



S.A.No.552 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2023

CORAM

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

S.A.No.552 of 2023
and C.M.P.No.17324 of 2023

1. K.Sulochana
2. K.Karthikeyan
3. K.Satheesh ... Appellants

Vs.

1. Kanchana
2. Loganayagi
3. Chitra
4. Rajalakshmi
5. Ramachandran
6. The Sub Registrar,
Sub Registrar Office,
Pernambut, Vellore District.
7. Sarala ... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., pleaded to set aside the Decree and Judgment made in A.S.No.14 of 2016 on the file of the



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learned Subordinate Judge, Gudiyattam, Vellore District, dated 12.11.2018, confirming the Judgement and Decree made in O.S.No125 of 2011 on the file of the learned District Munsif, Gudiyattam, Vellore District, dated 19.03.2013.

For Appellants : Mr.K.A.Ravindran
For Respondents : Mr.N.Manoharan for R1 to R4,
Dr.S.Suriya
Additional Government Pleader
for R6.

JUDGMENT

This Second Appeal has been filed against the Judgement and Decree passed by the learned Subordinate Judge, Gudiyattam, Vellore District, in A.S.No.14 of 2016 dated 12.11.2018, confirming the Judgment and Decree passed by the learned District Munsif, Gudiyattam, Vellore District in O.S.No.125 of 2011 dated 19.03.2013.

2. The defendants 1 to 3 are the appellants. Respondents 1 to 4/plaintiffs had filed an Original Suit seeking for partition, separate possession and permanent injunction. The suit was decreed in favour of the respondents 1 to 4/plaintiffs and it was also confirmed by the first appellate



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Court, aggrieved over the same, the appellants/defendants have filed this present Second Appeal.

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

4. The crux of the plaint averments is as follows:

4.1 The suit property originally belonged to one Venkatappa Naidu, having been purchased vide Sale deed dated 24.02.1917 and he was in possession and enjoyment of the suit property. The said Venkatappa Naidu died intestate leaving behind his sons namely Chinnanna Naidu and Nallayya Naidu to succeed his estates. Since then, the said Chinnanna Naidu and Nallayya Naidu were in possession and enjoyment of the suit properties as absolute owners.

4.2. Subsequently, the said Chinnanna Naidu and his sons sold their share in the suit property to Nallayya Naidu for valid consideration vide registered sale deed dated 02.04.1941. Since then, the said Nallayya Naidu was in possession and enjoyment of the suit property as absolute



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owner and he died 50 years ago leaving behind his wife Lakshmiammal and his sons namely, Krishnan, Nagarathinam and Kuppan. The said Lakshmiammal died intestate 25 years ago and Krishnan died 10 years back leaving behind defendants 1 to 3 as his legal heirs. The said Nagarathinam died in 1980 as a bachelor and the said Kuppan died intestate on 16.06.1985 leaving behind the plaintiffs as his legal heirs to succeed the share in the suit property. After the death of Lakshmiammal and Nagarathinam, the suit property is in joint possession of the above plaintiffs and defendants 1 to 3 as the Hindu Undivided Joint Family.

4.3. Originally, the Patta in respect to the suit property was granted in favour of the said Krishnan, father of defendants 1 to 3 being the elder member of the family. Subsequently, the first plaintiff applied before the Revenue Department to include her name in the Patta and notice of enquiry was issued to Krishnan and the said Krishnan appeared for the enquiry and he did not object for inclusion of the first plaintiff's name in the Patta and hence, the joint Patta was issued in favour of first plaintiff and said Krishnan.



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4.4. Thus, the suit property is the joint family property of plaintiffs and defendants 1 to 3 as per the order of the Special Tahsildar, Natham land revenue, dated 08.02.1993. The first plaintiff has been paying house tax to the Sendathur Panchayat Board.

4.5. The plaintiffs and defendants are having each half share in the suit property, being the joint family property. While so, the defendants 1 to 3 are acting against the welfare of the plaintiffs and tried to alienate the suit property to the 4th defendant and to register the documents in respect to the suit property before the 5th defendant. Hence, plaintiffs had issued a legal notice dated 25.06.2011 to defendants 1 to 3 calling upon them to divide the suit property into 2 equal shares and allot one such share to the plaintiffs and also issued notice to the 4th defendant not to purchase the suit property.

4.6. The first defendant evaded to receive the notice and defendants 3 and 4 received the notice, however, they have neither complied with the request nor sent any reply. Thereafter, defendants 1 to 3 attempted to sell the suit property to the 4th defendant and in order to defraud the rights of the plaintiffs, defendants 1 to 3 sold the suit property to the 6th defendant, who is a close relative of the 4th defendant.



