



S.A.No.820 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.02.2024

PRONOUNCED ON : 20.03.2024

CORAM:

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

S.A.No.820 of 2007
and MP.No.1 of 2007

Mohanavalli

.... Appellant

vs.

1.Kanagavalli
2.Perundeivammal
3.Bakyalakshmi
4.Saraswathi

... Respondents

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 14.11.2006 made in A.S. No.148 of 2004 on the file of the Principal District Judge, Chengalpattu, reversing the judgment and decree dated 15.07.2004 made in O.S. No.189 of 2001 on the



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file of the Principal Subordinate Judge, Chengalpattu.

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For Appellant : Mrs.V.Srimathi
For R1 : Mr.Y.Prakash
For R2 to R4 : No Appearance

JUDGMENT

The plaintiff in the suit is the appellant before this Court. The second appeal is filed challenging the judgment and decree dated 14.11.2006 in AS.No.148 of 2004 on the file of Principal District Judge, Chengalpattu, reversing the judgment and decree dated 15.07.2004 in OS.No.189 of 2001 on the file of Principal Subordinate Judge, Chengalpattu.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial court.

The brief facts, which gave rise to the second appeal, are as follows:



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3. According to the plaintiff, the suit properties originally belonged to Chakrapani Reddiar who is the husband of the first defendant and the father of the plaintiff and defendants 2 to 5. Only during May 1995, when the plaintiff was searching for her horoscope, she came across the registered will dated 29.10.1975 in Ex.A.3. As per the recitals in the will, the 'A' schedule will go to Andalammal, who is the first wife of Chakrapani Reddiar, entitled to enjoy till her lifetime without the power of alienation, thereafter it should be taken equally by the plaintiff and the defendants 2 to 5. Further, according to the will, the first defendant has to maintain and manage the 'B' schedule property and has to divide the said properties equally in a fair manner without any bias or favour to the plaintiff and defendants 2 to 5. Further, as per the will, the 'C' schedule properties were bequeathed in favour of Muralikrishnan, who is the brother's son of Chakrapani Reddiar. Since Muralikrishnan died as a bachelor and his father and mother also predeceased him, the plaintiff's father himself alienated the said property mentioned in the 'C' schedule given to



Muralikrishnan.



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4. According to the plaintiff, the defendants 1 and 4 suppressed about the will and partitioned the suit property and allotted a lesser value property to her. Since the plaintiff was unaware of the will, she was made to believe the partition and subscribe her signature in the partition deed dated 22.01.1987 in Ex.A.1. Only in May 1995, the plaintiff got the knowledge of the will and it was found that the directions given by her father Chakrapani Reddiar, in the will were not followed by the first defendant. Since the first defendant has not divided the share equally, the plaintiff has filed the suit for partition claiming 1/5th share in the suit properties.

5. The fourth defendant filed the written statement resisting the suit stating that the partition executed on 22.01.1987 through Ex.A.1 between the plaintiff and the defendants is fair, just and equitable. According to the



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defendants, the partition was executed by the plaintiff voluntarily and out of free will and volition. Once the partition is made, it is final and cannot be reopened without setting aside the partition deed. Hence the suit filed for partition without praying to set aside the partition deed in Ex.A.1 is not maintainable. Further, the defendant has stated that the partition deed in Ex.A.1 has been acted upon by all the executants, and this defendant had made valuable improvements over the items allotted and delivered to her. In fact, the plaintiff has also acted upon the partition and she had sold away the property allotted to her.

6. The 4th defendant has further averred that the plaintiff has not impleaded the purchasers as a parties to the suit and therefore, the suit is bad for non- joinder of necessary party. It is also stated that the will could not have been acted upon as Chakarapani Reddiar has sold many items of the properties in the will and also acquired many items subsequent to the will.



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Hence the children and wife of Chakrapani Reddiar, after consulting his son-in-law in the house and other elders, had amicably partitioned his shares under the partition deed in Ex.A.1. The suit is also not maintainable as the plaintiff has not paid Court fees as contemplated under Section 37(2) of the Court Fees Act and sought for dismissal of the suit.

Evidence and Documents:

7. During Trial, the plaintiff examined herself as PW.1 and Exs.A.1 to A.3 were marked. On the side of the defendants, fourth defendant was examined as DW.1 and Ex.B.1 to B.12 were marked.

Findings of the Court below:

8. The Trial Court, after analysing the evidence and documents, decreed the suit, granting 1/5th share in favour of the plaintiff. The Trial Court observed that since the details of the will in Ex.A.3 have not been mentioned



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in the partition deed in Ex.A.1, it is clear that the plaintiff was not aware of the availability of the will prior to the partition deed. If she had known, she could have demanded equal share as found in Ex.A.3. The Trial Court also observed that the valuation of the properties as found in Ex.A.1 is not equal, and the fourth defendant has been given the higher share.

