



S.A.No.782 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.782 of 2023

1. Lakshmi

2. Padmavathy

... Appellants

Vs

Karuppagounder (Died)

1. Palanisamy

2. Ramasamy

3. Thangathal

4. Balasubramaniam

5. Palaniammal

6. Deivathal

7. Kavitha

8. Paramasivam

9. Subbathal

10. Karunaiammal

11. M. Abdulla

12. M. F. Ahamadulla

13. S. Kaleel Rahman

... Respondents



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Prayer: Second Appeal is filed under Section 100 of C.P.C against the Judgment and Decree dated 10.01.2022 made in A.S.No.3 of 2017 on the file of the II Additional District Court, Tiruppur, confirming the judgment and decree dated 30.09.2016 made in O.S.No.146 of 2004 on the file of the Principal Subordinate Court, Tiruppur.

For Appellants : Mr.K.S.Karthik Raja

For Respondent-4 : Mr.K.Goviganesan

JUDGMENT

The plaintiffs are the appellants before this Court challenging the judgment and decree passed by the II Additional District Judge, Tiruppur in A.S.No.3 of 2017 in and by which, the learned Judge has confirmed the judgment and decree passed by the learned Principal Subordinate Judge, Tiruppur in O.S.No.146 of 2004 dismissing the suit for partition and granting maintenance to the plaintiffs.



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2. The facts that are necessary for disposing of the above second appeal are herein below set out and the parties are referred to in the same ranking as before the trial Court.

3. The plaintiff had filed the aforesaid suit for partition and maintenance. The plaintiffs are the wife and daughter of the third defendant respectively. The first defendant is the father of the defendants 2 to 4. It is the case of the plaintiff that the first item of the suit property was allotted to the share of the first defendant under a Partition Deed dated 11.06.1956 executed between the first defendant, his brother Ramasamy Gounder and mother Marakkal. The second item of the property was purchased by the first defendant from Ramasamy Gounder from out of the income derived from the proceeds of the first item of the property under a registered Sale Deed dated 20.06.1968 and therefore, the second item of the suit property is also the joint family property. Since a portion of the property allotted to the



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first defendant had been purchased by Ramasamy Gounder, his legal heirs are added as parties to the suit.

4. It is the case of the first plaintiff that she had married the third defendant in the year 1991 and the second plaintiff was born on 26.07.1992. On the birth of the second defendant, the third defendant's behaviour had undergone a change. He had become addicted to alcohol and would beat the first plaintiff, demanding money and jewels from him. Ultimately, she was driven out of her matrimonial home in the year 2000 and the plaintiffs are now under the care and custody of the first plaintiff's father.

5. Meanwhile, the first plaintiff came to learn that the first defendant was creating documents in respect of the suit properties with the active collusion of defendants 2 to 4. The second plaintiff, having been born on 26.07.1992 after the enactment of the Tamil Nadu Act 1 /



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1990, is also deemed to be a coparcener along with defendants 1 to 3 and is therefore entitled to 1/6th share in the suit properties. The plaintiffs would contend that the suit properties are agricultural lands and the third defendant is earning more than a sum of Rs.50,000/- from the property and Rs.5,000/- per month from the Power Loom Factory. The plaintiffs have no source of income and the third defendant is also not maintaining them.

6. The fifth defendant is the purchaser of the property. It appears that a portion of the property was sold in favour of one Nalayinee, who in turn had sold to the fifth defendant under a registered Sale Deed dated 08.11.2001.

7. On 21.01.2004, the first plaintiff had issued a legal notice to defendants 1 to 3 demanding maintenance and partition of the second plaintiff's 1/6th share in the property. However, despite receiving the



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said notice, they have not come forward to issue the reply. The first defendant died on 15.09.2005 pending the suit and his legal representatives are already on record. The third defendant is actively colluding with the other defendants to deprive the plaintiffs' of their right.

8. The written statement has been filed by the fifth defendant and defendants 12, 13 and 14 and other defendants have remained *ex-parte*. The fifth defendant would contend that he is the *bonafide* purchaser for value. He would submit that the first item of the property is a dry land, not earning sufficient income. In fact, the income earned was not sufficient to even take care of the basic family expenses. The first defendant was driving bullock carts for hire and was doing business for commission for his agricultural produces. Out of his own savings, he purchased the lands in S.F.No.22 /3, measuring an extent of 2.54 acres, under two registered sale deeds dated 20.06.1958 and



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08.05.1970. These properties have been enjoyed by the first defendant as his self-acquired properties, and thereafter, the entire extent of 2.54 acres was sold to one Nalayainee, from whom the fifth defendant had purchased the properties under a registered sale deed dated 08.11.2001 for proper and valid consideration. The fifth defendant had also pleaded that the suit was bad for non-joinder of necessary parties.