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averment is that the plaintiffs have sold the land of Kuppan and are residing in the house and that the first defendant's father Krishnan had sold the land and built a house in the vacant site out of his own funds and was residing there. Further, they have also contended that the plaintiffs had illegally tried to include their name in the Patta and sent a legal notice and at last, the plaintiffs name have been included in the Patta, and it does not confer any right to the plaintiffs. Further, the plaintiffs are the third parties to the suit property and that Manavari Patta does not confer any right to the plaintiffs and the plaintiffs never enjoyed the suit property. It is false to state that the suit property is the joint family property of both plaintiffs and defendants and that in the year 1980, the said Lakshmiammal had settled the properties in favour of her sons Krishnan and Kuppan and hence, the joint possession came to an end. The plaintiffs have to prove the fact of joint family and the joint enjoyment of the suit property. The suit property is the absolute property of the defendants 1 to 3 and they have sold the same to one Sarala on 04.07.2011 and also handed over possession. The plaintiffs have filed the suit, without having any right in the suit property, in order to grab money. The suit is bad for partial partition and for not including the properties in the name of Nallaya Naidu and Lakshmiammal and that if the settlement deed



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executed by Lakshmiammal in favour of Kuppan is filed. the truth will come out and thereby, sought for dismissal of the suit.

7. The fifth defendant has also filed a written statement denying all the averments in the plaint and contended that the dispute is a private dispute between the plaintiffs and defendants 1 to 4 and the 5th defendant has nothing to do with the same. The 5th defendant is discharging his service as per the Indian Registration Act and Indian Stamp Act and he cannot be restrained from registering the documents presented for registration which will lead to great loss to the Government and that he was impleaded in the suit as an unnecessary party to the suit and thereby, he sought for dismissal of the suit in so far as the 5th respondent is concerned .

8. The trial Court has framed the following issues.

1. Whether this Court has no jurisdiction to try the suit against the 5th defendant ?
2. Whether the entire suit properties belong to the defendants 1 to 3?
3. Whether the plaintiffs are entitled for partition as prayed for?



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4. Whether the plaintiffs are entitled for separate possession as prayed for?
5. Whether the plaintiffs are entitled for injunction as prayed for?

9. During the trial, on the side of the plaintiffs, the first plaintiff examined herself as PW1 and Ex.A1 to Ex.A9 were marked. On the side of defendants 1 to 3, the first defendant was examined as DW1 and Ex.B1 and Ex.B2 were marked. The defendants 4 and 6 remained *ex parte* in the suit.

10. After considering the oral and documentary evidence, the trial Court has passed a preliminary decree directing defendants 1 to 3 and 6 to divide the suit property into two equal shares and allot one such share to the plaintiffs and put in separate possession of the same, in default, the plaintiffs can approach the Court and get the relief and dismissed the suit with regard to the relief of permanent injunction as against the 5th defendant and thereby, partly decreed the suit without cost. Aggrieved over the same, defendants 1 to 3 have preferred the first appeal in A.S.No.14 of 2016, before the Sub Court, Gudiyattam, Vellore District.



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11. The first appellate Court, based on the grounds of appeal had framed the following points for determination.

“1. Whether the trial Court's Judgement and Decree passed in O.S.No.125 of 2011 dated 09.03.2015 is liable to be set aside or not ?

2. To what other relief?”

12. The first appellate Court found that Ex.A1 and Ex.A2 are the parent title deeds of the suit property. Ex.A1 is the registered Sale deed dated 24.02.1917 to show that the property belonging to one Venkatappa Naidu. Ex.A2 is the Sale deed dated 02.04.1941, by which one Chinnanna Naidu and his sons had sold their shares in favour of Nallayya Naidu for a valid sale consideration. Chinnanna Naidu and Nallayya Naidu are the sons of Venkatappa Naidu, who died intestate and subsequently, the said Chinnanna Naidu and his sons have sold their half shares to Nallayya Naidu. The first appellate Court has found that defendants 1 to 3 did not produce any documents to substantiate that the suit property is the absolute property of the said Lakshmiammal, who is the wife of Nallayya Naidu.



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13. It is the case of defendants 1 to 3 that their grandmother Lakshmiammal had executed the settlement deed in favour of their father Krishnan. However, both the Courts below found that Lakshmiammal did not have any exclusive right over the property and also found that the alleged settlement deed was also not exhibited before the Court. Further, defendants 1 to 3, after getting into the box for giving evidence, did not appear for cross examination. Hence, the first appellate Court finding that defendants 1 to 3 have not proved their case and that the subsequent purchaser/6th defendant had also remained *ex parte*, had dismissed the first appeal by confirming the judgment and decree passed by the trial Court. Both the Courts below found that defendants have not proved their case by producing valid documents and letting in oral evidence and also held that the suit property is not the absolute property of the said Lakshmiammal. Aggrieved against the concurrent findings of the Courts below, the present Second Appeal has been filed.

14. Mr. Manoharan, learned counsel for respondents 1 to 4 submitted that based on Ex.B1 and Ex.B2 exhibited on the side of defendants 1 to 3, the settlement deed was executed by the Lakshmiammal in favour of the father of the defendants. He further submitted that though



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the appellants/defendants 1 to 3 submitted that the property was settled by their grandmother Lakshmiammal in favour of the father of the appellants, they have neither chosen to mark the same nor appear in the witness box to prove their case and thereby, the Courts below, rightly finding that the appellants/defendants 1 to 3 have not proved their case, have dismissed the case.

