



A.S.No.118 of 2011

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2024

CORAM :

THE HONOURABLE Ms.JUSTICE P.T.ASHA

A.S.No.118 of 2011

R.Vasudevan

... Plaintiff/Appellant

Vs.

1.Indra

2.Krishnan Rangi

3.Padma

4.Parimala

5.Saroja

6.R.Kamala

7.Shantha

8.R.Prema

9.R.Raghavan

10.R.Madhavan



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11.Seetha

12.R.Vijayalakshmi @ K.R.Vijaya

13.K.S.Devanadhan

14.D.Maniammal

15.D.Veerasekaran

(R15 impleaded vide Court Order dated
07.12.2021 made in M.P.No.1 of 2014 in
A.S.No.118 of 2011)

... Defendants/Respondents

Prayer:- Appeal is filed under Section 96 of C.P.C to set aside the judgement and decree in O.S.No.5367 of 2009 dated 21.07.2010 on the file of the IV Additional City Civil Court at Chennai.

For Appellant : Mr.A.Muthukumar

For Respondents : Ex parte for R1 to R4

: Notice dispensed with
for R5, R8, R11 to R13

: No appearance for R6, R7, R9 and R10

: R14 died

: Mr.Sankar Murali for R15



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JUDGEMENT

The plaintiff who has unsuccessfully contested a suit for Partition, Permanent Injunction and Declaration is the appellant before this Court.

2. The facts are set out in a nutshell herein below and the parties are referred to in the same litigative status as before the Trial Court.

3. The suit O.S.No.5367 of 2009 was instituted by the plaintiff on the file of the IV Additional Judge, City Civil Court, Chennai for the following reliefs:-

“(i) For Partition and Separate Possession of the Plaintiff's 8/21 share in the immovable property, viz., No.25, Sunkuvar Street, Triplicane, Chennai - 600 005, more particularly described in the Schedule hereunder as against Defendants 1 to 12;

(ii) For an order of Permanent Injunction restraining the Defendants, their men, agents, servants and all those persons claiming under them and/or authorized by them from dealing in any manner



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whatsoever with the property, viz., No.25, Sunkuvar Street, Triplicane, Chennai - 600 005, more particularly described in the Schedule hereunder, either by demolition or otherwise;

(iii) For a Declaration that the Sale Deed dated 04.04.2007, registered as Document No.474 of 2007 executed by R.Srinivasa Rao, Fifth Defendant, Seventh Defendant in favour of the Thirteenth Defendant is null and void;

(iv) For a Declaration that the Sale Deed dated 26.04.2007, registered as Document No.583 of 2007 executed by Defendants 8 to 12 in favour of the Thirteenth Defendant is null and void;

(v) For a Declaration that the Sale Deed dated 31.05.2007, registered as Document No.714 of 2007 executed by the Sixth Defendant in favour of the Thirteenth Defendant is null and void;

(vi) Consequently declaring the Sale Deed dated 30.11.2007, registered as Document No.1481 of 2007 executed by the Thirteenth Defendant in favour of the Fourteenth Defendant is null and void;



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(vii) Directing the Defendants to jointly and severally pay to the Plaintiff the costs of the suit.”

4. It is the case of the plaintiff that he and the fifth to eighth defendants are the son and daughters of Late R.Ramachar. The first to fourth defendants are the wife and children of the plaintiff's deceased brother R.Srinivasa Rao. The ninth to twelfth defendants are the children of the plaintiff's Late sister Godavari and the thirteenth and fourteenth defendants are the subsequent purchasers of a portion of the property owned by Late R.Ramachar. The suit property is a house, ground and premises bearing Door No.25, Old No.42, Sunkuvar Street, Triplicane, Chennai – 600 005, measuring 1260 sq.ft. of thereabouts. The property in question belongs to the ancestors of Late R.Ramachar and in a partition between Late R.Ramachar and his brothers, the suit property was allotted to Late R.Ramachar. The plaintiff would submit that he along with his father and his brother Late R.Srinivasa Rao had constituted Hindu Undivided Family, each being entitled to 1/3rd undivided share. On



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19.01.1982, his father R.Ramachar died intestate leaving behind him, the plaintiff, the plaintiff's brother R.Srinivasa Rao and five daughters to succeed to his estates. The plaintiff would therefore submit that each of them would be entitled to a $1/7^{\text{th}}$ undivided share in the father's $1/3^{\text{rd}}$ undivided share in the suit property. The plaintiff and his brother Late R.Srinivasa Rao, who already had a $1/3^{\text{rd}}$ undivided share each in the suit property become entitled to an enhanced share of $8/21$ in the suit property.

