



A.S.No.818 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

A.S.No.818 of 2015
and
C.M.P.No.16357 of 2016

Judgment reserved on 06.03.2024	Judgment pronounced on 18.04.2024
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1.T.A.Joseph
2.Jerome Tottarave ... Appellants

Vs.

1.Josephine Aroquiamarie Christian Rani
2.Premraja
3.Tettarave Rock
4.Clair Augustin
5.Asthera Koskas
Caillard Leela (Died)
6.Marie Josephine Vasandhara
7.Josephine Victoria @ Mary Bernard
8.Fortein Caillard
9.Pamela
10.Yannick ... Respondents

Prayer: This First Appeal is filed under Section 96 r/w Order 43 Rule 1 of Code of Civil Procedure, against the supplementary preliminary decree passed by the learned Principal District Judge, Pondicherry dated 08.04.2015 passed in I.A.No.3 of 2005 in O.S.No.33 of 1974.



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For Appellants : Mr.R.Karunakaran
For Mr.J.Bharathi Raja

For R1 : Mrs.Anisha Gupta
For R2 : Mr.S.Senthil
For R3 to R6
R8 to R10 : No appearance
For R7 : Died

J U D G M E N T

This appeal is filed by the respondents 1 to 4 (L.R's of the deceased plaintiff) against the supplementary award passed by the learned Chief Judge, Puducherry, dated 08.04.2015.

2. Both the parties are heard.

3. The brief facts necessary for determination of this case are as under:-

In O.S.No.33 of 1974 is filed for partition.

(i) The plaintiff and the defendants are the sisters and they are the daughters of one Sourassamy Mudaliar. The said Sourassamy Mudaliar had bequeathed the schedule mentioned property to and in favour of the 1st defendant through a Will dated 23.05.1959. Therefore, the 1st defendant filed a suit in O.S.No.38 of 1974 against her sisters for declaration of her



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absolute title over the schedule of property mentioned in the petition, while the plaintiff filed the above suit in O.S.No.33 of 1974 for declaration that the will in question is null and void and consequently prayed for a decree for partition into four shares and for allotment of her 1/4th share by metes and bounds.

(ii) O.S.No.38 of 1974 was dismissed whereas in O.S.No.33 of 1974 declared that the will was valid only to the extent of 1/4th share and for partition of the reminder 3/4th share of the suit property into four equal shares and accordingly preliminary decree for partition was passed in favour of the plaintiff.

(iii) Aggrieved of the same, the 1st defendant in O.S.No.33 of 1974 preferred two appeals in A.S.No.449 of 1982 and 450 of 1982 before this Court, which stood abated by her death during the pendency of the appeals and consequently, the judgment and decree of this Court prevails and become executable.

(iv) The 1st defendant got a release deed from the 3rd defendant/8th respondent of her 3/16th share in the petition mentioned



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property for valid consideration through a release deed dated 26.02.1987 registered on 2.3.1987 and in turn the 1st defendant sold the same to and in favour of the 2nd petitioner for valid consideration through a sale deed dated 11.11.1988 registered on 05.12.1988.

(v) The 1st defendant had also sold her 3/16th share obtained by the decree of partition and also her 1/4th share in favour of the 1st petitioner for valid consideration through sale deed dated 31.12.1980.

(vi) Thus the petitioners are altogether entitled to 7/16th share plus 3/16th share totalling to 10/16th share i.e., 5/8th share in the petition mentioned property. The 2nd petitioner had also discharged by way of discharge receipt dated 09.06.1955, a registered usufructuary mortgage dated 21.12.1985 in respect of the north portion of the petition mentioned property at Rangapillai Street measuring an extent of 7.6 feet north to South and 60 feet east to west from one Joseph Fortune to whom the 1st defendant leased out and the portion of the property is also since then in the possession and enjoyment of the 2nd petitioner.



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(vii) The respondent Nos.1 to 6 as legal representatives of the deceased plaintiff have inherited her 3/16th share in the property mentioned in the petition through the said decree. The 7th respondent had purchased from the 2nd defendant in her 3/16th share in the petition mentioned property through a registered sale deed dated 05.03.1983. Thus the respondent Nos.1 to 6 are entitled to 3/16th share jointly, respondent No.7 is entitled 3/16th share.

(viii) The petitioners informed the respondents 1 to 7 about their purchase of 10/16th share from the deceased 1st defendant and requested them to come for an amicable partition but they have not responded and therefore this petition is filed in view of the transfer of the shares by the original sharers since the passing of the preliminary decree.

