



A.S.(MD)No.24 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD)No.24 of 2017
and C.M.P.(MD)Nos.1292 of 2017 and 6051 of 2021

- 1.Maheswari
- 2.Ramar
- 3.Lakshmanan
- 4.Vijaya
- 5.Rafique
- 6.Mohamadha Begam

... Appellants

Vs.

- 1.Sivanesapandyan
- 2.Sriramkumar
- 3.Saravanakumar
- 4.Priamugi Bourn
- 5.Alagarsamy (died)
- 6.Gunasekaran
- 7.Padma (died)
- 8.Sarveswaran
- 9.Dhanalakshmi

(Respondents 9 to 11 are brought on record as LR's of the deceased 5th respondent vide Court order dated 14.12.2021 made in C.M.P.(MD)Nos.4083 to 4085 of 2020)

- 10.Rubankumar
- 11.Santhosh Kumar
- 12.Vijayalakshmi
- 13.Vasuki

(Respondents 12 and 13 are brought on record as LR's of



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the deceased 7th respondent vide Court order
dated 23.02.2023 in C.M.P.(MD)
No.12186 of 2022)

... Respondents

PRAYER: This Appeal Suit is filed under Section 96 r/w Order 41 Rule 1 of C.P.C. against the judgment and decree passed by the Additional District Court, Dindigul in O.S.No.77 of 2014, dated 27.11.2015.

For Appellants : Mr.Ajmalkhan,
Senior Counsel for Mr.A.Arumugam

For Respondents : Mr.V.Chandrasekar for
Mr.D.Selvanayagam for R1 to R4

JUDGMENT

Aggrieved over the decree and judgment of the Additional District Judge, Dindigul in O.S.No.77 of 2014, dated 27.11.2015, the present appeal has been filed by the appellants.

2. For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.



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3. The brief facts, leading to the filing of this Appeal Suit, are as follows:-

Originally one Ramakrishna Nadar was the owner of the property and he had two sons viz., one Sivanapandian and Madhanaseela Pandian and two daughters viz., Jeyakodi and Nagajothi. The daughters of Ramakrishna Nadar have executed a release deed in favour of the first plaintiff, Sivanapandian and Madhanaseela Pandian. First defendant is the wife and defendants 2 to 4 are the children of Madhanaseela Pandian. The said Ramakrishna Nadar was having vast extent of properties besides family business. He was admitted at Aysa Hospital, Madras and other hospital and he was inpatient for months together and treated at huge cost and thereafter, he died on 02.01.2001. The medical expenses were met out by the sons from the family business and from the borrowed funds. To discharge the said borrowed debts and to meet out the legal necessities, all the family members decided to sell a land extending to 2 Acre 15 cents in western side of the property in S.No.727/2B by dividing it into various house plots numbering 29 besides space for the park. Accordingly, they executed a power deed dated 17.09.2004, appointing the said Madhanaseela Pandian empowering to sell the said plots and to perform all other relevant necessary acts and to account the same to both the families. Accordingly, he sold 17 plots and executed a sale deed as power agent during his life time and accounted the same to the plaintiffs. The



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remaining 12 plots viz., plot Nos.1 to 5, 22 to 24 and 26 to 29 are the suit properties and remained as a common, joint and undivided amongst the plaintiffs and the defendants 1 to 4. The plaintiffs recently came to know that some fraudulent transactions brought into existence by the defendants detriment to the share of the plaintiffs. The defendants 1 to 4 have executed an alleged power deed dated 19.07.2010 in favour of the fifth defendant to sell those plots and he has executed a sale deed in the name of his wife, viz., defendant No.6 regarding plot Nos.1 to 5 and on 19.01.2011, he has executed another sale deed regarding plot No.22 and in the name of one Krishnasamy regarding plot Nos.23 and 24 and in the name of seventh defendant regarding plot Nos.26 to 28. The defendant Nos.9 and 10 are the legal heirs of the said P.Krishnaswamy.

4. It is the contention of the plaintiffs that those documents are not binding on the plaintiffs. Hence, claimed half share in the suit properties.

5. Admitting the relationship, it is the contention of the defendants 1 to 4 in the written statement that in order to meet out the medical expenses and family necessities, the suit properties have been converted into 29 plots and the power of attorney was also executed in the name of Madhanaseela Pandian and he has sold



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17 plots. Thereafter, he died on 04.12.2008. It is their specific contention that the plaintiffs have allotted unsold 12 plots to the share of the defendants. In view of such allotment, they appointed the fifth defendant as power agent by registered power of attorney dated 19.07.2010 and he has sold the properties to various persons under the capacity as a power agent and the suit properties have been in possession of the purchasers. The defendants have no relation or title to the suit properties. Hence, it is their contention that the suit properties were allotted to the defendants in a partition after the death of the Madhanaseela Pandian.

