



A.S.No.163 of 2016

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2024

CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR JUSTICE C.KUMARAPPAN

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1.Balabaskar

2.Ravindran

3.Vijayalakshmi

...Appellants

Vs.

1.Kasthuri @ Thilagavathi (Deceased)

2.Ramu

3.Veeraraghavan

4.V.Sai Prasath @ Rangasamy (Died)

5.V.Mahalakshmi

6.V.Karthika

[Respondents 3 to 6 brought on record as LR's of
the deceased R1 vide order dated 23.06.2016
made in C.M.P.No.9289 and 9290 of 2016.]



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7.Kalaivani

[R7 brought on record as LR of the deceased 4th respondent vide order dated 18.10.2022 made in C.M.P.no.16759 of 2022]

...Respondents

Prayer: Appeal filed under Section 96 read with Order 41 Rule 1 of the Code of Civil Procedure against the judgment and decree dated 04.08.2015 passed by the learned Principal District Judge, Cuddalore District, Cuddalore in O.S.No.129 of 2011.

For Appellants : Mrs.S.Radha Gopalan
For Respondent : Mr.K.A.Ravindran for R3, 5 & 6
Mr.R.Krishnasamy for R7

J U D G M E N T

*(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)*

The defendants 1, 3 and 4 in a suit for partition in O.S.No.129 of 2011 are on appeal aggrieved by the preliminary decree for partition granted in favour of the plaintiff declaring that she would be entitled to 1/5th share in



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the property, which consists of three items. Item Nos.1 and 2 are immovable properties and the 3rd item is a bus with a route permit.

2. The plaintiff sued for partition contending that the suit properties belonged to her father Dhanapal, who died on 03.01.2008 leaving behind the plaintiff and the defendants 1 to 4 as his heirs. Dhanapal's wife Lakshmi pre-deceased him. The plaintiff would specifically aver that upon demand for partition, there was a settlement between the family members and an agreement was entered into on 17.04.2010, in and by which, the defendants 1 to 3 the sons of Dhanapal agreed to pay a sum of Rs.11,00,000/- each to the two daughters viz., the plaintiff and the 4th defendant. Claiming that the said money was also not paid and the defendants 1 to 3 denied her right over the properties, the plaintiff had sued for partition.

3. The suit was resisted by the defendants originally contending that the plaintiff is not entitled to any share since she was paid a sum of Rs.4,00,000/- at the time of her marriage, apart from being gifted about 100 sovereigns of gold jewellery. It was also contended that her marriage was



celebrated in a grand manner and hence she is not entitled to any share. A novel plea was taken to the effect that since she was married prior to 1989, she would not be entitled to the benefit of Tamil Nadu Amendment of the Hindu Succession Act which was introduced in the year 1989 under Act 1 of 1990. Subsequently a written statement was filed stating that as per the agreement dated 17.04.2010, the plaintiff would be entitled to sue only for Rs.11,00,000/- and she is not entitled to sue for partition.

4. The trial Court on the above pleadings framed the following issues and additional issues:

1. Whether the suit properties are joint family properties?

2. Whether the plaintiff is not entitled to any share in the properties including the bus for the reasons set forth on para 8 of the written statement?

3. Whether the plaintiff is entitled to 1/5th share in the suit properties?

4. Whether the plaintiff is to be accountable for Rs.4,00,000/- mentioned in para 7 of the written statement?

5. Whether the plaintiff is entitled to 1/5th share in the



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suit properties?

6.To what relief, the plaintiff is entitled?

Additional Issues:

1.Whether the suit properties are joint family properties?

2.Whether the plaintiff is not entitled to any share in the properties including the bus for the reasons set forth on para 8 of the written statement?

5. At trial, the plaintiff was examined as PW1 and Exs.A1 to A4 were marked. The 1st defendant was examined as DW1, the 3rd defendant was examined as DW2, the 4th defendant was examined as DW3 and two other witnesses were examined as DW4 and DW5 and the 2nd defendant Ramu was examined as DW6 and Exs.B1 to B6 were marked.

6. The trial Court upon consideration of the evidence came to a conclusion that since the agreement dated 17.04.2010 has not been honoured, it was open to the plaintiff to sue for partition. On transfer of the bus permit, the learned trial Judge concluded that the transfer was effected only to enable the business to continue and no objection for transfer will not



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amount to relinquishment of right in the property.

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7. The learned trial Judge also concluded that the plaintiff is not estopped from suing for partition merely because she had entered into an agreement for settlement of the dispute and has accepted to receive cash instead of share in the property, more particularly, when the defendants have denied existence of very agreement in the written statement, they have not come forward to pay the money as agreed to by them under the agreement dated 17.04.2010. On the above findings, the learned trial Judge granted a preliminary decree declaring 1/5th share of the plaintiff in the suit schedule properties. Aggrieved the present appeal.