5. Earlier, the plaintiff's deceased brother R.Srinivasa Rao had filed a suit O.S.No.8877 of 1986 on the file of the XII Assistant Judge, City Civil Court, Chennai for Partition and Separate Possession of his $8/21^{\text{st}}$ undivided share. Although the plaintiff had entered appearance in that proceedings and filed his written statement, he did not further proceed and was set *ex parte*. The suit was ultimately decreed (preliminary decree) in favour of the plaintiff's brother Late R.Srinivasa Rao on 18.04.2001. However, the said Late R.Srinivasa Rao had not filed any application for passing of a final



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decree and neither did the plaintiff take any steps. The plaintiff would submit that none of the sharers are getting any income out of the ancestral property. Towards the end of March 2007, the deceased R.Srinivasa Rao colluded with the other sharers and with a view to deprive the plaintiff of his share entered into a clandestine arrangement with one M/s.R.R.Builders for the sale of the property as a whole, though the plaintiff had a 8/21 undivided share in the property.

6. In fact, even in his suit i.e., O.S.No.8877 of 1986, the plaintiff's brother Late R.Srinivasa Rao had admitted to the fact that the plaintiff had a 8/21 undivided share in the suit property. The plaintiff on coming to know about the above arrangements, had immediately shot out a letter to the said M/s.R.R.Builders, asking them to refrain from proceeding further with the deal. However, despite receiving the notice, the said M/s.R.R.Builders appeared to be proceeded further with the matter. The plaintiff had therefore filed a suit O.S.No.4162 of 2007 on the file of the VII Assistant Judge, City



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Civil Court, Chennai against his brother R.Srinivasa Rao, the fifth to twelfth defendants and the said M/s.R.R.Builders for a Permanent Injunction restraining them from in any manner dealing with the suit property. The plaintiff had received a caveat from the thirteenth defendant, who said that Late R.Srinivasa Rao and the fifth to twelfth defendants had sold their 1/7th share each to the thirteenth defendant during the month of April, May 2007. The thirteenth defendant was thereafter impleaded in the above proceedings. Pending the suit, Late R.Srinivasa Rao had passed away and his Legal Representatives were brought on record. The eighth defendant had also filed a suit for Partition seeking a 1/7th share in the suit property. The suit has been filed against the plaintiff, Late R.Srinivasa Rao, the fifth to seventh defendants and ninth to twelfth defendants, which is pending on the file of the XIV Assistant Judge, City Civil Court, Chennai.

7. The plaintiff's grievance is that not only the share of the plaintiff and the said Late R.Srinivasa Rao is reduced, but the share of the sisters have been increased. The plaintiff also came to know that



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the defendants have created several Sale Deeds which are not binding on the plaintiff to the extent of his share i.e., 8/21th share. Therefore, the suit has been filed for the reliefs stated *supra*. The fourteenth defendant alone has contested the suit and other defendants remained *ex parte*.

8. The primary defence taken out by the fourteenth defendant is that the suit is barred by the principles of *res judicata* inasmuch as the earlier suit filed by Late R.Srinivasa Rao was for the very same relief and the same had been granted and therefore, the present suit is clearly barred by the principles of *res judicata*. The fourteenth defendant draws strength for asserting his right in the suit property to the earlier decree in O.S.No.8877 of 1986 filed by Late R.Srinivasa Rao. The fourteenth defendant would also submit that the plaintiff was very much aware about the sale having participated in the negotiations and later on refusing to proceed with it.



