



A.S.Nos.403 & 404 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

A.S.Nos. 403 & 404 of 2014

S.Vijayalakshmi

....Appellant in both Appeals

Vs

1.S.Ponnusamy Gounder
2.A.Chandrasekaran (died)
3.S.Krishnaveni
4.C.Sathiskumar (died)
5.C.Saraswathi
6.Santhi

7.CanaraBank,
Rep.by its Branch Manager,
Arachalur Branch,
Arachalur, Erode Taluk.

(Memo datd 27.09.2021 recorded. Sr.No.29172,
Respondent R2 died R4 to R6 brought into records
as LR's. Respondent 4 died as a bachelor leaving
behind his mother as 5th respondentvide Court
order dated 06.10.2021 (PTAJ) in A.S.No.403/2014)

....Respondents in A.S.No.403 of 2014

1.Shanthi
2.S.Krishnaveni
3.G.Somasundaram
A.S.No.404 of 2014

.....Respondent in



A.S.Nos.403 & 404 of 2014

Common Prayer:- Appeal Suits filed under Section 96 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 12.06.2013 in O.S.Nos.293 of 2007 & 36 of 2009 on the file of the learned Additional District Judge, Erode.

For Appellant : Mr.A.K.Kumaraswamy,
Senior Counsel
for Mr.S.Kaithamalai Kumaran

For R1, R2 & R4 : Died (Steps taken)

For R3 : Mr.M.R.Thangavel

For R5 [A.S.No.403/14] : Mr.V.P.Sengottuvel,
For R1 [A.S.No.404/14] Senior Counsel
for Mr.U.Baranidharan

For R2 & R3 [A.S.No.404/14] : Notice served

JUDGMENT

The appellant in A.S.No.403 of 2014 is the plaintiff in O.S.No.293 of 2007, who filed a suit for partition. She is the 2nd defendant in O.S.No.36 of 2009 filed by the 1st respondent in A.S.No.404 of 2014 and 5th respondent in A.S.No.403 of 2014 for permanent injunction.

2. Both the suits were filed in respect of the very same properties. The case of the plaintiff in O.S.No.293 of 2007 is that the 1st



defendant is her father, the 2nd defendant is her brother, the 3rd defendant is her sister and the 4th & 6th defendants are son and daughters of the 2nd defendant. The 5th defendant is the wife of the second defendant. The plaintiff and the 3rd defendant are co-parcener as per Hindu Succession Amendment Act, 2005 with effect from 09.09.2005. The suit properties are Hindu Joint Family properties of the plaintiff and the defendants 1 to 3. The 1st item of the suit schedule property is an ancestral property and items 2 to 4 are purchased from the income derived from the joint family properties viz., 1st item of the suit property. The 1st defendant had no other income except the income from the 1st item of the suit property. It is fertile garden land with well, motor pump-sets and irrigated by Lower Bhavani Project Canal. Therefore, all the properties are treated as joint family properties and no member can claim any separate right over the suit properties. Therefore, plaintiff and the defendants 1 to 3 are entitled to 1/4th share over the properties. In order to avoid the share of the plaintiff, the defendants 2 to 5 colluded together and brought about the Settlement Deed dated 22.12.2006. As per the settlement deed, the entire suit properties were gifted in favour of the 4th defendant. Whereas, the 1st defendant, due to advanced age, was senile from 2005. He lost his



conscious and he suffered from dementia. He also suffered with neuro problem. Therefore, physically he was not in a position to move without an aid and he could not even walk or stand or move. Further, he used to sign and however in the settlement deed his thumb impression is affixed. Therefore, the settlement is not a valid one. Even then, it cannot be enforceable, since the entire suit property is a co-parcener property.

