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S.A.Nos.464 & 469 of 2023
and C.M.P.Nos.13938 & 14169 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2023

CORAM

THE HON'BLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

S.A.Nos.464 & 469 of 2023
and C.M.P.Nos.13938 & 14169 of 2023

1. Munavar Syed alias Habibulllah
2. Anwar Syed alias Karimulla

... Appellants in both S.A.Nos.

Vs.

1. Syed Amanulla
2. Asief alias Jainalubdin
3. Akbar Syed

... Respondents in S.A.No.464 of 2023

1. Asief alias Jainalubdin
2. Akbar alias Gulam Ahamed
3. Syed Amanulla

... Respondents in S.A.No.469 of 2023

Prayer in S.A.No. 464 of 2023 : Second Appeal filed under Section 100 of C.P.C., pleaded to set aside the Judgement and Decree dated 20.07.2022 made in A.S.No.10 of 2015 on the file of the learned II Additional District Judge, Tindivanam, confirming the Judgment and Decree dated 07.10.2014 made in O.S.No.27 of 2010 on the file of the learned Sub Judge, Gingee.



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Prayer in S.A.No.469 of 2023 : Second Appeal filed under Section 100 of C.P.C., pleaded to set aside the Judgement and Decree dated 20.07.2022 made in A.S.No.09 of 2015 on the file of the learned II Additional District Judge, Tindivanam, confirming the Judgment and Decree dated 07.10.2014 made in O.S.No.45 of 2006 on the file of the learned Sub Judge, Gingee.

In S.A.No.464 of 2023,

For Appellants : Mr.K.V.Sundararajan

For Respondents : Mr.T.K.Kulasekaran for R1

In S.A.No.469 of 2023,

For Appellants : Mr.K.V.Sundararajan

For Respondents : Mr.T.K.Kulasekaran for R3

COMMON JUDGMENT

These Second Appeals have been filed against the Judgement and Decree passed by the learned II Additional District Judge, Tindivanam, in A.S.Nos.9 & 10 of 2015 dated 20.07.2022, confirming the Judgment and Decree passed by the Sub-Court, Gingee, in O.S.Nos.45 of 2006 & 27 of 2010 dated 07.10.2014.



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2. The following facts are necessary for disposing both the Second Appeals.

2.1. Munavar Syed alias Habibullah, Anwar Syed alias Karimulla, Asief alias Jainalubdin and Akbar Syed are brothers being the sons of one Ali Mohammed Khan. The said Ali Mohammed Khan had left large extent of properties more than 40 acres leaving behind his sons as his legal heirs.

2.2. While so, Asief alias Jainalubdin and Akbar Syed, the first and fourth sons of Ali Mohammed Khan claiming themselves to be the owners of 0.50 cents of the property in Gingee Taluk, Jayankondan Village in Dry R.S.No.78/2 had sold the same to the Syed Amanulla and his wife Atia Amanulla by way of registered sale deed (Ex.A2 and Ex.B7) dated 29.03.1993 and thereafter, the said Syed Amanulla had put up a construction to feed the poor.

2.3. Ever since the date of purchase of the land, the said Syed Amanulla and his wife have been in enjoyment of the property. While so, since



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the second and third sons of Ali Mohammed Khan namely Munavar Syed alias Habibullah and Anwar Syed alias Karimulla interfered and disturbed the possession of Syed Amanulla and his wife, the said Syed Amanulla and his wife have filed a suit in O.S.No.163 of 2006 before the Principal District Munsif, Gingee, seeking for permanent injunction against Munavar Syed alias Habibullah and Anwar Syed alias Karimulla on 28.04.2006.

2.4. After service of summons and filing of written statements, the said Munavar Syed alias Habibullah and Anwar Syed alias Karimulla, sons of Ali Mohammed Khan had filed a suit for partition in O.S.No.45 of 2006 on 20.09.2006, against their other two brothers namely Asief alias Jainalubdin, Akbar Syed and the purchasers namely Syed Amanulla and his wife, claiming $\frac{1}{2}$ share of the 0.50 cents of the property, which has been sold to Syed Amanulla and his wife, before the Sub Court, Gingee.

2.5. Later, since the property involved in both the cases are one and the same, the suit in O.S.No.163 of 2006 filed by Syed Amanulla and his wife was transferred to the file of the Sub Court, Gingee and re-numbered as O.S.No.27 of 2010 and both the suits were taken for joint trial.



