



S.A No.928 & 932 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

SA.Nos.928 and 932 of 2019 &
CMP. No.19795, 197377, 20795 and 20798 of 2019

1.SMT.G.Kumari

... Appellant in S.A No.928 & 932 of 2019.

Vs.

1.MR.Arumugam

...Respondent in S.A No. 928 & 932 of 2019.

2.Mr.Kannan

3.Mr.Ponmudi

... Respondents in S.A No. 928 of 2019.

PRAYER in S.A No. 928 of 2019: This Second appeal filed under Section 100 of the Code of Civil Procedure against the impugned Judgment and decree dated 15.03.2019 in A.S No. 17 of 2015 on the file of the Subordinate Judge, Gingee, partly allowing O.S NO.364 of 2005 dated 29.07.2015 on the file of the learned Principal District Munsif Court, Gingee.



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PRAYER in S.A No. 932 of 2019: This Second appeal filed under Section 100 of the Code of Civil Procedure against the impugned Judgment and decree dated 15.03.2019 in A.S No. 22 of 2015 on the file of the Subordinate Judge, Gingee, confirming O.S No.364 of 2005 dated 29.07.2015 on the file of the learned Principal District Munsif Court, Gingee.

For Appellant: M/s. V.Elangovan

For Respondents: Mr.K.Krishnan

COMMON JUDGMENT

The appellant herein is the plaintiff in suit O.S No. 364 of 2005, on the file of the District Munsif Court, Gingee, filed against the respondents for the relief of declaration, permanent injunction and alternative relief of $\frac{3}{4}$ share in the suit property.

2. The brief case of the plaintiff are as follow:

The item 1 to 3 of the suit properties are originally belongs to Ayyakannu Pillai, after his death his son Chinna Pillai enjoyed item 1 to 3 of the suit properties. Out of income derived from the item 1 to 3 of the suit properties the said Chinna Pillai purchased 4th item of the suit property during his life time. Thereafter, in the year 1981 he had released the entire



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suit property in favour of his son Govinda Pillai, with a condition that he shall maintain his mother i.e., first defendant till her death and the Chinna Pillai died. Thereafter the said Govinda Pillai married and died leaving his wife/plaintiff and first defendant as a legal heir. After the death of the said Govinda Pillai the 1st defendant released her right over the suit property in favour of the plaintiff and the plaintiff was in possession and enjoyment of the suit property. While being so, in the year 1997 the 1st defendant with the advice of his brother 2nd defendant attempted to disturb the peaceful possession of the plaintiff in the suit property. Hence the plaintiff filed suit in O.S No. 220 of 1997 before the District Munsiff, Gingee, for the relief of declaration and injunction. Later it was withdrawn by the plaintiff for the reason that it was defective. Again the plaintiff filed a suit for the relief of declaration of title and in alternative for partition over the property. In the earlier suit there was an interim injunction granted as against the first defendant not to create encumbrance over the property, despite the said order the first defendant created sale deed in the name of the second defendant's, in turn, he sold the same to 3 and 4 defendant. Hence the suit.



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3. The case of the first defendant which adopted by the second defendant are as follows:

The defendant's stated that plaintiff is not a legal heir of the deceased Govida Pillai, the material relationship between Govinda Pillai and the plaintiff ceased at the advent of customary divorce which was held between them in the presence of the villagers. While the said Govinda Pillai was alive he borrowed loans from many people in order to discharge the debt the first defendant sold the property to the second defendant for consideration. Further the first defendant derived her share of the property from her husband along with his son Govinda Pillai, after the death of Govinda Pillai the first defendant become absolute owner of the suit property and as absolute owner she sold item 1 to 3 of the suit property in favour of the second defendant. Hence prayed to dismiss the suit.

4.The case of the third defendant which adopted by fourth defendant are as follows:

The third defendant not denied that the item one to three of the suit properties were purchased by Aiyya Kannu and was derived by his son Chinna Pillai, and the said Chinna Pillai purchased the fourth item of the suit property out of income derived from the item 1 to 3 of the suit property.



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Thereafter he died leaving behind Govinda Pillai and the first defendant as legal heirs, both of them enjoyed the suit properties while so, they sold portion of the properties to third parties. Then Govinda Pillai married the plaintiff. There was misunderstanding between the plaintiff and the Govinda Pillai and the plaintiff left the matrimonial home and rupees five thousand was given to her for customary divorce. Thereafter the plaintiff has no right over the properties nor she enjoyed the portion of the property. Hence the first defendant claims right over the suit properties. Further, she stated that in the year 1995 during the life time of Govinda Pilla they had family debt to discharge the same they sold the properties to the first defendant herein. This plaintiff filed O.S No. 220 of 1997 for permanent injunction subsequently said suit was withdrawn by her. The first defendant sold the properties to the second defendant and same was known to the plaintiff but she has not raised any objection. Therefore the suit as such is not maintainable.

5. After considering the oral and documentary evidence the Trial Court concluded that the first defendant not denied the oral relinquishment claimed by the plaintiff thereby concluded that first defendant already released her right over the suit property hence the



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plaintiff is entitled for all the relief as she prayed for accordingly suit was decreed in favour of the plaintiff.