9. Aggrieved, the fourth defendant filed appeal in AS.No.148 of 2004 on the file of Principal District Judge, Chengalpattu. The Lower Appellate Court, after reappraising the evidence, allowed the appeal and set aside the decree of the Trial Court. The Lower Appellate Court found that when the plaintiff was a party to the partition deed in Ex.A.1 and she has signed in the deed, the plaintiff cannot avoid the document without challenging the partition deed. The Lower Appellate Court also found from the evidence let in by the parties and admission of PW.1 herself that there was a discussion about the will in Ex.A.3 during the execution of partition deed in Ex.A.1, and as such



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the plaintiff was aware of the will. Aggrieved by the judgment and decree of the Lower Appellate Court, the plaintiff is before this Court on appeal.

10. This Court by order dated 10.08.2007, ordered notice of motion.

Submissions on both sides:

11. The learned counsel appearing for the appellant argued that admittedly, when the plaintiff's father Chakrapani Reddiar executed the registered will in Ex.A.3, the first defendant along with the fourth defendant had suppressed the will and by fraud and coercion executed the partition deed in Ex.A.1, as such, it will not bind the plaintiff. The learned counsel for the appellant argued that it is not necessary for the plaintiff to seek to set aside the partition deed in Ex.A.1 as per Section 31 of the Specific Relief Act. As the document was executed by fraud and coercion, and it is void, therefore, the plaintiff is entitled to seek partition by avoiding the document in Ex.A.1. The



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learned counsel further argued that when the will in Ex.A.3 is not disputed by the defendants, there are no requirements on the part of the plaintiff to prove the will.

12. The learned counsel for the appellant relied on the judgment of the Hon'ble Supreme Court in **Ratnam Chettiar and Others Vs. S.M.Kuppuswami Chettiar and Others** reported in (1976) 1 SCC 214, for the proposition that the partition effected between the members of the Hindu undivided family by their own volition and with their consent cannot be reopened, unless it is shown that the same is obtained by fraud, coercion, misrepresentation or undue influence. In such a case, the Court should require a strict proof of facts because an act inter vivos cannot be lightly set aside.

13. The learned counsel for the appellant relied on the unreported judgment dated 19.03.2021 in AS.No.226 of 2013 by the Division Bench of



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this Hon'ble High Court, for the proposition that when the shares has not been distributed equally between the members, the parties are entitled to protect their right to the legitimate share in the suit properties particularly when the person is not a party to the partition deed. The learned counsel further contended that the Trial Court has rightly decreed the suit but the Lower Appellate Court has erroneously interfered in the decree which is perverse and sought for allowing the second appeal.

14. Per contra, the learned counsel for the 1st respondent argued that the plaintiff has not even pleaded fraud, coercion or misrepresentation in the plaint. Any amount of evidence produced without proper pleadings cannot support the case. The learned counsel further contended that the admission of PW.1 in her cross examination itself fortifies the fact that she had knowledge of the will in Ex.A.3 during the execution of the partition deed in Ex.A.1 and there is absolutely no suppression of the will.

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15. The learned counsel further contended that the partition deed in Ex.A.1 has been acted upon and all the parties to the deed have taken their respective shares and are in possession of the properties. The plaintiff and the defendants 2, 3 and 5 have sold the respective properties allotted in the partition. The learned counsel further submitted that all the parties in Ex.A.1 partition deed have been distributed with the properties equally. The Trial Court has wrongly noted that in the 'E' Schedule allotted to the fourth defendant, the value shown is Rs.65,000/- and it is higher than the 'B' Schedule allotted to the plaintiff ignoring the fact that since those are only vacant lands the value of thervai alone is noted in the deed. In fact, the plaintiff had sold a part of the property allotted to her in Ex.B.2 sale deed for Rs.45,000/-. Therefore, the finding of the Trial Court was erroneous, which was rightly set aside by the Lower Appellate Court.

16. The learned counsel further contended that even in the written



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statement, it has been explained that since Chakrapani Reddiar, after executing the will, sold several properties and also purchased some properties and in fact the entire properties in the 'C' schedule property allotted to one Muralikrishnan



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was also sold by him as he died as a bachelor. All the parties, along with elders, decided to partition the suit properties equally.

17. The learned counsel further submitted that when the documents were acted upon as early as in the year 1987, the plaintiff who got the share of the properties, also took possession and was in enjoyment of the properties nearly for six years and also sold a part of the property in the year 1993 and has filed the suit in the year 1995, including all the properties which have been sold by the plaintiff and also other defendants D2, D3 and D5, without even making purchasers as a party. As the plaintiff was a party to the partition deed in Ex.A.1 and also got shares in the property, the plaintiff cannot maintain the suit for partition without challenging the deed in Ex.A.1.

