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S.A.Nos.472 & 473 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.Nos.472 & 473 of 2017

1.K.Veerabadran
2.K.Balaraman

...Appellants in both S.A.'s

Vs.

1.K.Venugopal
2.Mohammed Yacob
Deivanayaki (Since Died)
3.Ambujammal
4.Devika

...Respondents in S.A.No.472/2017

Deivanayaki (Since Died)
1.Ambujammal
2. Devika

3.K.Venugopal
4.Mohammed Yacob

...Respondents in S.A.No.473/2017

PRAYER in S.A.No.472 of 2017 Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 30.11.2015 made in A.S.No.38 of 2011 on the file of the Additional District & Session Court, Kancheepuram District, Chengalpattu reversing the judgment and the decree dated 25.04.2011 made in O.S.No.159 of 2000 on the file of Principal Sub-Court, Chengalpattu.



S.A.Nos.472 & 473 of 2017

PRAYER in S.A.No.473 of 2017 Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 30.11.2015 made in A.S.No.44 of 2011 on the file of the Additional District & Session Court, Kancheepuram District, Chengalpattu reversing the judgment and the decree dated 25.04.2011 made in O.S.No.159 of 2000 on the file of Principal Sub-Court, Chengalpattu.

S.A.No.472 of 2017

For Appellants	: Mr.M.S.Subramanian
For Respondent 1	: Mr.S.Ruban Prabu
For Respondent 2	: Died
For Respondent 3 & 4	: Mr.K.Krishnaswamy for M/s.A.C.Kumaragurubaran

S.A.No.473 of 2017

For Appellants	: Mr.M.S.Subramanian
For Respondent 1 & 2	: Mr.K.Krishnaswamy for M/s.A.C.Kumaragurubaran
For Respondent 3	: Mr.S.Ruban Prabu
For Respondent 4	: Died

COMMON J U D G M E N T

The first and second defendants in a suit for partition filed by the third respondent are the appellants. The third respondent filed a suit for partition claiming 1/3 share in the suit properties. The said suit was dismissed by the



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Trial Court. Aggrieved by the same, the first and second respondents, deceased Deivanayaki preferred two separate first appeals in A.S.Nos.38 of 2011 and 44 of 2011. The First Appellate Court reversed the findings of the Trial Court and granted 7/36 share in favour of the appellants and the third respondent, 15/36 share in favour of the first and second respondents, deceased Deivanayaki. Aggrieved by the said judgment and decree, the first and second defendants in the suit have come by way of these second appeals.

2. For the sake of convenience, the parties are referred as per their ranking in S.A.No.473 of 2017.

3. According to the third respondent/plaintiff, the suit properties are joint family properties of the parties, who all are children of one Kishtappa Naicker. The father of the parties, namely Kishtappa Naicker died on 25.12.1991. He had two wives Rajammal and the fourth defendant in the suit namely Deivanayaki. The third respondent/plaintiff is one of the sons of Kishtappa Naicker through his first wife Rajammal, the appellants herein are other two sons of Kishtappa Naicker. The first and second respondents are daughters of Kishtappa Naicker through his second wife Deivanayaki. The



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said Deivanayaki, who was arrayed as fourth defendant in the suit died, pending the first appeal. It was further averred by the third respondent that after the death of Kishtappa Naicker as a coparcener along with appellants, the third respondent was entitled to 1/3 share in the suit properties. As there was no partition in the family after death of Kishtappa Naicker, the third respondent was constrained to file the suit claiming his 1/3 share in the suit properties.

4. The appellants herein filed a written statement and resisted the suit mainly on the ground that already there was a partition in the family involving appellants and third respondent as evidenced by registered Partition Deed dated 03.06.1999 and hence, the suit claim was not maintainable. In the written statement, the appellants also had given the details of the properties allotted to the appellants and the third respondent/plaintiff. Pending the suit, the deceased second wife of Kishtappa Naicker, the first and second respondents filed an application for impleading in I.A.No.274 of 2007 and got themselves impleaded as defendants 4 to 6. Thereafter, the appellants herein preferred an additional written statement raising a plea that in August 1993, there was a family arrangement in the family in the presence of respectable



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Panchayatdars, a sum of Rs.10,000, Rs.25,000 and Rs.25,000 were paid to the defendants 4 to 6. It was also averred by the appellants in the additional written statement that the defendants 4 to 6 executed an affidavit before the Notary Public affirming the family arrangement. It was also averred that the defendants 4 to 6 sold the properties given to them under family arrangement to a third party. On these pleadings, the appellants sought for dismissal of the suit.

5. Before the Trial Court, the third respondent was examined as P.W.1 and two other witnesses were examined on his behalf as P.W.2 and P.W.3. On behalf of third respondent/plaintiff, 26 documents were marked as Ex.A1 to Ex.A26. The second appellant was examined as D.W.1 and alienee of portion of the suit properties was examined as D.W.2. The sixth defendant in the suit was examined as D.W.3 and Mr.O.M.Balakrishnan was examined as D.W.4. On behalf of the defendants in the suit, 22 documents were marked as Ex.B1 to Ex.B22.

6. The Trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the claim of defendants 4 to 6



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had been already settled by the family arrangement entered into in the year 1993 and therefore, they were estopped from claiming partition, consequently dismissed the suit. Aggrieved by the same, the third respondent herein/plaintiff, the first and second respondents preferred the first appeals in A.S.Nos.38 of 2011 and 44 of 2011 on the file of Additional District and Session Court, Kancheepuram District, Chelgalpattu. The First Appellate Court, on re-appreciation of evidence available on record, came to the conclusion that family arrangement pleaded by the appellants was not proved and as a necessary consequence the registered partition entered between the appellants and the third respondent is not valid. Therefore, the First Appellate Court allowed the appeals and dismissed the suit. Aggrieved by the said judgment, the appellants are before this Court by way of these second appeals.

