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S.A.No.892 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.892 of 2023
and
C.M.P.No.28515 of 2023

Mr.P.Babu

... Appellant

Vs.

Mr.M.Dharman (died)

1.Mr.D.Saravanan

2.Mr.D.Dhinakar

3.Mr.D.Murthy

... Respondents

Prayer:- Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree dated 13.08.2021 made in A.S.No.37/2019 on the file of Sub Court, Arakonam confirming the judgement and decree dated 28.06.2018 made in O.S.No.110/2011 on the file of the District Munsif Court, Arakonam.

For Appellant : Mr.T.V.Badrinarayanan

For Respondents : M/s.Ralph V.Manohar [R.1 to R.3]



JUDGEMENT

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The defendant in the suit O.S.No.110 of 2011 on the file of the District Munsif, Arakonam is the appellant before this Court. The facts are briefly set out herein below with the parties being referred to in the same ranking as before the Trial Court.

2. The plaintiffs had filed the above-referred suit for a partition and separate possession of their half share in the suit schedule property.

3. It is the case of the plaintiffs that the defendant is the brother of the 1st plaintiff's wife Jyothi, who is the mother of plaintiffs 2 to 4. The plaintiffs would contend that the suit property comprised in Survey No.224 measuring an extent of 1200 sq.ft. originally belonged to one P.Kamalammal, the mother of the deceased Jyothi and the defendant. She had purchased the same under a registered sale deed dated 25.09.1972 out of her own savings and funds. The said Kamalammal had 4 children namely, Shanthammal, Jyothi (wife of the 1st plaintiff



and mother of plaintiffs 2 to 4), Padmavathy and Babu (defendant).

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4. The 2nd daughter, Jyothi was married to the 1st plaintiff on 07.09.1975. The other two daughters Shanthammal and Padmavathy died intestate without any issues. The said Kamalammal died intestate in the year 1987 leaving behind the defendant and the 1st plaintiff's wife Jyothi as her legal heirs to succeed to her interest. Therefore, they were both entitled to an equal share in the suit schedule property.

5. While so, on 14.11.2008, the said Jyothi passed away leaving behind her surviving the plaintiffs to succeed to her half share in the suit schedule property.

6. After the death of the said Jyothi, the 1st plaintiff had requested the defendant to partition the properties belonging to Kamalammal and this request was not considered by the defendant. A legal notice dated 10.05.2011 was also issued by the plaintiffs calling upon the defendant to partition the suit property and allot their half



share. The defendant had acknowledged the receipt of the notice and issued a reply dated 16.05.2011 alleging that the said Jyothi had no right to the suit property and refused to partition the same. Therefore, the plaintiffs had come forward with the suit in question.

7. The defendant had filed a written statement inter alia admitting the relationship between the parties. He would submit that his parents were very poor and they had no property or savings except the suit schedule property.

8. The defendant would submit that he had spent money for the marriage of his sisters which included Jyothi. He had mortgaged the suit property with one Jothy daughter of Sadagopan and borrowed a sum of Rs.7,500/-. This amount was used for the marriage expenses of the said Jyothi and the 1st plaintiff. He would also submit that he had given 16 sovereigns of jewels and vessels to the said Jyothi apart from bearing the marriage expenses of the other sisters. The defendant would submit that he had redeemed the mortgaged property and there has



been no contribution from the plaintiffs or the other sisters.

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9. The defendant would further submit that his mother Kamalammal died on 01.11.1988 and after her death, the 1st plaintiff's wife, Jyothi had never claimed any right in the suit schedule property till her death. This was on account of the fact that she was very much aware that her brother, the defendant had spent a considerable amount for her marriage. He would also submit that all the sisters had agreed and given their respective rights in the property in favour of the defendant. Therefore, they have not made any claim in respect of the suit schedule properties. Therefore, it is the contention of the defendant that the plaintiffs cannot claim any right to the suit property. It is also the case of the defendant that the medical and funeral expenses of the parents and sister, Shantha @ Sakkubai had been incurred only by the defendant.

10. He would further submit that the succession had opened in the year 1988 when Kamalammal died and after her death, the said



Jyothi had never requested for partition during her lifetime i.e. till 2006. Now, the plaintiffs are claiming partition after 23 years which is beyond the period of limitation. Therefore, the defendant seeks to have the suit dismissed.

11. The Trial Court had framed the following issues and additional issue :-

1. Whether the plaintiff is entitled to half share in the suit property?

2. whether the suit is hit by limitation?

Additional issue :-

Whether the contention of the defendant that the plaintiffs have under valued the suit claim and Court fee paid by the plaintiffs is not correct is true?

12. The 1st plaintiff had examined himself as P.W.1 and marked Ex.A.1 to A.6. The defendant had examined himself as D.W.1 and another witness as D.W.2 and marked Ex.B.1 to B.8.



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13. The learned Trial Judge on considering the evidence had come to the conclusion that the suit is not hit by limitation and that the plaintiffs are entitled to a decree of partition in the suit property. This judgment and decree was taken up on appeal by the defendant to the Sub Court, Arakonam in A.S.No.37 of 2019. The learned Appellate Judge had also concurred with the findings of the Trial Court and dismissed the appeal. Aggrieved by this concurrent judgment and decree, the defendant is before this Court.

14. Heard the learned counsels on either side.

15. It is an admitted fact that the property in question belonged to Kamalammal, the mother of the 1st plaintiff and the deceased Jyothi. The said Kamalammal had died intestate and on her death, her legal heirs, namely, the 1st plaintiff's wife Jyothi and the defendant Babu and



two other daughters namely, Sanathammal and Padmavaty had inherited the said property. The said Santhaamal and Padmavathi had passed away and they had died without leaving any legal representatives.

16. The defendant had not disputed the above facts, however, it is his contention that his sisters and mother were taken care of by him and further it is his case that he had spent huge amounts to get his sisters married of which also included the 1st plaintiff's wife, Jyothi.

17. It is also his case that taking into account these factors, especially the payment of all the hand loans by the defendant, all the sisters had agreed to relinquish their right in favour of the brother, the defendant herein. However, there is no document to show this release/relinquishment. Without the defendant proving the relinquishment since the property belonged to Kamalammal who died intestate, the property would automatically fall to the share of all the



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children of Kamalammal. Two of the daughters of Kamalammal, namely, Santhammal and Padmavathy had passed away intestate issue less and their respective shares would also become the property of the plaintiffs and the defendant.

18. The defendant has not made out any case nor has been able to put forward a Substantial Question of Law. Accordingly, the Second Appeal stands dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

15.12.2023

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

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



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P.T.ASHA, J.,

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