



S.A.No.273 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2024

CORAM

THE HONOURABLE MR.JUSTICE V. SIVAGNANAM

S.A.No.273 of 2008
and MP.No.1 of 2008

1.Sumathi
2.Suchitra

... Appellants

Vs

1. Sellamuthu
2.Indira
3.T.R.Muniappan (died)
4.Ammasai (died)
5.Ramasamy Gounder
6.Nachimuthu Gounder
7.Rajendran
8.Bhavani Primary Agricultural Cooperative Bank Ltd
rep by its Special Officer,
414 Melur Road,
Bhavani, Erode District.

9.Saraswathy
10.A.Rathinammal
11.A.Bhoopathi
12.T.M.Thangammal
13.R.Yugadevi
14.B.Yugeswari

R10 & R11 brought on record as Lrs of the deceased 4th respondent vide order dated 29.07.2021 in MP.No.1 to 3 of 2011 & MP.No.1 & 2 of 2015
R12 to R14 brought on record as Lrs of the deceased 3rd respondent vide order dated 29.07.2021 made in MP.No.1 to 3 of 2011 and MP.No1 & 2 of



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2015.

15.P.Ayyan

impleaded as party respondent vide order dated 29.07.2021 in
CMP.No.21809 of 2018

...Respondents

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree in AS.No.56 of 2006 dated 30.04.2007 on the file of the Additional District Judge-Fast Track Court No.4, Bhavani modifying the judgment and decree in OS.No.629 of 2004 dated 01.03.2005 on the file of the Principal District Munsif Court, Bhavani.

For Appellants : Mr.T.Murugamanickam, Sr.Counsel
for M/s.Zeenath Begam
For Respondents : Mr.P.Muthukumarasamy, Sr.Counsel
for V.Balamurugane for R5 & R7
M/s.Kaithamalai Kumaran for R6
Mr.C.Prabakaran
for C.S.Saravanan for R15
Mr.Niranjan Rajagopal for R13 & R14

JUDGMENT

Heard the learned counsel for the appellant and the learned counsel for the respondents and perused the judgments of the Courts below and the materials available on record.



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2. The 1st defendant is the father of the plaintiffs, the 2nd defendant is the mother of the plaintiffs, the defendants 4 to 7 and 9 have obtained a judgment against the 1st defendant based on the promissory note. The 3rd defendant on behalf of the 1st and 2nd defendants obtained a judgment and decree. Originally the suit property is a joint family property belongs to Plaintiffs grandfather Komarappa Gounder. On 13.05.1993, the said Komarappa Gounder partitioned the suit to his children Eswari, Chellamuthu and Eswaran in respect of the common family property, Schedule “C” property is allotted to the first defendant which is the present suit property. The plaintiffs are entitled to 1/3 share each in the ancestral property as per Hindu Succession Amendment Act 1990. As on date, the 1st defendant and the plaintiffs have not partitioned the suit property. It is found that the 1st respondent is indulging in bad habits without proper management of the family and by availing multiple loans by mortgaging the suit property. The 1st defendant had executed a settlement deeds on 22.07.1997 and 25.07.1997 to an extent of 5 acres in favour of his wife/2nd defendant. The 1st and 2nd defendants are spending the money lavishly without giving any special treatment to the plaintiffs and not maintaining the family in proper manner. Both the defendants 1 and 2 have mortgaged their portion of the property to



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the 8th defendant and availed loans to purchase cattles and for other expenses. The 1st plaintiff was married on 3-7-2000 and living in Salem district with her family. The 2nd plaintiff was married on 11-11-2002 and living in Namakkal district. On 07-08-1997, the 3rd respondent had loaned a sum of Rs.1,00,000/- to the 1st defendant and executed an agreement in respect of 2 1/2 acres of land in the suit property. Thereafter, filed suit for specific performance in OS.No.52 of 2001 and obtained a decree on 27.07.2003. The plaintiffs were not parties to that agreement and in the above suit in OS.No.52 of 2001. Therefore, the above judgments does not bind on the plaintiffs.

3. Likewise the 4th defendant obtained a judgment dated 06-09-2000 in OS.No.118 of 1998 in the name of the 1st defendant based on the promissory note before the Sub Court, Bhavani. The 5th defendant Ramasamy Gounder has also obtained judgment in OS.No.131 of 1998 on 30-06-2002 as against the 2nd defendant. The 6th defendant Nachimuthu Gounder has obtained a judgment on 28-11-2000 in OS.No.450 of 1999 against the 1st defendant. The 7th defendant Rajendran also filed a suit as against the 1st defendant in OS.No.764 of 1998 and obtained a judgment.



