



O.S.A.No.34 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2024

CORAM

THE HON'BLE Mr. JUSTICE S.S.SUNDAR
AND
THE HON'BLE Mr. JUSTICE G.ARUL MURUGAN

O.S.A.No.34 of 2023
AND
C.M.P.No.2737 of 2023

B.Ganapathy

.. Appellant

Vs.

- 1.A.Gajaharini
- 2.Lakshmanan
- 3.The Manager
Hi-Tech Diagnostics Center
57, Arunachala Naicken St.
Chintadripet, Chennai 600 002
- 4.Karthik
- 5.Raheela
- 6.R.Lakshmi
- 7.Suresh
- 8.Cindrella
- 9.Dhanasekar V.R.
- 10.E.Parasuram
- 11.Bhavani
- 12.Kirankumar



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13.Suresh

14.Thirumal

15.Priya

16.Bhanu

17.Karthik

.. Respondents

Original Side Appeal filed under Order XXXVI Rule 1 of O.S. Rules read with Clause 15 of Letters Patent, against the order dated 25.11.2022 passed in C.S.No.202 of 2020.

For Appellant : Mr.N.Manokaran
for Karan and Uday

For 1st Respondent : Mr.M.Radhakrishnan

For RR 2, 3, 5 to 10, : Ex parte
12 to 14, 16 & 17

For RR 4, 11 & 15 : Given up

J U D G M E N T

(Delivered by S.S.SUNDAR, J.)

This appeal is preferred against the judgment and decree dated 25.11.2022 passed by the learned Single Judge in C.S.No.202 of 2020.

2. The facts leading to the filing of this appeal are as under :

2.1. The 1st respondent filed a suit in C.S.No.202 of 2020 as against the appellant and others who are tenants, for a preliminary decree for partition and separate possession of suit schedule A and B properties into two equal shares



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and to allocate $\frac{1}{2}$ share of the said property to the 1st respondent and also for a direction to the appellant to pay a sum of Rs.1,80,000/- as mesne profits to the 1st respondent towards $\frac{1}{2}$ share of rent in respect of suit schedule A and B properties.

2.2. It is admitted that the appellant and the 1st respondent are the son and daughter of Late Sri.M.Balasubramaniam, who died on 30.07.2014, leaving behind his wife, the mother of the appellant and the 1st respondent viz., B.Kalaiselvi and two children. One of the sons of M.Balasubramaniam by name Gajendran died on 14.10.2010.

2.3. It is not in dispute that the suit schedule A properties were originally acquired by M.Balasubramaniam. It is stated that suit B schedule was jointly acquired by father and mother. It is also not in dispute that during the lifetime of B.Kalaiselvi after the death of M.Balasubramaniam, the appellant and the 1st respondent, by release deeds dated 23.02.2015 and 06.09.2018, relinquished their share in schedule A and B properties in favour of B.Kalaiselvi and therefore, she became the absolute owner of schedule A and B properties.

2.4. The suit was contested by the appellant mainly on the ground that



there was a family arrangement. In paragraph 6 of the written statement, the appellant pleaded that all the properties were purchased by his father M.Balasubramaniam from his fishing wholesale business and therefore, his father decided to make an arrangement of the properties by an oral partition. On account of such family arrangement, it is stated that item 1 and 2 of schedule A and B properties were given to the 1st defendant and other properties were given to plaintiff. Paragraphs 6 and 7 of the written statement filed by the 1st defendant is extracted as under :

“6. The 1st defendant respectfully submits that after the 1st defendant took over the 1st defendant's father's fishing wholesale business. The 1st defendant was take care his father, mother and brother and they were living as a joint family in suit schedule 'A' premises with his wife and two children. The 1st defendant's brother died on 14.10.2010. The suit properties and other all properties were purchased by the 1st defendant's father from his own funds. The 1st defendant's father decided to make arrangement of the properties. By oral partition suit schedule A item-1 & 2 and B properties were given to the 1st defendant whereas the following properties were given to the 1st defendant's sister plaintiff herein.