6. Aggrieved and dissatisfied over the same the third and fourth defendants preferred an appeal before the Subordinate Court, Gingee, it independently analysed the facts and evidence held that there is no dispute with regard to fourth item of the suit property, only in respect of item 1 to 3 of the suit property dispute is between the parties. since it is agricultural land as a legal heir of Govinda Pilla plaintiff is entitled for $\frac{1}{4}$ share in the suit property for the reason that remaining $\frac{3}{4}$ share goes to the first defendant as she is legal heir of her son Govinda Pillaai and her husband Chinna Pillai and also not accepted the alleged oral relinquishment made by the first defendant holding that the first plaintiff not proved the said relinquishment made by the first defendant thereby both the appeals allowed partly by modifying the decree passed in O.S No.364 of 2005 and declared plaintiff entitled to $\frac{1}{4}$ share in item 1 to 3 of the suit property accordingly preliminary decree was passed. In respect of 4th item of the suit property plaintiff declared as absolute owner of the property and also granted injunction to the defendant not to interfere with the peaceful possession and enjoyment of the fourth item of the suit property by the plaintiff.



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Accordingly both the appeal was partly allowed.

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7. Challenging the same the plaintiff preferred this second appeal this Court admitted the second appeal with the following questions of law:

1. Whether the lower appellate Court was right in granting a decree for partition and separate possession of the plaintiff's 1/4th share, in the light of the fact that the nature of the properties in the hands of Chinna Pillai is admitted?

8. Admittedly item No.1,2 and 3 of the suit properties were purchased by Aiyyakannu Pillai through sale deed which was marked as Ex.A1. After the death of the Aiyyakannu Pillai his son Chinna Pillai possessed and enjoyed the suit property. Thereafter, out of income derived from the above said properties fourth item of the suit property was purchased by him. As per the plaintiff contention the said Chinna Pillai have only one son namely Govinda Pillai. The said Govinda Pillai married the plaintiff. The first defendant herein is the mother of the said Govinda Pillai. During the life time of the plaintiff's father-in-law(Chinna Pillai) he along with his wife(first defendant) orally relinquished all the right over the property in favour of their son Govinda Pillai. But there is no evidence on the side of the plaintiff to prove that Chinna Pillai and his wife(first



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defendant) orally relinquished their right over the suit property in favour of the Govinda Pillai. However the Trial court admitted the oral relinquishment since the first defendant has not denied this fact thereby concluded that alleged oral relinquishment was amount to be proved. Accordingly entire share was granted in favour of the plaintiff, but the lower appellate Court set aside the findings of the Trial Court which needs no interference. Hence on the death of Chinna Pillai share in item 1 to 4 of the suit properties goes to his wife/first defendant. Admittedly plaintiff is the wife of the said Govinda Pillai(son of D1)the first defendant(mother in law) contending that during the life time of the Govinda Pillai the plaintiff had no cordial relationship with her husband Govinda Pillai and she left the matrimonial home. Thereafter Panchayat was held customary divorce was performed the plaintiff receiving permanent alimony from the first defendant's family. Thereby the plaintiff has no right to claim share in entire property. Admittedly customary divorce is not acceptable one and there is no proof that the Govinda Pillai and the plaintiff obtained valid decree through court of law. Hence the plaintiff is wife of the Govind Pillai she is entitled to $\frac{1}{4}$ share in the suit property remaining $\frac{3}{4}$ share goes to the first defendant. Thereby she is entitled for $\frac{3}{4}$ share and the same was rightly appreciated



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by first appellate Court which needs no interference. While the $\frac{3}{4}$ share in the item 1 to 3 of the suit properties are belongs to the first defendant but in the fourth item of the suit property entirely belongs to the plaintiff for the reason that she put up construction and enjoyed the same. The first defendant mother of the Govinda Piallai and mother-in-law for the plaintiff not raised any objection with regard to fourth item of the suit property belongs to the plaintiff.

9. On seeing the facts, it reveals that item No. 1 to 4 of the suit properties are belongs to the Chinna Pillai after his death it devolved upon his son(Govinda Pillai) and his wife(firs defendant). Eventhough plaintiff is in possession fourth item of the suit property the first defendant entitled to $\frac{1}{4}$ share in that property. Therefore the findings of the Court below that the plaintiff is entitled to $\frac{1}{4}$ share in the suit property is valid needs no interference.

10. It is admitted fact that during the pendency of the proceedings second and third defendants purchased the suit property from the first defendant entirely. Subsequently, he transferred the said property to the fourth defendant. Now all the second, third and fourth defendants are respondents herein. Admittedly purchaser defendants are not entitled to



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have share share which allotted to the plaintiff's instead they are entitled to have share which is allotted to the first defendant. As discussed above, the first defendant entitled to $\frac{3}{4}$ share in item 1, 2 and 3 of the property so by way of equity $\frac{3}{4}$ share may allot to the defendants 3 and 4. In item No. 4 of the suit property the first defendant was died leaving behind the plaintiff daughter in law as a legal heir she is entitled to item 4 of the suit property. Therefore, $\frac{3}{4}$ share in item No.1, 2 and 3 of the suit properties shall goes to the third and fourth defendants. During final decree proceedings $\frac{3}{4}$ share may allot to them by equity. Accordingly question of law is answered. The findings of the Trial Court is set aside and the findings of the lower appellate Court is confirmed.

11. The suit is decreed as follows:

i. In respect of Item No. 1, 2 and 3 of the suit properties the plaintiff is entitled to $\frac{1}{4}$ share, and the $\frac{3}{4}$ share is allotted to the first defendant since she sold the property to the second, third and fourth defendants hence they are entitled to $\frac{3}{4}$ share. During the final decree proceedings under equity $\frac{3}{4}$ share may allot to the third and fourth defendants



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ii. In respect of 4th item of the suit property the plaintiff is entitled to entire share.

12. In result, the second appeal are dismissed. No merits. There shall be no order as to costs. Consequently connected Miscellaneous petitions are closed.

27.01.2023

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To

1. The Sub Court, Gingee.
2. The Principal District Court, Gingee.
3. The Section Officer,
V.R Section.



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T.V.THAMILSELVI,J.

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