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S.A No.876 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2023

CORAM:

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

S.A No .876 of 2016
& CMP No. 17697 and 17698 of 2016

1.Hemant Kumar
2.Minor Girishankari(Rep. By mother guardian, the 3rd appellant)
3.Jayalakshmi .. Appellants/Appellants/Plaintiffs
Vs

1.Brindha
2.Prema
3.Suguna
4.Ganapathy ...
Respondents/Respondents/Defendants

PRAYER : This Second appeal filed under Section 100 of the Code of Civil Procedure to set aside the judgment and decree dated 21.01.2016 passed in A.S No.41 of 2014, on the file of Principal Sub Court, Tindivanam, confirming the judgment and decree dated 02.08.2014 in O.S No.76 of 2005 on the file of the Additional District Munsif Court, T indivanam.

For Appellants: Mr.T.S.Baskaran

For R1 to R3 :Mr.J.Umacharan

For R4 : Mr.B.Meganathan



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JUDGMENT

Challenging the concurrent findings of the Principal Sub Court, Tindivanam, in A.S No.41 of 2014 with respect to Additional Munsif Court, Tindivanam, in O.S No.76 of 2005, the plaintiffs preferred this second appeal.

2. The appellants/plaintiffs herein filed suit in O.S No. 76 of 2005, on the file of the Additional District Munsif Court, Tindivanam, against the respondents herein for the relief of declaration and permanent injunction.

3. The contention of the plaintiffs is that the suit property described in plaint schedule originally belongs to his parents one Muthu Venkatrama Reddiar and his wife Rukmani Ammal as a self acquired property, who have one son namely Ramachandran and three daughters/respondents 1 to 3 herein. The said Ramachandran died intestate leaving behind his wife, son and daughter as legal heirs, who are appellants/plaintiffs herein. The defendants 1 to 3 were given marriage long



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back. Moreover, the defendants gave up their rights in the suit property to his brother Ramachandran. So the said Ramachandran along with his legal heir enjoyed the suit property as their absolute property. After the demise of the said Ramachandran, the defendants caused interference in the suit property and the second defendant executed sale deed in favour of the fourth defendant/respondent herein for which she is not at all entitled. Hence the third plaintiff/third appellant issued notice to the respondents, raising objection about the alienation made by the second respondent herein. Hence the suit.

4. The defendant 1 to 3 contested the suit by filing their written statement, in which, they admitted the relationship between the appellants and the respondents, however they denied the other allegation raised by the appellants. Further they stated that in the year 1950, the properties were divided between them, at that time, their brother Ramachandran was minor so share allotted to him was under the care of his parents. Thereafter, Ramachandran enjoyed the property allotted to him separately, the remaining properties of the parents were not divided till the death of their parents and their parents also died intestate. Hence as a legal heir respondents 1 to 3 have equal share in that properties and not given up their



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right over the property as alleged by the appellants. Thereafter the respondents legally filed suit in O.S No. 166 of 2002 which was subsequently re-numbered as O.S No.41 of 2019 on the file of the I Additional District Judge, Tindivanam, for partition and the same is pending. Hence they are entitled to have share in the suit property hence they prayed to dismiss this petition.

5. After considering the oral and documentary evidences, the Trial Court concluded that respondents 1 to 3 have $\frac{3}{4}$ share in the suit property accordingly dismissed the suit.

6. Aggrieved over the same, the appellants herein preferred an appeal before the the Principal Sub Court, Tindivanam, which independently analysed the facts and circumstances of the case and confirmed the findings of the Trial Court. Challenging the same, the appellants preferred this second appeal. This Court admitted the appeal with the following substantial questions of law:

1. Whether the Courts below were right in dismissing the entire suit in the light of specific admission by the defendants notice dated 03.06.2002 marked as Ex.A3 that there was a partition between Muthu



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Venkatrama Reddiyar and Ramachdran even in the year 1955 and the defendants have a share in the properties that were allotted to Muthu Venkatrama Reddiyar in the said partition of the year 1955?

