



S.A.No.874 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.874 of 2023

and

C.M.P.No.27667 of 2023

Mrs.S.Ramani Bai

... Appellant

Vs.

1.Mrs.S.Sakunthala

2.Mrs.S.Uma

3.Mr.S.Suresh

4.Mr.S.Kasthuri

5.Mr.Liyakath Ali

... Respondents



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Prayer:- Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree made in A.S.No.11 of 2017 dated 20.09.2021 on the file of the District Court, Uthagamandalam confirming the judgement and decree in O.S.No.34 of 2013 dated 22.04.2016 on the file of the Sub Court Uthagamandalam.

For Appellants : Mr.B.Kumarasamy

For Respondents : Mr.Sharath Chandran [R.5]

JUDGEMENT

The plaintiff who has unsuccessfully contested the suit for partition and separate possession is the appellant before this Court and given below are the facts of the case in a nutshell with the parties being referred to in the same litigative status as before the Trial Court.



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2. The plaintiff had filed suit O.S.No.34 of 13 on the file of the Sub Court, Uthagamandalam for the above-referred relief.

3. It is the case of the plaintiff that the suit property originally belonged to her father Subha Rao, he having purchased the same under a registered sale deed dated 13.12.1972. It is her case that her father was in possession and enjoyment of the suit property till his death on 13.09.2009. She would submit that she and defendants 2 to 4 are the children of the said Subha Rao and Sakunthala, the 1st defendant who is the wife of the said Subha Rao. She would therefore contend that on the death of Subha Rao intestate, the property devolved on the plaintiff and the defendants 1 to 4 equally. The plaintiff would submit that she was therefore entitled to a 1/4th share under Section 14 of the Hindu Succession Act 1956.



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4. While so, the 5th defendant who is a stranger to the family had come forward with a claim that he is an agreement holder and in possession of the suit property by virtue of a sale agreement. The plaintiff would submit that such an agreement was not in existence and the 5th defendant was not in possession of the suit property.

5. Even assuming without admitting that the 5th defendant had entered into an agreement, the plaintiff is not bound by the agreement executed in favour of the 5th defendant. The plaintiff would submit that she had been taking care of the defendants 1 to 4. However, it is only recently she came to learn that defendants 1 to 4 had turned against her and were desirous of enriching themselves and were therefore colluding with the 5th defendant. The plaintiff would submit that the properties were being enjoyed in common and she is entitled to a 1/5th



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share of the property. Therefore, she had come forward with the suit in question.

6. The defendants 1 to 4 remained ex parte and it was only the 5th defendant who had contested the suit. The 5th defendant would contend that Subha Rao, the owner of the property had entered into an agreement of sale dated 23.10.2008 wherein he agreed to sell the suit property to the 5th defendant for a sale consideration of Rs.25,70,000/- free from all encumbrances and claims. The said Subha Rao had received only a sum of Rs.7,00,000/- on the date of execution of the sale agreement at Mettupalayam. It is also his contention that defendants 1 to 4 had witnessed the execution of this agreement.

7. Under Clause 4 of the sale agreement, the vendor, Subha Rao had undertaken to vacate the tenants in the property and the sale was to be concluded only when the said Subha Rao was in a position to



deliver vacant possession of the suit property to the 5th defendant.

8. On 01.12.2008, the 4th defendant and her husband Mr.C.Sankara Rao had received a further payment of Rs.1,50,000/- from the 5th defendant on behalf of Subha Rao. The receipt of the money had also been endorsed in the reverse side of the sale agreement. The 5th defendant would submit that Subha Rao had also delivered the original sale deed dated 13.12.1972 to him.