A) House property door No.14/11, Rathnammal 2nd Street, Asath Nagar, Aminjikarai, Chennai 600 028. Plot No.B Ground Floor, Plot No.3 part, block No.11 admeasuring 1400 sq.ft. UDS comprised in survey No.44/15, Puliur Village, Kodambakkam and other vide a settlement deed dated 13.05.2013 registered as document No.1731/2013 in SRO, Kodambakkam, Central Chennai.

B) Vacant land admeasuring 3.83 acres of land comprised in RS.No.311/3, 312/2, 312/3, Panampakkam Village, Thiruvallur Taluk, Uthukottai Sub District, Arani and other vide a settlement deed dated 21.04.2017, registered as document No.833 of 2017 in Sub Registrar's Arani, North Chennai Registration District.



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7. The 1st defendant respectfully submits that after the family oral settlement. The 1st defendant was decided to transfer the suit schedule B properties in his mother name for fulfill of his ambition to build new home for his mother in his own hard earning money. Therefore the 1st defendant have built present superstructure in suit schedule B property through his own hard earned money and debts for more than one crore and transferred title to the 1st defendant's mother's name by a release deed with his sister the plaintiff herein schedule B property on 23.02.2015 vide document No.483/2015 in the office of the Sub Registrar, Periamet, Chennai. After completion of superstructure the 1st defendant have been managing the building in his mother name till now. The 1st defendant is using few portions for his business and have given other few portions for rent and other portions remain vacant.”

2.5. Considering the pleadings of both sides, the learned Single Judge framed the following issues :

- (1) Whether the plaintiff's mother was the absolute owner of the Schedule A and Schedule B property at the time of her death on 20.06.2020 ?
- (2) Whether the plaintiff is entitled to be allotted half the share of Schedule A and Schedule B property after due partition ?
- (3) Whether the defendant is liable to pay the plaintiff a sum of Rs.1,80,000/- towards half the share of the rent in respect of the Schedule A and Schedule B property received from the defendants 2 and 3, 5 to 10, 12 to 14 and 16 and 17 for the months of June 2020 and July 2020 and continue to pay the plaintiff the said half a share of the rent every month effective from August 2020 with interest thereon at the rate of 12 percent per annum from the date



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of suit till realization ?

- (4) Whether the plaintiff has already got her share from family properties in settlement deed dated 13.05.2013 Doc.No.1731 of 2013 and 21.04.2017 Doc.No.833 of 2017 by her mother ?
- (5) Whether the 1st defendant have built superstructure in suit schedule B property in his own hard earned money ?
- (6) To what other relief the parties are entitled to ?

2.6. The wife of the appellant was examined as D.W.1. The appellant also examined two more witnesses whose evidence were recorded as D.W.2 and D.W.3. On behalf of the 1st respondent, Exs.P1 to P9 were marked. Exs.P1 and P2 are the certified copies of the sale deeds in respect of items 1 and 2 of schedule A properties. Ex.P3 is the certified copy of the sale deed in respect of schedule B properties. All the suit properties were purchased by father and mother. The registered release deeds are admitted. Therefore, the fact that the properties are otherwise divisible among the 1st respondent and the appellant is admitted. Hence, the major issue is whether the oral family arrangement is proved. Incidentally, the further question is about the actual income from the property to grant further relief.

2.7. The release deeds executed by the 1st respondent and the appellant in



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favour of their mother B.Kalaiselvi in respect of A and B schedule properties are marked as Exs.P4 and P5. Ex.P6 is the legal heirship certificate to show that the 1st respondent and the appellant are the legal heirs of M.Balasubramaniam. The Death Certificate of B.Kalaiselvi is marked as Ex.P7 and the legal heirship certificate in respect of B.Kalaiselvi is also marked as Ex.P9. The legal notice issued by the 1st respondent is marked as Ex.P8.

2.8. Copy of the settlement deeds executed by B.Kalaiselvi in favour of the 1st respondent were marked as Exs.D1 and D2. Ex.D3 is the legal notice dated 03.08.2020. The encumbrance certificates are marked as Exs.D4 and D5. Witnesses also filed additional proof affidavits. It is seen that the appellant, who is competent to speak about the oral family arrangement, was not examined.