7. The facts reveals that suit properties are originally belongs to one Muthu Venkatrama Reddiyar and his wife Ruckmani Ammal, they died intestate leaving behind their Son Ramchandran and three daughters/1to 3 defendants. The said Ramachandran died leaving behind his legal heirs/appellants herein. The contention of the plaintiffs is that defendants 1 to 3 given marriage in the year 1972, 1987 with Sreethanas, hence they released their rights over the suit property in favour of the Ramachandran. Moreover, there was a partition in the family in the year 1955 in which B schedule properties was allotted to the Ramachandran who enjoyed the property, till his life time after the demise of the said Ramchandran, the defendants 1 to 3 falsely claiming right over the suit property ignoring the release already made in favour of him. So as a legal heir of the said Ramachandran the plaintiffs/appellants herein filed suit claiming exclusive right over the property and also praying for injunction against the defendants 1 to 4/ respondents herein in respect of suit properties.

8. On the other side, the defendants denied the plaintiffs rights



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over the suit property, contending that properties belongs to their father and mother, hence, they are entitled to $\frac{3}{4}$ share in the suit property, since it is the self acquired property of their parents. Further, they contended that some of the portion of the properties were already sold to the fourth respondent and also submitted that they have filed suit for partition is O.S No. 166 of 2002 pending before the Additional District Court, Tindivanam, in which, the appellants also contested the suit, both the Court below held that alleged oral release claimed by the plaintiffs is not valid in law. Since the properties belongs to the parents of the defendants 1 to 3 and the said Ramachandran who are entitled to $\frac{1}{4}$ share and the remaining $\frac{3}{4}$ share belongs to the defendants 1 to 3, accordingly, the suit was dismissed.

9. The learned counsel for the appellants submitted that the Courts below failed to appreciate the fact that in the year 1955, the properties were allotted to the share of the Ramachandran, when he was minor and subsequently, after attaining majority, the Ramachandran alone enjoyed the property, since the defendants settled with their husbands not claimed the right over suit property. But the Courts below failed to appreciate these facts and also without considering the long possession and



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enjoyment of the property erroneously dismissed the suit as such is unfair and liable to be set aside.

10. As rightly pointed out by the respondent counsel, there is no written document with regard to release of the rights in favour the Ramachandran by the defendants 1 to 3. Oral release pleaded by the plaintiffs as such was not appreciated by the Court below. When the alleged release is not acceptable, the defendants are deemed to be one of the co-sharer. Admittedly, the second defendant sold some of the properties to the fourth defendant, but plaintiffs has simply come forward with the suit without proper prayer because they have not claimed relief of declaration in respect of the encumbrance made by the defendants 1 to 3 nor certain about their right in the property, with vague prayer they had approached the Court. Further, the relief claimed by the plaintiffs should have not been accepted by the Court below, however, the Trial Court had erroneously fixed the share of the defendants as that they are entitled to $\frac{3}{4}$ share in the suit property for the reason that nature of the properties is self acquired property of their parents. Indeed without deciding as to how the suit properties were acquired by their parents, the share of the defendants would not be determined. Some of the



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properties are absolute property of the mother and some of the properties are belong to their father, some of the properties share allotted to the Muthu Venkatrama Reddiar. Only in the comprehensive suit for partition, the nature of the property is to be decided, admittedly one of the party filed suit for partition which is pending. So the plaintiffs and defendants 1 to 3 are directed to work out their remedy in O.S NO. 41 of 2019 pending before the I Additional District Judge, Tindivanam, without influence of the observation made by the Courts below with regard claim of the both parties in the suit property.

11. In result, the second appeal is dismissed as no merits. There shall be no order as to costs. Consequentially connected miscellaneous petitions is closed.

18.04.2023

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To

1. The Principal Sub Court, Tindivanam,.
2. The Additional Munsif Court, Tidndivanam.
3. The Section Officer,



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V.R Section.

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T.V.THAMILSELVI,J.
Pb1

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