



S.A.No.500 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2023

CORAM

THE HON'BLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

S.A.No.500 of 2023
and C.M.P.No.15290 of 2023

1. A.Subbammal
2. R.Rangammal ... Appellant

Vs.

1. K.Vellingiri
2. K.Chinnasamy
3. Ramasamy
4. V.Velusamy
5. Sathya ... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., pleaded to set aside the Judgement and Decree made in A.S.No.69 of 2014 dated 25.01.2019 passed by the 1st Additional Sub Court, Coimbatore, confirming the Judgment and Decree passed in O.S.No.1526 of 2007 dated 28.11.2013 on the file of the 3rd Additional District Munsif Court, Coimbatore.



S.A.No.500 of 2023

WEB COPY

For Appellants : B.Kumarasamy

JUDGMENT

This Second Appeal has been filed against the Judgement and Decree passed by the 1st Additional Sub Court, Coimbatore, in A.S.No.69 of 2014 dated 25.01.2019, confirming the Judgment and Decree passed by the 3rd Additional District Munsif Court, Coimbatore, in O.S.No.1526 of 2007 dated 28.11.2013.

2. The suit has been filed by the appellants/plaintiffs for partition and separate possession. The suit was dismissed and the same was confirmed by the first appellate Court. Aggrieved against the same, the appellants/plaintiffs have filed the present Second Appeal.

3. For the sake of convenience, the parties are referred to as they are arrayed in the Original Suit.

4. The case of the plaintiffs as per the plaint is as under:-

4.1. The suit property originally belonged to one Kanakkae



S.A.No.500 of 2023

Gounder, who died intestate 30 years ago, leaving behind his wife Nanjammal, his daughters/plaintiffs and sons/1st and 2nd defendants as his legal heirs. The said Nanjammal became the absolute owner of the suit property as per the settlement deed document No.1441/1973 executed by the deceased Kanakkae Gounder. The said Nanjammal also died on 27.05.2006, leaving his daughters and sons.

4.2. The plaintiffs and defendants 1 and 2 are in joint possession and enjoyment of the suit property. The plaintiffs and defendants 1 & 2 are entitled to 1/4th share in the suit property.

4.3. When the plaintiffs had demanded for amicable partition, defendants 1 & 2 did not cooperate and therefore, the plaintiffs have sent a legal notice dated 06.07.2007 and even after the receipt of the suit notice, defendants 1 & 2 did not respond to the same.

4.4. While so, defendants 1 & 2, by suppressing the plaintiffs' right over the suit property, have sold the suit property to defendants 3 to 5. Hence, the plaintiffs have filed the present suit for dividing the suit property into 4 equal shares and allot 2 such shares to the plaintiffs.

5. The 1st defendant has filed the written statement, the crux of



S.A.No.500 of 2023

which is as under :-

5.1. The suit property originally belonged to one Kanakkae Gounder and he had executed registered settlement deed in favour of the first and second defendants reserving life estate to his wife Nanjammal. After the demise of the said Nanjammal on 27.05.2006, defendants 1 & 2 are in continuous possession and enjoyment of the suit property and the plaintiffs are not entitled to any share in the suit property.

5.2. Further, the first defendant settled his share of the suit property in favour of his legal heirs and the second defendant sold his share to the third party and the plaintiffs have no manner of right in the suit property. The plaintiffs got married 20 years ago and they have been not at all in joint possession and enjoyment of the suit property. The Court fee paid by the plaintiffs is incorrect and the suit is liable to be dismissed.

6. The 2nd defendant has also filed the written statement contending as under:-

The suit property is the ancestral property of late Kanakkae Gounder and Nanjammal is his second wife. The plaintiffs and defendants 1



S.A.No.500 of 2023

& 2 are their legal heirs. During the life time of Nanjammal, the suit property was commonly enjoyed by the plaintiffs and defendants 1 & 2. The 2nd defendant never acted against the interest of the plaintiffs by suppressing their rights. The 1st defendant purchased a part of the property from the 2nd defendant and agreed to pay a sum of Rs.2 lakhs to the plaintiffs, whereas, after the registration of the property, he has not kept his promise and grabbed entire suit property by illegal manner. Now the value of the suit property is high, thereby, the plaintiffs have filed this partition suit.

