



S.A(MD)No.96 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A(MD)No. 96 of 2017

Kaliammal

... Appellant

Vs.

1.Ramayee

2.Saraswathi

3.Palaniammal

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 24.06.2016 made in A.S.No.12 of 2015 on the file of the Principal District Court, Karur reversing the judgment and decree dated 09.07.2014 made in O.S.No.245 of 2008 on the file of Principal Sub Court, Karur.

For Appellant : Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.V.Nagarajan

For Respondent No.1 : No Appearance

For Respondents 2&3: Mr.C.Mahadevan



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JUDGMENT

The Second appeal is filed against the Judgment and Decree, dated 24.06.2016 passed in A.S.No.12 of 2015 on the file of the Principal District Court, Karur reversing the Judgment and Decree, dated 09.07.2014 made in O.S.No.245 of 2008 on the file of Principal Sub Court, Karur.

2. The Plaintiff is the Appellant and the Defendants are the Respondents herein. For the sake of convenience, the rank of the parties shall be referred as plaintiffs and defendants as stated in suit.

3. The suit in O.S.No.245 of 2008 was filed for partition, to divide the suit properties into four shares. The 'A' schedule property contains of five items. As far as 1 to 3 items and 5th item of 'A' schedule properties are concerned the Trial Court has granted 1/4 share to the plaintiff. In 'C' schedule property has granted 1/4 share. But the suit was dismissed as far as 4th item in 'A' schedule properties and then 'B' schedule properties. Aggrieved over the same, the defendants had preferred an appeal in A.S.No.12 of 2015. The Appellate Court



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has reversed the Judgment by relying on the *Benami Transactions (Prohibition) Act, 1988*. Hence the defendants in the suit have preferred this Second appeal.

4. As far as the 4th item in “A” schedule is concerned, the contention of the appellant is that they have never executed or affixed any signature in the partition deed. Further the appellant submitted that the father was alive, when father alive, the partition deed ought to be executed along with the father by granting one share to the father. In order to substantiate the claim, the appellant submitted that in the partition deed, which was alleged executed among the three daughters there is no mention that the father was mentally ill.

5. The said fact was vehemently opposed by the respondents and relied on the partition deed Ex.B3 executed by the three daughters, wherein it is categorically stated that the father was mentally ill and he is not in a position to understand and to execute any documents. Therefore, the daughters are dividing only one property alone (which is 4th item in the “A” schedule) leaving out the other properties. Therefore, the plea of the appellant that the father was mentally ill was not mentioned in the partition deed is incorrect. Therefore, the property



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which is already partitioned and hence the same is not available for partition again and hence, the plea of the appellant is rejected as far as the item No.4 is of “A” schedule is concerned.

6. As far as the 'B' schedule property is concerned the Lower Appellate Court held that the said property is not joint family property and it is the property of the 1st defendant and the same is not liable for partition. The Learned Senior Counsel appearing for the plaintiff submitted that the Appellate Court had erred in rendering such finding and the Court ought to have held that the “B” schedule property ought to be considered as joint family property and relied on Mangathai Ammal and other Vs. Rajeswari reported in 2016 (1) MWN (Civil) 464, wherein it is held that the property purchased in the name of wife by husband then the same is available for partition since section 4 of the Act is not applicable but only section 3(2)(a) of the Act is applicable. But the Learned Senior Counsel appearing for the 2nd and 3rd defendants submitted that the Benami Transaction Act is not applicable to the present case since the sale was executed prior to the enactment of the Benami Transaction Act. The 1st defendant had purchased the property to the 1st defendant through Ex.B1 executed on



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21.01.1975. The Act was enacted on 19.05.1988. To substantiate this the Learned Senior Counsel relied on the judgment rendered in Maria Francis and others Vs. M.Varghese and others reported in 2017 (1) CTC 374, wherein it is held that the law has been settled that the provisions of Benami Transaction Act are not applicable to transactions prior to the commencement of the Act in judgments C.Ganagacharan Vs. C.Narayanan 2000 (1) CTC 551 (SC) : 2000 (1) SCC 459, Sankara Kali & Sankara Institute of Philosophy and Culture Vs. Kishori Lal Goenka and another through Legal heirs reported in 1996 (7) SCC 55. Therefore, following the said judgments this Court is of the considered opinion that any transactions entered prior to the enactment of Benami Transactions (Prohibition) Act 1988, then the Benami Act is not applicable.

7. The further contention of the Learned Senior Counsel appearing for the plaintiff is that the 1st defendant / mother is house wife and she had no income on her own and the property was purchased by the father in the name of the mother and the same is purchased from the Joint Family nucleus. The 1st defendant ought to prove that the same was purchased on her own funds. Further the 1st defendant did not enter the witness box to prove her contention that she is



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the absolute owner of the property, then the same is sufficient to prove the property was Joint Family property. The contention of the plaintiff is refuted by the Learned Senior Counsel appearing for the defendants 2 and 3 and submitted once the sale is executed it is conclusive proof that the 1st defendant is the absolute owner of the property. Moreover, the 1st defendant / mother has further sold the property to one Sivaraj, who is one of the sons of the defendants 2 and 3.

8. It is relevant to narrate the sequence of the events. The 1st defendant had executed power of attorney to one R.Palanisamy, who had married both the 2nd and 3rd defendants. The said R.Palanisamy is selling the property to his son namely Sivaraj on 24.09.2008. The suit is filed on 15.10.2008. When the plaintiff had demanded partition of all the properties, the defendants had hurriedly executed the power of attorney and then sold it to her grandson / their son with an intention to encumber the property. The said power of attorney and the sale deed dated 15.10.2008 are self-serving documents. The 1st defendant though filed a separate written statement had chosen to remain silent without entering the witness box. Further it is seen the 1st defendant is shown as respondent in First Appeal A.S.No.12 of 2015, which means she is not inclined to file first appeal



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and adjudicate the case. It is in this background the further contention of the plaintiff ought to be considered. Initially the “B” schedule property was leased out to the 1st defendant’s husband, then the said property was purchased. Admittedly the 1st defendant is not having any independent source of income. Even though the said property was purchased in the name of the 1st defendant, the patta stood in the name of the 1st defendant’s husband, which is admitted by DW1 (the 3rd defendant) in her deposition, which the Trial Court had rightly taken note of. When the husband of the 1st defendant was having lease holder rights alone, it is not necessary to obtain patta in his name. It is after the purchase of the B schedule property, the husband of the 1st defendant had changed patta in his name and had chosen not to take patta in 1st defendant’s name. In such circumstances, the property was treated by the husband of the 1st defendant as joint family property. Therefore, this Court is of the considered opinion that the B schedule property is available for partition. The sale deed executed in favour of the grandson of the 1st defendant is self-serving document and the same is liable to be set aside and accordingly set aside.



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9. For the reasons stated above this Court is of the considered opinion that the 4th item of A schedule property is not available for partition since the same is already partitioned but the B schedule property is available for partition. As far as the other items i.e., 1 to 3 items and 5th item in 'A' schedule and 'C' schedule are concerned the Trial Court has already granted partition and the same is confirmed. Therefore, this appeal is partly allowed and the Judgment and Decree, dated 24.06.2016 passed in A.S.No.12 of 2015 on the file of the Principal District Court, Karur is modified to the above extent. No Costs.

Index : Yes / No
Internet : Yes
KSA

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To

1. The Principal District Judge,
Karur.
2. The Principal Sub Court,
Karur.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J

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**Judgment made in
S.A(MD)No. 96 of 2017**

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