



S.A.(MD).No.677 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2023

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

S.A.(MD).No.677 of 2021

Rajeswari

... Appellant/Appellant/Plaintiff

Vs.

1.Marimuthu

2.Saroja

...Respondents/Respondents/Defendants

Prayer: Second Appeal is filed under Section 100 of CPC to allow the appeal setting aside the judgment and decree of Principal Sub Court, Thenkasi in A.S.No.87 of 2018 dated 16.10.2020 confirming the judgment and decree of Additional District Munsif Court, Thenkasi in O.S.No.209 of 2013 dated 17.07.2018 .

For Appellant : Mr.Sankararamasubramanian
for Mr.P.T.Thiraviam

For Respondents : Mr.I.Robert Chandrakumar



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JUDGMENT

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This Second Appeal has been filed challenging the concurrent findings of the Courts below. The plaintiff in the suit O.S.No.209 of 2013 on the file of the Additional District Munsif Court, Tenkasi is the appellant herein. The respondents are the defendants in the said suit. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

2. The plaintiff claims to have purchased the suit schedule property under two sale deeds, one executed by Velliammal and her daughter Dhuraichy and the other executed by Velu and his son Santhanakumar dated 08.02.2006 and 13.02.2006 respectively. According to the plaintiff, the defendants are the co-owners of the suit schedule properties. It is also the case of the plaintiff that her vendors are having half share in the suit schedule property. In such circumstances, the plaintiff has filed a suit for partition claiming half share in the suit schedule property. The plaintiff's vendors are the children of the first wife of the deceased Mookan. The first defendant and Pechimuthu are the children of the second wife of the deceased Mookan. The second defendant is the wife of the first defendant.



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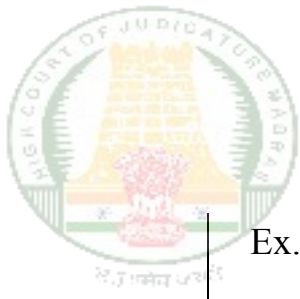
3. However, as seen from the written statement filed by the defendants, they have categorically pleaded that the plaintiff does not have any share in the suit schedule properties and the suit for partition is not maintainable without seeking for a declaratory relief that the plaintiff is the owner of the suit schedule property. They contend that the plaintiff is not a legal heir of the deceased Mookan and hence, the suit for partition is not maintainable.

4. Based on the pleadings of the respective parties, the Trial Court, namely, the Additional District Munsif Court, Tenkasi framed the following issues:

- a) Whether the suit is bad for misjoinder of parties?
- b) Whether the plaintiff is entitled for half share in the suit schedule properties?
- c) To what other reliefs?

5. Before the Trial Court, the plaintiff filed four documents which were marked as exhibits A1 to A4, the details are as follows:

Exhibits	Date	Details
Ex.A1	24.04.1946	Certified copy of the sale deed executed by Subbammal in favour of Mookan and Santhanathammal



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Ex.A2	08.02.2006	Sale deed executed by Velliammal and Dhuraichy in favour of the plaintiff
Ex.A3	13.02.2006	Sale deed executed by Velu and Santhanakumar in favour of the plaintiff
Ex.A4	-	Family chart

The plaintiff herself was examined as a witness (P.W.1). On the side of the defendants, 12 documents were filed which were marked as exhibits B1 to B12, the details are as follows:

Exhibits	Date	Details
Ex.B1	24.04.1946	Sale deed executed by Subbammal in favour of Mookan and Santhanathammal
Ex.B2	03.02.1992	Sale deed executed by Velu in favour of the plaintiff's husband Samuthiram
Ex.B3	-	Property tax receipts in the name of the first defendant
Ex.B4	-	EB receipts in the name of the first defendant
Ex.B5	-	Drinking water receipts in the name of the first defendant
Ex.B6	28.04.2003	Sale executed by Gandhimathi in favour of the first defendant Marimuthu
Ex.B7	15.07.2003	Mortgage deed executed by the first defendant in favour of Veerakeralampudur Housing Society Limited
Ex.B8	20.09.2013	Discharge deed by Veerakeralampudur Housing Society Limited to the first defendant
Ex.B9	21.02.2005	Decree passed in O.S.No.215 of 2003 by the Additional District Munsif Court, Tenkasi
Ex.B10	21.02.2005	Judgment passed in O.S.No.215 of 2003 by



