



A.S.(MD).No.11 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 01.12.2023

Delivered on: 13 .12.2023

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

A.S.(MD).No.11 of 2014

1.Sasi

2.Saranya

.. Appellants / Plaintiffs

Vs.

1.Vellaikannu

2.Selvam

.. Respondents / Defendants

Prayer:- Appeal filed under Section 96 of the Code of Civil Procedure, against the judgment and decree, dated 10.09.2013, made in O.S.No.123 of 2012, on the file of the II Additional District Judge, Tiruchirappalli.

For Appellants : Mr.K.Baalasundaram

Senior Counsel

for Mr.R.Thangapandian

For R1 : Mr.P.Ganapathi Subramanian

For R2 : No appearance



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JUDGMENT

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P.B.BALAJI,J.

The plaintiffs, in O.S.No.123 of 2012, on the file of the II Additional District Court, Tiruchirappalli, are the appellants. The plaintiffs filed a suit for partition. The defendants were set ex-parte in the said suit. However, the trial Court finding that the plaintiffs had not made out a case for partition, dismissed the suit in toto, as against which, the present appeal has been preferred by the plaintiffs.

2. The main grounds of challenge laid by the appellants / plaintiffs are that the trial Court ought to have decreed the suit in view of the non-filing of the written statement by the defendants, which amounted to admission of the plaintiffs' contentions; the trial Court failed to see that the appellants were not parties to the alleged partition of the year 1981 and that the same cannot be binding on them; the trial Court failed to see that in any event, the partition was void and therefore, there was no necessity for the plaintiffs to seek for declaration to set aside the same; the trial Court failed to draw a presumption of joint family and ought not to have dismissed the uncontested suit on a technical ground.



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3. Though the defendants, before the trial Court remained ex-parte, before us, the first defendant has entered appearance through counsel and also argued the matter.

4. We have heard Mr.K.Baalasundaram, learned Senior Counsel appearing for the appellants and Mr.P.Ganapathi Subramanian, learned counsel appearing for the first respondent.

5. The brief facts of the case are as follows:

The plaintiffs are the son and daughter respectively of the second defendant. The first defendant is one of the sons of one Sanga Gounder. The suit property originally belonged to the said Sanga Gounder, who had three sons, namely, Palanisamy, Velu and the first defendant. The second defendant is the son of the said Palanisamy, who is one of the sons of Sanga Gounder. It is an admitted fact that Palanisamy as well as Velu are no more. According to the plaintiffs, after the death of Sanga Gounder in the year 1980, one of the sons, namely, Velu relinquished his share to the first defendant on receiving a consideration of Rs.1,50,000/- and thereafter, the father of the second defendant, namely, Palanisamy and the first defendant were enjoying the suit properties in common. According to the



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plaintiffs, the partition deed dated 10.02.1981 between the first defendant and the Palanisamy was sham and nominal. In the said partition deed, 1/3rd share has been allotted to the said Palanisamy and 2/3rd share has been allotted to the first defendant. According to the plaintiffs, the said partition deed has been created fraudulently and the suit properties have to be partitioned only into two equal shares, the plaintiffs' father and the plaintiffs entitled to 50% and the first defendant being entitled to the remaining 50%.

6. Before the trial Court, the first plaintiff examined himself as P.W.1 and marked Ex.A1 to Ex.A11. The defendants did not contest the suit. However, the trial Court finding that the plaintiffs did not challenge the partition deed, dated 10.02.1981 and that the properties have already been partitioned between Palanisamy and the first defendant and Ex.A1 and Ex.A2 being the certified copies of the partition deed, dated 10.02.1981 and sale deed, dated 17.03.1982 executed by Palanisamy as guardian of the second defendant being the registered document, held that without seeking cancellation of the same, the plaintiffs were not entitled for the relief of partition.



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7. The learned counsel appearing for the appellants would submit that the trial Court ought not to have dismissed the suit and contended that there was no necessity for the plaintiffs to challenge the partition deed as well as the subsequent sale deed as the same were not binding on the plaintiffs. The learned counsel for the appellants would also place reliance on the decision of the learned Single Judge of this Court in ***V.Nataraja Iyer and others V.Arunachalam and others*** reported in ***Volume-89, L.W., 674***. In the said decision, this Court has held that only in a case where property belonging to a minor is alienated by his guardian, the minor becomes *eo nomine* party to the document and hence, he is obliged to ask for setting aside the alienation. However, in a case where the joint family manager alienates the family properties, even though the minor coparcener are also mentioned as parties to the document, that would not lead to the conclusion that when the minor coparceners question the alienation, they would be obliged to pray for setting aside the alienation. Placing reliance on the Full Bench decision in ***Sankaranarayana v. Kandasamia*** reported in ***A.I.R.1956 Madras 670*** and earlier Full Bench decision of this Court in ***Ramaswami Iyengar v. Rangachariar*** reported in ***1940-1-M.L.J, 32 (FB)***,



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the learned Single Judge in the above referred decision held that the minor could always ignore the transaction as not binding on him.