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The defendants 1 and 2 availed loans from the defendants 3 to 9 do not in any way encumber the plaintiffs. The loans availed by the defendants 1 and 2 are not for the joint family expenses. The marriages of the plaintiffs were performed by their husbands in the presence of the plaintiffs grandfather/Nallasamy Gounder. After the marriage of the 2nd plaintiff, both the plaintiffs asked the defendants 1 and 2 orally through the Panchayat to partition their respective share in the properties and finally the plaintiffs asked for the same on 24.10.2003. The loans obtained by the defendants 1 and 2 from defendants 3 to 9 and other persons are not legally bound the plaintiffs in getting 2/3rd share in the suit property. Hence, the plaintiffs prayed the trial court to divide the suit property into 3 equal parts and allot one share each to the plaintiffs 1 and 2 and one share to the first defendants.

4. The 3rd defendant had filed his written statement wherein it is stated that the suit schedule properties are ancestral properties, the plaintiffs and the defendants 1 and 2 are in joint possession and enjoyment of the suit



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properties. The 1st defendant had executed a settlement deed in favour of the 2nd defendant on 22.07.1997 and 25.07.1997. The 3rd defendant submits that he entered into an agreement dated 07.08.1997 with the 2nd defendant for a sum of Rs.1,25,000/- and paid an advance of Rs.1,00,000/- and subsequently obtained a decree before the Sub Court, Bhavani in OS.No.52 of 2001. As against which, EP.No.77 of 2003 was filed for execution of the sale deed and delivery of possession before the Sub Court, Bhavani and executed the sale deed in favour of the 3rd defendant on 15.04.2004. The plaintiffs were not added as parties to the above suit as the property is obtained by virtue of settlement deed dated 22.07.1997. The decree obtained by the defendants 4, 5, 6 and 7 in OS.Nos.118 of 2000, 131 of 1998, 450 of 1999 and 764 of 1998 will not bind on the 3rd defendant and does not affect his rights. Hence, the 3rd defendant prays for dismissal of the suit.

5. The 4th defendant filed his written statement contending that the defendants 1 and 2 spend the loan amounts lavishly on their own and not purchased the cattles for the welfare of the family. The defendants 1 and 2 have not spent any amounts towards performing the marriages to the plaintiffs. After the marriage of the 2nd plaintiff, both the plaintiffs asked



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the defendants 1 and 2 orally to partition their respective shares in the property and finally the plaintiffs asked for the same on 24.10.2003, but the defendants 1 and 2 refused to do so. The decree obtained by the 3rd defendant will not bind on the 4th defendant. Hence, the 4th defendant prays for dismissal of the suit.

6. The defendants 5 and 7 filed their written statement stating that the defendants have obtained decree against the 1st defendant in respect of the loans obtained against the promissory note. The 1st defendant obtained loan from these defendants as the manager of the family for common family benefit and for the needs of the plaintiffs. The defendants 5 and 7 have every right to take steps to auction over the property for the dues to these defendants. At the instigation of the plaintiffs, the 1st and 2nd defendants have written two invalid settlements among themselves. Further, the defendants 1 to 3 conspired together and created false Court documents with an intention that the properties should not be auctioned for the loan availed by them. The 4th defendant is acting independently and the loans received by the 3rd defendant from these defendants do not bind the plaintiffs. The loan received by the 1st defendant was not for general family expenses, the



marriage expenses of the plaintiffs were met out by their husbands and the marriages were performed in the presence of their grandfather Nallasamy Gounder.

7. The 6th respondent filed his written statement contending that the 1st defendant obtained the suit schedule property vide partition dated 13.05.1993. The 1st defendant executed the settlement deeds in favour of the 2nd defendant/wife on 22.07.1997 and 25.07.1997 in the unpartitioned suit is invalid in the eye of law. The 1st defendant is not administering the joint family property and spend the money lavishly by involving in bad habits. Thereby, the defendants 1 and 2 have mortgaged the suit property towards other expenses and not for common family expenses. It is said that the husbands of the plaintiffs have performed the marriage in the presence of the grand father Nallasamy Gounder. Both the plaintiffs asked the defendants 1 and 2 orally to partition their respective share in the properties and finally the plaintiffs asked for the same on 24.10.2003, but the defendants 1 and 2 refused to do so. Both the plaintiffs were minors at the time of purchase of cattles by availing loan and they are unmarried members of the family who were experiencing debt. Hence, the 6th defendant and the other defendants



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have the right to recover the arrears on the undivided family properties of the plaintiffs. The plaintiffs are bound to repay the loan through their legal share in the suit property.

