



A.S.(MD).No.109 of 2015

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

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1.Selvi
2.Koundappan
3.Suresh

... Appellants/Defendants

-Vs-

Periya Ramathal (Deceased)
1.Ponnusamy
2.Ramukannu
3.Ramathal

... Respondents/Plaintiffs

PRAYER: Appeal Suit is filed under Order 41 Rules 1 and 2 r/w. Section 96 of the Code of Civil Procedure, 1908, against the judgment and decree passed by the learned Additional District and Sessions Court, Dindigul in O.S.No.99 of 2010, dated 26.02.2013.

For Appellants : Mr.M.P.Senthil

For Respondents : Mr.A.R.Sethupathy



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J U D G M E N T

Aggrieved over the decree and judgment of the trial Court granting 1/5th share in the suit schedule properties, the unsuccessful defendants have filed the present appeal.

2. The parties are arrayed as the rank in the trial Court.

The first plaintiff is the first wife of Periyathugayappa Gounder. The plaintiffs 2 to 4 are the children born through the first wife of Periyathugayappa Gounder. The first defendant is the second wife of the said Thugayappa Gounder and the defendants 2 and 3 are the children born through the second wife of the said Thugayappa Gounder. Originally, the suit properties belonged to one Nalliappa Gounder, who is the father of the said Thugayappa Gounder. On 14.07.1976, there was a partition between Nalliyappa Gounder and his two sons viz., Periyathugayappa Gounder and Chinnathugayappa Gounder along with the plaintiffs 2 and 3, wherein the plaintiffs 2 and 3 were allotted 2/3rd share. In the suit schedule properties, remaining 1/3rd share was allotted to Periyathugayappa Gounder. The said properties have been allotted to Periyathugayappa Gounder



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and his two sons, the plaintiffs 2 and 3 jointly. The said Periyathugayappa Gounder had developed contact with the first defendant, during the existence of first marriage. Though there was no valid marriage between them, the defendants 2 and 3 were born through the second wife. Therefore, they are only elder sons and each entitled to 1/18th share. The plaintiffs are entitled to the remaining share. Hence, they claimed a preliminary decree for partition.

3. It is the case of the defendants that the said Thugayappa Gounder married the second wife legally and the defendants 2 and 3 are the sons of the said Thugayappa Gounder through the second wife. The said Thugayappa Gounder has sold 1/3rd share in favour of the first defendant on 31.08.1982. From the date of purchase, the defendants are enjoying the said properties. The plaintiffs have filed a suit in O.S.No.821 of 1982 before the District Munsif Court, Palani. During the pendency of the suit, there was a compromise entered between the parties, followed by the release deed executed by the plaintiffs relinquishing their 2/3rd share for a total sale consideration of Rs.7,500/- in favour of Periyathugayappa Gounder. Having executed such a release deed, now the suit came to be filed after 24 years. Hence, opposed the suit.



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4. Based on the above pleadings, the trial Court has framed the following issues:

(i) Whether the plaintiffs are entitled to 16/18th share in the suit schedule properties?

(ii) To what other relief they are entitled to?

5. On the side of the plaintiffs, P.Ws.1 and 2 were examined and Exs.A1 to A7 were marked and on the side of the defendants, D.Ws.1 to 3 were examined and Exs.B1 to B5 were marked.

6. Based on the evidence, the trial Court has granted a preliminary decree in respect of the 2/3rd share and granted a decree for 3/5th share to the plaintiffs 2 to 4. Challenging the same, the present appeal came to be filed by the defendants.

7. The main contention of the learned counsel appearing for the appellants/defendants is that the plaintiffs have renounced their right in the joint



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family property by executing the release deed in the year 1987, which is marked as Ex.B3. Now, they cannot claim a partition in respect of the same property, after the death of their father. According to him, they were estopped from claiming any share, since they already received a consideration for relinquishing their share in favour of the father. Therefore, it is his contention that once the release deed executed in favour of the father, the father has become the absolute owner of the property and the share only go to the other legal heirs and not to the legal heirs already relinquished their right in the property. Therefore, the trial Court has breached in granting the decree treating the property as a father's property and equal to all the legal heirs is not correct, as per the law.

8. In support of his contention, the learned counsel for the appellant has placed reliance on the judgment of this Court in the case of *Leelavathi vs. Chellaswami* reported in **2023 - 1 L.W. 804**.