3. On the strength of the settlement deed, on 08.05.2007, the 4th defendant had executed another settlement deed in favour of 5th defendant for life and 6th defendant absolutely. It is not also valid one, since the 4th defendant had no title over the property. As far as item 2 and 3 of the suit properties also, the defendants 2 to 5 colluded together and brought the settlement deed as if it was executed by the 1st defendant, thereby the property was settled in favour of the 6th defendant. On the strength of the settlement deed, the 6th defendant filed a suit in O.S.No.554 of 2007 on the file of the District Munsif, Erode and the same was transferred to the file of the I Additional District Judge, Erode for joint trial. It was filed for injunction in respect of the property settled in favour of the 6th defendant. Hence, the suit for partition.



4. Resisting the same, the 1st defendant filed separate written

statement stating that the plaintiff and the 3rd defendant are not co-parceners as per the Hindu Succession Amendment Act. The 1st defendant and his father were members of the Hindu Joint Family, which owned a portion of 1st item of the suit property and a portion of item 4 of the suit property ancestrally, in which, each of them have owned 1/2 share. On 02.01.1976, his father executed a Will and bequeathed his own 1/2 share in the ancestral property in favour of the 1st defendant. After his demise, the Will became operative and he had got nearly 9 acres under the Will. The remaining 1/2 share belonged to Joint Family of the first defendant and his children. After demise of his father, the 1st defendant was in exclusive possession and enjoyment of the 1/2 share that originally belonged to his father and which devolved under the Will dated 02.01.1976. He had substantial income from the said property and earned his separate income through the business of paddy and money lending business. In fact, the income derived from the 1/2 share of the ancestral property was just sufficient to maintain the family and also to educate his children. Therefore, there was no surplus income from the ancestral property. The marriage of the plaintiff and the 3rd defendant



were celebrated in a grand manner out of his own separate funds and savings. The 1st defendant was hale and healthy, both physically and mentally and in fact, he was looking after his own affairs by himself. Therefore, he was conscious both physically and mentally and he had only executed a Settlement Deed after knowing the recital and consequences. Therefore, the settlement deed dated 22.12.2006 is valid, genuine and acted upon in respect of the right over by the family property.

5. The 2nd defendant had executed a Release Deed dated 26.12.1975 in favour of the 1st defendant. The 4th defendant had also released her right over the Joint Family Property. Therefore, the 1st and 4th defendants were the co-parcener in the family. The 1st defendant had executed settlement deed dated 21.08.1996 and 12.09.1996 in favour of the 3rd defendant and the plaintiff in respect of the properties, which were acquired by him out of his own separate income and thereby the plaintiff and the 3rd defendant relinquished their rights in the family properties. Therefore, they are not entitled to make any claim over the family property or other properties, which were purchased by the 1st defendant from and out of his own income. Apart from the property, the 1st



defendant also had given lot of cash out of the income from the individual business. Therefore, they cannot claim to be co-parcener in the joint family properties i.e., 1/2 share in the ancestral property. By way of amending plaint, the 2nd defendant was requested to join with the 1st defendant and the 4th defendant in the execution of settlement deed dated 22.12.2006 and executed in favour of the 1st defendant, thereby relinquished her share in the family property. After the settlement deed dated 22.12.2006, the defendants 5 & 6 have mortgaged the property with the 7th defendant and borrowed loan. In fact, the 3rd defendant and her husband were, at the settlement deed dated 22.12.2006, fully aware of the contents of the settlement deed.

6. In the same line, the other defendants also filed written statement including the 6th defendant. The 6th defendant also stated that during the pendency of the suit, the 1st defendant died. After his demise, the plaintiff sought for amendment of the plaint alleging that as though the 1st defendant died as intestate. In fact, during his life time, he had executed a settlement deed dated 22.12.2006, passing the title over the property to the 4th defendant. Thereafter, the 4th defendant executed a



settlement deed in favour of the 5th defendant for life time and 6th defendant absolutely. Therefore, there was no property to succeed by his legal heirs by way of another succession. Therefore, the suit is barred for partial partition. Having acted upon and accepted the settlement deed executed in favour of the 3rd defendant and the plaintiff dated 21.08.1996 and 12.09.1996 respectively and after enjoying the properties, they are not entitled to have any share in the suit properties, as if the suit properties are the joint family properties. The claim is based upon the introduction of Hindu Succession Act 13 of 2005. It is not a case of the plaintiff that she was a co-parcener of the property prior to the amendment and she was not in joint possession and enjoyment of the suit properties. Therefore, if the plaintiff sought for partition, she is bound to pay Court fee under Section 37(1) of the Tamil Nadu Court Fees and Suit Valuation Act.

