



S.A.(MD) No.442 of 2016

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD) No.442 of 2016

and

C.M.P.(MD) No.4745 of 2016

1.Siriya Pushbam

2.R.Ramamoorthy

3.Muniammal

... Appellants/Appellants/
Defendants

Vs

1.R.Vijayakumar

2.R.Rajamohan

3.R.Bala Ganesh

4.K.Rajalakshmi

... Respondents/Respondents/
Plaintiffs

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 10.07.2015 made in A.S.No.24 of 2014 on the file of the Sub Court, Sivakasi by confirming the judgment and decree dated 25.06.2013 made in O.S.No.4 of 2011 on the file of the District Munsif's Court, Sivakasi.



S.A.(MD) No.442 of 2016

WEB COPY

For Appellants : Mr.M.Thirunavukkarasu

For Respondents : No appearance

J U D G M E N T

1.1. The defendants in the suit for partition are the appellants before this Court. The respondents filed a suit for partition claiming 4/6th share in the suit property. The trial Court partly decreed the suit granting 4/12th share in the suit property. Aggrieved by the same, the defendants filed an appeal in A.S.No.24 of 2014. The respondents also filed an appeal challenging the disallowed portion in A.S.No.17 of 2013. Both the appeals were heard together and dismissed by the first appellate Court by confirming the judgment and decree passed by the trial Court. Aggrieved by the same, the unsuccessful defendants have come up by way of this second appeal.

1.2. According to the respondents/plaintiffs, the first appellant is their mother and the 2nd appellant is their brother. The third appellant is a



S.A.(MD) No.442 of 2016

purchaser of the suit property from the first appellant. It was pleaded by the respondents in the plaint that the suit property was purchased by their father Late.Ramasamy and the first appellant under a registered document dated 29.12.1993. The suit property was purchased out of joint family funds and it has been all along enjoyed as a joint family property. The father of the respondents died on 02.08.2002 and after his death, the suit property has been enjoyed by the respondents and appellants 1 and 2 as joint family property. The first appellant clandestinely sold the suit property to the third appellant and the said fact came to the knowledge of the respondents only during December, 2010. The respondents claimed that the first appellant had no right to sell the joint family property and consequently, filed a suit seeking partition of their 4/6th share in the suit property.

2. The appellants herein filed a written statement and contested the suit on the ground that the suit property was purchased by the first appellant out of her own funds in her name and in the name of her husband Late.Ramasamy. The averment of the respondents as if the suit property has been enjoyed by them as a joint family property was specifically denied by



S.A.(MD) No.442 of 2016

the appellants. It was also pleaded by the appellants that after the death of Ramasamy, there was a family arrangement in the family on 17.08.2002, whereunder the suit property was allotted to the share of the first appellant. Therefore, the suit property was sold by the first appellant in favour of the third appellant on 27.04.2004 and thereafter, the third appellant had been in possession and enjoyment of the suit property as owner of the suit property.

3. The trial Court, on appreciation of oral and documentary evidences available on record, came to the conclusion that the respondents failed to prove their plea that the suit property was purchased out of joint family funds. The trial Court found that the suit property was purchased by the first appellant and her husband Late.Ramasamy and hence, the respondents and appellants 1 and 2 are entitled to equal share in the half share of Ramasamy. Accordingly, the suit was decreed granting preliminary decree for partition of 4/12th share in favour of the respondents. Aggrieved by the portion of the decree against them, the respondents as well as the appellants filed appeals in A.S.No.17 of 2013 and A.S.No.24 of 2014 respectively. Both the appeals were dismissed by the first appellate Court and challenging



S.A.(MD) No.442 of 2016

the judgment and decree passed in A.S.No.24 of 2014, the appellants are before this Court.

4. The learned counsel for the appellants contended that before the first appellate Court, the appellants filed an application seeking leave of the Court to file additional written statement to raise a plea of partial partition. According to the learned counsel, one house property belonged to the family was not included in the plaint schedule properties. Therefore, the suit was bad for partial partition. The learned counsel further submitted that the suit property was allotted to the share of the first appellant in the family arrangement made after the death of her husband in *lieu* of right of maintenance and the said fact was not appreciated by the Courts below.

5. It is seen from the records that challenging the judgment and decree passed by the trial Court, both the appellants and respondents preferred two separate appeals in A.S.No.24 of 2014 and A.S.No.17 of 2013 respectively. The appellants herein filed this second appeal challenging the judgment and decree passed in A.S.No.24 of 2014 only. As far as the first contention



S.A.(MD) No.442 of 2016

raised by the learned counsel for the appellants that plea of partition was not raised by the appellants before the trial Court is concerned, the appellants filed an application for filing additional written statement raising the plea of partial partition and enlargement of the right of the first appellant under Section 14(1) of the Hindu Succession Act, 1956 during the pendency of the first appeal. In the affidavit filed in support of the petition, seeking leave of the Court to file additional written statement, the appellants have not given any acceptable reason for the failure to raise the plea before the trial Court. The first appellate Court dismissed the application filed by the appellants mainly on the ground that they failed to give any convincing reason for their failure to raise plea of partial partition before the trial Court. The plea of partial partition requires adducing of evidence. Therefore, permitting the appellants to raise a new plea of partial partition in the first appellate stage would amount to reopening of the case and recording of evidence. Therefore, the first appellate Court rightly held that the petition filed by the appellants seeking leave of the Court to file additional written statement in the first appellate stage cannot be accepted due to their failure to give any convincing reason for filing the application before the first appellate Court.



S.A.(MD) No.442 of 2016

WEB COPY

6. As far as the contention regarding the family arrangement pleaded by the appellants is concerned, the Courts below came to the conclusion that the appellants failed to prove the family arrangement pleaded by them. There is no evidence available on record to support the said plea of the appellants. Therefore, the said finding of fact arrived at by the Courts below does not require any interference by this Court.

7. Both the Courts below on appreciation of oral and documentary evidences came to the conclusion that the suit property was purchased by the first appellant and her husband Late.Ramasamy under Ex.A.1. Therefore, the respondents and appellants 1 and 2 are entitled to equal share in the half share of Late.Ramasamy. Therefore, the respondents are entitled to a preliminary decree for partition of their 4/12th share in the suit property. The said conclusion arrived by the Courts below is on the evidence available on record. There is no perversity in the approach of the Courts below. Therefore, the Second Appeal fails and it does not involve any substantial question of law.



S.A.(MD) No.442 of 2016

WEB COPY

8. In fine,

(i) this Second Appeal is dismissed by confirming the judgments and decrees passed by the Courts below;

(ii) in the facts and circumstances of the case, there will be no order as to costs; and

(iii) C.M.P(MD) No.4745 of 2016 is also dismissed.

14.02.2023

NCC: Yes/No

Index: Yes/No

abr



S.A.(MD) No.442 of 2016

WEB COPY

To

- 1.The Sub Judge,
Sivakasi.
- 2.The District Munsif,
Sivakasi.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD) No.442 of 2016

S.SOUNTHAR, J.

abr

S.A.(MD) No.442 of 2016

14.02.2023