9. The learned counsel appearing for the respondents/plaintiffs would submit that though the plaintiffs have executed the release deed in respect of 2/3rd share under Ex.B3, the release deed has been executed in favour of the father.



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Therefore, he become the absolute owner of the property. After his demise, the property will devolve under Section 8(a) of the Hindu Succession Act. Therefore, all the legal heirs are entitled to equal share in the property lead by the father. Hence, the question of applying estoppel does not arise at all and he prayed for dismissal of this appeal.

10. In the light of the above said submissions, now the point for consideration in this appeal is (i) whether the plaintiffs are entitled to claim a share after executing the release deed in respect of their right in the joint family property in favour of the co-owner, after the death of the said co-owner? (ii) whether the trial Court is right in granting equal share to the plaintiffs 2 to 4? and (iii) to what other relief the plaintiffs are entitled to?

11. The relationship of the parties are not disputed. The first plaintiff is also now died and she is the first wife of Periyathugayappa Gounder. The plaintiffs 2 to 4 are the children born to the first wife. The first defendant is the second wife of the said Periyathugayappa Gounder and the defendants 2 and 3 are the children born through the second wife viz., the first defendant. These facts are



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also not disputed. The suit properties originally belonged to one Nalliyappa Gounder and there was a partition between Nalliyappa Gounder and his two sons, as per Ex.A2, dated 14.07.1976, which is also not disputed by the parties, in which, the said Thugayappa Gounder, the father of the plaintiffs 2 to 4 and the plaintiffs 2 and 3 were also arrayed as one of the parties and $\frac{2}{3}$ rd share has been allotted to the plaintiffs 2 and 3 and the remaining $\frac{1}{3}$ rd share has been allotted to the said Periyathugayappa Gounder. These facts are also not disputed. It is also not disputed that the suit in O.S.No.821 of 1982 came to be filed by the plaintiffs, claiming $\frac{2}{3}$ rd share from his father, based on Ex.A2.

12. During the pendency of the above suit, a compromise entered between the parties. Consequent upon the compromise, a release deed / Ex.B3, dated 07.09.1987 came to be executed, wherein the plaintiffs 2 and 3 along with their mother and sister have relinquished their right in the $\frac{2}{3}$ rd share, which was originally allotted under Ex.A2 in favour of his father Thugayappa Gounder, after receipt of Rs.7,500/- as a consideration. These facts are also not disputed. Now, the suit has been filed under the premise that since the said Thuggayappa Gounder died, the plaintiffs are entitled to succession as the legal heirs.



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13. It is relevant to note that as the co-owners the plaintiffs 2 and 3, who are the original coparcener, along with his father relinquished their right under Ex.B3, release deed dated 07.09.1987 and the recitals in Ex.B3 made it clear that they will not have any right whatsoever in the said property in future. The release deed completely renouncing their entire right in the suit property. Such being the position, now the question remains to be answered is whether the co-owners, who have already relinquished their right in the joint family property in favour of the other co-sharers, still entitled to claim a partition as per law.

14. It is useful to refer the judgment of the Apex Court in the case of ***Gulam Abbas v. Haji Kayyum Ali*** reported in ***1973 (1) SCC 1***, wherein, the Hon'ble Apex Court has held as follows:

“7. Sir Roland Wilson, in his "Anglo Mohhamadan Law" (P 260, paragraph 208) states the position thus :-

"For the sake of those, readers Who are familiar with the joint ownership of father and son according to the most widely prevalent school of Hindu Law, it is perhaps desirable to state explicitly that in Muhammadan, as in Roman and English Law, nemo est heres viventis-a living person has, no heir. An heir-



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apparent or presumptive has no such reversionary interest as would enable him to object to any sale or gift made by the owner in possession; see Abdul Wahid, L.R. 12 I.A., 91, and 11 Cal. 597 All., 456 (1885) which was followed in Hasan Ali, 11 All. 456 (1889). The converse is also true : a renunciation by an expectant heir in the lifetime of his ancestor is not valid, or enforceable against him after the vesting of the inheritance".