8. The 9th defendant filed her written statement stating that on 13.05.1993 Komarappa Gounder partitioned his property to his children Eswari, Chellamuthu and Eswaran in respect of the common family property, Schedule “C” property is allotted to the first defendant which is the present suit property. It is reported that the 1st defendant is indulging in bad habits without proper management and administration of the family and by availing many loans and by mortgaging the suit property. The 1st defendant had executed a settlement deeds on 22.07.1997 and 25.07.1997 to an extent of 5 acres in favour of his wife/2nd defendant, both the settlement deeds are not legally valid in the eye of law. The plaintiffs have asked the defendants 1 and 2 to partition the suit property equally and the defendants refused the request made by the plaintiffs. The above allegations have been made out by the plaintiffs as against the defendants 1 and 2 only for the purpose to file vexatious suit. Hence, the learned counsel prays for dismissal of the second appeal.



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9. The appellant is the plaintiff in the suit in OS.No.629 of 2004 on the file of the Principal District Munsif, Bhavani filed the suit for partition in the plaint schedule mentioned property and 1/3rd share in the suit property as the property is joint family property. The respondents 1 and 2 are father and mother of the plaintiffs. The 3rd respondent is the purchaser from the 1st respondent (father of the plaintiff) and the remaining respondents are the creditors to the defendants.

10. The trial Court after considering the evidences dismissed the suit as the suit has been filed to defraud the creditors. Aggrieved by the said judgment and decree appeal in AS.No.56 of 2006 has been filed before the Additional District Judge-Fast Track Court No.4, Bhavani. The appellate Court after considering the submissions of the parties passed the preliminary decree over the plaint schedule properties except the properties contained in Ex.B2. The sale deed executed by the Court subject to the debts of defendants pertaining to Exs.B2 to B6. Aggrieved by the said judgment and decree, the present second appeal has been filed.



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11. During the course of arguments, the learned counsel for the appellants submitted that though the first appellate Court passed the preliminary decree for 1/3rd share over the plaint schedule properties in favour of the plaintiffs. The 15th defendant who purchased the property from the 3rd defendant through Ex.B2 claims that both the properties then what he has purchased. It is further contended that admittedly, the plaintiff has not challenged the Ex.B2, it still remains unchallenged. Under these circumstances, the decree passed by the the first appellate Court still binds the parties.

12. The learned counsel for the respondents submitted that the plaintiffs not challenged the Ex.B2 sale deed properties still remains valid and therefore supporting the findings of the first appellate Court and prayed for dismissal of the suit.

13. The appellant is the plaintiff in the suit in OS.No.629 of 2004 filed the suit for partition in the plaint schedule mentioned property and 1/3rd share in the suit property and the property is joint family property. The respondents 1 and 2 are father and mother of the plaintiffs. The 3rd respondent is the subsequent purchaser from the 1st respondent and the



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remaining respondents are the creditors to the defendants.

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14. It is not disputed and accepted that Ex.B2 sale deed properties is not challenged by the plaintiff as on date, therefore, it will bind on the parties. With regard to other properties, it is accepted it is a joint family properties and the plaintiffs are entitled to 1/3 share each, to that effect, the first appellate Court passed the preliminary decree. Therefore, there is no perversity in the findings rendered by the first appellate Court.

15. With regard to properties contained in Ex.B2 sale deed, while passing the final decree, the Court will consider the equity while allotting the shares to the respective parties. Therefore, the findings of the first appellate Court is not perverse and not misconceived on records and it is passed based on the evidences available on record. I find no ground in entertaining the second appeal and there is no substantial questions of law involved in this appeal. Since, the settlement deed is also not challenged and the sale deed executed by the parties to the 3rd defendant is also not challenged, the findings of the lower appellate Court in this regard is sustainable and answered the substantial questions of law.



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16. In the result, the second appeal stands dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

24.06.2024

tsh

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

To

1. The Additional District Judge-Fast Track Court No.4, Bhavani
2. The Principal District Munsif Court, Bhavani



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V. SIVAGNANAM, J.

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