



S.A.No.145 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 11.03.2024

Pronounced on: 22.03.2024

Coram:

THE HONOURABLE Mr. JUSTICE P.B.BALAJI

S.A.No.145 of 2018

Krishnakumar.

S/o.Somasundaram,

Represented by his Power of Attorney,

Agent Loganathan, S/o.Rangasamy,

Ananthagoundampalayam,

Minnakkal Post, Rasipuram Taluk,

Namakkal District.

... Appellant

/versus/

Athayee (Deceased)

1. Mangalam,

2. Poongothai,

3. Poongodi,

4. Parameshwarai,

5. Kathik,

6. Kumaravel,

7. Banumathi,

8. Jothi,

9. Senthilkumar,

... Respondents

Prayer: Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 18.09.2017 passed in A.S.No.57 of 2013 on the file of the Learned Additional District Judge, Namakkal confirming the judgment and decree dated 12.08.2013 passed in O.S.No.65 of 2010 (Originally O.S.No.596 of 2000 of Namakkal Sub Court) on the file of the Learned Subordinate Judge, Rasipuram.



S.A.No.145 of 2018

For Appellant : Mr.S.Mukunth, Senior Counsel,
for M.K.Samratt

For R1 to R5 : Mr.C.Jagadish

For R6 : Mr.S.Senthil

For R7 to R9 : No appearance

J U D G M E N T

The plaintiff in a suit for partition is the appellant before this Court.

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

3. The case of the plaintiff is that he is the son of the 2nd defendant and 10th defendant, the 1st wife of the 2nd defendant. The property is the ancestral property of Sengottuvel who had two sons namely, the 1st defendant/S.Paramasivam and 2nd defendant/Somasundaram. There was a partition subsequent to the demise of Sengottuvel, between the 1st defendant and 2nd defendant on 06.11.1989. According to the plaintiff, the said partition was wholly inequitable and ignoring the interest of the plaintiff, who was then a



S.A.No.145 of 2018

minor. According to the plaintiff, he was not even shown as a party to the said partition deed and when he had a definite share in the suit property by birth, the partition at the instance of his father was not binding on him.

4. The suit was resisted by the defendants stating that the father of the plaintiff, namely, the 2nd defendant/Somasundaram was competent to represent the estate being the Kartha and therefore, the partition entered into between the defendants 1 & 2 was valid and binding on the plaintiff. Further, it is also stated that the partition was not inequitable as claimed since the properties were situated in different village and depending on the then prevailing value of the properties, the allotment took place. It is also contended that since the partition was already effected, the plaintiff can claim a share only in the share allotted to the 2nd defendant and cannot seek to challenge the allotment in favour of the 1st defendant. The subsequent purchasers who are also made parties have filed separate written statements, denying the share of the plaintiff and also claiming that they are bonafide purchasers for value and contended that the suit was liable to be dismissed.

5. The father of the plaintiff had married for a second time, one Selvam and through her, he had two children namely, Jothi and Senthil Kumar



S.A.No.145 of 2018

who were impleaded as defendants 11 & 12. They have filed a separate written statement stating that their mother did not know about the earlier marriage between the 2nd defendant and the plaintiff's mother and according to them, the plaintiff's mother and the 2nd wife and defendants 11 & 12, lived together till the year 2000 and only thereafter, the plaintiff's mother left the house with the plaintiff. Further, according to them, the plaintiff had no right to seek for partition.

6. The trial Court dismissed the suit finding that pursuant to Ex.A6 partition deed, the plaintiff was not entitled to seek a share in the properties and at best, he can only claim a share in the properties allotted to the 2nd defendant.

7. Aggrieved by the dismissal of the suit, the plaintiff preferred a First Appeal in A.S.No.57 of 2013. The First Appellate Court dismissed the appeal confirming the judgment and decree of the trial Court.

8. On 26.04.2018, the Second Appeal was admitted on the following substantial questions of law:-



S.A.No.145 of 2018

"(a) Whether the Courts below are right in dismissing the suit after having found that the plaintiff was entitled to a share in the suit properties?

(b) Whether the Courts below were right in holding that the partition deed dated 06.11.1989 is binding on the interests of the plaintiff when he was not shown as a party to the same?

(c) Whether the Courts below committed a grave error in upholding the partition deed dated 06.11.1989 when it was shown to be unequal on the face of it?