18. The learned counsel further contended that the Lower Appellate Court by rightly taking into these aspects has allowed the appeal and the



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finding of fact arrived at by the Lower Appellate Court is based on the material available on record and does not warrant any interference and sought for dismissal of the appeal.

19. In support of his arguments, the learned counsel for the 1st respondent relied on the following decisions,

(i) **T.Bai Ammal and Others Vs. T.Sampath** reported in **CDJ 2018 MHC 4679**.

(ii) **N.Rani Versus N.Balasubramanian & Others** reported in **CDJ 2008 MHC 170**.

Analysis:

20. Admittedly, Chakrapani Reddiar was the absolute owner of the entire suit properties. He had two wives, Andalammal and Chandrakanth Ammal who is the first defendant. The plaintiff, defendants 2 to 5 are the



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daughters born to Chakrapani Reddiar and his second wife Chandrakanth Ammal. It can be seen from the materials available on record that Chakrapani Reddiar had executed the registered will in Ex.A.3. As per the will, 'A' schedule property was given to his first wife Andalammal, and she was given a life time interest without any power of alienation and the property would revert to the plaintiff and the defendants 2 to 5. As far as the 'B' schedule property is concerned, the first defendant who is the second wife was directed to maintain the properties and thereafter divide the property equally in favour of the plaintiff and the defendants 2 to 5. Chakrapani Reddiar had bequeathed the 'C' schedule property in favour of his brother's son Muralikrishnan. Since Muralikrishnan died as a bachelor and his parents also predeceased him, Chakrapani Reddiar, even during his life time had sold the entire properties in 'C' schedule by himself. Apart from the same, even from the evidence of PW.1, it can be seen that Chakrapani Reddiar had sold several other properties which are covered in the will in Ex.A.3.



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21. After the death of Chakrapani Reddiar, his wife / the first defendant and the daughters, plaintiff and the defendants 2 to 5 discussed the fact that most of the properties covered under the will were sold by Chakrapani Reddiar himself. He also bought some property, and it was decided among the legal heirs of Chakrapani Reddiar that they can partition the properties amicably.

22. One Janakiraman who is the attesor in both the will in Ex.A.3 and also the partition deed in Ex.A.1 had participated in the discussions that took place in the family at the time of execution of the partition deed. The plaintiff in her evidence admitted that Janakiraman is the uncle's son and he was present at the time of execution of the partition deed and he is the attesor in the will. The plaintiff also admitted that he is a common person for all the parties and he had discussed about the will executed by the Chakrapani



Reddiar in Ex.A.3 at the time of execution of the partition deed in Ex.A.1.

Further DW.1 who is the fourth defendant had also in her cross examination has clearly deposed that at the time of execution of the partition deed in Ex.A.1, will in Ex.A.3 was discussed by the family members along with elders and based on the common understanding and agreement arrived at, the partition deed in Ex.A.1 was executed by partitioning the properties.

23. The admission of PW.1 that the will in Ex.A.3 was discussed at the time of the execution of the partition deed by the parties, along with the attesor to the document, will clearly show that the plaintiff had the knowledge of the will and only based on the prevailing situation, the parties along with the attesor and the elders, decided to execute the partition deed in Ex.A.1. Further from the admission of PW.1, it can be seen that the partition deed in Ex.A.1 has been acted upon, and the parties have taken possession of their respective shares and have been in possession of the property from the year



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1987 onwards.

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24. As the partition deed has been acted upon and the parties were in enjoyment of their respective share of the property, the plaintiff sold the portion of the property allotted to her in Ex.B.2 in the year 1993. It is seen that she sold only a part of the property for sale consideration of Rs.45,000/-. Further, as far as the properties allotted to the share of the second defendant is concerned, the second defendant being in possession and enjoyment of her share had sold the properties allotted to her to 3rd parties in Ex.B.4. The third defendant, who was allotted the share in the partition, has sold her properties to 3rd parties through sale deed in Ex.B.6. Likewise the fifth defendant has been in possession of the property allotted to her in Ex.A.1 and she has also sold her share of the properties in Ex.B.9. As such from the documents in Ex.B.2, B.4, B.6 and B.9 coupled with the documents in Ex.A.1 and admission of PW.1, it can be seen that the properties were partitioned amicably among



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the sisters, and they have been in possession and enjoyment of their respective shares. Apart from the fourth defendant, the plaintiff and the defendants 2, 3 and 5 have also sold their respective properties allotted to them in the partition. The plaintiff who had been in possession of her shares of the property from 1987, sold a part of the property in Ex.B.2 in 1993. Only the fourth defendant has made development in the properties and has retained the properties allotted to her. Now the plaintiff has come up with the suit claiming for partition by including the entire suit properties.