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9. The fourteenth defendant would submit that the allegations of the plaintiff that there was a clandestine dealing between the fourteenth defendant and the other defendants has to necessarily be rejected as a self-serving allegation. The fourteenth defendant would further submit that there is no relief claimed against her and the suit is nothing but a vexatious one and the fourteenth defendant is the *bona fide* purchaser for the value.

10. The Trial Court had framed over nine issues. The plaintiff had examined himself as P.W.1 and marked Exs.A1 to A8. The fourteenth defendant has examined herself as D.W.1 and marked Ex.B1. The learned IV Additional Judge, City Civil Court, Chennai, had ultimately dismissed the suit O.S.No.5367 of 2009 filed by the plaintiff with cost. In the cross-examination of the plaintiff before the learned trial Judge, the plaintiff had admitted that he had been involved in the negotiation with the thirteenth defendant and has also admitted that he was part of the negotiation for the sale of the



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property to the thirteenth defendant and that a 6/7th undivided share was sold.

11. The learned trial Judge had observed that the plaintiff had demanded a higher price, the sale in respect of his share did not go through whereas, the other sharers/other co-owners had sold their respective 1/7th share to the thirteenth defendant. The plaintiff is therefore estopped from questioning the sale. Aggrieved by this Judgment and Decree, the plaintiff is before this Court.

12. On hearing the arguments of the counsels, the points for determination in the above First Appeal are:-

*“1. Whether by reason of the fact that the Final Decree had not been passed in the earlier suit O.S.No.8877 of 1986, the daughters would get an equal share in the suit property by reason of the Judgment of the Hon'ble Supreme Court in the case of **Vineeta Sharma Vs. Rakesh Sharma & others** reported in 2020 (5) CTC 302?*



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2. *Whether the plaintiff's share in the suit property had reduced from 8/21 undivided share to a mere 1/7th undivided share?*

3. *Whether the present suit is barred by the principles of res judicata?*

13. Mr.A.Muthukumar, learned counsel appearing on behalf of the plaintiff would submit that during trial in O.S.No.5367 of 2009, the plaintiff was examined as P.W.1 and Ex.A1 to Ex.A8 were marked. On perusing the plaint, written statement, judgment and decree in O.S.No.8877 of 1986 which were marked as Exs.A1 to A4, the Court had clearly observed that the plaintiff was entitled to a 8/21 undivided share just as in the case of Late Srinivasa Rao. He would also rely upon the judgment of the High Court of Andhra Pradesh in the case of *Mallayya and another Vs. Talari Tippanna and other* reported in *AIR 1955 ANDHRA 81* to buttress his contention that filing of an earlier suit for Partition is not a bar to the filing of the second suit for the same relief. That apart, there was no restrictions in the earlier suit and therefore, the second suit was very much maintainable.



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14. The learned counsel for the plaintiff would further submit that nowhere has the plaintiff given up his right to the 8/21 undivided share, though the parties had discussed the reduction of the shares of Late R.Srinivasa Rao. However, the same had not fructified into a clear Agreement insofar as the shares of the plaintiff is concerned and therefore, the subsequent suit was clearly not barred.

15. Per contra, Mr.Sankar Murali, learned counsel appearing on behalf of the fifteenth respondent would submit that there is no time limit to file a final decree. He would further submit that any intervening circumstances or law would have a bearing on the issues even in a suit where a preliminary decree has been passed.

16. The learned counsel for the fifteenth respondent would submit that Act 39 of 2005 had come into existence pending the suit and therefore in the light of the Judgment of the Hon'ble Supreme Court in *Vineeta Sharma's case* referred to *supra*, the sisters would also get a right to the property. He would rely upon the Judgments of the



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Hon'ble Supreme Court in the case of ***Ganduri Koteshwaramma and another Vs. Chakiriyandi and another*** reported in ***(2011) 9 SCC 788*** and in the case of ***Vineeta Sharma Vs. Rakesh Sharma & others*** reported in ***2020 (5) CTC 302***, in support of his contentions. He would also submit that in keeping with the tenor of the judgment in ***Vineeta Sharma's case*** referred to *supra*, no final decree or partition decree have been passed in the instant case before 20.12.2004. Therefore, the judgment would apply on all fours to the instant case. He would also rely upon the Judgment of the Hon'ble Supreme Court in the case of ***DR Subramanian Swamy Vs. State of Tamil Nadu and others*** reported in ***(2014) 5 SCC 75***, to explain the concept of *res judicata*. He would submit that by reason of the amendment Act 39 of 2005, the daughter(s) is/are also got an equal right in the ancestral property and therefore, the shares of both plaintiff as well as Late R.Srinivasa Rao would be reduced to a 1/7 undivided share as against 8/21 undivided share. He would therefore prayed that the First Appeal be dismissed.



