



S.A(MD).No.742 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.(MD)No.742 of 2022
and C.M.P(MD)No.11098 of 2022

1.Gothainayaki
2.Venkateshan
3.Selvakadarkari
4.Karthika

.... Appellants/Appellants/Plaintiffs

Vs.

1.Arumuga Nainar
2.Esakkiammal
3.Balasubramanian
4.Chellakkani
5.Kalaivani

... Respondents/Respondents/Defendants 1, 3 to 6

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 24.06.2022 passed in A.S.No.125 of 2018 on the file of the 1st Additional District Court, Tirunelveli confirming the judgment and decree dated 06.02.2018 passed in O.S.No.22 of 2012 on the file of the Additional Sub Court, Tirunelveli.

For Appellants : Mr.H.Arumugam

J U D G M E N T

This Second Appeal has been filed challenging the concurrent findings of the courts below. The plaintiffs in the suit in O.S.No. 22 of 2012



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on the file of the Additional Sub Court, Tirunelveli are the appellants herein.

2. The suit was filed for partition claiming $4/5^{\text{th}}$ share in the suit schedule property. The plaintiffs claim that their father Arumuga Nainar, the first defendant in the suit led a wavered life and he never executed a sale deed dated 21.02.2007 in favour of the second defendant. According to the plaintiffs, after the death of their father Arumuga Nainar, they are entitled to $4/5^{\text{th}}$ share. The plaintiffs claim that the suit schedule property is an ancestral property of Kadarkariandi Nadar. The plaintiffs being his grand children are therefore entitled to equal shares along with the first defendant who is their father. In such circumstances, they have filed the suit for partition claiming $4/5^{\text{th}}$ share.

3. However, as seen from the written statement filed by the second respondent in whose favour the suit schedule property was sold by the first defendant under sale deed dated 21.02.2007, the second defendant claims that only through a valid sale deed dated 21.02.2007 he had purchased the suit schedule property from the first defendant. It is also contended by the second defendant that after purchase, he filed a petition in R.C.O.P.No.32 of



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2010 against the first defendant for eviction and obtained delivery through the court in an Execution Petition. The second defendant also contended that without challenging the sale deed dated 21.02.2007 standing in his name, the suit is not maintainable. The second defendant also contended that there is no joint possession and therefore, the payment of court fee by the plaintiffs is not correct. The second defendant also contended that the suit schedule property is an absolute property of the first defendant through a settlement deed and hence, he has got absolute right to sell the property.

4. Based on the pleadings of the respective parties, the trial court framed issues. Before the trial court, the appellants/plaintiffs filed 3 documents, which were marked as Ex.A.1 to Ex.A.3 and on their side, one witness was examined namely, the third plaintiff as P.W.1. On the side of the respondents/defendants, 11 documents were filed, which were marked as Ex.B.1 to Ex.B.11 and one witness namely, Balasubramanian, the fourth defendant in the suit was examined as D.W.1. Based on the oral and documentary evidence available on record, by its judgment and decree dated 06.02.2018 passed in O.S.No.22 of 2012 the Additional Sub Court, Tirunelveli, dismissed the suit by giving the following reasons:



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- a) The plaintiffs have not established that they are the legal heirs of the first defendant and they have also not produced any death certificate or legal heirship certificate for Kadarkariandi Nadar;
- b) The settlement deed executed in favour of the first defendant by Kadarkariandi Nadar itself is doubted as it creates many suspicions regarding the execution, identity of person and property;
- c) Both parties have failed to establish the title of the first defendant through settlement deed;
- d) The sale deed executed by the first defendant dated 21.02.2007 in favour of the second defendant also creates many suspicions;
- e) Delivery taken through the court will not give any right when the parties have not proved their right and title.

By giving the aforesaid reasons, the suit came to be dismissed.

