



S.A.No.763 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.763 of 2023
and
C.M.P.No.24053 of 2023

Puspa Rani

... Appellant

Vs.

1.K.B.Jawahar

2.B.Kumaresan

. . . Respondents

Prayer:- Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree passed in A.S.No.90 of 2019 on the file of the Principal District Judge, Salem dated 27.07.2022, confirming the Judgement and Decree passed in O.S.No.195 of 2012 on the file of the I Additional Sub Judge, Salem.

For Appellant : Mr.Charles Kamalesh M.Appaji.

For Respondent : M/s. R.Revathy Caveator for R.2.



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JUDGEMENT

The 2nd defendant is the appellant before this Court challenging the concurrent judgement and decree in O.S.No.195 of 2012 on the file of the I Additional Sub Judge, Salem which has been confirmed by the Principal District Judge, Salem in A.S.No.90 of 2019. The facts in brief are as follows and the parties are referred to in the same rank as before the Trial Court.

2. The plaintiff had filed the suit O.S.No.195 of 2012 on the file of the I Additional Sub Judge, Salem for a partition and permanent injunction. It is the case of the plaintiff that he and the defendants are siblings born to one Balasbramaniam. Their father had died intestate leaving behind him surviving the plaintiff and the defendants who had inherited his properties. The properties in question are ancestral property as the same had been allotted to Balasbramaniam under a registered partition deed dated 16.09.1977.



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3. The plaintiff would submit that there is no division of the suit property and that each of the parties are entitled to a 1/3rd share. Since, the parties were unable to enjoy the property in common, he had requested for a partition which had not been acceded to by the defendants and that apart the defendants were trying to alienate the property and thereby put it out of the reach of the plaintiff. Therefore, the plaintiff had come forward with the suit for partition and permanent injunction.

4. The 1st defendant had filed a written statement admitting the relationship but contending that the plaintiff is not in possession and enjoyment of the property and it is only the 1st defendant who is in possession and enjoyment of the same. The 1st defendant had also denied the plaintiff's right to a 1/3rd share in the property.



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5. The 2nd defendant had filed a written statement inter alia contending that that the properties were being jointly enjoyed by the plaintiff and the defendants as the legal representatives of the deceased Balasbramaniam. The 2nd defendant would submit each person is entitled to a 1/3rd share and the same is yet to be divided. She would also submit that she is ready to pay necessary Court fee if 1/3rd share is allotted to her.

6. The 1st defendant had subsequently filed an admission memo in which he would state that each of the parties are entitled to a 1/3rd share and that he has no objection to a preliminary decree for partition being ordered.



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7. The 2nd defendant had filed an additional written statement inter alia contending that she had released her 1/3rd share in favour of the 1st defendant and that the 1st defendant is now entitled to a 2/3rd share and therefore a preliminary decree may be passed on these lines.

8. The learned Trial Judge had framed the following issues:-

1. Whether the plaintiff is entitled to the relief of partition and separate possession of 1/3rd share in the suit property?

2. To what other relief, if any is the plaintiff entitled?

On 19.12.2018, the learned Trial Judge had framed the following additional issues:-



1. Is it true that the 2nd defendant released her 1/3rd share in favour of 1st defendant?

2. To what shares are the defendants entitled to?

3. Whether the plaintiff is entitled to permanent injunction restraining alienation of the suit property?

9. The plaintiff had examined himself as P.W.1 and Ex.A.1 was marked. The 2nd defendant had examined herself as D.W.1 and the 1st defendant was examined as D.W.2. That apart, one Arumugam was examined as D.W.3 and the defendants had marked Ex.B.1. Though the 2nd defendant had taken out an additional written statement stating that she had released her 1/3rd share in favour of her brother, the 1st defendant, however, she seems to have retracted this submission and had proceeded to question the very release deed which has been marked as Ex.B.1. The document not only contains the signature of



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Pushparani but also her thumb impression. Ultimately, the Trial Court had granted a decree allotting $1/3^{\text{rd}}$ share to the plaintiff and $2/3^{\text{rd}}$ share to the 1^{st} defendant.

10. The judgment and decree of the Trial Court were taken up on appeal to the Principal District Judge, Salem in A.S.No.90 of 2019. However, after considering the evidence oral as well as documentary, the learned Appellate Judge had confirmed the judgment and decree of the Trial Court. Aggrieved by the same, the 2^{nd} defendant/ appellant is before this Court.

11. Heard the learned counsel for the 2^{nd} defendant/ appellant.

12. The 2^{nd} defendant/ appellant had herself filed an additional written statement in which she has stated that she had executed a



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release deed in respect of her 1/3rd share in the suit property in favour of her brother, the 1st defendant under a registered release deed dated 30.09.2004, bearing document no.2829/2004. This document has also been marked as Ex.B.1. Having admitted to the execution of the release deed in her written statement and not having taken any steps to send the said deed for verification of the handwriting expert, the 2nd defendant/ appellant cannot now question the concurrent judgement and decree of the Courts below. It is also seen that no steps whatsoever have been taken by the 2nd defendant/ appellant to prove that the signatures in the release deed had been obtained either by coercion, fraud or undue influence. Further, there is no plea of fraud, coercion or undue influence.

13. Therefore, the Courts below have rightly rejected the contention of the 2nd defendant/appellant and I see no reason to re-



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consider this well-considered judgement and decree of the Courts below. Further, the 2nd defendant/appellant has not made out any substantial question of law which requires re-consideration of this Court. Accordingly, the Second Appeal stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
shr



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To

1. The Principal District Judge, Salem
2. The I Additional Sub Judge, Salem.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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