(d) Whether the Courts below were right in holding that the father of the plaintiff was entitled to bind the interests of the sons in the absence of any evidence that he had acted as a Kartha in the disputed transaction?"

9. I have heard Mr.S.Mukunth, Learned Senior Counsel for Mr.K.R.Samratt, Learned Counsel for the appellant and Mr.C.Jagadish, Learned Counsel for the respondents 2 to 5 and Mr.S.Senthil, Learned Counsel for the 6th respondent.



S.A.No.145 of 2018

10. Mr.S.Mukunth, Learned Senior Counsel for the appellant

would contend that the minor was not even shown as an existing person in the partition deed Ex.A.6 and the 1st and 2nd defendants have suppressed his very existence and proceeded to partition the properties. Further, he would state that there was no consideration whatsoever of the interest of the minor, namely, the plaintiff/appellant and therefore, an inequitable partition, in and by which a lesser value of properties alone was allotted to the 2nd defendant.

11. The Learned Senior Counsel for the appellant would also contend that the minor was not even an co-nominee party and therefore, it was a void transaction. Further, he would also contend that under Ex.B.8 *Will*, the father of the plaintiff had bequeathed all his properties which he got under Ex.A.6 partition in favour of the children of the 2nd wife and therefore, the plaintiff has been left without any share whatsoever. In any event, he would state that the partition deed executed by his father, without even mentioning that he was representing the minor was not valid and binding on the plaintiff.



S.A.No.145 of 2018

12. The Learned Senior counsel would place reliance on the

following decisions:-

(i). *C.Krishna Prasad -vs- C.I.T., Bangalore* reported in **1975 (1)**

SCC160.

(ii). *Ratnam Chettiar and others -vs- S.M.Kuppuswami Chettiar*

and others reported in **1976 (1) SCC 214.**

(iii). *Rohit Chauhan -vs- Surinder Singh and others* reported in

(2013) 9 SCC 419.

(iv). *Palanimmal and others -vs- Pappathi and others* reported in

2013(3) CTC 729 and

(v). The decision of the Division Bench of this Court in *A.Suresh*

-vs- Pavishna and others reported in **MANU/TN/2018/2021** dated 19.03.2021.

13. Referring to the ratio laid down by the Hon'ble Supreme Court in *C.Krishna Prasad's* case cited supra, the Learned Senior Counsel for the appellant would state that the share that is obtained by the minor, namely, the appellant was acquired by him at birth and therefore, the share of a coparcener who obtains on partition, continue to be ancestral property as regards his male



S.A.No.145 of 2018

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14. In *Ratham Chettiar's case* referred above, the Hon'ble Supreme Court held that a partition effected between the members of Hindu undivided family cannot be reopened, unless it is shown that the same is obtained by fraud, coercion, misrepresentation or undue inference. However, in the said judgment it is held that where such partition involves minors and it is proved to be unjust and unfair and is detrimental to the interests of the minors, then the partition can be reopened at any point of time, as it was the duty of the Court to protect and safeguard the interest of the minors and onus of proof that the partition was just and fair was on the party supporting the partition.

15. In *Rohit Chauhan's case* referred above, the Hon'ble Supreme Court held that a share of ancestral property held by a person would become coparcenary property as soon as a child is born to such holder of the partition share of ancestral property.

16. In *Palaniammal's case* referred above, this Court held that a coparcener can will away only his share in terms of Section 30 of Hindu Succession Act.



S.A.No.145 of 2018

17. The Learned Senior Counsel would also place reliance on a division bench judgment of this Court in S.Suresh case cited supra, where the Division Bench of this Court held that in a partition deed, if the minor was not even shown as an eo-nominee party and the presence or existence of the minor was not at all recognised, then the partition deed would be void *ab initio* and would not even be necessary for seeking declaration that the partition deed was to be set aside or cancelled. Therefore, the Learned Senior Counsel for the appellant would pray for the Second Appeal being allowed.

18. Per contra, Mr.C.Jagadish, Learned Counsel for the respondents 1 to 5 would contend that as a father and Kartha, the 2nd defendant, on severance of status of joint family, would take the property as Kartha on behalf of the minor. He would also further state that the 2nd defendant had given insolvency in the year 2000 and the suit itself is a collusive suit at the instigation of the 2nd defendant. Further, the Learned Counsel for the respondents would also take me through Ex.A.6 to show that the partition was not inequitable merely because of the number of items and that, in fact the 2nd defendant had been allotted more items of properties than the 1st defendant. He would also state that there is absolutely no evidence forth coming on the side of the appellant to establish any fraud or coercion in bringing about Ex.A.6



S.A.No.145 of 2018

partition deed and therefore, no interference was warranted with the concurrent findings rendered by the Courts below.

