



S.A.No.128 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 20.02.2024

Pronounced on: 23.02.2024

Coram:

THE HONOURABLE Mr. JUSTICE P.B.BALAJI

S.A.No.128 of 2018
& C.M.P.No.2889 of 2018
& C.M.P.No.11967 of 2021

1. Samiappan.
2. Saraswathi. ... Appellants/Respondents 1 & 2/Defendants 1 & 2

/versus/

1. C.Selvan. ... 1st Respondent/Appellant/Plaintiff
2. Ponnambalam. ... 2nd Respondent/3rd Respondent/3rd defendant

Prayer: Second Appeal has been filed under Section 100 of C.P.C., to set aside the judgment and decree dated 06.06.2013 passed in A.S.No.1/2013 on the file of the Principal District and Sessions Judge, Erode reversing the judgment and decree dated 17.10.2012 passed in O.S.No.24/2011 on the file of the Sub Court, Sathyamangalam.

For Appellants : Mr.V.Anandamurthy

For R1 : Mr.A.Sundaravadhanan

For R2 : No appearance



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J U D G M E N T

The defendants in O.S.No.24 of 2011 are the appellants in the present Second Appeal. The plaintiff is the younger brother of the 1st defendant. The defendants 1 & 2 are husband and wife. The plaintiff sought for the relief of declaration and permanent injunction in respect of 1 acre and 18 cents, being the suit property.

2. The parties are described as per their litigating status before the trial Court.

3. It is the case of the plaintiff that one Chenniappa Gounder was blessed with two sons and one daughter. One of the sons is the plaintiff, who was admittedly born two months after the death of Chenniappa Gounder in the year 1969. The other son is the 1st defendant. It is the case of the plaintiff that the 1st defendant had applied for an assignment to the Special Tahsildar (Land Reforms), Erode and he was assigned 2.36 acres on 07.09.1988. The plaintiff filed the suit in the year 2011 claiming $\frac{1}{2}$ share in the said 2.36 acres. According to the plaintiff, there was an oral partition in the year 1993 and the



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total extent of 2.36 acres was taken by the plaintiff and the 1st defendant in two equal shares, each getting 1.18 acres. However, the 1st defendant, pursuant to the assignment in his favour, settled 50% of the entire 2.36 acres in favour of his wife, the 2nd defendant. The plaintiff therefore was constrained to file the suit seeking the relief of declaration that he was entitled to 1.18 acres (18 cents in item No.1 and 1 acre in Item No.2) and that, he was also entitled to relief of permanent injunction to restrain the defendants from interfering with the peaceful possession and enjoyment of the suit properties, namely item Nos.1 & 2. Further, a declaration is also prayed for to declare the sale agreement executed by the 1st defendant in favour of the 3rd defendant dated 09.12.2010 as null and void and also the settlement deed executed by the 1st defendant in favour of the 2nd defendant dated 22.12.2010 also as null and void and for a permanent injunction to restrain the 2nd defendant from alienating or encumbering item No.2 of the suit property to third parties.

4. The trial Court decreed the suit, holding that the defendants were not able to establish the oral partition and the 1st defendant alone was entitled to the entire 2.36 acres, having been assigned the same, in and by proceedings dated 07.09.1988. The trial Court also negated the contentions of



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the defendants that the property was joint family property and that the documents on which reliance had been placed by the plaintiffs' were all pursuant to the filing of the suit.

5. However, on appeal, the First Appellate Court finding that there was an existence of joint family, proceeded to reverse the findings of the trial Court and decreed the suit as prayed for.

6. Aggrieved by the reversal finding rendered by the First Appellate Court, the defendants have preferred the above present Second Appeal on 20.02.2018.

7. The above Second Appeal was admitted on 20.02.2018 and the following substantial questions of law were framed:

(i). Whether on the facts and circumstances of the case, the lower appellate Court is justified in recording a finding that particulars stated in the application for assignment gives right to the 1st respondent is correct in law?



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(ii). Whether on the facts and circumstances of the case, the finding of the lower appellate Court that the lands assigned by the Government towards the joint family an not for the 1st respondent is correct in law?

(iii). Whether on the facts and circumstances of the case, the lands assigned by the Government vest with the assignee or to joint family of the assignee?

8. I have heard Mr.V.Anandamurthy, Learned Counsel for the appellants and Mr.A.Sundaravadhanan, Learned Counsel for the 1st respondent.

9. I have also gone through the pleadings of the respective parties, the oral and documentary evidence adduced by the parties before the trial Court as well as the judgments of the trial Court and the First Appellate Court.

10. Though, the defendants were unsuccessful in establishing the plea of oral partition, the defendants have filed documents which were obtained through Right to Information Act to show that they was in existence, a Hindu undivided joint family and that even the conduct of the 1st defendant would clearly evidence that the property was not his absolute or self acquired property.



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The application seeking assignment of the land was made under Ex.A.11 series.

The First Appellate Court has found that the 1st defendant has included the name of the plaintiff, being his brother, in the said application form. This apart, before the First Appellate Court, under Ex.A.16, certified copy of the release deed executed by the aunt of the plaintiff and the 1st defendant dated 16.02.1988 was also taken as additional evidence. The releasors to the said release deed are the sisters of the father of the plaintiff and the 1st defendant. This document also evidenced the existence of a Hindu undivided joint family. No doubt, the suit property was not the subject matter of the said release deed in Ex.A.16. However, for the limited purposes of existence of joint family property, Ex.A.16 becomes relevant.

11. As rightly pointed by the Learned Counsel for the 1st respondent Mr.A.Sundaravadhanan, the assignment order under which the entire 2.36 acres stood as assigned/allotted to the 1st defendant was not even exhibited. In fact, he would also bring to my notice that the 1st defendant never entered the witness box even to give oral evidence. He would further contend that the Courts have rightly drawn adverse inference against the 1st defendant and no interference is warranted in the findings of the First Appellate Court



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which is well merited. The case of the 1st defendant was only under the assignment deed, according to which the entire 2.36 acres has been assigned/allotted to the 1st defendant. However, in order to substantiate the same, the 1st defendant has neither chosen to enter the witness box nor exhibit the said assignment/allotment order before the Court, despite the same being the sheet anchor of his defence.

12. On the contrary, the plaintiff has applied for relevant documents under the Right to Information Act and has shown that joint family property existed and the conduct of the 1st defendant himself in including the name of the plaintiff in the application form for assignment would clinch the issue. Thus, in the light of the documents exhibited by the plaintiff, namely Ex.A.1 to Ex.A.16, coupled with the fact that the 1st defendant has shied away from giving evidence and also not marked the most crucial document, the assignment order in his favour, the Court has to necessarily draw adverse inference against the 1st defendant. The First Appellate Court has rightly dealt with all these relevant aspects and proceeded to set aside the judgment and decree of the trial Court.



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13. In view of the above, I do not find any perversity or illegality in the findings arrived at by the First Appellate Court, warranting interference under Section 100 of Code of Civil Procedure.

14. In fine, this *Second Appeal is dismissed.* There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

23.02.2024

Index :Yes/No.

Internet :Yes/No.

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1. The Principal District and Sessions Judge, Erode.
2. The Sub Court, Sathyamangalam.
3. The Section Officer, V.R. Section, High Court, Madras.



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P.B.BALAJI, J.

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Pre-delivery judgment made in
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