7. On hearing the rival pleadings, the Trial Court framed the issues in O.S.No.293 of 2007 as follows :-

(i) Whether the plaintiff is entitled partition, separate possession as claimed in the plaint ?



A.S.Nos.403 & 404 of 2014

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(ii) Whether the properties are joint Hindu Family properties of plaintiff and defendants 1 to 3 as claimed ?

(iii) Whether the Will dated 02.01.1976 in favour of 1st defendant is valid ?

(iv) Whether the settlement deed executed by the 1st defendant is not binding upon the plaintiff as claimed ?

(v) Whether the Court fee paid by the plaintiff is correct ?

(vi) To what relief the plaintiff is entitled to ?

The Trial Court framed the following additional issues on 19.03.2012 :

(i) Whether the release deed dated 26.12.1978 was not acted upon is claimed ?

(ii) Whether the property covered under the sale deed dated 11.01.1947 is not in possession and enjoyment of the family as alleged ?

The Trial Court also framed the following additional issues on 06.09.2013 :-

(i) Whether the suit properties are not the self acquired properties of the 1st defendant as claimed by the plaintiff ?



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(ii) Whether the plaintiff is entitled to contend that properties included in the settlement deeds dated 21.08.1996, 12.09.1996 executed by 1st defendant in favour of the plaintiff and the 3rd defendant are his self acquired properties or ancestral properties ?

(iii) Whether the plaintiff is estopped from contending that the suit properties are ancestral properties ?

(iv) Whether the suit is bad for partial partition ?

(v) Whether the plaintiff and 3rd defendant are in actual possession and enjoyment of the suit properties ?

(vi) Whether the plaintiff and the 3rd defendant's are collusive parties ?

O.S.No.36 of 2009

8. The case of the plaintiff is that the 1st and 2nd defendants are the sisters of her father. The 3rd defendant is the husband of the 2nd defendant. Her paternal grandfather had executed a settlement deed dated 04.05.2007 in her favour in respect of the suit properties. She is in continuous and exclusive possession and enjoyment of the suit properties. She permitted her parents and other family members to reside in the suit



properties. While being so, on 21.07.2007, the 1st defendant, accompanied with the 3rd defendant, trespassed into the suit properties and obtained thumb impression from her grandfather and also trespassed into the suit properties on 28.07.2007 and obtained signature from her brother under force and coercion. Thereafter, they attempted to seize illegal possession of the suit properties on 04.08.2007. Hence, the suit.

9. Resisting the suit by way of written statement was filed stating that the suit property is a joint family property of the 1st and 2nd defendants' father and they never attempted to take illegal possession of the suit property.

10. On hearing the rival pleadings, the Trial Court framed the following issues :

(i) Whether the plaintiff is entitled to get the relief of permanent injunction as claimed in the plaint ?

(ii) To what other relief the plaintiff is entitled ?

11. In both the suits, common trial has been conducted in



which the plaintiff in O.S.No.293 of 2007 was examined as P.W.1 and marked Exs.A1 to A22. The plaintiff in O.S.No.36 of 2009 had examined D.Ws.1 to 3 and marked Exs.B1 to B42. On considering the oral and documentary evidences adduced by the respective parties and the submissions made by the learned counsel, the Trial Court dismissed the suit for partition in O.S.No.293 of 2007 and decreed the suit for injunction in O.S.No.36 of 2009. Aggrieved by the same, these appeal suits are filed .