This is a correct statement, so far as it goes, of the law, because a bare renunciation of an expectation to inherit not bind the expectant heir's conduct in future. But if the expectant heir goes further and receives consideration and so conducts himself as to mislead an owner into not making dispositions of his property inter vivos the expectant heir could be debarred from setting up his right when it does unquestionably vest in him other words, the principle, of estoppel remains untouched by this statement."

17. As we have already indicated, it is enough for the decision of this case that the plaintiff and defendant No.4 were estopped by their conduct, on an application of [Section 115 Evidence Act](#), from claiming any right to inheritance which accrued to them, on their father's death, covered by the deeds of relinquishment for consideration, irrespective of the question whether the, deeds could operate as legally valid and effective



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surrenders of their spes successionis. Upon the facts and circumstances in the case found by the courts below we hold that the plaintiff and defendant No.4 could not, when rights of inheritance vested in them at the time of their father's death, claim, these as such a claim would be barred by estoppel.

15. Similarly, in the case of ***Elumalai @ Venkatesan and another Vs.M.Kamala and others*** reported in **2023 Live Law (SC) 65**, the Hon'ble Apex Court has held as follows:

*“23. It will be noticed that the father of the appellants, by his conduct, being estopped, as found by us, is the fountainhead or the source of the title declared in [Section 8\(a\)](#) of the Hindu Succession Act. It is, in other words, only based on the relationship between Shri Chandran and the appellants, that the right under Section 8(a) of the Hindu Succession Act, purports to vest the right in the appellants. We would think, therefore, that appellants would also not be in a position to claim immunity from the operation of the Principle of Estoppel on the basis of [Section 8\(a\)](#) of the Hindu Succession Act. If the principle in *Gulam Abbas (supra)* applies, then, despite the fact that what was purported to be released by Shri Chandran, was a mere spes successionis or expectation his conduct in transferring/releasing his rights for valuable consideration,*



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would give rise to an estoppel. The effect of the estoppel cannot be warded off by persons claiming through the person whose conduct has generated the estoppel. We also find no merit at all in the attempt at drawing a distinction based on religion. The principle of estoppel applies without such distinction.

24. The only further contention which remains to be dealt with is that raised by Shri Jayanth Muth Raj, learned Counsel. He made an attempt to contend that the principle in *Gulam Abbas (supra)* may not be available in view of the factual matrix. It is his case that in the said case, the brothers received a benefit and thereafter gave-up the rights, which, as it was found, they did not possess at the time. The position in this case, however, is not similar. We are of the view that this argument ignores the play of the facts. Having received valuable consideration and allowed his father Shri Sengalani Chettair to proceed on the basis that he was free to deal with the property without the prospect of being haunted by any claim whatsoever as regards the property by Shri Chandran, a clear estoppel sprang into existence following the receipt of consideration by Shri Chandran. Estoppel would shut out in equity any claim otherwise either by Shri Chandran or his children, viz., the appellants”



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16. Similarly, in the case of Leelavathi vs. Chellaswami reported in 2023 (1) L.W. 804, this Court has held as follows:

“11.13.The case laws referred to above are the authorities for the proposition that a person releasing his chance of succession or spec successionis is barred from enforcing his right after it get vested in him in view of rule of estoppel. As far as the half share of the respondent is concerned, the appellant not even had chance of succession or spec successionis.”

17. Therefore, being the co-sharer or coparcener the plaintiffs 2 and 3 along with their mother and sister relinquished or renounced their right in the 2/3rd properties allotted under Ex.B3, now they cannot claim a partition and they are estopped from claiming right on the basis of succession, after the death of his father.

18. If such a plea of partition is once again entertained, it will amount to receive the double benefit. After receiving the consideration and relinquished their entire right, the plaintiffs are certainly not entitled to claim a partition. The



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suit has been filed after 24 years of the execution of the release deed and similarly, the execution of the release deed is also suppressed in the very plaint itself. Further, the father of the plaintiffs 2 and 3 died in the year 2001 and the suit has been filed in the year 2010 with huge delay. Therefore, the suit filed claiming joint possession under Section 37(2) of C.P.C. is also not valid in the eye of law.

19. In the result, the judgment of the trial Court granting preliminary decree for partition dividing the suit property by 1/5th share is hereby set aside and the Appeal Suit is allowed. No costs.

25.04.2023

akv

To

1.The Additional District and Sessions Court,
Dindigul

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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