8. The learned counsel appearing for the first respondent would submit that even though the defendants had remained ex-parte, the trial Court has rightly found that in the absence of challenge to the registered documents, the suit for partition would not lie, the respondents, therefore, prayed that the appeal suit be dismissed.

9. Having heard the learned Senior counsel for the appellants and the learned counsel appearing for the first respondent, we determine the following points to be decided in the present First Appeal:

“(i) Whether the plaintiffs are entitled to any share in the suit properties and if so, what is their entitlement.

(ii) Whether in the absence of challenge to the registered partition deed in Ex.A1 and registered sale deed Ex.A2, the plaintiffs can claim a decree for partition.



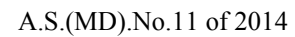
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10(a). Admittedly, the properties belonged to one Sanga Gounder, who had three sons. Out of the three sons, one of them relinquished his share in favour of another son, who is the first defendant in the suit. The second defendant is the father of the plaintiffs. The second defendant has not questioned the partition deed, dated 10.02.1981. The said partition deed has been effected way back on 10.02.1981 and the father of the plaintiffs has never chosen to question the same.

10(b). It is well settled position of law that a partition need not be always equitable and it is for the parties to the deed to work out a convenient mode of division, in and whereby, the final division may result in not being equitable.

10(c). The fact that one of the sons Velu has relinquished his 1/3rd share for consideration in favour of the first defendant has not been under challenge at any point of time. The plaintiffs merely contended that the said partition is sham and nominal and it has been created fraudulently, for which, there is no absolute iota of evidence forthcoming from their side. Further, the plaintiffs, who are claiming under the second defendant cannot



11(a). Therefore, we are unable to accept the contention of the appellants that their father and the first defendant had equal and undivided 50% each in the suit property. At the same time, we are unable to justify the dismissal of the suit in its entirety. Admittedly, the plaintiffs' father had a 1/3rd share and the property is a joint family / coparcener property, which is also not in dispute. Thus, on the birth of the plaintiffs, the 1/3rd share of the second defendant would devolve on the plaintiffs. The 1/3rd share of the second defendant would get reduced to 1/9th share and each of the plaintiffs would become entitled to 1/9th share in the suit properties.

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plaintiffs. Therefore, we are constrained to interfere with the findings of the trial Court in this regard.

12(a). Insofar as Ex.A2 sale deed is concerned, no doubt, the father of the second defendant has conveyed his share along with the share of his minor son, Selvam in favour of the first defendant. The trial Court has found that the sale deed being registered is binding on the plaintiffs and therefore, they are not entitled to seek for partition. Admittedly, the sale effected by the father of the second defendant for himself and as a guardian of the second defendant can at best pertain to a 1/9th share of the second defendant in the joint family coparcener property.

12(b).The moment, the plaintiffs are born, they acquire a birth right and the share of the second defendant automatically gets divided and benefit is conferred on the newly born coparcener. Now, the law is equally settled that even a daughter is a coparcener and gets a right by birth, like a son, who is a coparcener by birth. Thus, 1/9th share each of the plaintiffs cannot be knocked of by execution of any documents, including the registered documents in Exs.A1 and A2.



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12(c).The trial Court, therefore, ought to have granted a decree limited to 2/9th share of the plaintiffs in the suit property, instead of dismissing the suit in its entirety. Applying the ratio laid down by the Hon'ble Full Bench in *Sankaranarayana v. Kandasamia's* case, we hold that it was not necessary for the plaintiffs to challenge Exs.A1 and A2 before becoming entitled to a decree for partition.

13. In fine, we answer both the questions in favour of the appellants/ plaintiffs. The judgment and decree passed in O.S.No.123 of 2012 by the II Additional District Judge, Tiruchirapalli is set aside and there shall be a preliminary decree in favour of the plaintiffs/appellants for a 1/9th share each, in the suit property.

14. In the result, the Appeal Suit is allowed in part to the extent indicated as above. No costs.

(T.K.R.J.) & (P.B.B.J)
13.12.2023



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Internet : Yes

Index: Yes/No

Neutral Citation: Yes/No
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To

1. The II Additional District Judge,
Tiruchirappalli.

2. The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.



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RMT.TEEKAA RAMAN, J.,
and
P.B.BALAJI, J

am

judgment in
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