12. The learned Senior Counsel appearing for the appellants in both appeals submitted that item 1 of the suit schedule property is an ancestral property and his father only derived the income from the suit property and the other items of the suit properties were purchased by the 1st defendant. The first defendant and his father owned property admeasuring 17.88 acres. From the income derived from the suit properties, the other properties were purchased by the 1st defendant. The 1st defendant had no other income than the income from the joint family property. After amending the plaint under the Hindu Succession Act with effect from 09.09.2005, the appellant became a co-parcener and as



such, she is entitled to get a share in the entire suit properties. Under the Will executed by father of the 1st defendant, the 1st defendant had bequeathed only 5.17 acres out of total extent of 17.51 acres, which the joint family owned and possessed and the remaining 12.34 acres admittedly owned and possessed by joint family consisting of 1st defendant and his father. The plaintiff and the 3rd defendant, being the daughters of the 1st defendant, were co-parceners of Hindu Joint Family and they are entitled to have a share in the suit property. Therefore, the settlement deed executed in favour of the 4th and 6th defendants are not valid after the commencement of Hindu Succession Act 1956. The same was not binding on the plaintiff and the 3rd defendant.

13. Per contra, the learned Senior Counsel appearing for the respondents would submit that the suit properties are individual properties of the 1st defendant. Therefore, he had title over the property and had executed settlement deed in favour of the 4th and 6th defendants. Though the Hindu Succession Amended Act came into force with effect from 09.09.2005, the plaintiff is not entitled to have any share, since she is not a co-parcener of the Hindu Joint Family. She also suppressed the settlement deed executed by the 1st defendant in favour of the plaintiff



A.S.Nos.403 & 404 of 2014

dated 21.08.1996 and another settlement deed dated 12.09.1996 in favour of the plaintiff and the 3rd defendant. After execution of those deeds, they relinquished their rights 1/2 share in the family property and as such, they are not entitled to have any share in the family property. Therefore, the Trial Court rightly dismissed the suit filed by the plaintiff and allowed the suit filed by the 6th defendant.

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

15. On hearing the arguments on either, the point for consideration arising in this appeal is that,

(i) Whether the plaintiff is entitled to have share in the suit properties as a co-parcener ?

(ii) Whether the settlement deeds executed in favour of the 4th and 6th defendants by the 1st defendant are valid ?

16. The 1st defendant is the son of one Chennimalai Gounder.



The 1st defendant gave birth to one son and two daughters. His son got married and gave birth to one son and one daughter. The 1st defendant's son is the 2nd defendant, his 1st daughter is 3rd defendant. The 2nd daughter is the plaintiff. The 1st defendant's wife is the 5th defendant and their son and daughter are defendants 4 and 6. There are 4 items in the suit properties. The 1st defendant and his father were members of a Hindu Joint Family. They owned property and they had 1/2 share each. On 02.01.1976, the father of the 1st defendant had executed a registered Will, thereby bequeathed his 1/2 share in the ancestral property in favour of the 1st defendant. Accordingly, the 1st defendant had derived title over 9 acres of the ancestral property as his own property. Insofar as the remaining 1/2 share in the ancestral property is concerned, it belonged to joint family of 1st defendant and his children. Thereafter, out of his own income from the 1st defendant, he had purchased items 2 to 4 of the suit properties.

17. A perusal of the records reveals that he had so many business and had sufficient income. Insofar as the income derived from the ancestral property, he had spent for his family and children for their



education. As a matter of fact, the 1st defendant had celebrated the marriage of the 3rd defendant and the plaintiff in a grand manner and had spent huge money. Further, the 2nd defendant, who is the son of the 1st defendant, had executed a Release Deed dated 26.12.1975 in favour of the 1st defendant, whereby releasing and relinquishing right over the family property. Therefore, he ceased to be a co-parcener of the joint family. Thereafter, the 3rd defendant and the plaintiff insisted to settle some property in their favour and they also promised that they will not claim any right or title over the property or in the separate property of the 1st defendant. Therefore, the 1st defendant had executed a settlement deed dated 21.08.1996 and 12.09.1996 in favour of the 3rd defendant and the plaintiff. Immediately, the settlement deeds were acted upon and the 3rd defendant and the plaintiff were put in possession.