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2.6. The contention of the plaintiffs in O.S.No.27 of 2010 is that the first plaintiff, Syed Amanulla is a native of Madras. Several years ago, he went to USA for pursuing his Post Graduate in Civil Engineering and upon completion of his studies, he had settled down in USA and married the second plaintiff in 1987. After his retirement, they returned to India and during their visit, they observed the helpless condition of the poor, uneducated masses of people and also observed the deep sufferings of the girls and women folk and therefore, they decided to stay back in India and to do social service for the betterment and welfare the women sector and thereby, they started a Trust named “QAMAR TRUST” in Hyderabad on 11.08.1994 in memory of his mother Qamrunnisa Begum. In pursuance of the Deed of Trust, the plaintiffs purchased several properties in Hyderabad for giving training for girls in Tailoring, Embroidery and other works. Further, they have constructed a Marriage Hall for the performance of marriage of poor couples free of cost.

2.7. They also intended to start a branch in Tamil Nadu and when they were in search of a land, they came to know about the availability of properties with the defendants. Therefore, the plaintiffs had purchased about



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0.50 cents of land in R.S.No.78/2, from Asief alias Jainalubdin and Akbar Syed through a registered sale deed (Ex.A2) dated 29.03.1993 and thereafter, the plaintiffs were in continuous possession and enjoyment of the said land. Further, the plaintiffs had put up a construction in the area for carrying out the activities of their Trust.

2.8. While they were carrying on their Trust activities, the defendants had interfered with the running of the trust and disturbed their peaceful possession and thereby, the plaintiffs had filed a Suit in O.S.No.163 of 2006 before the Principal District Munsif, Gingee against the sons of Ali Mohammed Khan namely Munavar Syed alias Habibullah, Anwar Syed alias Karimulla, Asief alias Jainalubdin and Akbar Syed.

2.9. Asief alias Jainalubdin and Akbar Syed, who were stated to have sold the property to the plaintiffs, had filed a written statement stating that they did not appear before the Registrar Office nor sign the document. Later, after filing the written statement, they did not appear before the Court to let in evidence and to prove their claim.

2.10. Munavar Syed alias Habibullah and Anwar Syed alias



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Karimulla had filed the written statement contending that there was no partition between them and the properties was common properties belonging to the family and without their knowledge and without any authority, their brothers Asief alias Jainalubdin and Akbar Syed had executed a sale deed in favour of the plaintiffs in respect of the 0.50 cents of the land which remain unpartitioned. The defendants 1 and 4 were not the absolute owners of the property and that the patta also stands in the name of the family members.

2.11. During the pendency of the suit filed by the Syed Amanulla and his wife, the defendants 2 and 3 filed a suit for partition in O.S.No.45 of 2006 before the Sub Court, contending that they are entitled to $\frac{1}{2}$ share of the 0.50 cents of the property which has been sold to Syed Amanulla and his wife Atia Amanulla, in which, Asief alias Jainalubdin and Akbar Syed remained ex-parte.

2.12. Syed Amanulla and his wife Atia Amanulla filed a written statement contending that the plaintiffs in O.S.No.45 of 2006 and their family possessed about more than 40 acres of land and that they had filed the suit for partial partition in respect of 0.50 cents only to defeat the right of the



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purchasers. Also, apart from the properties in R.S.No.78/2, there were large extent of properties and that the property measuring 0.50 cents in R.S.No.78/2 out of 40 acres were allotted to two brothers namely Asief alias Jainalubdin and Akbar Syed as per the final partition deed (Ex.A1) registered on 16.01.1958. The plaintiffs in O.S.No.45 of 2006 and their two brothers, who have sold the property to Syed Amanulla and his wife Atia Amanulla, were also parties to it. Initially, though the brothers of the plaintiffs in O.S.No.45 of 2006 had claimed that they have not sold the property to Syed Amanulla and his wife, they remained ex-parte and did not let in evidence to prove the same.

2.13. Both the suits were tried together and on the side of the plaintiffs in O.S.No.45 of 2006, documents were marked as Ex.A1 to Ex.A7 and on the side of the defendants (purchasers of the property), Ex.B1 to Ex.B30 were marked.

2.14. The facts admitted by both the parties are that :-

a) Asief @ Jainalubdin, 2). Munavar Syed @ Habibullah, 3). Anwar Syed @ Karimulla, 4). Akbar @ Gulam Ahamed are the legal heirs of deceased Ali Mohamed Khan. They are having right over the suit schedule



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property in view of Partition entered between the family members of deceased Ali Mohamed Khan as per final Partition deed entered on 16/01/1958 [Ex.A-1]. The Appellants and their brothers were party to Partition Deed.

b) As per the Partition Deed dated 16/01/1958 'G' and 'H' Schedules were jointly allotted to the Appellants and their brothers (2nd and 3rd Respondents in SA No. 464 of 2023 & 1st and 2nd Respondents in S.A.No. 469 of 2023) in which all of them were equally entitled.

c) The suit schedule property is a part of Item No.14 of Schedule 'G' of Partition Deed situated at Gingee Taluk, Jayankondan Village measuring an extent of 50 cents. The same was sold to the purchaser namely Syed Amanulla by brothers of the Appellant alone by way of Sale deed dated 29.03.1993 bearing Doc. No 358 of 1993.

