



S.A.No.1057 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2023

CORAM

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

S.A.No.1057 of 2022
and C.M.P.No.22702 of 2022

1. Vanitha
2. Gokulakrishnan

.. Appellants

Vs.

1. Pappammal
2. Ranjitham
3. Mayavathi
4. Sumathi

.. Respondents

Prayer:- Second Appeal filed under Section 100 of CPC to set aside the Decree and Judgment of the first Appellate Court, passed in A.S.No.80 of 2017 dated 11.02.2019 on the file of Principal Sub Court, Cuddalore confirming the Decree and Judgment passed in O.S.No.305 of 2013 on the file of Principal District Munsif, Cuddalore dated 17.07.2017.

For Appellants : Mr.N.R.Rajagopalan

JUDGMENT

This second appeal has been filed as against the Decree and Judgment of the first Appellate Court, passed in A.S.No.80 of 2017 dated 11.02.2019 on the file of Principal Sub Court, Cuddalore, confirming the Decree and Judgment passed in O.S.No.305 of 2013 on the file of Principal District Munsif, Cuddalore



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dated 17.07.2017, thereby decreed the suit.

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2. The appellants are the defendants in the suit in O.S.No.305 of 2013 filed by the respondents for partition. The case of the respondents is that the plaintiffs and the defendants are legal heirs of the deceased Ramasamy, who died intestate. The suit properties are ancestral properties of the deceased Ramasamy, who inherited the same from his father. Therefore, they are entitled to have 1/5th share each.

3. Resisting the same, the appellants filed their written statement stating that the suit properties are self acquired properties of the said Ramasamy. Item No.2 of the suit property was settled in favour of the second appellant herein by the said Ramasamy out of love and affection. From the date of the settlement, the second appellant is in possession and enjoyment of the Item No.2 of the suit schedule property. Therefore, the said property cannot be subjected for any partition, since it is the absolute property of the second appellant herein. Another property was omitted by the respondents in the partition suit. Therefore, they have not approached the Court with clean hands.



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4. On basis of the pleadings, the Trial Court framed issues as follows:-

“ a) Whether the suit properties are the ancestral properties of the deceased Ramasamy?

b) Whether the settlement deed in favour of the 2nd defendant with respect to the 2nd item of the suit properties is true, valid, acted upon and binding upon the Plaintiffs?

c) Whether the Plaintiffs are entitled to 4/5 th share in the suit properties?

d) To what other reliefs the plaintiffs entitled to?”

The Trial Court framed the Additional issues as follows:-

“a) Whether the suit is bad for partial partition?

b) Whether the property mentioned in the Additional Written Statement was the property of plaintiff's husband?

c) PW1 was examined and Ex A1 to Ex A3 were marked on the side of plaintiffs. DW1 was examined and Ex.B1 to Ex.B6 were marked on the side of defendants.”

5. On the side of the respondents, they had examined P.W.1 and marked Exs.A1 to 3. On the side of the appellants, they had examined D.W.1 and marked Exs.B1 to 6. On a perusal of oral and documentary evidences, the Trial Court decreed the suit and aggrieved by the same, the appellants preferred an appeal suit in A.S.No.80 of 2017, on the file of the Principal Sub Court, Cuddalore and the same was also dismissed, confirming the Judgment and Decree passed by the Trial Court. Hence, this appeal.



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6. The appellants raised the following substantial questions of law,

“1. Whether the Courts below are justified in holding that the suit properties are joint family property of Ramasamy after partition between member?

2. Whether the Courts below are right in said properties among the will become individual property of said Ramasamy after partition?

3. Whether the respondents are not bound by Ex.B3 settlement document which is disputed or contradicted by the respondents?

4. Whether the findings of the Courts below that the plaintiff need not pray for cancellation of settlement Deed Ex.B3 as it being a void document is correct especially when the document remained in challenged even after filing of written statement about its existence?

5. Whether the Courts below are right in decree the suit for partition when the plaintiff himself admitted that all the properties are not included in the suit for partition?

6. Whether judgment and decree is liable to be set aside since it is only partial partition and not all the properties are included?”

7. The learned counsel for the appellants would submit that Exs.B3 to B6

revealed that the said Ramasamy sold out the properties as his self acquired property. Therefore, the suit properties are not ancestral properties and cannot be subjected for any partition. Item No.2 of the suit schedule property was already settled in favour of the second appellant and as such it cannot be subjected for



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partition. He further submitted that the settlement deed was marked as Ex.B3 and it was not contradicted by the respondents.

8. A perusal of the records revealed that admittedly the appellants and the respondents are legal heirs of one Ramasamy. Item No.2 of the suit schedule property, was settled in favour of the second appellant by Ex.B3. A perusal of Ex.B3 revealed that the said Ramasamy categorically stated that the properties are ancestral properties and he obtained the same by way of oral partition. Therefore, the recitals of the settlement deed is very clear that the suit properties are ancestral properties. In fact, all the revenue records stands in the name of the said Ramasamy and he was shown as Kartha of his joint family. Therefore, the said Ramasamy cannot execute any settlement deed in favour of any person except on discharging any duties which includes the fulfillment of anti-nuptial requirements of family members. Therefore, the said Ramasamy had no right to execute any settlement deed in favour of his grand son namely the second appellant herein. Hence, it is an invalid document and as such there need not be any relief sought for declaration declaring as null and void. Therefore, the both the Courts below rightly decreed the suit for partition and allotted 4/5th share in favour of the respondents herein and this Court finds no substantial questions of



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law involved in this case and the second appeal is liable to be dismissed.

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9. Accordingly, this Second Appeal is dismissed. Consequently, connected

Miscellaneous petition is closed. No costs.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.

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To

1. The Principal Sub Court, Cuddalore.
2. The Principal District Munsif, Cuddalore.

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