19. Mr.S.Senthil, Learned Counsel for the 6th respondent would submit that he is a bonafide purchaser for value and he has purchased only a portion of the property and if at all the appellant is declared to be entitled to any share, the properties purchased by the 6th respondent may be left out and equitable principle be applied while allotting share to the appellant/plaintiff and the property purchased by the 6th respondent could be allotted to the share of the 6th respondent's vendor.

20. I have paid my anxious and careful consideration to the submissions advanced by the Learned Senior Counsel for the appellant and the Learned Counsel for the respondents 1 to 6.

21. The question that needs to be decided in the Second Appeal is as to whether the partition in Ex.A.6 is valid and binding on the appellant who was admittedly a minor on the date of execution of Ex.A.6 partition deed.



S.A.No.145 of 2018

22. The plaint proceeds on the footing that the partition deed was executed behind the minor's back and therefore, it was not binding on him. The plaintiff has not alleged any fraud, undue inference or coercion. The contention before the Court is that he was a coparcener admittedly, existing and alive on the date of execution of Ex.A.6 partition between his father, namely 2nd defendant and his uncle, namely 1st defendant and it could not have been validly entered into, depriving the plaintiff/appellant's share.

23. The Learned Counsel for the respondents 1 to 5 would place reliance on the decision of the Hon'ble Supreme Court in ***Kalyani (dead) by LRs -vs- Narayanan and others reported in 1980 Supp SCC 298***, where it is held that the father governed by *Mitakshara law*, living jointly with his sons, can effect disruption, without the consent of his sons.

24. Though, the Learned Senior Counsel for the appellant and the Learned Counsel for the respondent have relied on various decisions which have been referred herein supra, the judgment of the Division Bench of this Court in the case of ***A.Suresh -vs- Pavishna and others***, assumes the relevance for the purpose of the present case, where in similar circumstances, the Division



Bench of this Court held as follows:-

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“14. Reading of the judgments referred above would show that the minor was a eo-nomine a party in the case concerned in ruling reported in MANU/TN/0135/2001 : (2001) 2 CTC 641 (cited supra). The ruling (cited supra) does not deal with the right of a minor co-parcener. In the case concerned in ruling reported in MANU/TN/0132/1956 : AIR 1956 Madras 670 (cited supra), the minor was an eo-nomine a party. The judgment reported in MANU/SC/1293/2004 : (2004) 13 SCC 480 (cited supra) dealt with the right of a natural guardian of a Hindu minor to deal with the immovable property of minor under Section 8 of Hindu Minority and Guardianship Act, 1956. However in the case before hand, it is seen from Ex.B1-partition deed that the first respondent was not even shown as eo-nomine a party. Her presence and existence at the time of execution of partition deed was not at all recognised. The partition deed was not executed by the appellant on his behalf and on behalf of the first respondent. Therefore, we are of the view that the aforesaid judgments relied on by the learned counsel for the appellant are not applicable to the facts and circumstances of this case.

15.....

16. Thus, from the reading and understanding of judgments relied on by both the sides, this Court finds that the judgments relied on by the first respondent apply to the facts and circumstances of this case and the judgments relied on by the appellant are not applicable to the facts and circumstances of this case. Therefore, this Court is of the considered view that when the first respondent is not a party to Ex. B1-partition deed, the partition deed insofar as the first respondent is



S.A.No.145 of 2018

concerned is void-ab-initio and it is not necessary for her to seek the prayer to set aside the partition deed or to seek cancellation of the partition deed. In this view of the matter, this Court finds that the argument advanced on behalf of the appellant and respondents 2 and 3 that the suit filed without a prayer for declaration that Ex. B1-partition deed is null and void and not binding on the first respondent (or) without a prayer for its cancellation, is not maintainable, cannot be accepted and the argument in this regard is rejected.”