9. The 12th defendant has filed the written statement which was adopted by the defendants 13 and 14. It is their case that the first defendant had purchased an extent of 1.20 acres in S.F.No.36/3 of Velampalayam Village of Palladam Taluk under a registered Sale Deed dated 20.06.1968 out of the self earned property. He has been in enjoyment of the same. On 13.07.1994, under a registered Sale Deed he had settled an extent of 0.771/2 acres of property in S.F.No.3/3B in favour of the third defendant. On 20.03.2006, the third defendant, in turn, had sold the northern part of 0.35 $\frac{1}{4}$ acres of property to



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defendants 12 and 13 and the southern portion measuring an extent of 0.35 $\frac{1}{4}$ acres to the 14th defendant under the registered sale deeds. Therefore, defendants 12 to 14 are *bonafide* purchasers for value. It is also the case of the 12th defendant that the first defendant made arrangements with regard to the properties amicably during 1994, and therefore, there was no ancestral property in existence. They had also pleaded that the suit is not valued properly since the plaintiffs who are out of possession ought to have valued the suit as per Section 37(1) of the Tamil Nadu Court Fees and Suits Valuation Act.

10. The learned Principal Subordinate Judge, Tiruppur had framed the following issues:

i) Whether the 2nd (then minor) plaintiff is entitled for a preliminary decree of partition of 1/6 share in the suit property as prayed?



ii)Whether the plaintiffs are entitled for a monthly maintenance of Rs.2000/- for one year as prayed for?

iii)Whether the plaintiffs are entitled for a charge decree with regard to 1/6th share in the suit property?

iv)How for the sale deeds dated:20-6-1968, 8-5-1970, 1-3-1983, 8-11-2001 Valid? Acted upon? Binds the parties and properties?

v) Whether the suit is bad for partial partial partition and bad for non-joinder and mis-joinder of necessary parties?

vi) To what other relief?

11.The first plaintiff had examined herself as P.W1 and had examined one Rathinamoorthi as P.W2 and marked Exs.A1 to A19. The fifth defendant had examined himself as D.W1, one Krishnasamy was examined as P.W2 and the 12th defendant was examined as P.W3. The 5th defendant had marked Exs.B1 to B5 and defendants 12 to 14



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had marked Exs.B6 to B11. Ultimately, the learned Judge had dismissed the suit with reference to the relief of partition but granted the relief of maintenance by directing the third defendant to pay a sum of Rs.2,000/- per month to the plaintiffs with a charge over the property. The learned Judge had observed that the first item of the property had been sold even as early as on 18.09.1956 in favour of one Karunaiammal, as evidenced by Ex.A13. The first item and other properties were sold under this document. Thereafter, the purchase by the first defendant was only in the year 1968 and there is no proof forthcoming for the plaintiffs to show that the property had been purchased from out of the sale proceeds. Therefore, the learned Principal Subordinate Judge dismissed the suit for partition but granted the relief of maintenance as prayed for. Challenging the said judgment and decree, the plaintiffs had filed an appeal in A.S.No.3 of 2017 on the file of the II Additional District Judge, Tiruppur. The learned Judge has also confirmed the judgment and decree of the trial Court.



Challenging the same, the appellants / plaintiffs are before this Court.

12. Heard the learned counsel for the appellants and the learned counsel for the fourth respondent and perused the materials available on record.

13. The plaintiffs have filed the suit for partition on the basis that the first item of the suit schedule property is their ancestral property and the second item of the suit property had been purchased from out of the income derived from the first item. However, the evidence that has been let in on the side of the defendants would clearly show that the first item of the suit property was purchased by the first defendant on 11.06.1956 and that the first item of the suit property has been sold under Ex.A13-Sale Deed dated 18.09.1956 to one Karunaiammal and under Ex.A12-Sale Deed dated 14.09.1956 to one Murugesu Mudaliyar by defendants 1 to 3. However, the second item of the property in



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respect of which partition has been sought on the ground that it was purchased from the joint family income in year 1968 cannot be held to be a joint family and there is nothing to connect the sale proceeds derived under Exs.A12 and A13 to the said purchase. Therefore, both the Courts have rightly come to the conclusion that the first item of the property is not available for partition and the second item of the property does not partake the character of an ancestral property as it is was not purchased from out of the income derived from the first item of the property. Both the Courts below have rightly rejected the relief of partition and granted the relief of maintenance as prayed for. I see no reason to interfere with the concurrent judgment of the Courts below. Further, no substantial question of law has been made out by the appellants. Accordingly, the second appeal is dismissed. No costs.

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

12/14



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To

1. The Subordinate Judge, Pollachi.
2. The District Munsif, Pollachi.
3. The Section Officer,
V.R.Section, High Court, Madras.



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P.T.ASHA, J.,

srn

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