



S.A.No.248 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2024

CORAM

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A.No.248 of 2004
and
CMP.No.1516 of 2004

- 1.Munusamy(Deceased)
- 2.Mari (Died)
- 3.Anbazhagi
- 4.Arivazhagi
- 5.Amutha
- 6.Anjugam
- 7.Mariyammal
- 8.Kolanjiyappan
- 9.Dhanalakshmi
- 10.Vengadesan

...Appellants

(appellants 3 to 6 brought on record as LR's of the deceased sole appellant vide order of Court dated 28.01.2019 made in CMP.No.12136 to 12138/2016 in S.A.No.248/2004)

(appellants 7 to 10 are brought on record as LR's of the deceased second appellant (Mari) vide order of Court dated 12.01.2024 made in CMP.Nos.18562, 18563 & 18558/2023 in S.A.No.248/2004)

Vs.



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- 1.T.Kannan (Died)
- 2.Veerammal
- 3.Anjalai
- 4.Gunasekaran
- 5.Govindammal
- 6.Alamelu
- 7.Pappathi

...Respondents

(respondents 3 to 7 are brought on record
as LR's of the deceased first respondent
vide order of Court dated 04.03.2008
made in CMP.Nos.3504 to 3506/2007 in
S.A.No.248 of 2004)

Prayer: Civil Revision Petition filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 22.04.2005 of the Additional District Court (Fast Track Court) at Kallakurichi, made in A.S.No.101 of 2002 reversing the judgment and decree dated 14.10.1999 made in OS.No.812 of 1996 on the file of the Principal District Munsif Court, Kallakurichi.

For appellants : Mrs.T.R.Gayathri
for M/s.Sarvabhauman Associates

For Respondents : R1 – Died
Ms.Nilafer
for Mrs.R.Meenal for R6 & R7
Mr.T.Sezhian for R3
R2 & R4 - dismissed



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JUDGMENT

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The defendants 1 & 2 are arrayed as appellants. The plaintiff is arrayed as the first respondent, and third defendant is arrayed as the second respondent in the Second Appeal.

2. For the sake of convenience, the parties will be referred to according to their litigating status as before the Trial Court.

3. The brief facts which give rise to the instant Second Appeal are that:

According to the plaintiff, the suit property originally belongs to one Sadaiyan. The total extent of the suit property is 1 acre 73 cents comprising in S.F.No.152/2, and 2 acres 26 cents comprising in S.F.No.152/3. According to the plaint averments, the above referred Sadaiyan has got 3 sons by name Subbarrayan, Chinnapaiyan and Mari. The son by name Mari predeceased about 50 years back.



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4. It is further contention of the plaintiff that the plaintiff's predecessor in title Subbarrayan has got 2/3rd share in the above property, and Chinnapaiyan derived 1/3rd share. It is the submission of the plaintiff, that after demise of Subbarrayan, the plaintiff obtained a sale deed Ex.A1 dated 20.12.1977 from the legal heirs of Subbarrayan. Thereafter, patta was also issued in their name and they have been in actual physical possession and enjoyment of the same by paying kist and other statutory dues. The third defendant claims to be the daughter of deceased Mari, who is the brother of Subbarrayan and Chinnapaiyan. Similarly, the defendants 1 & 2 who are the subsequent purchasers from Chinnapaiyan also claim right over the property. These necessitated the plaintiff to institute the present suit for the relief of declaration and for injunction.

5. The said suit was resisted by the first defendant by contending that Subbarrayan did not have any legal heirs, and that the documents alleged to have been obtained by the plaintiff is not true one. Apart from that Subbarrayan cannot have 2/3rd right in the suit property. It is their further contention that, if at all Subbarrayan has got any right, the same can be only for



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1/3rd right along with 1/2 share in Mari's property. Therefore, Ex.A1 dated 20.12.1977 will not be construed as document for 2/3rd share over Sadiayan's property. Hence, the defendants prayed to dismiss the suit.

6. Before the trial Court, the plaintiff has examined three witnesses as PW1 to PW3 and marked 6 documents as Ex.A1 to Ex.A6. On behalf of the defendant two witnesses were examined and 9 documents were marked as Ex.B1 to Ex.B9.

7. Having considered the oral and documentary evidence, the trial Court found that the plaintiff can have a declaration in respect of Subbarrayan's 1/3rd property and 1/2 share in Mari's property as Mari did not have any heir. Eventually, the suit was decreed partly. Aggrieved by the same, the plaintiff preferred the first Appeal. The first Appellate Court believing the case of the plaintiff, allowed the same and thereby decreed the suit as prayed for. Not satisfying the judgment, the defendants 1 & 2 filed the instant second appeal.