6. The defendants 5 and 6 filed a written statement admitting that all the transactions in respect of the suit properties was done by the plaintiffs, late Madhanaseela Pandian and the defendants 1 to 4. After obtaining the profits, now the plaintiffs have unnecessarily impleaded the bona fide purchaser. They have acted as bridge between the plaintiffs and the defendants 1 to 4 and he was assisting the deceased Madhanaseela Pandian also. It is their contention that the properties have been allotted to the defendants 1 to 4, due to the family circumstances and they have executed the power attorney in respect of the suit property on 19.07.2010 and based on the power of attorney he sold the plot nos.1 to 5 to the 6th defendant, plot Nos.29, 23, 24 sold to late Krishnaswamy, plot No.



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22, sold to the 8th defendant and plot Nos.26 to 28 sold to seventh defendant for valuable consideration and also settled the accounts particulars to the defendants 1 to 4. Hence, according to them, they are the bona fide purchasers.

7. Defendants 7 and 10 also filed a written statement reiterating the averments in the written statement of defendant No.5 and claiming that they are the bona fide purchaser.

8. Based on the above pleadings, the trial Court has framed the following issues?

1. Whether the plaintiffs are entitled to half share in the suit schedule properties?
2. It is true that the suit properties have already been divided and separate shares have been allotted to sharers?
3. To what other reliefs the plaintiffs are entitled?

9. On the side of the plaintiff, one witness was examined as P.W.1 and 17 documents were marked as Ex.A1 to Ex.A17. On the side of the defendants, no



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oral evidence was adduced and 12 documents were marked as Exs.B1 to B12.

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10. Based on the above pleadings and evidence, the trial Court has granted the partition in favour of the plaintiffs. Challenging the same, defendants 1 to 6 filed the present appeal.

11. The main contention of the learned Senior Counsel appearing for the defendants / appellants that Ex.A15 clearly shows that the eastern side to an extent of 2.15 cents were allotted to the plaintiffs and no other shares have been allotted to defendants 1 to 4 or Madhanaseela Pandian. These facts clearly show that the western portion have been allotted to the defendants. According to him, as per the above document viz., Ex.A15, a oral partition can be presumed. In pursuant to the same, defendants 1 to 4 have executed a power of attorney in favour of defendant No.5, who in turn sold the property to defendant Nos.6 to 8 and according to him, even Exs.B1 to B12 clearly shows that plots have been developed by one Madhanaseela Pandian. Therefore, oral partition has to be presumed. However, considering the nature of the document, the trial Court decreeing the suit is not proper and therefore, the same has to be set aside.



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12. The learned counsel appearing for the plaintiffs / respondents would submit that having pleaded the oral partition, defendant Nos.1 to 4 have not chosen to enter into the witness box and no documents whatsoever have been filed to show that there was oral partition. Admittedly, the western side in S.No.727/2B is a common property and 29 plots have been developed and as power of attorney, the first defendant's husband has sold 17 plots. The remaining 12 plots jointly owned by the plaintiffs and defendants. However, the defendants 1 to 4, executed a power of attorney in favour of the fifth defendant and dealt with the properties. The oral partition has not been established and no evidence whatsoever available on record to presume the oral partition. Hence, it is the contention of the learned counsel appearing for the plaintiffs / respondents that the plea of oral partition has to be pleaded and established. There is not even pleadings as to when such oral partition has been made among the family members and no evidence adduced in this regard by the defendants. Hence, submitted that the trial Court has rightly appreciated the evidence and accordingly, granted partition.

13. In the light of the above submissions, now the points arise for consideration in this appeal are as follows:

1. Whether the defendants have discharged their burden in



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establishing the plea of oral partition?

