



AS.No.75 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.12.2023

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

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Jagadesan

... Appellant

Vs.

1.Minor Gopinath
rep. by Guardian Ad Litem Mother
2.Kavitha
3.V.R.Vediyappan

...Respondents

PRAYER: Appeal Suit is filed under Section 96 r/w Order 41 rule 1 of CPC against the judgment and decree in OS.No.70 of 2010 on the file of the Additional District Judge, Dharmapuri dated 07.08.2015.

For Appellant : M/s.V.Srimathi

For Respondents : No appearance

JUDGMENT

This Appeal suit is filed against the judgment and decree passed in OS.No.70 of 2010 on the file of the Additional District Judge, Dharmapuri



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dated 07.08.2015, thereby dismissed the suit filed for partition, separate possession, permanent injunction and declaration.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The plaintiff is the appellant and the defendants are the respondents. The case of the plaintiff is that the suit property originally belonged to his father and it is an ancestral property. His father had two sons, the plaintiff and one, Kalaiarasan. His father died in the year 1980 leaving behind two sons to succeed his estate. The suit property was in common enjoyment of the plaintiff and his brother. During the year 2009, his brother Kalaiarasan died leaving behind him, his wife and his son i.e. defendants 2 & 1 respectively. The plaintiff and defendants 1 & 2 are having equal half undivided share in the suit property. Insofar as the property comprised in survey No.217/2B, it was already acquired for laying road by the panchayat. After demise of the said Kalaiarasan, the second defendant had sold some of the properties in favour of the third defendant. Hence the suit for partition and also



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challenging the sale deeds executed by the second defendant in favour of the third defendant as null and void and for permanent injunction.

4. Resisting the same, defendants 1 & 2 filed written statement stating that in the year 1993, there was oral partition between the family members in respect of the first item of the suit property comprised in survey No.217/2A and the second item of the suit property comprised in survey No.224/1 to a total extent of 63 cents, they were divided into half share. Likewise, in respect of the property comprised in survey No.224/1 admeasuring 67 cents and property comprised in survey No.224/5 as well as the land comprised in survey No.225/8A were allotted in favour of the plaintiff. Accordingly, they enjoyed their respective share and doing agriculture. Thereafter, the husband of the second defendant and the plaintiff were living there. After marriage of the second defendant, there was dispute between the plaintiff and the husband of the second defendant. Thereafter, the husband of the second defendant vacated the house and constructed separate house in item No.1 of the suit property. He also dug up well and obtained service connection in his name. The house was also assessed to house tax. After demise of her husband, the second defendant



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along with the first defendant are in possession and enjoyment of the same. In order to maintain the first defendant and also for his school education expenses, the second defendant sold out a portion of the property admeasuring 7 cents in favour of the third defendant in the item 1 of the suit property. Since the second defendant is a widow and helpless, the plaintiff came forward with the present suit with false allegations. As such, the suit is also bad for non joinder of necessary parties since the daughters of her father-in-law were not impleaded as party in the suit for partition.

5. On hearing the rival pleadings, the learned trial Judge framed the following issues for determination of the suit :-

- (i) Whether the plaintiff is entitled to get the partition decree as prayed for?
- (ii) Whether the plaintiff is entitled to get the permanent injunction against the defendants as prayed for?
- (iii) Whether the plaintiff is entitled to Declaratory decree in respect of sale deed dated 14.10.2010 as null and void?
- (iv) Whether the suit property has already been oral partitioned?



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- (v) Whether the suit is bad for non-joinder of necessary parties?
- (vi) Whether the suit is hit by partial partition?
- (vii) To what other relief the plaintiff is entitled?

6. In support of the plaintiff's case, P.W.1 & P.W.2 were examined and two documents were marked as Ex.A.1 to Ex.A.2. On the side of the defendants, D.W.1 to D.W.5 were examined and Ex.B.1 to Ex.B.7 were marked. 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 by the same, the appellant has preferred this appeal suit.

7. The learned counsel for the plaintiff would submit that the property comprised in survey No.217/2B situated at Parayapatti Village was already acquired for laying road by the panchayat, that too while his brother was alive. Therefore, the said property is no way connected with the properties mentioned in the suit. There was no partition by metes and bounds and even according to the second defendant, there was tentative arrangement. While being so, the



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second defendant unilaterally dealt with the partition of the property in favour of the third defendant. Knowing these facts, he purchased the portion of the property which was jointly owned by the plaintiff and the second defendant. Therefore, the third defendant cannot claim to be a bonafide purchaser for valid consideration. There was no oral partition between the family members in respect of the suit properties. Further, the revenue records are not conclusive piece of evidence of division and even otherwise, defendants 1 & 2 are unable to indicate the exact date of the alleged division amongst the brothers. She further submitted that the other daughters are not necessary parties to the suit since already they were settled with sridhana articles and they had no claim over the suit property.

8. Heard, M/s.V.Srimathi, the learned counsel appearing for the plaintiff.

9. The suit properties were owned by the father of the plaintiff. He died in the year 1980. He had two sons. After his demise, his two sons became the absolute owners of the suit properties. The specific stand of the second



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defendant is that already the suit properties were partitioned while her husband was alive, that too before their marriage. It is also evident from PW2, who deposed that already there was oral partition between the plaintiff and his deceased brother in the year 1993 itself. Accordingly, they were allotted their respective shares and they were in possession and enjoyment of their respective lands.

10. After acquisition of the land for laying road by panchayat, the value of the land increased and as such plaintiff filed suit for partition in respect of the share which was already allotted in favour of the second defendant's husband. In fact, after partition, the husband of the second defendant dug up a well in the land comprised in survey No.224/1. For the well, with the consent of the plaintiff, electricity connection was given. It is also evident from DW2. After the oral partition, separate patta was issued and all the revenue records were mutated accordingly in respect of their respective shares. After partition, the husband of the second defendant availed loan by mortgaging his share of the property with Chinnankuppam Primary Agricultural Cooperative Bank. As per the partition, the second defendant sold out a portion of the property in



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favour of the third defendant. Therefore, the trial court rightly dismissed the suit and this Court finds no infirmity or illegality in the judgment and decree passed by the trial court.

11. Accordingly, this appeal suit is dismissed and the judgment and decree passed in OS.No.70 of 2010 on the file of the Additional District Judge, Dharmapuri dated 07.08.2015 is confirmed. There shall be no order as to costs.

07.12.2023

Index : Yes / No
Internet : Yes / No
Speaking order /Non-speaking order
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To

- 1.The Additional District Judge,
Dharmapuri
- 2.Section Officer,
V.R.Section,
High Court of Madras



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G.K.ILANTHIRAIYAN, J.

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