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A.S.No.681 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

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1.C.Murugesan
2.C.Shanmugam
3.G.Gopal
4.S.Goutham
5.M.Prakash
6.M.Mathizhagan

...Appellants

Vs.

1.K.Eswari
2.V.Alamelu
3.C.Malar
4.C.Mallika

...Respondent

PRAYER: First Appeal filed under Section 96 of the Civil Procedure Code, against the judgment and preliminary decree dated 10.03.2017 in O.S.No.170 of 2013 on the file of the I Additional District Court, Salem.

For Appellants : M/s..D.Shivakumaran

For Respondent 1 : Mr.P.Mathivanan
For Respondent 2 : Mr.G.Pugazhenth
for M/s.A.Nagarathinan
For Respondent 3 &4 : No appearance



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JUDGEMENT

The defendants 1, 2, 5, 7 to 9 are the appellants. The 1st respondent filed a suit against appellants and other respondents seeking partition of 1/5th share in the suit properties. She also sought for declaration that settlement deeds executed by her mother Sengampillaiammal dated 11.02.2013 were invalid documents and injunction restraining the appellants and other respondents from alienating the suit properties. The Trial Court granted a declaration that settlement deeds executed by Sengampillaiammal dated 11.02.2013 were not valid documents and granted preliminary decree for partition of 1st respondent's 1/5th share in both the items of the suit properties. The Trial Court also granted interim injunction restraining the appellants and other respondents from alienating the suit properties. Aggrieved by the same, the appellants have come before this Court by way of first appeal.

2. For the sake of convenience, the parties are referred as per their ranking in O.S.No.170 of 2013.



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3. Plaint averments:-

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According to the 1st respondent/plaintiff, the suit properties are joint family properties of plaintiff and defendants. The suit properties were originally belonged to father of the parties namely Chinnappan. The 1st item of the suit property was purchased by him under registered sale deed dated 04.06.1979 in his name and his wife Sengampillaiammal. The patta for the 2nd item of the suit property stands in the name of Chinnappan. Therefore, both the items belonged to father of the parties namely Chinnappan. The said Chinnappan had three sons and two daughters. The plaintiff and 3rd defendant are his daughters. The 1st defendant, 2nd defendant and one late Govindan are his sons. The legal representatives of deceased Govindan are arrayed as defendants 4 to 6. The 7th defendant is the son of 2nd defendant. The defendants 8 and 9 are sons of 1st defendant. It was averred by the plaintiff that after the death of Chinnappan, the parties succeeded to his estate and the plaintiff was entitled to 1/5th share of the suit properties. It was further averred by the plaintiff that she acquired knowledge about the gift settlement deeds executed by his mother Sengampillaiammal in favour of defendants 5, 7 to 9 on 11.02.2013. Subsequently, she died on 20.03.2013. The said Sengampillaiammal was only a



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home maker and she had no financial capacity to purchase suit property in her favour. Therefore, Sengampillaiammal had no right to execute any document with respect to the suit properties. Accordingly, the plaintiff sought for declaration that the settlement deeds executed by Sengampillaiammal in favour of defendants 5, 7 to 9 were invalid documents. On these pleadings, she laid a suit for declaration, partition and injunction as mentioned above.

4. Averments found in the Written Statement :-

The 2nd defendant filed a written statement and the same was adopted by defendants 1, 5, 7 to 9. The defendants specifically denied the plaint averment that suit properties exclusively belonged to Chinnappan. According to the defendants, said Chinnappan and his wife Sengampillaiammal were doing firewood and brick business and out of said earning, they purchased the 1st item jointly and therefore, Sengampillaiammal and Chinnappan had ½ share each in the 1st item of the suit property. It was further contended by the defendants that 1st respondent/plaintiff and his sister got married 40 years back and they never enjoyed the suit property and therefore, they could not be treated as members of the joint family consisting other male members. It was also averred by the



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defendants that Sengampillaiammal executed three gift settlement deeds in respect of 2nd item of the suit property in favour of her grandchildren and the same was also known to the plaintiff. Therefore, the suit was mainly resisted on the ground that Sengampillaiammal also had ½ share over the suit properties and the same was gifted to grand children as stated above.