2.15. The admitted facts as per the plaintiffs in O.S.No.45 of 2006 is that :-

(a) The plaintiffs and their brothers are Co-owners of the Suit Property by virtue of the Partition Deed. The same was reflected in Patta Ex.A-



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7. There is no subsequent Partition entered between the plaintiffs and their brothers.

(b) The suit Property was jointly allotted to the plaintiffs and their brothers. Since the plaintiffs have not been added as a party to the sale deed, the purchasers have right only with regard to half share in the suit Property. The plaintiffs have remaining share in the Suit Property. The Brothers of the plaintiffs are not the absolute owners of the property.

(c) In view of Judgement passed by the Hon'ble Supreme Court in ***T.V. Ramakrishna Reddy v. M. Mallappa***, reported in (2021) 13 SCC 135, when there is a cloud over the title, the suit filed by the plaintiff for bare Injunction without a declaratory relief is not maintainable. Further, the Purchaser is not in continuous possession of Suit Schedule Property. After filing of the suit also patta remains jointly in the name of the plaintiffs and his brothers.

2.16. Admitted facts according to the plaintiffs in O.S.No.27 of 2010 (Syed Amanulla and his wife Atia Amanulla)/purchasers is that :-



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(a) The brothers of the appellants herein (plaintiffs in O.S.No.45 of 2006) are absolute owners of the suit property and they are well aware of the Sale deed entered between their brothers and purchasers.

(b) An oral partition has already taken place between the appellants and their brothers, giving the brothers of the appellants absolute rights over the suit property. Furthermore, other transactions related to additional properties in the Partition Deed have occurred among the appellants' brothers.

(c) The Purchasers are in continuous possession of the suit schedule property from the date of purchase in 1993 and they have put up various structures including marriage hall which is well known to everyone in the village.

(d) The Suit filed by the Appellants for Partition is only with regard to suit scheduled property and non-inclusion of other properties would not be maintainable. The same would itself prove that the oral partition has already been taken place between the Appellants and his brothers. Further, the appellants have not chosen to file a suit for declaration to declare the sale deed



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executed by their brothers in favour of the Syed Amanulla and his wife Atia Amanulla, as null and void.

2.17. The trial Court, after hearing both the parties and looking into the evidence, found that the plaintiffs in O.S.No.45 of 2006 were well aware of the sale deed executed by their brothers as early as 1993 and not filed any Suit to declare the registered sale deed as null and void and further, despite the availability of large extents of property and joint family property of more than 40 acres, they had filed the suit only for partial partition in respect of 0.50 cents of land, which cannot be maintained. The trial Court had dismissed the suit and also decreed the suit in O.S.No.27 of 2010, against which, the plaintiffs in O.S.No.45 of 2006, who are defendants in O.S.No.27 of 2010, had filed the Appeal Suits in A.S.Nos.9 & 10 of 2015 before the learned II Additional District Judge, Tindivanam.

2.18. The first appellate Court, finding that the plaintiffs/appellants were having knowledge of the earlier sale performed by



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their brothers in the year 1993 and also finding that the suit for partial partition cannot be sustained, had dismissed both the appeals by judgment and decree dated 20.07.2022, against which, the present Second Appeals have been filed.

3. Learned counsel for the appellants submitted that both the Courts below had erred in holding that there was an earlier partition between the appellants and their brothers/respondents 1 & 2. He further submitted that there are totally four brothers and the two brothers are entitled to sell only their half share of the property, whereas, in R.S.No.78/2, they had sold the entire extent of 0.50 cents, which cannot be allowed. Thereby, the appellants have filed the suit for partition. He also submitted that the suit for bare injunction filed without declaration cannot be maintainable and thereby, he prays for the second appeals to be admitted.

4. Mr.T.K.Kulasekaran, learned counsel for Syed Amanulla/R1 in S.A.No.464 of 2023 and R3 in S.A.No.469 of 2023 submitted that even as per the evidence available, there is a large extent of property comprising more than



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40 acres of land vested with the sons of Ali Mohammed Khan. He further submitted that the appellants herein are also aware of the registered sale deed executed by their brothers in favour of Syed Amanulla and his wife as early as 1993, which was also marked as Ex.A1 and Ex.B7. He further submitted that the suit property is situated in a village and the relatives of the appellants stood as witness to the registered sale deed and further, in the village, Syed Amanulla and his wife had put up a construction and they are running the Trust from the year 2006, whereas, after a period of 13 years, the appellants had interfered with the peaceful possession and thereby, warranting the appellants to file the suit in O.S.No.27 of 2010 seeking permanent injunction against the appellants and their brothers, who had sold the suit property to Syed Amanulla. The other two brothers of the appellants had not appeared before the Court and they have also not proved their case.