9. The 5th defendant would further submit that on 26.05.2009, a supplemental sale agreement to the original sale agreement dated 23.10.2008 was executed by Subha Rao as a vendor and the plaintiff and defendants 2 to 4 as second parties and the 5th defendant as the purchaser. The supplemental sale agreement affirmed and reiterated the agreement of sale dated 23.10.2008. The said supplemental agreement also recites that the defendant had made a further payment of



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Wakf property and that registration could not take place. The said Subha Rao had also called upon the 5th defendant to make further payment of Rs.8,00,000/- as he was in need of money. The sum of Rs.8,00,000/- was also paid by the 5th defendant.

11. The 5th defendant would further submit that the plaintiff is one of the signatories to the supplemental sale agreement and that being the case she is now estopped from feigning ignorance about the agreement of sale entered into between the 5th defendant and Subha Rao. The 5th defendant would submit that the property was being wrongly shown as Wakf property since the same belonged absolutely to Subha Rao.

12. Meanwhile, defendants 1 to 4 insisted upon the 5th defendant paying a further sum of Rs.8,70,000/- constituting the balance sale consideration with some extra amount as exgratia payment as they were



in difficulties. The 5th defendant would submit that he had agreed to pay an additional sum of Rs.30,000/- thereby making the total of Rs.9,00,000/-. Therefore, he would submit that the plaintiff has come to Court with unclean hands and has to be non-suited.

13. The Trial Court had framed 5 issues. Before the Trial Court, the plaintiff had examined herself as P.W.1 and two others as P.W.2 and P.W.3 and marked Ex.A.1 to A.6. On the side of the defendant, the 5th defendant had examined himself as D.W.1 and a staff of the Sub Registrar Office, Mr.Mano Kumar as D.W.2 and marked Ex.P.1 to P.8. The defendants 1 to 4 remained ex parte.

14. Ultimately, the Trial Court had dismissed the suit. Aggrieved by the said dismissal order, the plaintiff had filed A.S.No.11 of 2017, on the file of the District Judge, Udthagamandalam, Nilgiris. The learned appellate Judge had also proceeded to dismiss the appeal and



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confirmed the judgment and decree of the Trial Court. Aggrieved by this, the plaintiff is before this Court.

15. Heard the counsel for the appellant for admission.

16. The admitted case of both parties is that the property belonged to one Subha Rao whose wife is the 1st defendant and the plaintiff and defendants 2 to 4 are his children.

17. The plaintiff's case is that the said Subha Rao had died intestate leaving behind the plaintiff and defendants 1 to 4 and each of them became equally entitled to the suit property.

18. The 5th defendant who had alone contested the case would submit that he had entered into an agreement of sale Ex.B.3 dated 23.10.2008 with the said Subha Rao. Admittedly, the property is the



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self-acquired property of Subha Rao. It is also seen that apart from the agreement of sale Ex.B.3, the parties have entered into a supplemental agreement Ex.B.1 in which the plaintiff is also a party. The plaintiff has suppressed this fact in her pleadings.

19. The 5th defendant had also produced the original sale deed dated 13.12.1972 executed in favour of Subha Rao which has been marked as Ex.B.4. Under Ex.B.5, confirmation and declaration letter dated 04.05.2011, defendants 1 to 4 had confirmed the agreement between the 5th defendant and the said Subha Rao. Under the said letter, defendants 1 to 4 had further declared that the entire sale consideration had been settled by the 5th defendant and the 5th defendant had no further liability towards the plaintiff.

20. The plaintiff had admitted her signature in the supplemental sale agreement, Ex.B.7 dated 26.05.2009,. Further, the plaintiff is



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working in the Collector's Office and by no stretch of imagination can she be lured into affixing her signature to the documents, namely, the sale agreement and the supplemental sale agreement and she cannot now turn around and state that the same is a fabricated and created document. The plaintiff has not been able to substantiate the contention raised by her and there appears to be no Substantial Question of Law involved awaiting the consideration of this Court. Accordingly, the above Second Appeal stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

08.12.2023

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

1. The District Court, Uthagamandalam.
2. The Sub Court Uthagamandalam.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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