2.9. Even though an issue was raised whether B.Kalaiselvi was the absolute owner of the A and B schedule properties, the trial Court held that B.Kalaiselvi was the absolute owner of the A and B schedule properties. Even though the oral partition pleaded by the appellant was spoken to by D.W.1 to D.W.3., the learned Single Judge, based on the documents and oral evidence, recorded a finding that the oral family arrangement cannot be accepted and that



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the 1st respondent and the appellant are entitled to equal share in item 1 and 2 of schedule A and B properties. The oral partition was not believed by the learned Single Judge for reasons. As regards the mesne profits, the learned Single Judge relegated that the same can be gone into at the time of deciding the final decree application. Challenging this finding of the learned Single Judge, this original side appeal has been preferred by the appellant.

3. Heard both sides and perused the materials available on record.

4. The learned counsel for the appellant canvassed the following points :

- i. The learned Single Judge failed to appreciate that the family arrangement as pleaded by the appellant is probablised by two settlement deeds executed by B.Kalaiselvi in favour of the 1st respondent in 2013 and 2017, pursuant to an oral arrangement.
- ii. The learned counsel suggested that it was only due to family arrangement, two settlement deeds *i.e.*, Ex.D1 and Ex.D2 were executed by B.Kalaiselvi.
- iii. The learned counsel submitted that the appellant had built a superstructure in the suit property with his own earnings and that the 1st respondent did not raise any objection when the appellant put up the



construction.

iv. Referring to the evidence of D.W.1 to D.W.3, the learned counsel submitted that their evidence were not considered in a proper perspective by the learned Single Judge.

v. The learned counsel attempted to canvass that the findings of the learned Single Judge are on the basis of the submissions, ignoring the facts admitted and circumstances pleaded by the appellant based on documents.

5. The learned counsel for the 1st respondent submitted that the learned Single judge has considered the pleadings, analysed the documents carefully and rendered findings by giving substantial reasons as seen from the judgment. He further submitted that the appellant miserably failed to prove the oral partition.

6. This Court, on a careful perusal of pleadings and evidence, framed the following points for determination :

(1) Whether the appellant has proved the oral partition or family arrangement as pleaded in his written statement ?

(2) Whether the 1st respondent is entitled to allotment of $\frac{1}{2}$ share in the



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suit A and B schedule properties ?

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(3) Whether the settlement deed executed by B.Kalaiselvi in favour of the 1st respondent under Exs.D1 and D2 dated 13.05.2013 and 21.04.2017 respectively, as part of family arrangement or the oral partition as pleaded by the appellant ?

7. The fact that A schedule property was purchased by M.Balasubramaniam and that B schedule was purchased along with B.Kalaiselvi is not in dispute. By virtue of the release deeds, which were marked as Exs.P4 and P5, B.Kalaiselvi became the absolute owner of the property as she had already inherited 1/3rd share in respect of her husband's property. When we examine the plea taken by the appellant in the written statement the alleged oral partition or the oral arrangement was during the lifetime of M.Balasubramaniam, as seen from paragraph 6 of the written statement, where the appellant specifically pleaded that M.Balasubramaniam decided to make arrangement of the properties.

8. It is now admitted that B.Kalaiselvi executed the first settlement deed in respect of another property under Ex.D1 on 13.05.2013, which is prior to the death of M.Balasubramaniam. The second settlement deed Ex.D2, in respect of



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an extent of 3.83 acres in Panampakkam Village, Thiruvallur Taluk, was executed on 21.04.2017, three years after the death of M.Balasubramaniam.

Therefore, the appellant has failed to explain the time gap between the alleged oral arrangement and the second settlement deed. So, we are unable to reconcile the timeline between the alleged oral partition and the settlement deeds executed by B.Kalaiselvi under Exs.D1 and D2. How can there be partition of properties during the lifetime of father. If there is a family arrangement, why the document was executed in favour of appellant.