5. The 3rd defendant filed a separate written statement and the same was adopted by defendants 4 to 6. They claimed that each of them entitled to 1/5th share in the suit property after the death of Chinnappan and Sengampillaiammal.

6. Evidence before the Trial Court:-

Before the Trial Court, the plaintiff was examined as P.W.1 and yet another witness was examined on behalf of the plaintiff as P.W.2. Eight documents were marked on behalf of the plaintiff as Ex.A1 to Ex.A8. On behalf of the defendants, the 2nd defendant was examined as D.W.1 and 11 documents were marked on their behalf as Ex.B1 to Ex.B11.



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7. Findings of the Trial Court:-

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The Trial Court on the basis of Ex.A1, Sale Deed in the name of Chinnappan and Sengampillaiammal came to the conclusion that 1st item of the suit property belonged to Chinnappan and his wife Sengampillaiammal. The Trial Court, on the basis of patta, Ex.A2 came to the conclusion that suit item 2 also belonged to Chinnappan and Sengampillaiammal. Therefore, the Trial Court found both the items of the suit property belonged to parents of the parties to the suit namely Chinnappan and Sengampillaiammal. The Trial Court also held that Sengampillaiammal had no absolute right over the suit properties and she had no right to execute settlement deeds in favour of her grandchildren. The settlement deeds executed by Sengampillaiammal were held to be invalid and not binding on the plaintiff. On these findings, the Trial Court granted preliminary decree for partition of 1/5th share in favour of plaintiff in respect of both the items of the suit properties. The settlement deeds executed by Sengampillaiammal were held to be invalid documents. The Trial Court also granted injunction restraining the defendants from alienating the suit properties.



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8. The submissions of the learned counsel for the appellants:-

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Aggrieved by the said judgment and decree passed by the Trial Court, the defendants 1, 2, 5, 7 to 9 has come before this Court by way of this first appeal. The learned counsel for the appellants submitted that after death of Chinnappan, his wife Sengampillaiammal and sons namely Murugesan, Shanmugam and grandson Gopal entered into a partition excluding the daughters and the said fact had not been taken into consideration by the Trial Court. The learned counsel further submitted that as per Ex.A2, patta for the 2nd item of the suit property, stands in the name of Chinnappan, Sengampillaiammal and five other persons namely Chinnannan, Manickam, Thirunamalaiammal, Pazhaniammal and Jayamani. In these circumstances, the findings rendered by the Trial Court that the item 2 of the suit property belonged to both Chinnappan and Sengampillaiammal is contrary to the evidence available on record. He also submitted when other sharers of item 2 of the properties are not impleaded, the Trial Court ought not to have granted a decree for partition on the assumption that the property belonged to Chinnappan and Sengampillaiammal only.



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9. The Submissions of the learned counsel for the respondents:-

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The learned counsel for the 1st respondent/plaintiff submitted that merely because after death of Chinnappan, his wife and sons entered into a partition deed excluding the daughters, they will not lose their right over the suit properties. The learned counsel submitted that Ex.B1, partition deed entered among mother and brothers of plaintiff would not bind her. The learned counsel further submitted that Ex.A1 and Ex.A2 clearly establish that Sengampillaiammal had no exclusive right over the suit properties. In such circumstances, she was not entitled to execute settlement deed in respect of the entire suit properties and consequently, the findings rendered by the Court below that the settlement deeds executed by her were invalid is in accordance with law.

10. Points for consideration :-

On the the basis of the submissions made by the counsel on either side and the pleadings of the parties, the following points arising for consideration in this First Appeal:-

- 1) Whether the suit properties are exclusive properties of Chinnappan?
- 2) Whether the settlement deeds executed by Sengampillaiammal are valid



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and binding on plaintiff?

3) Whether the plaintiff is entitled to 1/5th share in the suit properties?