2. Whether the trial Court is right in granting the partition of half share in the suit properties to the plaintiffs?

3. To what other reliefs the plaintiffs are entitled to?

14. The relationship between the parties is not disputed. The suit properties originally belonged to one Ramakrishna Nadar. He had two sons viz., one Sivanesanpandian and Madhanaseela Pandian, who is the husband of the first defendant and father of defendant Nos.2 to 4. The two daughters of Ramakrishna Nadar have executed a registered Release deed relinquishing their entire rights in respect of their shares in favour of their two brothers viz., Sivanesanpandian and Madhanaseela Pandina under Ex.A14 and Ex.B8 on 17.09.2004. This fact is also not disputed. Though Ex.A15 has been filed to show that only the first plaintiff was allotted to eastern portion of the suit property, it is not the case of the defendant that western portion in S.No.727/2B were allotted to Madhanaseela Pandian. Ex.A15 also clearly shows that western portion is not allotted to anybody. Some other properties were allotted to the defendants shown as B-schedule properties. Therefore, it is very clear that western portion of the property was not subject matter of the partition deed. That itself clearly shows that the



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defendants were also allotted some properties under Ex.A15. Therefore, merely because there is a difference in value of the property allotted under Ex.A15, the same cannot be a ground to presume that western portion of the suit property is allotted to the defendants.

15. It is relevant to note that it is admitted case of the plaintiffs and defendants that western portion in S.No.727/2B was developed as plots by all the parties particularly the first plaintiff and his brother Madhanaseela Pandian. To discharge the debts borrowed for the medical expenses of their father, the plaintiffs and defendants were decided to sell the same and executed a power of attorney Ex.A3, dated 17.09.2004 and appointed Madhanaseela Pandian as a power agent of other co-owners to sell the plots and to perform all other necessary acts. Besides other power of attorney also was executed viz., Ex.A5 on 06.12.2007. Ex.A3, power of attorney deed itself clearly shows that the power has been given into divide the property into plots and also sell to the various persons. It is relevant to note that another power of attorney viz., E.A5, dated 06.12.2007 has been executed and the recitals in the document clearly shows that the parties are intended to treat the property as common property. Therefore, merely on the basis of Ex.A15, wherein western side properties not been specifically allotted to the



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defendants, it cannot be presumed that there was a oral partition between the parties and the suit properties have been allotted to defendants 2 to 4.

16. It is relevant to note that even in the year 2007 through Ex.A5, a specific power has been given to Madhanaseela Pandian only for the purpose of dividing the property and sell the property. Such being a position, when the defendants took a plea of oral partition allotting the remaining unsold plots of 12 plots, it is for them to establish the same. Admittedly, 17 plots out of 29 plots have been sold by Madhanaseela Pandian on the strength of the power of attorney. Remaining 12 unsold plots are the subject property of the suit. When the defendants took a plea of oral partition, there must be necessary pleadings in the written statement as to when such oral partition took place. However, there is no pleadings in the entire written statement as to when such oral partition took place and on the basis of the same, suit properties were allotted to the defendants. Therefore, in the absence of any pleadings and evidence adduced on the side of the defendants 2 to 4, the plea of oral partition cannot be assumed merely on the basis of Ex.A15, dated 12.06.2006.



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17. It is relevant to note that even after the above said partition, under Ex.A5, the parties treated the suit properties as a common property and executed the power of attorney for the purpose of dividing the property and sell the property. If really, the western portion of the properties have been allotted to the defendants, there was no necessity for them to get the power of attorney from other legal heirs for the purpose of development and sale of the plots. These facts clearly prove that there was some other arrangements between the parties. Therefore, no allotment was made under Ex.A15 to the defendants. Therefore, it is for the defendants to show that really there was a oral partition and 12 plots have been allotted to them. The defendants not even chosen to enter into the witness box to substantiate their pleadings also. Therefore, this Court is of the view that when the property remained as a common property, the plaintiffs have certainly entitled to share in the suit properties. The two daughters of Ramakrishna Nadar have executed a registered deed relinquished their entire right in respect of their shares in favour of their two brothers viz., Sivanesanpandian and Madhanaseela Pandian under Ex.A14 and Ex.B8 on 17.09.2004.

18. Such view of the matter, when the parties are all along treated the property, which was plotted out, as common property, unless the defendants



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establish the oral partition, the plaintiffs have certainly entitled to the partition.

The defendants have miserably failed to establish the oral partition. The fifth defendant, as a power agent of defendant Nos.1 to 4, has dealt with the property and sold the 5 plots in the name of his wife viz., the sixth defendant and the defendants 7 and 8. Therefore, mere purchase by others will not get better title and they ought to have verified the title before purchasing the property. Therefore, the plaintiffs are certainly entitled to the partition. The trial Court has rightly analyzed the entire evidence in proper manner and granted decree. Accordingly, all the points are answered.

19. In the result, this Appeal suit is dismissed and the judgment and decree granted by the Additional District Judge, Dindigul in O.S.No.77 of 2014, dated 27.11.2015, is confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes

Index : Yes/No

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N.SATHISH KUMAR, J.

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To

- 1.The Additional District Judge,
Dindigul.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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