



S.A.No.491 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A.No.491 of 2010

1. Saradhammal

2. Kanthammal

3. Suseela

...Appellants

Vs.

1. Manikodi

2. Duraisamy

3. Shanmugam

...Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 16.12.2009 made in A.S.No.88 of 2007 on the file of the learned Subordinate Judge, Vellore, confirming the judgment and decree dated 30.03.2007 made in O.S.No.703 of 2003 on the file of the learned Principal District Munsif at Vellore.

For Appellants : Mr. G. Jermiah

For Respondents : Mr. V. Perumal,
for Mr. T.Dhanya Kumar,
for R1



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: R2 & R3- notice served-No appearance
JUDGMENT

Second Appeal has been filed against the judgment and decree dated 16.12.2009 made in A.S.No.88 of 2007 on the file of the learned Subordinate Judge, Vellore confirming the judgment and decree dated 30.03.2007 made in O.S.No.703 of 2003 on the file of the learned Principal District Munsif at Vellore.

2. For the sake of convenience, the parties are referred to as per their rankings in the Trial Court.

3. The plaintiffs in the suit in O.S.No.703 of 2003, on the file of District Munsiff Court, Vellore, are the appellants in this Second Appeal.

4. The fact of the case is that one Murugesu Goundar, Chinnappa Goundar, Ponnuranga Goundar are sons of Narayana Goundar of Thellur Palayam Villlage. They had purchased the suit "A" schedule property to an extent of 2.98 cents. On 10.09.1953, the said Chinnappa Goundar



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sold his share of 0.99 cents to Murugesan Goundar under registered sale deed dated 10.09.1953 and on the same day, at the insistence of the Ponnuranga Goundar, Chinnappa Goundar sold his share equally, i.e., 0.49 1/2 cents to Ponnuranga Goundar and remaining 0.49 1/2 cents to Murugesan Goundar, which was mutually agreed through the sale deed of Murugesan Goundar. Accordingly, Chinnappa Goundar sold 0.49 1/2 cents to Ponnuranga Goundar on 10.09.1953. Later, sons of Murugesan Goundar, namely Duraisamy Goundar/2nd respondent and Kathirvelu Goundar had effected partition under the registered partition deed dated 18.02.1984, in which, 1.49 cents were allotted to Duraisamy Goundar/2nd respondent and Kathirvelu Goundar was allotted some other property in different places. Thereby, Duraisamy Goundar/2nd respondent was entitled to 1.49 cents and the legal heirs of the Ponnuranga Goundar are entitled to remaining 1.49 cents of land. Though the said Duraisamy Goundar/2nd respondent was entitled to 1.49 cents, he had executed the sale deed dated 27.11.1992 in respect of 1.80 cents of the land in favour of the first defendant, which is described as suit "B" schedule property. The excess of 0.31 cents of land in "B" schedule property belongs to the legal heirs of Ponnuranga Goundar. Hence, the suit for partition of 0.31



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cents and for mesne profits.

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5. The first defendant filed written statement and contested the suit stating that the plaintiffs had filed the suit with false allegations. The averments made in the plaint are false except those are admitted by the defendants. As per registered sale deed, dated 10.09.1953 document no.1993 of 1953, Chinnappa Goundar sold his entire share of 0.99 cents in S.No.174/3 to Murugesha Goundar and Ponnuranga Goundar was entitled to his share of 0.99 cents only. Chinnappa Goundar did not sell 0.49 1/2 cents to Ponnuranga Goundar. Thus, Murugesha Goundar Possessed absolute right over his share of 0.99 cents and another 0.99 cents purchased from Chinnappa Gounar vide document no.1993/1953. Hence, the defendant's vendor's father Murugesha Goundar possessed 1.98 acres in S.No.174/3 out of total extent of 2.98 acres and the said land fell to the share of Duraisamy Goundar/2nd defendant, who in turn, sold the same to the first defendant, vide registered sale deed, dated 27.11.1992 and since then she is in possession and enjoyment of the same and patta has also been granted in her favour and hence, the plaintiffs have no right to claim partition and allotment of 0.31 cents in the "B" schedule



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property and prays for dismissal of the suit.

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6. On the basis of the above said pleas set out by the respective parties, the following issues were framed by the Trial Court for consideration:

1. Whether the plaintiffs are entitled for partition in respect of plaint “B” schedule property as prayed for?
2. Whether the Court fee paid is incorrect?
3. Whether the suit is barred by limitation ?
4. Whether the plaintiffs are entitled for mesne profits ?
5. To what other reliefs, the plaintiffs are entitled?

7. Before the Trial Court, in support of the plaintiff's case, first plaintiff examined herself as P.W.1 and one Subramani and Annamalai were examined as P.W.2 and P.W.3 and 5 documents have been marked as Ex.A1 to Ex.A5 . On the side of defendants, the first and second defendants examined themselves as DW1 & DW2 and one Durai and Rathinam were examined as DW3 & DW4 and one document has been marked as Ex.B.1.