9. In the course of evidence, it is admitted by the appellant that B.Kalaiselvi also executed a settlement deed in favour the appellant. However, the settlement deed executed by B.Kalaiselvi cannot be a reason to presume that there was a family arrangement as pleaded by the appellant. When this was put to the learned counsel for the appellant, the learned counsel submitted that the 1st respondent has not disclosed the settlement deed executed by B.Kalaiselvi in favour of the 1st respondent and therefore, the omission to refer to the settlement deed executed by B.Kalaiselvi in favour of the appellant has no significance. Since the execution of the settlement deed in favour of the 1st respondent is pleaded to suggest the oral arrangement, this Court finds that the failure to disclose the settlement in his favour by the appellant is definitely a material omission and a reason to disbelieve the contention of the appellant



about the oral arrangement.

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10. This Court has already seen that the oral arrangement pleaded in paragraph 6 of the written statement is during the lifetime of M.Balasubramaniam and therefore, the appellant has to explain the facts which do not match the sequence of events to accept the alleged oral family arrangement or statement pleaded by him. Further, in paragraph 7 of his written statement, the appellant has submitted that he has spent money for building a house for his mother B.Kalaiselvi, out of his own earnings only in fulfilment of his ambition to build a new home for her. Therefore, he cannot assert his right on the basis of oral family arrangement.

11. In the course of evidence, the appellant has not examined him but examined his wife on his behalf, for which, this Court finds no explanation. In the absence of focus by the appellant before the learned Single Judge, this Court is not inclined to draw adverse inference against the appellant. However, this is a relevant circumstance to infer that the appellant avoided witness box intentionally to avoid speaking truth.

12. D.W.2., during chief examination, has stated that he is doing business and he knows the appellants's family for the past 30 years. His evidence during



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chief examination does not inspire confidence. When he is not a person close to the family, he cannot be a person to speak about the oral family arrangement among the members of the family and at the best, he can be a person who can only speak from what the appellant disclosed to him about his family affairs. In the absence of an assertion that D.W.2 was a person, who is close to the appellants's family, this Court is unable to believe his statement. Further, in the absence of examination of appellant as a witness, this Court cannot rely on the evidence of D.W.2 to corroborate with the evidence of D.W.1. During cross-examination, the suggestions put to D.W.2 were simply denied without any explanation. D.W.2 has admitted that he did not know the date, place and year of the oral partition. Apart from that, in the absence of a word during cross-examination about how he had knowledge of the family arrangement, this Court is unable to believe the evidence of D.W.2.

13. As regards D.W.3., D.W.3 claims that she is the aunt of the 1st respondent and the appellant. A perusal of her proof affidavit shows that it is nothing but a replica of the proof affidavit filed by D.W.2. It is to be noted that D.W.3 has deposed at the request of the appellant, who has not given any explanation for his non-examination. When a specific suggestion was put to D.W.3 that she did not have any cordial relation with M.Balasubramaniam's



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family for the last 10 years prior to his death, she has simply denied it.

Relevant suggestions were put to the witness suggesting that she has come to the witness box at the instigation of the appellant to give false evidence, even though she has no personal knowledge about the family arrangement regarding allotment of the suit schedule property.

14. Having regard to the specific stand taken by the appellant in paragraph 6 of his written statement, the evidence of D.W.2 and D.W.3 do not support the case of the appellant about the alleged oral partition or family arrangement during the lifetime of M.Balasubramaniam. In the absence of any further evidence or document showing that there is an oral partition or family arrangement or that the same was acted upon immediately after the death of M.Balasubramaniam in 2014, this Court is unable to accept the case of the appellant that the alleged settlement deeds which were executed before and after the lifetime of M.Balasubramaniam is based on a family arrangement during the lifetime of father.

15. As pointed out by the learned Single Judge, this Court also finds no other evidence to prove the family arrangement. Apart from the fact that the case pleaded by the appellant is contra to the sequence of events as gathered



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from the documents, this Court agree with the learned counsel for the 1st respondent that there is no sufficient evidence to establish the family arrangement as pleaded in the written statement by the appellant. All the points are answered in favour of the 1st respondent. Therefore, this Court holds that the appellant has failed to prove his case and as a result, this original side appeal is dismissed as being devoid of merits. No costs. Connected C.M.P. is closed.

[S.S.S.R.,J.] [G.A.M.,J.]
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Index : Yes/No
Neutral Citation : Yes/No
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