(ix) The petitioners have already filed a final decree applicable in I.A.No.21 of 1999 against the respondents, dividing it by metes and bounds into 16 shares, allotting 10 shares to them. The said application is pending for enquiry.



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WEB COPY 4.I.A.No.3 of 2005 filed by the respondents 1&2 herein is the appellant also filed a counter stating that they are strangers to the family alleged sale transaction is hit by lis pendense. By an order dated 08.04.2015, the same was allowed and hence the Appeal Suit.

5. On perusal of the lower Court order, I find that the 7th respondent before the lower Court namely Marie Josephine Vasandhara filed a memo that she is also entitled for 3/6th share. However, in the preliminary decree, it was not allotted to her since he has not paid the necessary court fee. As he has paid necessary court fee as required under Section 37(3) of Pondicherry Court Fees and Suit Valuation Act, the same may be ordered and the trial Court also considered and allowed the memo.

6. The learned counsel appearing for the appellants contended that:

(i) the application for supplementary preliminary decree in as much as the alleged sale took place in favour of the respondents 1&2, when the appeals were pending before this Court and the alleged sale is hit by the doctrine of lis pendens.



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WEB COPY (ii) Pendent lite purchasers have no automatic right to file any application in the suit which was already decreed.

(iii) The supplementary preliminary decree was passed by the fraud played by the counsel for the appellants by filing a memo submitting to a decree to be passed in I.A., without the consent of the appellants.

(iv) He filed a memo before the trial Court, without the consent of the appellants, as if they are submitting for the supplementary preliminary decree. This proves that the advocates for the appellants colluded with the respondents 1&2 and paved the way for passing a collusive decree.

7. The learned counsel for the contesting respondents contended that respective memos taken by the learned Chief Judge of Puducherry in the memo filed before the Court on 06.04.2015. The respondents 2 and 3 have signed and on behalf of the respondents 1 to 5, the counsel has also made an endorsement that the respondents 1 to 5 are submitting to the decree as per the petition in I.A.No.3 of 2005 and hence order was passed and further relied upon the following judgments:-



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(i) **Byram Pestonji Gariwala v.Union Bank of India**

WEB COPY (1992) 1 SCC 31

(ii) **Ajanta LLP v. Casio Keisanki Kabushiki Kaisha
d/b/a Casio Computer Co.Ltd. and ors., (2022) 5 SCC 449**

(iii) **Bakshi Dev Raj and ors v.Sudhir Kumar, (2011) 8
SCC 679**

(iv) **Y.Sleebachen v.Superintending Engineer
WRO/PWD, (2015) 5 SCC 747**

(v) **Pushpa Devi Bhagat (D) th.LR.Sadhna Rai
v.Rajinder Singh and Ors., (2006) 5 SCC 566**

(vi) **M.Ganesan v. G.Anbumani, C.R.P.No.4626 of 201**

(vii) **Phoolchand and Ors v.Gopal Lal, AIR 1967 SC
1470**

(viii) **Ganduri Koteshwaramma and Ors. v. Chakiri
Yanadi adn Ors., AIR 2012 SC 169**

(ix) **G.T.Girish v. Y.Subba Raju (D) by L.Rs and Ors.,
Civil Appeal No.380 of 2022.**



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8. After hearing the rival submissions, the following points

arises for determination:

(i) Whether the compromise memo filed is vitiated by fraud as alleged by the appellant?

(ii) Whether the supplementary decree passed is sustainable in law?

(iii) Since the second petitioner before the trial Court has purchased the property pending appeal does it hit by lis pendens?

9. The lower Court records perused.

10. Memo filed in the said I.A.No.3 of 2005 on behalf of the respondents 1 to 5 and endorsement made therein by the respondents 2 to 3 therein and the learned counsel for the respondents 1 to 5 therein and specific endorsement made by the learned counsel for the respondents along with the vakalath filed by the learned counsel for the respondents R1 to R5 and hence, I find that based upon the lower Court records, I have no hesitation to come to the conclusion that all the parties namely respondents before the trial Court in the said I.A are given valid consent



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for granting the supplementary decree. Now, after giving the consent for the passing of the supplementary decree. In view of the subsequent change in quantum of share as stated in the affidavit, the parties have now turned around and filed this application, as an after thought. Admittedly, no complaint has been filed against the counsel before the lower Court also assumes significance.