7. The 5th defendant has also filed the written statement which was adopted by the 4th defendant, contending as under :-

7.1. As per the settlement deed dated 12.12.1973 executed by Kannake Gounder, his wife Nanjammal should enjoy the suit property without any right of alienation till her life time and thereafter, it vested with defendants 1 and 2. After the demise of the said Nanjammal on 27.05.2006, defendants 1 and 2 became the absolute owners and they orally partitioned the suit property and accordingly, the property in S.F.No.365/2 was allotted to the 1st defendant and the property in S.F.No.365/3 was allotted to the share of the 2nd defendant. Thereby, the revenue records with respect to the suit



S.A.No.500 of 2023

property were also mutated in their respective names.

7.2 Thereafter, the 1st defendant had settled his share of the suit property in favour of his son/4th defendant, who in turn settled the property in S.F.No.365/2B in favour of his wife/5th defendant. Thereby, the 5th defendant became the absolute owner of the property. The further allegation is that the plaintiffs were never in joint possession of the suit property and the description of the property is also incorrect. Hence, the suit is liable to be dismissed.

8. On the above pleadings, the Trial Court framed the following issues:-

1. Whether the plaintiffs are entitled to claim the 2/4 share of the suit property?
2. Whether the Court stamp fee paid correctly ?
3. To what other relief?

9. During trial, on the side of the plaintiffs, PW1 to PW3 were examined and Ex.A1 to Ex.A12 were marked. On the side of the defendants, DW1 was examined and Ex.B1 to Ex.B12 were marked.



S.A.No.500 of 2023

WEB COPY

10. Before the trial Court, the plaintiffs pleaded that the suit property is the absolute property of Kanakkae Gounder and he settled the same in favour of his wife Nanjammal by the settlement deed dated 12.12.1973 and after the death of said Nanjammal on 27.05.2006, the plaintiffs and defendants 1 & 2, being the legal heirs, are entitled to $\frac{1}{4}$ share in the suit schedule property and thereby, urged to decree the suit. On the other hand, defendants 1 and 2 pleaded that as per the settlement deed, Nanjammal is entitled to enjoy the property till her life time and after her death, the first and second defendants are entitled for suit property and thereby, contended that the suit is not maintainable.

11. After a full fledged trial, the trial Court accepting the contention of defendants 1 & 2, dismissed the suit, against which, the plaintiffs have filed the Appeal Suit.

12. The first appellate Court, based on the grounds of appeal had framed the following point for determination :-

“Whether the judgment and decree recorded by



S.A.No.500 of 2023

the trial Court is just and legal?”

13. The first appellate Court found that the following are the admitted facts of this case:-

1. The suit property absolutely belonged to Kanakkae Gounder as per Ex.A10 sale deed dated 12.02.1931 (half share) and as per Ex.A11 sale deed dated 02.08.1942,
2. The said Kanakkae Gounder died intestate leaving behind his 2nd wife Nanjammal, sons/ defendants 1 & 2 and daughters/plaintiffs as his legal heirs
3. Kanakkae Gounder executed Ex.A1 settlement deed dated 12.12.1973 in favour of his wife Nanjammal and his sons, reserving her right till her life time
4. The said Nanjammal died on 27.05.2006.

14. After perusing the entire records, the first appellate Court found that the suit properties are self acquired properties of one Kanakkae Gounder and that he had executed a settlement deed dated 12.12.1973 in favour of his wife and sons/ defendants 1 and 2, reserving life interest to his wife and that his wife Nanjammal died on 27.05.2006 and that after the



S.A.No.500 of 2023

death of the said Nanjammal, defendants 1 and 2 are entitled to property and that the plaintiffs are not entitled to the share in the suit properties. Thereby, the first appellate Court dismissed the first appeal, confirming the decree and judgment passed by the trial Court in O.S.No.1526 of 2007 dated 28.11.2013. Aggrieved against the concurrent findings of the Courts below, the present second appeal has been filed.

15. Heard, perused the judgments of the Courts below and also the grounds raised by the appellants.

16. A perusal of the entire materials available on record reveals that the plaintiffs/appellants being sisters of defendants 1 and 2 claim partition in the suit property under the impression that it is the ancestral property, without even a plea as to whether the suit property is an ancestral one or a self-acquired one. While three witnesses have been examined on the side of the plaintiffs and 12 documents have been marked on their side, only the first defendant has been examined as DW1 and no document has been marked on the side of the defendants.