5. Further, it is also the admitted case of the appellants that there are several properties to an extent of more than 40 acres which are joint family properties and the suit in O.S.No.45 of 2006 has been filed only for a partial



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partition of 0.50 cents, which has been sold to Syed Amanulla as early as in 1993. Later, during the pendency of the suit, the appellants along with their brothers namely Asief alias Jainalubdin and Akbar Syed have entered into a partition vide Partition Deed dated 25.04.2011 in respect of all other properties excluding the suit property to an extent of 0.50 cents of land, which has been sold to Syed Amanulla by a valid registered sale deed dated 29.03.1993 and thereby, the appellants are well aware of the sale of suit schedule properties 0.50 cents even as early as in 1993 and they have not filed any suit to set aside the sale and having not done so, they cannot insist the Syed Amanulla and his wife to file a suit for declaration and there is no necessity for Syed Amanulla and his wife to seek for declaration and thereby the case in ***Anathulla Sudhakar vs. P.Buchi Reddy (Dead) by lrs & Others*** reported in ***(2008) 4 SCC 594*** will not be applicable. It is also made clear that the appellants have not filed the suit with clean hands. Further, the Courts below on the grounds of equity, had decreed the Suit of Injunction in favour of Syed Amanulla and his wife and dismissed the Suit filed by the appellants holding that it was for a partial partition.



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6. Heard both sides and perused the judgments of the Courts below and also the grounds raised by the appellants.

7. Admittedly the properties are in a village and the brothers of the appellants have sold the property to Syed Amanulla and his wife by way of registered sale deed during 1993. They have also put up construction and are in continuous possession of the property. Apart from the suit scheduled property, admittedly, there are larger extent of properties i.e., more than 40 acres of land, lying as joint family properties. The appellants, knowing that their brothers have already sold the property to Syed Amanulla and his wife have filed the suit for partition with respect to 0.50 cents alone in order to create trouble. Though the appellants claim that a suit for injunction without a prayer for declaration cannot be sustained, equally a prayer for partial partition without challenging the sale deed executed by the brothers of the appellants in favour of Syed Amanulla and his wife Atia Amanulla cannot be sustained in respect of the suit schedule properties leaving out the other joint family properties.



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8. Appreciating the oral and documentary evidence, the Courts below have found that, the appellants, being aware of the sale deed executed by their other two brothers in favour of Syed Amanulla and his wife Atia Amanulla, have not come out with any prayer seeking to declare the sale deed as null and void. Further, both the Courts below have held that the suit filed for partial partition cannot be sustained and on the grounds of equity, had decreed the Suit by granting Injunction against the appellants.

9. Having carefully analysed the materials available on record and perused the judgments of both the Courts below, this Court does not find any illegality or perversity in the findings of the Courts below and thereby, confirms the judgment and decree passed by the Courts below. Further this Court finds that no substantial question of law is involved to admit these second appeals.

10. The Hon'ble Apex Court in ***Kirpa Ram (D) Tr.Lrs. vs Surender Deo Gaur (2020 Scc OnLine SC 935)*** has categorically held as under :-



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"23. Sub-section (1) of [Section 100](#) of the Code contemplates that an appeal shall lie to the High Court if it is satisfied that the case involves a substantial question of law. The substantial question of law is required to be precisely stated in the memorandum of appeal. If the High Court is satisfied that such substantial question of law is involved, it is required to formulate that question. The appeal has to be heard on the question so formulated. However, the Court has the power to hear appeal on any other substantial question of law on satisfaction of the conditions laid down in the proviso of [Section 100](#) of the Code. Therefore, if the substantial question of law framed by the appellants are found to be arising in the case, only then the High Court is required to formulate the same for consideration. If no such question arises, it is not necessary for the High Court to frame any substantial question of law. The formulation of substantial question of law or re- formulation of the same in terms of the proviso arises only if there are some questions of law and not in the absence of any substantial question of law. The High Court is not obliged to frame substantial question of law, in case, it finds no error in the findings recorded by the First Appellate Court."



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11. In view of the above, sans any substantial question of law, these Second Appeals fail and the same are dismissed, confirming the concurrent findings rendered by the Courts below. No costs. The connected Miscellaneous Petitions are closed.

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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

To

1. The II Additional District Judge, Tindivanam
2. The Sub Judge, Gingee.
3. The Section Officer, VR Section, High Court of Madras.



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