11. The learned counsel who signed the compromise memo has a valid vakalath on the date of making such endorsement and R2 and R3 have signed in person. They are not filed any appeal challenging the said compromise also assumes significance.

12. In the Byram's case as stated supra, the compromise memo can be signed by the counsel on record on behalf of their client and in Sleebachen's case cited supra, the Supreme Court has held that the compromise entered into by counsel is valid agreement. No action taken against the counsel, insufficient evidence to set aside the compromise.

13. In Phoolchand's case, the Hon'ble Supreme Court has held that supplementary preliminary decree may be passed, if an event transpires



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after the first preliminary decree which necessitates a change in the shares. So also in Ganduri's case, the supplementary preliminary decree may be passed, if an event transpires after the first preliminary decree which necessitates a change in shares and G.T.Girish's case, the doctrine of lis pendens, does not invalidate sale, but transfer of property is subject to final result of the litigation.

14. In the instant case upto the passing of preliminary decree which was confirmed in the appeal, there was no dispute.

15. On perusal of Exs.P4 to P6, this Court finds that the 7th respondent – Josephine Victoria @ Mary Bernard executed a release deed in respect of her 3/16th share in favour of Josephine Immacule on 26.02.1987, which was registered on 02.03.1987 (Ex.P4), and which share was subsequently sold to Mr.Premraja for valid consideration vide Sale Deed dated 11.11.1988, registered on 05.12.1988 (Ex.P5). Further, Josephine Immacule sold her 7/16th share through Sale Deed dated 31.12.1980 to Josephine Christian Rani (Ex.P6).



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16. Thereafter, the subsequent purchasers, i.e., Josephine Christian Rani and Premraja, filed I.A.No.3 of 2005 filed a petition under Section 151 of the Code of Civil Procedure, 1908 ("CPC") praying that a supplementary preliminary decree be passed in their favour, for 10/16th share in the schedule property. The legal heirs of Josephine Marikannu Antoine filed a Counter-Affidavit alleging that Tettarave Rock (son of Josephine Marikannu Antoine) received 3/16th share from Mary Bernard vide Release Deed dated 28.12.1994.

17. Hence, I find that the quantum of the share as fixed in the preliminary decree has undergone the change in view of the subsequent release deed and the sale deed. In the decision cited supra, the Hon'ble Supreme Court has categorically stated that the unequitable terms have stated that after passing off the preliminary decree if the quantum of the share undergoes a change, supplementary preliminary decree may be passed. Further, it is also stated that any sale effected during the pendency of the appeal, the doctrine of lis pendens does not invalidate sale, but the transfer of property is subject to final result of the litigation.



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18. In the instant case, the quantum of share of the first petitioner (before the Trial Court) is not disputed and remained the same, as per the decree in A.S and he vending along with the purchaser filed the application for supplementary preliminary decree and hence, I find that the order passed by the learned Principal Judge is in accordance with law laid down by the Hon'ble Supreme Court of India in the above said decision and the petitioners before the trial Court have successfully demonstrated as to the change of the quantum of share as per Ex.P4, P6, P7, P9 and P10 and they are also discharged the usufructuary mortgage in Exs.P8 and P9 made the property free of encumbrance and suitable for division and hence I find that the appeal is devoid of merits. Both the points are held against the appellants and order passed by the learned Principal District Judge, Puducherry is hereby confirmed.

19. From the records, I find that the suit for partition is filed in the year 1974. The appeal to the High Court in A.S.Nos.449 of 1982 and 450 of 1982 was dismissed as abated on 13.12.1991 and thereafter, final decree proceedings are at the final stage of the proceedings, more than 50 years have passed at the institution of the suit for partition. However, parties are not able to get the fruits of the decree and hence, I find that



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it is a fit case to give a direction to the learned Principal Judge, Puducherry to dispose of the final decree proceedings within a period of three months from the date of receipt of a copy of this order and to forward a copy of the final decree to this Court as a '**compliance**'.

20. In the result, this **Appeal Suit is dismissed** and the learned Principal District Judge, Pondicherry dated 08.04.2015 passed in I.A.No.3 of 2005 in O.S.No.33 of 1974 is confirmed. No costs. Consequently, connected C.M.P is closed.

18.04.2024

Index : Yes / No
Neutral Citation : Yes/No
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To
1.The Principal District Judge, Pondicherry
2.The Section Officer,
VR Section, High Court,
Madras.



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RMT.TEEKAA RAMAN, J.

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