S.A.No.500 of 2023

WEB COPY

17. It is pertinent to note that based on the documents filed by the plaintiffs viz., Ex.A10 and A11 the courts below have found that the suit property is a self-acquired property of one Kanakkae Gounder, father of plaintiffs and defendants 1 and 2 and Ex.A1 produced by the plaintiffs themselves prove that the said Kanakkae Gounder had settled the suit property granting life estate to his second wife Nanchammal and after her lifetime, the ownership in respect of the suit property to devolve upon defendants 1 and 2. Ignoring such a concept of grant of life estate alone to their mother, the plaintiffs had claimed partition on the only ground that they had been in enjoyment of the suit property with defendants 1 and 2 without even challenging the alleged settlement deed, Ex.A1, when the contents of the said settlement deed make it clear that after the lifetime of Nanchammal, the suit property would devolve upon defendants 1 and 2 alone. The omission on the part of the plaintiffs to challenge the settlement deed, which takes away their right to claim a share in the suit property, speaks much about the nature of the suit property being acknowledged by them.

18. Under the guise that the suit property is an ancestral property and vide Ex.A1, their mother had acquired the same by way of settlement



S.A.No.500 of 2023

and thereby, they could claim a share in the suit property, the plaintiffs have come up with the present suit for partition. The appellants/plaintiffs relies upon the dictum of the Apex Court in *Vineeta Sharma vs. Rakesh Sharma* (2020) 9 SCC 1 to claim co-parcenary right over the suit property. Once the plaintiffs intend to take such a stand that the suit property is an ancestral property, they could maintain their claim only after challenging the settlement deed, Ex.A1 relied on by themselves. The mere enjoyment of the suit property by the plaintiffs alongwith defendants 1 and 2 during the lifetime of their mother cannot be taken as a ground to claim that the suit property is an ancestral property.

19. Appreciating the oral and documentary evidence adduced by the parties, the courts below have arrived at a conclusion that the suit property is the self-acquired property of Kanakkae Gounder, who had settled the same during his life time itself, granting life estate to his second wife Nanchammal and after her lifetime, the ownership in respect of the suit property to devolve upon defendants 1 and 2. When Ex.A1 settlement deed itself has not conferred any right upon the settlee Nanchammal to alienate the suit property except the grant of life estate and after her lifetime, the suit



S.A.No.500 of 2023

property devolved upon defendants 1 and 2 alone, the plaintiffs cannot claim any right over the suit property on the basis of Ex.A1 or through their mother Nanchammal.

20. Therefore, this Court does not find any infirmity in the judgment and decree passed by both the Courts below either in law or on facts. Having carefully analysed the materials available on record including the judgments of both the Courts below, this Court is of the view that no substantial question of law is involved to admit this second appeal.

21. The Hon'ble Apex Court in ***Kirpa Ram (D) Tr.Lrs. vs Surender Deo Gaur (2020 Scc OnLine SC 935)*** has categorically held as under:-

"23. Sub-section (1) of [Section 100](#) of the Code contemplates that an appeal shall lie to the High Court if it is satisfied that the case involves a substantial question of law. The substantial question of law is required to be precisely stated in the memorandum of appeal. If the High Court is satisfied that such substantial question of law is involved, it is required to



S.A.No.500 of 2023

formulate that question. The appeal has to be heard on the question so formulated. However, the Court has the power to hear appeal on any other substantial question of law on satisfaction of the conditions laid down in the proviso of [Section 100](#) of the Code. Therefore, if the substantial question of law framed by the appellants are found to be arising in the case, only then the High Court is required to formulate the same for consideration. If no such question arises, it is not necessary for the High Court to frame any substantial question of law. The formulation of substantial question of law or re-formulation of the same in terms of the proviso arises only if there are some questions of law and not in the absence of any substantial question of law. The High Court is not obliged to frame substantial question of law, in case, it finds no error in the findings recorded by the First Appellate Court."

22. In view of the above, when no question of law much less substantial question of law arises for consideration, the Second Appeal fails and the same is dismissed at the admission stage itself, by confirming the concurrent findings rendered by the Courts below. No costs. The connected Miscellaneous Petition is closed.



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S.A.No.500 of 2023

04.09.2023



WEB COPY



S.A.No.500 of 2023

A.D.JAGADISH CHANDIRA.,J.

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To

1. The 1st Additional Subordinate Court, Coimbatore.
2. The 3rd Additional District Munsif Court, Coimbatore.
3. The Section Officer, VR Section, High Court of Madras.

***S.A.No.500 of 2023
and C.M.P.No.15290 of 2023***

04.09.2023