25. At this juncture, it is pertinent to note that when the plaintiff sold a part of the property allotted to her in Ex.B.2, she had included those properties also in the suit and filed the suit for partition without even impleading the purchaser in the suit, to whom she herself had sold the property. Likewise all the other purchasers from the 2nd, 3rd and 5th defendants had not been made as a party to the suit and the suit filed without impleading the purchasers is bad



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for non joinder of necessary parties.

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26. From the evidence available on record and the admission of PW.1, it can be seen that the plaintiff had the knowledge of the will in Ex.A.3 at the time of the execution of the partition deed in Ex.A.1. The allegation made by her that the partition deed has been executed by fraud, coercion and misrepresentation cannot be sustained. The plaintiff, in fact had not pleaded about the fraud, coercion and misrepresentation and it is her case that she had no knowledge of Ex.A.3 during the execution of the partition deed. But on the contrary, she has admitted in her evidence that the will in Ex.A.3 was discussed along with the attester at the time of the execution of the partition deed in Ex.A.1 which goes to show that she had knowledge of the will. When the plaintiff was a party to the document in Ex.A.1, she signed in the partition deed and the partition deed has been acted upon and the parties have taken possession of their respective shares and they were in enjoyment of the



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property and also all the parties except the fourth defendant had sold the property to the third parties, the present suit filed by the plaintiff for partition without challenging the partition deed in Ex.A.1 is not sustainable. The plaintiff cannot avoid the document in Ex.A.1 without specifically challenging the document in Ex.A.1 when she is a party to the document and had taken the shares allotted to her through the partition deed.

27. In fact, even the decision relied by the appellant in **Ratnam Chettiar and Others Vs. S.M.Kuppuswami Chettiar and Others** (cited **supra**) makes it clear that the partition effected between the members of the Hindu undivided family by their own volition and with their consent cannot be reopened unless it is shown that the same has been obtained by fraud, coercion or misrepresentation or undue influence. In such a case, the Court should require strict proof of facts because an act inter vivos cannot be lightly set aside.



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28. The plaintiff is not able to establish, that the partition deed in Ex.A.1 has been executed by fraud, coercion and misrepresentation but on the contrary, the plaintiff had knowledge of the will in Ex.A.3 and the partition deed in Ex.A.1 has been executed among the members on their own volition and consent and as such, the partition effected in the family in Ex.A1 cannot be lightly set aside. The other decision of this Hon'ble Court in AS.No.226 of 2013 dated 19.03.2021 in **A.Suresh Vs. 1.Minor Pavishna, rep.by next friend and mother Revathi @ Loganayagi and others,** is a case where the party who filed the suit was not a party to the partition deed , therefore the Court held that if a person is not a party to deed, it is not necessary for her to seek to set aside the partition deed or to seek cancellation of the partition deed.

29. As held in the cases referred by the learned counsel for the 1st respondent in **N. Rani Vs. N.Balasubramanian and Others (cited supra)**



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and **T.Bai Ammal and Others Vs. T.Sampath (cited supra)**, in the instant

case also, the plaintiff is a party to the partition deed in Ex.A.1 and the document has been executed on their own volition and consent. When the partition deed has been acted upon and the parties took possession of their respective shares long ago and the properties allotted to each of the parties have also been sold, the suit filed by the plaintiff after the period of 13 years from the date of partition and that too after a period of eight years after the sale has been executed by herself in Ex.B.2, cannot be maintained without a challenge to the partition deed in Ex.A.1, as the plaintiff cannot avoid this document.

30. In fact, from the evidence of PW.1 it could also be seen that after the execution of the partition deed in Ex.A.1, her mother, the first defendant had been residing with the plaintiff from the year 1987 till 1992. Therefore the claim of the plaintiff that the first defendant had acted against the interest of



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the plaintiff and the first defendant along with fourth defendant had suppressed the will and misrepresented her and thereby the partition deed in Ex.A.1 was executed is not acceptable. From the evidence available on record, it has been established that the plaintiff had the knowledge of the will during the execution of the partition deed.

31. The Lower Appellate Court has rightly arrived at a finding of fact that when the plaintiff is a signatory and a party to the document in Ex.A.1 partition deed, the plaintiff cannot avoid the document, and the suit filed for partition is not maintainable without a challenge to the partition deed in Ex.A.1 is based on the material available on record and is not perverse or illegal.

32. In view of the above discussion, this Court does not find any substantial question of law involved in the above second appeal. Therefore,



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this Second Appeal stands dismissed. However, there is no order as to costs.

Consequently, connected miscellaneous petition is closed.

20.03.2024

drl

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

To

1. The Principal District Judge, Chengalpattu.

2. The Principal Subordinate Judge, Chengalpattu.

G.ARUL MURUGAN,J.

drl



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Pre-delivery Judgment in

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