plaintiffs 1 and 2 were married on 08.09.1992 and 12.03.2000



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respectively and therefore they are entitled to a share in the ancestral properties.

8. The plaintiffs would submit that the 4th defendant has no right, title or interest in the suit properties. The plaintiffs would submit that they came to learn from the villagers that the 4th defendant is going to take steps to encroach upon the properties and bring it for auction. The auction is sought to be brought on the basis of a mortgage created by defendants 1 to 3 in favour of the 4th defendant. The plaintiffs therefore approached defendants 1 to 3 on 15.03.2005 and demanded partition but the defendants had refused to partition the properties. The plaintiffs would submit that the mortgage executed by including their share as well is not valid and binding on them. Therefore, they had come forward with the suit in question.

9. A common written statement was filed by defendants 1 to 3



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contending that it is not true that defendants 1 to 3 had mortgaged the properties of Veerasamy and raised a loan. They would submit that they had mortgaged their properties and obtained a loan.

10. The 4th defendant had filed a written statement inter alia contending that the suit properties are the properties of Veersamy and the 1st defendant and the contention that it is an ancestral property is absolutely incorrect.

11. Further, the 4th defendant would submit that the suit properties were in the possession and enjoyment of the defendants 1 to 3 and Veerasamy and after the death of Veerasamy, the defendants were enjoying the same. The 4th defendant was not aware about the legal heirs of late Veerasamy. The 1st defendant had borrowed a sum of Rs.8,10,000/- from the 4th defendant and both the 1st defendant and late Veerasamy had executed an equitable mortgage by deposit of title deeds in favour of the 4th defendant. The 1st defendant had not repaid



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the mortgage loan and therefore the 4th defendant had taken action under the SARFAESI Act against the mortgaged properties and got possession of the same. The 4th defendant would contend that he is taking steps to bring the properties for auction to realise the mortgage amount when this suit has been inherited. They would further submit that the properties are the self-acquired properties of the 1st defendant and late Veerasamy and not ancestral properties as claimed by the plaintiff.

12. The 5th defendant who is the auction purchaser had filed a written statement more or less reiterating the contentions of the 4th defendant and adding that the properties were brought to auction and the 5th defendant had purchased the 1st item of the property in the auction conducted on 16.11.2009 for the sum of Rs.21,05,000/- and had deposited the entire auction price. The 4th defendant had executed a sale deed in favour of the 5th defendant with regard to the 1st item of the schedule property and the possession was also been handed over to the



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5th defendant. After the auction, defendants 1 to 3 had filed

W.P.No.23941 of 2009 and even after time granted by the Court as the defendants 1 to 3 the defendants had failed to pay the amount and therefore, the Writ Petition was dismissed.

13. The 6th and the 7th defendants had filed their written statement contending that they are not aware of the mortgage and that they are entitled to a share in the suit properties.

14. The Trial Court framed the following issues and Additional issues:-

1. Whether the plaintiffs are entitled to the relief of preliminary decree of partition as prayed for?

2. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for?

3. What other relief are the plaintiffs entitled to?

Additional issues:



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1. *Whether the 6th defendant is entitled to 1/32*
2. *Whether the 5th defendant is a bonafide purchaser with regard to the 1st schedule property?*
3. *Whether the 7th defendant is entitled to 1/9th share in the suit properties?*

15. On the side of the plaintiffs, two witnesses were examined and Ex.A.1 to A.17 were marked. On the side of the 5th defendant, one witness was examined and Ex.B.1 to B.15 were marked. On the side of the other defendants, no witness was examined or document was marked.

16. The Trial Court on considering the evidence on record dismissed the suit. Against which the plaintiffs had filed A.S.No.8 of 2019 on the file of the Court of Sessions (Fast Track Mahila) Judge, Namakkal. The Lower Appellate Court had taken into consideration



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Ex.A.8 to A.10 which are the sale deeds dated 20.06.1940, 31.07.1963 and 11.09.1973 and had come to the conclusion that the amounts received under these sale deeds had not been the source for the purchase of the suit properties by late Veerasamy and the 1st defendant as the properties were only purchased in the year 1985, under Ex.A.2 and in the year 1994 under Ex.A3. Therefore, the amounts received from the sale of the ancestral properties which had taken place as early as in 1940, 1963 and 1973 would not be the source for the purchase of the suit properties. Therefore, the Lower Appellate Court had held that the properties should be treated only as the self-acquired properties of Veerasamy and the 1st defendant and therefore the mortgage created by them in favour of the 4th defendant was valid and the plaintiffs have no right to the said properties and ultimately dismissed the appeal. Challenging this concurrent judgement and decree the plaintiffs are before this Court.



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17. Heard the counsel for the appellants.

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18. The only basis on which the suit has been filed is that the suit properties had been purchased in the name of Veerasamy and the 1st defendant from out of the sale consideration received from the sale of the ancestral properties. Ex.A.8 to Ex.A.10 (which are the sale deeds dated 20.06.1940, 31.07.1963 and 11.09.1973) and should therefore be treated as ancestral properties. The records would show that the said Veerasamy and the 1st defendant had purchased the suit properties in the years 1985 and 1994 nearly 12 and 21 years after the sale of the ancestral properties. Therefore, the contention of the plaintiffs that the sale consideration received under Ex.A.8 to Ex.A.10 form the source of income for the purchase of the suit properties in the name of the 1st defendant and the said Veerasamy cannot be accepted and has been rightly rejected by the Courts below.



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19. Therefore, the properties have to necessarily be considered as the individual properties of both Veerasamy and the 1st defendant. Veerasamy and the 1st defendant have jointly executed the mortgage by deposit of title deeds. The plaintiffs cannot question the same as the properties are the individual properties of the said Veerasamy and the 1st defendant.

20. Therefore, the request for partition has been rightly rejected by the Courts below. Further, the plaintiffs have not made out for any Substantial Question of Law warranting the interference of this Court and therefore the Second Appeal stands dismissed at the admission stage. No costs. Consequently, the connected Miscellaneous Petition is closed.

22.12.2023

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To
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1. The Sessions (Fast Track Mahila) Judge, Namakkal
2. The Principal Subordinate Judge, Namakkal.
3. Tamil Nadu Industrial Investment Corporation,
Dr. Sankaran Road,
Kaspa Namakkal Town,
Namakkal Taluk through its Branch Manager
4. The Section Officer,
V.R.Section,
High Court, Madras.



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