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20. Therefore, a reference can be made to the Judgment of the Hon'ble Supreme Court in *Ganduri Koteshwaramma's case* referred to *supra*, where, their Lordships had observed as follows:-

“14. A preliminary decree determines the rights and interests of the parties. The suit for partition is not disposed of by passing of the preliminary decree. It is by a final decree that the immovable property of joint Hindu family is partitioned by metes and bounds. After the passing of the preliminary decree, the suit continues until the final decree is passed. If in the interregnum i.e. after passing of the preliminary decree and before the final decree is passed, the events and supervening circumstances occur necessitating change in shares, there is no impediment for the court to amend the preliminary decree or pass another preliminary decree redetermining the rights and interests of the parties having regard to the changed situation.”

21. It is clear that the earlier suit had not attained finality and the Hon'ble Supreme Court in *Vineeta Sharma's case* referred to *supra*, had held that where the law confers a right or such other event takes place, its effect has to be worked out even after the passing of the preliminary decree.

22. Their Lordships were making these observations while



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considering the interpretation of Section 6 of the Hindu Succession Act, 1956 as amended by the Hindu Succession (Amendment) Act, 2005 and whether the provisions would be prospective or retrospective, ultimately, their Lordships had observed as follows:-

“125. The severance of status may take place from the date of filing of a suit; however, a decree is necessary for working out the results of the same, and there may be a change of rights during the pendency of the suit for allotting definite shares till final decree is passed. There are cases in which partition can be reopened on the ground of fraud or mistake, etc. or on certain other permissible grounds. In appropriate cases, it can be reopened at the instance of minor also.

126. The protection of rights of daughters as Coparcener is envisaged in the substituted [Section 6](#) of the Act of 1956 recognises the partition brought about by a decree of a court or effected by a registered instrument. The partition so effected before 20.12.2004 is saved.”

23. Therefore, it is clear that though a preliminary decree had passed, no final decree proceedings were initiated and that apart in the interregnum, Act 39 of 2005 had come into existence. Therefore, once the Act is given effect to, the daughter(s) would become entitled to an equal share and therefore, in this case, the daughters would



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become entitled to a $1/7$ undivided share. Both the plaintiff as well as his brother Late R.Srinivasa Rao would have their $8/21$ undivided share (reduced to a $1/7$ undivided share).

24. It is also seen that recognizing the right of the sisters of the property, the plaintiff had participated in the negotiations with the thirteenth defendant. The deal insofar as the plaintiff was concerned, had fallen out only an account of the fact that that the thirteenth defendant was not able to match the price claimed by the plaintiff as is evident from the Judgment of the Trial Court.

25. Therefore, having accepted the rights of the sisters to the property, the plaintiff is estopped from contending that he is entitled to a $8/21$ undivided share. All the defendants have agreed that the plaintiff is entitled to a $1/7^{\text{th}}$ share. The thirteenth and fourteenth defendants have purchased only a $6/7^{\text{th}}$ share from the others.

26. The Trial Court ought to have decreed the suit for a $1/7^{\text{th}}$



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share and not dismissed it *toto*. The points for consideration are answered in favour of the defendants.

27. The Appeal Suit is partly allowed granting a preliminary decree for a 1/7th undivided share in the suit schedule property to the plaintiff. The order of the Trial Court granting cost is set aside. No costs.

10.04.2024

Index : Yes / No
Internet : Yes / No
Speaking Order / Non-Speaking Order
Neutral Citation : Yes / No

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To

1.The IV Additional City Civil Court,
Chennai.

2.The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.

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