15. In support of his contention, the learned counsel for respondents 1 to 4 relied upon the judgment passed by the Hon'ble Apex Court in the case of *Vidhyadhar Vs. Manikrao and another* reported in **(1999) 3 SCC 573**.

16. Heard both sides, perused the judgments of the Courts below and also the grounds raised by the appellants.

17. The plaintiffs sought for a direction to defendants 1 to 3 and 6 to effect partition of the suit properties into two equal shares by metes and bounds and allot one such share to the plaintiffs and put them into separate possession and enjoyment of the same claiming that the suit properties are



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the ancestral properties belonging to both plaintiffs and defendants 1 to 3, whereas defendants 1 to 3 contested the claim of the plaintiffs by contending that their grandmother Lakshmiammal died about 15 years ago and before that, she gifted the suit property, which is a vacant site and some other properties to Krishnan through a settlement deed and likewise, she gifted the house and land property to Kuppan. Since then, both of them have mutated the Patta of the properties in their name and enjoying the same and subsequently, the plaintiffs have sold the land of Kuppan and are residing in the house and that the first defendant's father Krishnan had sold the land and built a house in the vacant site out of his own funds and was residing there. The defendants further case is that the plaintiffs had illegally included the name of the first plaintiff in the Patta, which does not confer any right upon the plaintiffs and thereby the case of defendants 1 to 3 is that the suit property is not the joint family property and in fact, after the settlement made by their grandmother Lakshmiammal, the joint possession came to an end and it became the absolute property of defendants 1 to 3.

18. To resolve the dispute, the suit property has to be identified as to whether it is an ancestral one in joint possession of plaintiffs and



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defendants 1 to 3 or an absolute property belonging to defendants 1 to 3. To contend that joint possession came to an end, defendants 1 to 3 relied on the settlement/gift deed alleged to have been executed by Lakshmiammal. In this regard, the Courts below, on analysing the oral and documentary evidence, have rightly found that after the demise of Nallayya Naidu, his wife Lakshmiammal could not have been in possession of the entire suit property as absolute owner and thus, she had no locus standi to execute the settlement deed in favour of Krishnan.

19. It is seen from the records that respondents 1 to 4/plaintiffs have proved their case by marking their documents and letting in oral and documentary evidence, whereas, the defendants, though filed the written statements, have not proved their case. Further it is seen that it is the case of the plaintiffs that they had been in joint possession of the suit property with defendants 1 to 3 as evidenced by the revenue records, whereas the defendants, took a stand that the plaintiffs have illegally mutated the revenue records to add the name of the first plaintiff in the patta, however, they have not initiated any steps to object the same before the appropriate authority, which falsifies their case. Further, they have not entered into the witness box to prove their case, which raises adverse inference against them.



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20. In the case of *Vidhyadhar Vs. Manikrao* reported in (1999) 3

SCC 573, the Hon'ble Apex Court has held as follows:-

“17. Where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in Sardar Gurbakhsh Singh v. Gurdial Singh. This was followed by the Lahore High Court in Kirpa Singh v. Ajaipal Singh and the Bombay High Court in Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh. The Madhya Pradesh High Court in Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat also followed the Privy Council decision in Sardar Gurbakhsh Singh case. The Allahabad High Court in Arjun Singh v. VirendraNaths held that if a party abstains from entering the witness-box, it would give rise to an adverse inference against him. Similarly, a Division Bench of the Punjab and Haryana High Court in Bhagwan Dass v. Bhishan Chand drew a



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presumption under Section 114 of the Evidence Act, 1872 against a party who did not enter the witness-box.”

21. The trial Court found that the defendants have not proved the case set up by them. Further, the first appellate Court, having analysed the oral and documentary evidence and the findings of the Trial Court, held that it cannot be concluded that the suit property is the absolute property of the defendants 1 to 3 on the basis of Ex.B2., executed by Lakshmiammal. Having found that the said Lakshmiammal, being the wife of Nallaya Naidu and not the co-owner of the suit property, can only claim her share and cannot act as co-sharer or kartha of the suit property, held that Lakshmiammal has no right to execute the settlement deed in favour of the husband of the 1st defendant viz., Krishnan, when she had not acquired any such right.

22. Therefore, it is clear that on re-appreciating the entire oral and documentary evidence, the first appellate Court had concurred with the findings of the Trial Court both on facts and in law and rightly appreciated and confirmed the judgment and decree of the Trial Court.



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23. 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.

24. 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 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*



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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."

25. 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. Consequently, the connected Miscellaneous Petition is also closed.

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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No



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To

1. The Sub Court, Gudiyatham.
2. The District Munsif Court, Gudiyatham.
3. The Sub Registrar,
Sub Registrar Office,
Pernambut, Vellore District.
4. The Section Officer,
VR Section, High Court of Madras.



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