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		the Additional District Munsif Court, Tenkasi
Ex.B11	28.02.2018	Adangal extract in favour of the first defendant
Ex.B12	08.09.2017	Survey plan of Survey No.1752, Surandai Village, Tenkasi Division.

The first defendant was examined as a witness (D.W.1) on the side of the defendants.

6. The plaintiff is not a legal heir of the deceased Mookan. The plaintiff's claim is based on an oral partition entered into between the plaintiff's vendors. However, the claim for oral partition made by the plaintiff to prove her title has not been supported by any document of title, patta, chitta, tax receipts or any other witness to speak as regards the oral partition. The vendors of the plaintiff was also not examined as a witness to prove the oral partition entered into between the legal heirs of the deceased Mookan. Ex.A2 is the sale deed dated 08.02.2006 which is executed in favour of the plaintiff by Velliammal and her daughter Dhuraichy. Ex.A3 is the sale deed dated 13.02.2006 executed in favour of the plaintiff by Velu and Santhanakumar. Based on the two sale deeds, Ex.A2 and Ex.A3, the plaintiff claims half share in the suit schedule properties. Ex.B2 is the sale deed dated 03.02.1992 executed in favour of the plaintiff's husband by Velu. Through Ex.B2, the plaintiff's husband had



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purchased the property lying south of the suit schedule property. In Ex.B2, the oral partition shown in Ex.A2 and Ex.A3 was not mentioned. In Ex.B2, in the boundaries mentioned in the schedule, it is disclosed that in the north, the property belongs to Marimuthu (first defendant). Therefore, it is clear that the property purchased by the plaintiff's husband lies in the southern part of the suit schedule property. Even though in the sale deeds dated 08.02.2006 and 13.02.2006 (Ex.A2 and Ex.A3), the recitals contained therein mention about an oral partition, the sale deed dated 03.02.1992 (Ex.B2) executed in favour of the plaintiff's husband by the very same Velu, who is the vendor of the plaintiff, is silent about the oral partition.

7. The northern portion of the property shown in Ex.B1 was allotted to the first defendant and his brother Pechimuthu. The property shown in Ex.B2 was allotted to Velu and others. In Ex.B2 dated 03.02.1992, the name of the first defendant is disclosed in the boundaries of the schedule property. Therefore, Ex.B2 sale deed has been executed in favour of the plaintiff's husband by Velu with the knowledge that the suit schedule property is the property of the first defendant. The plaintiff's husband has admitted as seen from Ex.B2 sale deed dated 03.02.1992 in his favour that the title of the suit



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schedule property is with the first defendant. However, the plaintiff has taken a different stand as seen from the pleadings in her plaint. The plaintiff's husband, who had purchased the property by sale deed dated 03.02.1992 (Ex.B2) in which he has acknowledged that the suit schedule property belongs to the first defendant, has also not been examined as a witness by the plaintiff to prove her case.

8. It is also an admitted fact that the suit schedule property was sold to one Poolpandi on 10.06.1999 by the first defendant and Poolpandi subsequently sold the same to one Mr.Thangaraj on 20.10.1999 and thereafter, Gandhimathi, wife of Thangaraj has sold the same to the first defendant once again by sale deed dated 28.04.2003 (Ex.B6). Ex.B7 is the mortgage deed dated 15.07.2003 executed by the first defendant in favour of Veerakeralampudur Housing Society Limited and the said mortgage was also discharged by the first defendant through the discharge deed dated 20.09.2013 (Ex.B8). Ex.B3 is the property tax receipt, Ex.B4 is the electricity bill receipt and Ex.B5 is the drinking water receipt over the suit schedule property which all stands in the name of the first defendant. Ex.B11 is the adangal extract which also stands in the name of the first defendant in respect of the suit schedule property.