18. Thus, the plaintiff and the 3rd defendant had relinquished their right in the suit properties. Therefore, the 1st defendant and the 4th defendant alone are the co-parceners in respect of 1/2 share in the ancestral properties i.e., the 1st item of the suit properties. Thereafter, on 22.12.2006, the 1st defendant had executed a settlement deed in favour of



the 4th defendant. In turn, the 4th defendant had executed a settlement deed in favour of the 5th defendant for her life time and 6th defendant absolutely. Though the plaintiff had taken a specific stand that the 1st defendant was not in sound mind and he was bedridden and as such, he could not have executed the Settlement Deed dated 22.12.2006, the plaintiff failed to prove the same by any piece of evidence. In fact, the 1st defendant himself, while he was alive, filed a separate written statement stating that he was hale and healthy at the time of settlement deed dated 22.12.2006. Due to his old age, he could not sign in the settlement deed and he had put up his left thumb impression.

19. As rightly pointed out by the learned Senior Counsel for the defendants that the plaintiff suppressed the facts that the plaintiff and the 3rd defendant were settled with the properties by the 1st defendant by way of two settlement deeds. After having accepted the Settlement Deeds and relinquishing their right of ancestral property, they cannot claim the suit properties, that too, after several years. It is also seen that after amendment of the Hindu Succession Act, the suit for partition has been laid by the plaintiff.

20. Further it is also seen that the 1st defendant's father had no



ancestral property. He derived title over the 1st item of the suit schedule property by way of a Will dated 09.08.1938 which was marked as Ex.B9 executed by his maternal grandmother. Thereafter, he had purchased part of the 1st item of the suit property vide registered sale deed dated 14.11.1952. By a Will dated 02.01.1976, he had bequeathed undivided ½ share of his property in favour of the 1st defendant. Thereafter, some of the properties, i.e., Serial No.1 & 2 of item 1 of the suit property, purchased by the 1st defendant under a registered Sale Deed dated 13.10.1972 and in the name of his wife by a Sale Deed dated 24.06.1977, which were marked as Ex.B7. Thereafter, the 1st defendant had purchased the 2nd item of the suit property by a registered Sale Deed dated 29.04.1978, which was marked as Ex.A1. By a registered Sale Deed dated 20.01.1995, the 1st defendant also purchased item 3 of the suit property, which was marked as Ex.B8. On 19.06.1990, the 1st defendant had also purchased item No.4 of the suit property, which was marked as Ex.B2/A2. Therefore, the entire properties are individual properties of the 1st defendant, out of which he had settled the properties in favour of the plaintiff and the 3rd defendant, which were marked as Exs.B1 & B4/A16 & A17. That apart, the plaintiff also failed to prove



A.S.Nos.403 & 404 of 2014

the existence of ancestral nuclear and the suit properties were purchased out of income derived from the ancestral properties.

21. In view of the above discussions, all the points are answered against the plaintiff. The Trial Court rightly decreed the suit filed by the 6th defendant for injunction and dismissed the suit filed by the plaintiff for partition and both the appeals are liable to be dismissed. Accordingly, both Appeal Suits are dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

20.12.2023

Internet: Yes
Index: Yes/No
Speaking/Non speaking order
Neutral Citation: Yes/No
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To

1. The Additional District Judge, Erode.
2. The Section Officer,
V.R.Section,
High Court, Madras

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A.S.Nos.403 & 404 of 2014

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A.S.Nos.403 & 404 of 2014

20.12.2023