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8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Trial Court dismissed the suit by a judgment and decree dated 30.03.2007. Aggrieved over the same, the plaintiffs had preferred an appeal in A.S.No.88 of 2007 before the Sub Court, Vellore. The First Appellate Court, after considering the entire materials, vide judgment and decree dated 16.12.2009, dismissed the appeal confirming the judgment and decree passed by the Trial Court. Now, challenging the same, the present Second Appeal has been filed by the plaintiff.

9. The learned counsel for the appellants/plaintiffs submitted that both the Courts below erred in dismissing the suit for partition without considering the merits of the case. Both the Courts below failed to note that each brother was entitled to 0.99 cents out of 2.98 acres of A schedule property and they failed to appreciate the execution of Ex.A.3 on the very same day, i.e., on 10.09.1953 by the said Chinnapa Goundar in favour of the Ponnuranga Goundar. The attestors of the above said



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documents Ex.A2 and Ex.A3 are one and the same. Under Ex.A4 only 1.49 acres had been allotted to the share of the 2nd defendant and he is entitled to alienate that extent alone. The learned counsel reiterated the other grounds raised in the grounds of appeal and thus, pleaded to allow the appeal.

10. The learned counsel appearing for the respondent supported the judgment of the Trial Court as well as the First Appellate Court and contended that sons of Narayana, Goundar, viz., Murugesha Goundar, Chinnappa Goundar, Ponnuranga Goundar, had purchased 2.98 cents. Out of which, Chinnappa Goundar had sold 0.99 cents to Murugesha Goundar by way of registered sale deed dated 10.09.1953. After selling of 0.99 cents to Murugesha Goundar, the sale deed executed in favour of Ponnuranga Goundar on the same day is invalid and he is not entitled for 0.49 cents as claimed and hence, he has no right to seek partition. The Trial Court and the First Appellate Court rightly dismissed and thus there is no ground for interference with the finding of the First Appellate Court and no substantial question of law involved in this Second Appeal and pleaded to dismiss the second appeal.



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11. I have considered the matter in the light of the submissions made by the learned counsel on both sides and perused the materials available on records carefully.

12. The appellants/plaintiffs had filed the suit against the defendants for partition of "B" schedule property and allot 0.31 cents of land in the B schedule property to the plaintiffs and for mesne profits. On perusal of records, it is seen that one Murugesu Goundar, Chinnappa Goundar, Ponnuranga Goundar are sons of Narayana Goundar and they jointly purchased the suit "A" schedule properties to the extent of 2.98 cents, in which Chinnappa Goundar had sold his share of 0.99 cents to one Murugesu Goundar and registered the sale deed on 10.09.1953. According to the plaintiffs, since Ponnuranga Goundar insisted Chinnappa Goundar to sell his share equally, Chinnappa Goundar had sold 0.49 1/2 cents to Ponnuranga Goundar on 10.09.1953 and 0.49 1/2 cents to Murugesu Goundar on the same day.



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13. On perusal of records, it is seen that the sale effected by Chinnappa Goundar to Murugesu Goundar on 10.09.1953 is an earlier one. Admittedly, after registering the sale deed dated 10.09.1953, measuring to an extent of 0.99 cents, the said Chinnappa Goundar has no title or right over the same. Therefore, subsequent to the same, the sale effected by Chinnappa Goundar to Ponnuranga Goundar on 10.09.1953, to the extent of 0.49 1/2 of cents, is invalid one. Therefore, based upon the document, since the properties alleged to have been purchased by Ponnuranga Goundar, the plaintiffs, who are the legal heirs of Ponnuranga Goundar, cannot claim any share over the "B" schedule properties, which were already entirely sold to Murugesu Goundar. Considering all these facts, the Trial Court and the First Appellate Court rightly dismissed the suit only based upon the evidence on record.

14. In this circumstances, there cannot be any doubt whatsoever that consideration of irrelevant fact and non consideration of relevant fact would give rise to a substantial question of law. Further, it does not meet out the parameters laid down by the Hon'ble Supreme Court in the



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following decisions:

- (i) *AIR 2008 SC 379 – Moses Wilson Vs. Kasturiba.*
- (ii) *AIR 2008 SC 956 – AbdulRaheem Vs. Karnataka Electricity Board.*
- (iii) *AIR 2008 SC 1749 – Kashmir Singh Vs. Harnam Singh and another.*

15. Both the Courts below on a proper appreciation of the materials placed on record, both oral and documentary evidence adduced by the respective parties and the principles of law governing the same, had correctly decided the issues and the findings of the Courts below are legally valid and I find no merit in this Appeal. There are no perverse findings, no mis-consideration of evidence and no substantial questions of law are involved in this case.

16. For the aforesaid reasons, the second appeal fails and accordingly, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

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Index: Yes/No
Speaking/Non speaking order
NCC: Yes/No

To

- 1.The Subordinate Judge, Vellore
- 2.The Principal District Munsif, Vellore



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V.SIVAGNANAM, J.

mrp

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