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9. In the suit O.S.No.215 of 2003 filed by the plaintiff's husband Samuthiram, he has admitted as seen from his pleadings that the first defendant is the owner of the suit schedule property as the boundaries in the suit schedule in O.S.No.215 of 2003 makes it clear that the first defendant is the owner of the suit schedule property, which is the subject matter of O.S.No.209 of 2013. Ex.A2 and Ex.A3, the sale deeds dated 08.02.2006 and 13.02.2006 respectively standing in the name of the plaintiff are subsequent to Ex.B9 and Ex.B10 dated 21.02.2005, which is the judgment and decree passed in O.S.No.215 of 2003 in the suit filed by the plaintiff's husband, who has admitted that the suit schedule property in O.S.No.209 of 2013 is owned by the first defendant. Even though the suit O.S.No.215 of 2003 was filed with regard to a pathway dispute, when the plaintiff has not produced any other documentary evidence to prove that there was oral partition by the legal heirs of the deceased Mookan by which the plaintiff's vendors were allotted the suit schedule property, adverse inference can be drawn against the plaintiff from the dismissal of the suit O.S.No.215 of 2003 in which the plaintiff's husband in his suit schedule has disclosed that the present property which is in dispute is owned by the first defendant in the suit O.S.No.209 of 2013.



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10. The documentary evidence produced by the defendants in the suit makes it clear that the defendants are in possession of the suit schedule property. The defendants have produced adangal, chitta, house tax receipts, water tax and electricity bill receipts which have been marked as exhibits (B series) to prove that they are in possession of the suit schedule properties. Further, the plaintiff is said to have purchased the suit schedule properties under two sale deeds dated 08.02.2006 and 13.02.2006 (Ex.A2 and Ex.A3) respectively. Even though she had purchased the properties in the year 2006 itself, she has chosen to file the suit seeking for partition only in the year 2013. Further, she is not a legal representative of the deceased Mookan from whom she derives title. Being not a legal representative, a suit for partition is not maintainable as rightly held by the Courts below. Even though the defendants have not taken a specific stand in their written statement that the suit for partition is not maintainable, this Court does not find any infirmity in the findings of the Courts below that the plaintiff being not a legal heir of the deceased Mookan, the suit for partition is not maintainable as it is only a legal issue and there is no necessity for a specific pleading by the defendants in their written statement to that effect.



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11. The Trial Court, after giving due consideration to the fact that the plaintiff is not a legal heir of the deceased Mookan from whom she derives title and also taking note of the fact that the suit has been filed belatedly after a lapse of seven years and the defendants have also transferred the property and had also mortgaged the same between the date of purchase of the suit schedule property by the plaintiff till the date of filing of the suit and the documentary evidence placed on record will prove that the defendants are in possession of the suit schedule property, has rightly held that the suit filed by the plaintiff seeking for partition is not maintainable by its judgment and decree dated 17.07.2018 in O.S.No.209 of 2013.

12. The Lower Appellate Court, namely, the Principal Sub Court, Tenkasi by its judgment and decree dated 16.10.2020 in A.S.No.87 of 2018 has also rightly confirmed the findings of the Trial Court by dismissing the first appeal filed by the plaintiff. The substantial questions of law raised by the appellant/plaintiff in the grounds of the Second Appeal are all issues which have been rightly considered by the Courts below only based on oral and documentary evidence available on record and only in accordance with law. There are no debatable issues of fact or law involved for further consideration



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by this Court in this Second Appeal under Section 100 of CPC. In the result,
there is no merit in this Second Appeal.

13. Accordingly, this Second Appeal is dismissed. There shall be no order as to costs.

20.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
Lm

To

- 1.The Principal Sub Court,
Tenkasi.
- 2.The Additional District Munsif Court,
Tenkasi.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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ABDUL QUDDHOSE, J.

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