11. The item 1 of the suit property was purchased by Chinnappan and Sengampillaiammal under Ex.A1, Sale Deed dated 04.06.1979. It was contended by the plaintiff that Sengampillaiammal had no individual source of income and the entire consideration for the sale was paid by Chinnappan and therefore, the item 1 of the suit property should be treated as exclusive property of Chinnappan. Though a plea was raised by the plaintiff as if Chinnappan provided considerations for purchase of the property jointly in the name of his wife, there is no acceptable evidence available on record in support of the said plea except the interested testimony of the plaintiff. When the registered sale deed Ex.A1 stands in the name of Chinnappan and Sengampillaiammal, it should be treated as property belongs to both the persons. Further, as per presumption available under Section 3(2) of Benami Prohibition Act, as it stood on the date of filing of suit, the property shall be deemed to be purchased for benefit of wife, even if consideration was paid by husband, unless contrary is proved. Any property acquired in the name of Female Hindu shall be her absolute property under Section 14(1) of Hindu Succession Act. In such



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circumstances, the Trial Court, on appreciation of recitals in Ex.A1, rightly came to the conclusion that item 1 belonged to Chinnappan and Sengampillaialammal.

The mother of the parties namely Sengampillaialammal has not dealt with item 1 of the suit property in the settlement deeds executed by her. Therefore, as far as item 1 is concerned, both Chinnappan and Sengampillaialammal died intestate. In such circumstances, all the children of Chinnappan and Sengampillaialammal are entitled to 1/5th share each in item 1 of the suit property. Therefore, the decree passed by the Trial Court granting 1/5th share in item 1 of the suit property is confirmed.

12. As far as item 2 is concerned, Ex.A2, patta in respect of item 2 stands in the name of seven persons namely Chinnappan, Sengampillaialammal, Chinnannan, Manickam, Thirunamalaialammal, Pazhaniammal and Jayamani. Therefore, a perusal of Ex.A2, patta would suggest that item 2 of the suit property stands in the name of seven persons including the parents of the parties namely Chinnappan and Sengampillaialammal. However, the Trial Court without considering the names of other parties had erroneously come to the conclusion under Ex.A2, patta for 2nd item of the suit property stands in the name of Chinnappan and Sengampillaialammal only. As mentioned earlier the Ex.A2



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stands in the name of seven persons. In such circumstances, it should be presumed that all the seven persons are co-owners of item 2 of the suit property in the absence of any evidence to contrary. Therefore, the present suit filed by the plaintiff without impleading the other patta holders of item 2 is not maintainable. It is always open to the plaintiff/1st respondent to file a fresh suit for partition in respect of item 2 of the suit property by impleading the other patta holders of item 2 as mentioned in Ex.A2. Therefore, the decree for partition of 1/5th share granted by the Trial Court in respect of item 2 of the suit property is liable to be set aside as the other sharers of the item 2 were not impleaded as parties in the suit. Accordingly, the decree for partition in respect of item 2 of the suit property is set aside.

13. The Trial Court came to the conclusion that the settlement deeds executed by Sengampillaiammal were invalid as she did not have exclusive title over the properties dealt with under settlement deeds. As discussed earlier, as per Ex.A2, patta in respect of the item 2 of the suit property, Sengampillaiammal is shown as one of the patta holders along with six other persons. In such circumstances, she is having a share in item 2 of the suit property. The settlement deeds executed by her is valid to the extent of her interest in item 2. However,



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the Trial Court wrongly came to the conclusion that since she was not an exclusive owner of the item 2, she was not entitled to execute settlement deed and as a consequence the settlement deeds were invalid documents. The settlement deeds executed by Sengampillaiammal are valid to the extent of her interest in item 2 of the suit properties. To that extent, the declaration granted by the Trial Court requires modification.

14. In view of the discussions made earlier, the First Appeal is partly allowed by modifying the judgment and decree passed by the Trial Court as indicated below:-

a) the preliminary decree for partition in respect of item 2 of the suit property is set aside with liberty to the plaintiff to file a fresh suit in respect of item 2 by impleading all the patta holders as mentioned in Ex.A2.

b) the declaration granted by the Trial Court is set aside to the extent of interest of Sengampillaiammal over the suit item 2. Therefore, the settlement deeds executed by Sengampillaiammal are declared invalid excluding her interest in the item 2 of the suit properties. In respect of her share, the settlement deeds are valid.



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c) the preliminary decree for partition granted in respect of 1/5th share in item 1 is confirmed.

d) In view of 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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To

The I Additional District Court, Salem.

S.SOUNTHAR, J.



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