8. We have heard Mrs.Radha Gopalan, learned counsel appearing for the appellant and Mr.K.Ravindran, learned counsel appearing for the respondents 3, 5 and 6 and Mr.R.Krishnasamy, learned counsel appearing for the 7th respondent. The 2nd respondent though served is not appearing either in person or through counsel. The 2nd respondent, one of the sons, as 2nd defendant in the suit, though had filed a statement supporting the plaintiff's claim had not participated in the proceedings. The respondents 1



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and 4 having died their legal representatives have been brought on record.

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9. Mrs.Radha Gopalan, learned counsel appearing for the appellant would vehemently contend that having entered into an agreement and agreeing to receive a sum of Rs.11,00,000/- in lieu of her share, the plaintiff cannot sue for partition. According to her, the plaintiff at best can sue for a specific performance of the agreement dated 17.04.2010 or for recovery of a sum of Rs.11,00,000/-. She would also point out that the agreement could not be complied with because of non-cooperation of the plaintiff. Pointing out to the fact that the agreement states that the 2nd item of the property, which is a vacant land is to be sold and out of the proceeds the plaintiff and the 4th defendant are to be paid Rs.11,00,000/- each, the learned counsel would submit that the plaintiff did not co-operate for sale of the property. Therefore, the default in payment is not voluntary and hence, the plaintiff cannot be allowed to sue for partition.

10. Contending contra Mr.K.A.Ravindran, learned counsel appearing for the respondents 3, 5 and 6, the legal heirs of the original plaintiff/ 1st respondent and Mr.R.Krishnasamy, learned counsel appearing for the 7th



respondent in the appeal would vehemently contend that the agreement did not fructify because of the reluctance of the appellants viz., the defendants 1, 3 and 4 to part with the share of the plaintiff. Taking us through the original written statement filed in the suit as well as the reply notice issued, the learned counsel would submit that the defendants 1, 3 and 4 never accepted the said agreement. They had specifically contended that the plaintiff is not entitled to any share since she has been paid a sum of Rs.4,00,000/- at the time of her marriage.

11. On the above contentions of the learned counsel for the parties the only question that arises for consideration in this appeal is,

Whether the plaintiff can be said to be barred from filing a suit for partition, in view of the fact that she had entered into an agreement dated 17.04.2010 agreeing to receive money in lieu of her share?

12. The following facts are not disputed:

1. The properties belonged to Dhanapal, father of the plaintiff and the defendants who died on 03.01.2008.



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2. Lakshmi wife of Dhanapal pre-deceased him.
3. The plaintiff and the defendants are children of Dhanapal.
4. The properties are self acquired properties of Dhanapal.

13. In the light of the above admitted facts, it is clear that the plaintiff as a daughter of the male Hindu, who died after coming into force of Hindu Succession Act, 1956 would be entitled to 1/5th share in the properties left behind by Dhanapal. Therefore, there is no doubt regarding entitlement of the plaintiff to a share in the properties. Claim that the plaintiff was given certain monies at the time of marriage and that her marriage was performed at a great cost, even if true, cannot be a bar to the plaintiff seeking partition of her 1/5th share.

14. The only contention that is urged by the learned counsel for the appellants is that the plaintiff had entered into an agreement dated 17.04.2010 agreeing to receive Rs.11,00,000/- in lieu of her share and



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money has not been paid within the time agreed, she is always at liberty to file a suit for partition. The other contention that she has executed a no objection for transfer of bus permit cannot hold water, in as much as its purpose is for exigency and will not amount to relinquishment of right in the property.

17. The learned trial Judge had concluded that the defendants having not paid a sum of Rs.11,00,000/- as agreed to by them are not entitled to claim that the plaintiff is not entitled to a share in the property. The claim that the plaintiff did not cooperate for sale of the property was not made in the pleadings. For the first time it was elicited in cross-examination of DW2. We are therefore unable to fault the trial Court for having come to the conclusion that despite Ex.B2 agreement, the plaintiff would be entitled to seek partition of her share. Ex.B2 being an un-registered document will not operate as relinquishment of share of the plaintiff in lieu of monetary compensation.

18. We therefore see no merit in the appeal. The appeal fails and it is



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accordingly **dismissed**. No costs. We make it clear that we have not gone into the dispute inter se between the plaintiff's heirs, as they are beyond the scope of the appeal. No costs.

(R.S.M., J.) (C.K., J.)
06.11.2024

dsa
Index : No
Internet : Yes
Neutral Citation : No
Speaking order

To

The Principal District Judge,
Cuddalore District, Cuddalore.



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