



A.S.No.1089 of 1988

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.1089 of 1988

Kalai alias Balagurunathan

...Appellant/Plaintiff

Vs.

1.B.Balagurunathan (died)
2.B.Ammaiyappan
3.B.Avudaiammal (died)
4.V.Pandiya Thevar (died)
5.M.C.Balraja
6.S.Ramasubramaniam
7.Pandian
8.Minor Jayabala Gurunathan
9.Senthurpandian

...Respondents/Defendants

*[9th respondent minor declared as major as per order dated 13.07.2004]
[R8 represented by his mother natural guardian Subbulakshmi Ammal]*

PRAYER: This Appeal Suit is filed under Section 96 of the Civil Procedure Code, to set aside the judgment and decree dated 22.02.1988 made in O.S.No.61 of 1984 on the file of the Sub Court, Srivilliputhur.

For Appellants : Mr.T.M.Madasamy
For R2 : Mr.V.Meenakshi Sundaram
for Mr.P.Samuel Gunasingh
For R9 : Mr.N.Balasubramanian



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JUDGMENT

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Aggrieved over the decree and judgment of the trial Court granting preliminary decree only in respect of some of the suit properties, the present appeal came to be filed by the plaintiff.

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

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

(i)The plaintiff is the son of the second defendant in the suit. The first defendant is the grandfather of the plaintiff. The third defendant is the brother of the second defendant. The fourth defendant is the mother of the second and third defendants and wife of the first defendant. The fifth defendant is the son in law of the first defendant. The sixth, seventh and eighth defendants are the subsequent purchasers. The defendants 9 and 10 are the sons of the third defendant.



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4.The suit has been laid claiming share in the suit property on the ground that the suit property is the joint family property. It is the contention of the contesting defendants that the suit property has already been partitioned among the first defendant and his two sons, namely second and third defendants. Further, the first defendant had also executed a settlement deed in favour of his grandsons namely, defendants 9 and 10 by way of Ex.B108 and Ex.B109. But, the suit has been filed by the appellant claiming partition of 1/6 share in the entire suit properties. Hence, opposed the suit.

5.Based on the oral and documentary evident, the trial Court had framed the following issues:

1.Whether the plaintiff and defendants 1 to 3 were coparcenars of Hindu Joint family on the date of plaint?

2.Whether the partition deed dated 18.02.1084 is not true valid and binding on the plaintiff?

3.Whether the second and third schedule properties are joint family properties are joint family properties and whether the plaintiff is entitled to claim partition in that items?



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4. Whether the first defendant had gifted in favour of defendants 9 and 10 under the gift deed dated 02.05.1984 the properties allotted to him under partition deed dated 18.02.1984?

5. Whether the sale in favour of D-6 and D-8 are not valid and binding on the plaintiff?

6. To what relief if any is the plaintiff is entitled to?

Additional Issues framed on 20.07.1987:

1. Whether the 8th defendant is entitled to equity for the allotment of properties purchased by him?

2. Whether the sale in favour of the 8th defendant is not valid and binding on the plaintiff?

6. Before the trial Court, on the side of the plaintiff P.W.1 was examined and Ex.A1 to Ex.A6 were marked. On the side of the defendants D.W.1 to D.W.3 were examined and Ex.B1 to Ex.B117 were marked.

7. Based on the above issues, the trial Court granted preliminary decree only in respect of the shares allotted to the father of the plaintiff, namely the second defendant. Challenging the same, the present appeal is filed.



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8. Though various grounds have been raised, the learned counsel for the appellant mainly urged on the ground that since his father died during the pendency of the appeal, the entire share allotted to his father will devolve upon the appellant as he is the only legal heir of his father. Therefore, the decree has to be modified. In respect other findings of the trial Court, the learned counsel for the appellant has no grievance.

9. The learned counsel for the respondents would submit that as far as the share allotted to the father of the plaintiff is concerned, some of the properties had already been sold by the plaintiff along with his father and what remains for partition is only the house property and some other properties. He fairly submitted that preliminary decree shall be granted only in respect of the shares allotted to the father of the plaintiff.

10. In the light of the above submission, now the point arise for consideration in this appeal is as follows:

(1) Whether the appellant is entitled to the share as claimed in the plaint?



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11.Heard the learned counsel appearing on either side and perused the materials available on record.

12.The issue is very narrowed down in view of the submissions made before this Court. Now the appellant is seeking enlargement of share on account of the death of his father. Admittedly, the property originally owned by the first defendant and the same has been partitioned between his two sons namely, the second and third defendants. This fact is not in dispute. The partition deed, dated 18.02.1984 by Ex.A5 is also not disputed. In the partition deed, the second schedule has been allotted to the father of the plaintiff, namely second defendant. Therefore, once joint family property has been divided among the sharers, severance of status took place. Therefore, the appellant's contention that still the joint family remains cannot be countenanced. It is also established on record that the share allotted to the first defendant was dealt by him during his life time and executed a settlement deed in favour of the ninth and tenth defendants. The settlement deeds are also marked as Ex.B108 and Ex.B109, which are also proved before the trial Court. Further, the said documents had not been challenged. In such view of the matter, the trial Court in fact had granted preliminary decree considering the fact that the father of the appellant was alive.



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13.It is brought to the notice of this Court that during the pendency of the appeal, the father of the appellant also died and the appellant is the only legal heir of his father /second defendant. In such view of the matter, the share allotted under Ex.A5 to the father of the appellant has to go to the appellant.

14. Accordingly, the preliminary decree is passed for allotting the entire share allotted to the father of the appellant, under Ex.A5 to the appellant herein. At this juncture, the learned counsel for the respondents stated that some of the properties allotted under Ex.A5 to the father of the appellant/plaintiff had already been sold by the father of the appellant as well as the appellant. In such view of the matter, the appellant is entitled to the properties, which remain unsold.

15.In the result, the Appeal Suit is disposed of and the decree and judgment of the trial Court is hereby modified to the extent stated above. No costs.

30.06.2023

NCC : Yes/NO
Index : Yes/No
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N.SATHISH KUMAR, J.

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To

- 1.The Sub Court, Srivilliputhur.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
A.S.No.1089 of 1988

30.06.2023