



S.A.No.1058 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.01.2023

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

S.A.No.1058 of 2022

and

C.M.P.No.22722 of 2022

K.E.Kandasamy

...Appellant

Vs.

Kannammal(died)
amended as per order in
IA.No.1 of 2019 dated 12.03.2019
1.M.P.Saravanan
2.M.P.Seenivasan

...Respondents

Prayer :-

This Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 09.09.2021 made in AS.No.21 of 2020 passed by the III Additional District and Sessions Judge, Erode at Gobichettipalayam confirming the judgment and decree dated 21.02.2020 passed in OS.No.190 of 2014 on the file of the Subordinate Judge, Erode at Gobichettipalayam.

For Appellant : Mr.P.R.Balasubramanian



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For Respondents : Mr.P.Valliappan
for M/s.P.V.Law Associates

JUDGMENT

This second appeal is directed as against the judgment and decree dated 09.09.2021 made in AS.No.21 of 2020 passed by the III Additional District and Sessions Judge, Erode at Gobichettipalayam confirming the judgment and decree dated 21.02.2020 passed in OS.No.190 of 2014 on the file of the Subordinate Judge, Erode at Gobichettipalayam, thereby dismissed the suit.

2. The appellant is the plaintiff and the respondents are the defendants. The appellant filed suit for partition and for separate possession of the suit property. The case of the appellant is that the suit property originally belonged to his father through the partition deed between his family members dated 01.11.1974 registered vide document No.3045 of 1974. His father was allotted 'A' schedule property in the partition deed. His father died on 16.02.2006 when the appellant was minor. His mother also died on 09.11.2012. While being so, on 15.10.2014, the respondents trespassed into the property and attempted to evict the appellant from the suit property. Thereafter, he came to know that when his father was alive,



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he sold the entire suit property to the father of the respondents herein by the sale deeds dated 17.12.1986, 18.12.1986 and 02.01.1987. Since his father was not having any right over the entire property, the sale deeds executed by him are not valid and filed suit for declaration declaring that the sale deeds are null and void and partition and for separate possession.

3. Resisting the same, the respondents filed written statement stating that their father purchased the suit property by way of registered sale deeds. After demise of their father, they are in possession and enjoyment of the suit property. The suit itself is barred by limitation. It is also hit by non joinder of necessary parties and misjoinder of unnecessary parties.

4. On the side of the appellant, he had examined PW1 and PW2 and marked Ex.P1 to Ex.P14. On the side of the respondents, they had examined DW1 and DW2 and marked Ex.D1 to Ex.D16. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit. Aggrieved over the judgment and decree of the trial Court, the appellant also preferred an appeal suit in AS.No.21 of 2020 before the III



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Additional District and Sessions Judge, Erode at Gobichettipalayam. The first appellate Court on appreciating the materials placed on records, dismissed the appeal by confirming the judgement and decree passed by the trial Court. Challenging the same, the plaintiff has come forward with the present second appeal.

5. The learned counsel for the appellant has raised the following substantial questions of law:

a) Whether the courts below are correct in law in decreeing the suit filed by the plaintiff, when the plaintiff is the only legal heir of deceased Elayanavel and Thirumalaisamy is not the legal heir and if he has any right to entitled to get any share in the ancestral properties?

b) Whether the courts below are correct in law in decreeing the suit filed by the plaintiff, when the grandmother of the plaintiff Tmt.Valliammal executed a partition release deed in favour of the defendants and their mother Tmt.Kannammal, since deceased and if the father of the plaintiff is have any right to sell the entire property ignoring the right of the plaintiff?



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c) Whether the courts below are permitted to completely ignore the pleadings made and evidence given by the parties?

6. The learned counsel for the appellant would submit that the suit property is ancestral property and as such, his father had no right to sell the entire property except his share. Whatever the sale deed executed by his father are not binding on the appellant. The suit property is being an ancestral property, the appellant has half share over the suit property. Therefore, his father had no right to sell the entire suit property.

7. Heard, Mr.P.R.Balasubramanian, the learned counsel appearing for the appellant and Mr.P.Valliappan, the learned counsel appearing for the respondents.

8. This Court considered the rival submission made by the learned counsel on either side.

9. On perusal of records, revealed that the sale deed dated 02.01.1987 was marked as Ex.A4. The recitals of Ex.A4 revealed that it



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was executed for his minor son i.e. the appellant herein as educational expenditure. Admittedly, his father left them in lurch and stayed at Bhavani with another woman. Therefore, the appellant is not the only legal heir of the said Elayanaivel. Further, he had given birth to one Thirumalaisamy through the another woman when he stayed with her at Bhavani. Therefore, the appellant ought to have impleaded the other legal heirs as party to the suit for partition. In a suit for partition, the plaintiff has to necessarily include all the properties and also to implead all the legal heirs. Admittedly, the appellant also failed to subject other properties for partition which were owned by his father. Though the appellant had knowledge about the sale deed executed in favour of the respondents herein by his father, the appellant failed to challenge those sale deeds. Further, the appellant filed the suit after so many years from the date of his attainment of majority. As such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and dismissed the suit filed by the plaintiff. Accordingly, this Court is of the considered opinion that no substantial questions of law involved in this appeal.



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10. In view of above, this Second Appeal is dismissed and the judgment and decree dated 09.09.2021 made in AS.No.21 of 2020 passed by the III Additional District and Sessions Judge, Erode at Gobichettipalayam confirming the judgment and decree dated 21.02.2020 passed in OS.No.190 of 2014 on the file of the Subordinate Judge, Erode at Gobichettipalayam is confirmed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Index : Yes/No

Internet : Yes/No

Speaking order/Non-speaking order

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To

- 1.The III Additional District and Sessions Judge,
Erode at Gobichettipalayam
- 2.The Subordinate Judge, Erode
at Gobichettipalayam.
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.

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