25. However, the decision of the Hon'ble Supreme Court by a Three Judge Bench in ***Kalyani (dead) by LRs*** case referred above, has held that:

“12. Mr. Krishnamoorthy lyer urged that even though undoubtedly a Hindu father joint with his sons and governed by Mitakshara law has the power to partition the joint family property, this power enables him to partition the property by metes and bounds but he has no power merely to disrupt the joint family status unaccompanied by division of property by metes and bounds. The limited question that needs answer in this case is whether a Hindu father joint with his sons governed by Mitakshara law has the power to disrupt the joint family status being a first step in the stage of dividing the property by metes and bounds. The wider question whether a coparcener of a coparcenary governed by Mitakshara law brings about a disruption of joint family status by definite and unequivocal indication of his intention to separate himself from the family would constitute disruption of status qua the non-separating



members need not be examined. A Hindu father joint with his sons and governed by Mitakshara law in contradistinction to other manager of a Hindu undivided family or an ordinary coparcener enjoys the larger power to impose a partition on his sons with himself as well as amongst his sons inter se without their consent and this larger power to divide the property by metes and bounds and to allocate the shares to each of his sons and to himself would certainly comprehend within its sweep the initial step, viz., to disrupt the joint family status which must either precede or be simultaneously taken with partition of property by metes and bounds. This view taken in [Kandaswami v. Doraiswami Ayyar](#) [1880] I.L.R. 2 Mad. 317, does not appear to have been departed from. Further, the text from Mayne's book extracted in the preceding paragraph shows that the weight of authority is against the proposition canvassed for by Mr. Iyer. It does, therefore, appear that a Hindu father governed by Mitakshara law has power to partition the joint family property belonging to the joint family consisting of himself and his sons and that this power comprehends the power to disrupt joint family status."

26. In the above decision, the Hon'ble Supreme Court has recognised the controversy as to whether a Hindu father governed by *Mitakshara law* has a right to partition ancestral properties, without the consent of his sons and after referring to Mayne's Hindu Law and Usage, 14th Edition and Mulla's Hindu Law, the Hon'ble Supreme Court held that the father of the



S.A.No.145 of 2018

joint family has the power to divide the family property at any moment during his life time, provided he gives his sons equal shares with himself, and if he does so, the effect in law is not only a separation of the father from the sons, but a separation of the sons inter se. The consent of the sons is not necessary for the exercise of that power and that the Hindu father joint with his sons governed by *Mitakshara law* has the power to partition the joint family property at any moment during his life time.

27. In *Kasirajan and others -vs- Ramasamy Nainar* reported in (1992) 1 LW 89, the Hon'ble Mr.Justice M.Srinivasan, dealing with a similar issue where the father had dealt with the property of the minor, held that the loan was borrowed by the father as the 'Karta' of the joint family and it was for legal necessity and in such event, it would be binding on the estate.

28. In the above decision, this Court relied on the decision of *S.M.Jakati and another -vs- S.M.Borkar and others*, reported in AIR 1959 SC 282, where the Hon'ble Supreme Court has held that the sale by the father, would bind the minor, since the estate was being represented.



S.A.No.145 of 2018

29. Unfortunately, the decision of the Hon'ble Supreme Court in

Kalyani (dead) by LR's case referred herein supra, was not brought to the notice of Division Bench of this Court in ***A.Suresh case referred above***. The law is fairly well settled on this aspect and when the father alienates the coparcenary property, it is on behalf of the estate and it would not be open to a minor coparcener to come forward and claim partition stating that what was sold by the father was only the father's interest in the coparcenary property and not the entire coparcenary property.

30. In these facts of the present case also, though the minor's share was allotted to his father and the minor, whether he was eo-nominee party or not, would not become entitled to a right to seek partition and disown the allotment to his father. At best, the minor can make a claim against his father and not against the joint family properties as a whole as if, there was no partition at all at any point of time. I also do not find that the contention that the partition was inequitable or detrimental to the share of the minor and there is absolutely no satisfactory evidence brought on record to evidence the same. In fact, I do not even find pleadings being effectively made in this regard.

31. Both the Courts have discussed the oral and documentary



S.A.No.145 of 2018

evidence available record in a proper perspective and have rightly concluded that the plaintiff was not entitled to challenge the Ex.A.6 partition deed as it was valid and binding on him.

32. Thus, I do not find any of the substantial questions of law formulated to be answered in favour of the appellant. Hence, the ***Second Appeal is dismissed.*** No costs.

22.03.2024

Index :Yes/No.
Internet :Yes/No.
Speaking order/Non-speaking order
Neutral Citation :Yes/No.
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2. The Subordinate Judge, Rasipuram.



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S.A.No.145 of 2018

P.B.BALAJI, J.

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S.A.No.145 of 2018