5. The lower Appellate Court, while dismissing the first appeal filed by the plaintiffs, has given the following reasons:

- a) The trial court's consideration with regard to the validity of Ex.B.1 settlement deed is totally wrong as it was not in dispute;
- b) As per Ex.B.1 settlement deed, Kadarkariandi Nadar has got absolute right and hence, the sale deed executed through the sale deed



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dated 21.02.2007 (Ex.B.2) in favour of the second defendant is a valid sale deed;

c) The validity of the sale deed dated 21.02.2007 executed in favour of the second defendant has not been challenged by the plaintiffs.

d) Pursuant to the said sale deed dated 21.02.2007, the second defendant has also obtained possession of the suit schedule property by filing R.C.O.P. No.32 of 2010 and the same was also recorded by the executing court.

e) The plaintiffs are not in joint possession and the payment of the court fee under Section 32 of the Tamil Nadu Court Fees and Suits Valuation Act, is not correct.

f) The plaintiffs have not established through oral and documentary evidence that the suit schedule properties are ancestral properties whereas admittedly it belongs to Kadarkariandi Nadar and therefore, the plaintiffs have no right over the suit schedule property.

6. Admittedly, the sale deed dated 21.02.2007 standing in the name of the second defendant which is questioned by the plaintiffs in the plaint has not been challenged by seeking for a declaration that the said sale deed is null and void. Though the plaintiffs may contend that their father namely,



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the first defendant led a wavered life and did not execute the sale deed dated 21.02.2007 voluntarily, there is no iota of evidence produced by the plaintiff before the courts below to substantiate their claim. Further, the sale deed is of the year 2007, whereas the instant suit has been filed in the year 2012 through O.S.No.22 of 2012 on the file of the Additional Sub Court, Tirunelveli. No documentary evidence has been produced on the side of the plaintiffs to prove that the suit schedule property is an ancestral property and is not a self acquired property of Kadarkariandi Nadar, who has executed a settlement deed in favour of the plaintiffs' children namely, the first defendant herein from whom the second defendant has purchased under sale deed dated 21.02.2007.

7. Both the courts below have rightly held that the suit claim seeking for partition of 4/5 th share in the suit schedule property is not maintainable, though the reasons given by each of the courts are different in some aspects. However, both the courts have concurrently held that when the plaintiffs have not challenged the sale deed dated 21.02.2007 standing in the name of the second defendant but have chosen to file a suit for partition alone. This Court is of the considered view that the said reason given by the courts below is a correct one. The plaintiffs have not challenged the sale deed of



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the year 2007 standing in the name of the second defendant and that too, the suit having been filed after lapse of almost 5 years from the date of the sale deed dated 21.02.2007, this Court is of the considered view that both the courts below have rightly dismissed the suit. If the plaintiffs were aggrieved by the sale deed dated 21.02.2007 standing in the name of the second defendant, they ought to have filed a suit for declaration to declare the said sale deed as null and void by producing oral and documentary evidence in support of their contentions that the said sale deed was not executed voluntarily by the father namely the first defendant herein. No supporting documents have been produced by the plaintiffs to support their contentions in the plaint. The substantial questions of law raised in the grounds of appeal are all issues, which have been rightly considered by the courts below on the basis of oral and documentary evidence available on record. There are no debatable issues of fact or law involved to enable this Court to interfere with the findings of the courts below.

8. In the result, there is no merit in this Second Appeal. Accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.



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9. If so advised, the plaintiffs are at liberty to file a suit for declaration

to declare the sale deed dated 21.02.2007 standing in the name of the second defendant as null and void. But however, they have to satisfy the court with regard to the issue of limitation before which the said suit is going to be filed.

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Index : Yes/No
Internet: Yes/No
CM

To,

1.The 1st Additional District Court, Tirunelveli

2. The Additional Sub Court, Tirunelveli.

3.The Section Officer,

VR Section,

Madurai Bench of Madras High Court, Madurai.



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ABDUL QUDDHOSE, J.

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