7. This Court at the time of admitting the second appeals formulated the following substantial questions of law vide order dated 23.08.2017, which read as follows;

"1. Whether the Appellate Court is right in reversing the judgment and decree of the Trial Court by framing a point for consideration as to the genuineness and validity of the partition deed, dated 03.06.1999 to which the plaintiff was a signatory



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and give a finding, without there being a pleading regarding the validity of the partition deed, dated 03.06.1999 and there being no issue in respect of the same by the Trial Court?

2. Whether the lower Appellate Court gone wrong in holding that for want of stamp duty, it is not valid and inadmissible, when Exhibit B-27, an affidavit signed by the defendants 5 and 6 and affixture of left thumb impression by the 4th defendant and the same having been attested by a Notary and admitted by D.W.3 (Devika/6th defendant)?"

8. The learned counsel appearing for the appellants elaborated the substantial questions of law by stating that no disposition of properties had taken place under Ex.B27 affidavit signed by the first and second respondents and hence, the First Appellate Court erred in coming to the conclusion that Ex.B27 is invalid for want of registration. The learned counsel further submitted that Ex.B27 is only an affidavit and therefore, the same need not be stamped or registered. The learned counsel further submitted that once plea of family arrangement raised by the appellants is accepted in the light of Ex.B27 affidavit signed by the first and second respondents and their deceased mother, a subsequent Partition Deed entered between the appellants and third defendant would reinforce the family arrangement. The learned counsel further



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submitted that the Partition Deed Ex.B5 dated 03.06.1999, was not challenged by the third respondent/plaintiff by praying to set aside the document or to declare the document as null and void. In such circumstances, the suit filed by the third respondent is not at all maintainable.

9. The main defence raised by the appellants in the suit for partition is family arrangement in the year 1993 and subsequent registered partition dated 03.06.1999. The registered partition is only among the male members of the family and the female members of the family were not made as parties to the said document. As far as the family arrangement pleaded by the appellants is concerned, the female members of the family said to have given up their right by receiving some amount and some of the properties allegedly allotted to them under family arrangement. Though the appellants in their pleadings had stated that family arrangement was entered into in the presence of one Sri Nagooran, President of Panchayat and one Sri Arumugham of Nagankolai, hemlet of Kuduperambakkam, those Panchayadars were not examined by the appellants to prove the alleged family arrangement. The only document filed by the appellants to prove the alleged family arrangement is Ex.B27, notarized affidavit said to have been signed by the first and second respondents and their



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deceased mother.

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10. The First Appellate Court, on consideration of wordings in Ex.B27 came to the conclusion that it requires registration and therefore, inadmissible in evidence. Ex.B27 is an affidavit said to have been signed by the first and second respondents and their deceased mother. Ex.B27 is dated 05.08.1993, a reading of said document would suggest that on the very same date, the appellants and the third respondent paid some amount by way of Demand Draft to the first and second respondents and their mother and also delivered possession of certain properties to them. After acknowledging delivery of properties and payment of amount, the first and second respondents and their mother agreed not to claim any right in the properties stand in the name of appellants and the third respondent. A reading of Ex.B27 clearly indicates that disposition of properties had taken place instantly under the document. Therefore, though it was styled as affidavit, the said document requires compulsory registration. The findings rendered by the First Appellate Court that Ex.B27 could not be admitted in evidence to prove family arrangement is based on sound reasons. The wording in the family arrangement clearly indicates that it is not recording any past transaction and transfer of properties



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had taken place under the document. Therefore, the conclusion reached by the First Appellate Court that Ex.B27 is inadmissible for want of registration requires no interference by this Court.

11. The appellants herein have come to the Court with specific plea that there was a family arrangement involving female members of the family in the year 1993, in the presence of certain Mediators. However, for the reasons best known to them, the appellants failed to examine the Mediators in whose presence the alleged family arrangement had taken place. Therefore, the appellants miserably failed to prove the plea of family arrangement in the year 1993, involving female members of the family. Admittedly, the female heirs of the family namely the first and second respondents and their mother are Class I heirs of deceased Kishtappa Naicker. Therefore, any partition of the properties left behind by Kishtappa Naicker shall be among all the Class I heirs. Ex.B5 registered partition is only among the sons of Kishtappa Naicker without involving female heirs namely his wife and two daughters. In such circumstances, the First Appellate Court correctly came to the conclusion that Ex.B5 Partition Deed is not a valid document and the same will not prevent the first and second respondents from claiming any share in the suit properties.



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Therefore, both Ex.B27 and Ex.B5 pressed into into service by the appellants are not helpful to them to resist the suit for partition successfully.

12. In view of the discussions made earlier, both the questions of law framed at the time of admission are answered against the appellants and hence, the second appeals stand dismissed

a) by affirming the judgment and decree dated 30.11.2015 made in A.S.Nos.38 & 44 of 2011 on the file of the Additional District & Session Court, Kancheepuram District, Chengalpattu, reversing the judgment and the decree dated 25.04.2011 made in O.S.No.159 of 2000 on the file of Principal Sub-Court, Chengalpattu.

b) In the above facts and circumstances of the case, there will be no order as to costs.

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Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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S.SOUNTHAR, J.

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To

1. The Additional District & Session Court, Kancheepuram District, Chengalpattu
2. The Principal Sub-Court, Chengalpattu.

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