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8. The learned counsel for the appellants/defendants vehemently contends that the plaintiff did not prove that Ex.A1 sale deed was executed by legal heirs of Subbarrayan and that Subbarrayan did not have any legal heirs and he lived a wayward life. Therefore, Ex.A1 sale deed cannot be construed as a true document. It is also contended by the learned counsel for the defendants 1 & 2 that Subbarrayan cannot have 2/3rd share in the suit property as yet another brother Mari has been left out without allotting any share. It is further contention of the plaintiff that Ex.B2 which was relied by the first Appellate Court is wholly unsustainable document. Hence, the findings recorded by the first Appellate Court, based on Ex.B2, is perverse finding and liable to be interfered. It is also contended by the learned counsel for the defendants 1 & 2 that the first Appellate Court did not appreciate the oral and documentary evidence in it's proper perspective and hence, prayed to interfere with the order of the First Appellate Court.

9. Per contra, the learned counsel for the respondents would vehemently submit that the findings recorded by the Trial Court was not



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challenged by the defendants 1 & 2. According to the findings recorded by the Trial Court, there is a finding that Subbarrayan has 1/3rd share on his own and 1/2 share in Mari's property. This findings was not at all challenged by the defendants 1 & 2. But the first appeal was filed only by the plaintiff to have remaining 1/2 share which according to the defendants belongs to Mari. Even according to Ex.B2 which is the sale agreement executed by Subbarrayan, the defendants themselves have admitted that Subbarrayan has got 2/3rd share. Therefore, once they have admitted the rights of Subbarrayan, now in the Second Appeal, they cannot challenge such finding. Hence, the learned counsel would submit that there are no merits in the Second Appeal. Hence, prayed to dismiss the Second Appeal.

10. At the time of admission of this Second Appeal, the following substantial questions of law has been formulated:

“1.In the absence of any evidence as to factum of partition and allotment of 2/3rd share to the predecessor-in-title of the first respondent, who was one of the three co-sharers, whether the lower appellate Court



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is justified in reversing the finding of the trial Court by discarding the reasonings of the trial Court?

2. Whether the Lower Appellate Court is right in law in misconstruing Ex.B2 sale agreement to the effect that the predecessor-in-title of the first respondent was allotted 2/3rd share in the suit survey number?

3. When the trial Court as categorically found that the factum of partition and allotment of 2/3rd share to the vendor's husband of he first respondent is not established by letting-in any evidence, whether the lower appellate Court is right in law in reversing the finding of the trial Court as to the factum of partition on mere surmises and conjectures?"

11. The sum and substance of the issue which revolves around this matter is whether Subbarrayan who was the son of Sadaiyan has got 2/3rd share in the property or not. According to the defendants 1 & 2, the said Sadaiyan has got three sons viz., Mari, Subbarrayan and Chinnapaiyan. Therefore, the contention of the plaintiff that Subbarrayan has got 2/3rd share of the suit property cannot be believed. Such defence was not disputed and is



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an admitted fact. However, the learned counsel for the respondents would rely on Ex.B2 to contend, that Ex.B2 Subbarrayan has entered into sale agreement with the plaintiff wherein out of the total extent of 3.99 acres in S.F.No.152/2 and S.F.No.152/3, the defendants obtained sale agreement for an extent of 2.66 acres which is nothing but 2/3rd share over the suit property.

12. This Court also perused Ex.B2 wherein the defendants 1 & 2 and said Subbarrayan had entered into a sale agreement for 2.66 acres qua 2/3 share of the entire property. Therefore, the defendants having admitted the said Subbarrayan's right of 2/3rd share in the suit property, and having not challenged the findings recorded by the trial Court in respect of the legal heirs, the objections made by the defendants 1 & 2 in respect of the plaintiffs' right is not sustainable, and there are no plausible argument advanced by the defendant to counter the said findings. Therefore, this Court is of the view that the findings recorded by the first Appellate Court based upon Ex.B2 is well merited and this Court could not find any grounds to interfere with the findings recorded by the first Appellate Court.



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13. Therefore, in view of the above discussions, the substantial questions of law are answered in favour of the respondents.

14. In the result, this Second Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

10.04.2024

Index : Yes / No
Internet : Yes / No
dna

To

- 1.The Additional District Court (Fast Track Court) at Kallakurichi,
- 2.The Principal District Munsif Court, Kallakurichi.



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dna

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