



S.A.No.166 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2024

CORAM

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.No.166 of 2024
and
C.M.P.No.5751 of 2024

1.Muthuvedi
2.Minor.Bharathi
3.Minor.Elango
4.Minor.Siva
(Minors 2 to 4 are represented by their mother and
natural guardian i.e., 1st appellant)

... Appellants

vs.

1.Chinnapappa
2.Madheswari
3.Murali
4.Vediappan
5.Balan
6.Rajappa
7.Marappa
8.Madhammal
9.Saritha
10.Minor.Yamuna Priya
11.Minor.Sivananda

(Minors/respondents 10 and 11 are represented by Advocate &
Court guardian Ms.V.Tamil Priyanka)

12.Muthamma
13.Govindaraj
...Respondents



S.A.No.166 of 2024

WEB COPY

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 27.07.2023 passed in A.S.No.50 of 2022 passed by the Additional District Judge, Krishnagiri, modifying the judgment and decree dated 06.04.2022 in O.S.No.85 of 2016 passed by the learned Additional Subordinate Judge, Krishnagiri.

For appellants : Mr.K.Venkatasubban
for M/s.Sarvabhauman Associates

J U D G M E N T

1. The defendants 1 to 4 are before this Court in this Second Appeal.

2. This Second Appeal is filed as against the judgment and decree dated 27.07.2023 passed in A.S.No.50 of 2022 passed by the Additional District Judge, Krishnagiri, modifying the judgment and decree dated 06.04.2022 in O.S.No.85 of 2016 passed by the learned Additional Subordinate Judge, Krishnagiri.



S.A.No.166 of 2024

WEB COPY

3. For the sake of convenience, the parties will be referred to as per their ranking as before the Trial Court.

The brief facts, which gave rise to this Second Appeal, are as follow:

4. According to the plaintiffs, the suit properties and several other properties were ancestral joint family properties of one Vediappan along with his two sons viz., Madhu and Balan, and they were in joint possession of the same. Vediappan died 23 years ago leaving behind his wife Lakshmiammal/5th defendant and his two sons viz., Madhu and Balan. Thereafter, the 5th defendant, along with her two sons viz., Madhu and Balan, by means of partition deed dated 17.01.2011, partitioned the properties, inherited from Vedyappan. Madhu was allotted with 'B' schedule property in the partition deed and thus, the suit properties are the ancestral divided share of Madhu. The first plaintiff is the legally wedded wife of the said Madhu and the second plaintiff is the only daughter born in the year 1996 and the second plaintiff is also a co-parcener to the suit properties, as per the provisions of Act 1 of 1990 and Act 39 of 2005. The second plaintiff and her father Madhu have equal half share in the suit properties and they are in joint possession of



S.A.No.166 of 2024

WEB COPY

the same. Around 11 or 12 years ago, the husband of the first plaintiff and the father of the second plaintiff/Madhu had, during subsistence of the first marriage, married the first defendant. As the marriage is void in law, she cannot get the status of a wife. Out of the void marriage, the defendants 2 to 4 are born to Madhu and the second wife and therefore, the defendants 2 to 4 are illegitimate children and they do not have any share in the suit properties. But, they can get share from the half share of their father/Madhu.

5. While so, on 28.02.2013, the said Madhu died leaving behind his mother, the plaintiffs and his three children born through the second wife. Therefore, the 5th defendant, the plaintiffs 1 and 2 and the defendants 2 to 4 have equal share in the half share of Madhu and are entitled to $1/12$ share in the suit properties and the second plaintiff is entitled to $1/12 + 6/12 = 7/12$ share and therefore, in all, the plaintiffs are entitled to $8/12$ share in the suit properties.

6. While so, to defeat the rights of the plaintiffs, bogus and nominal sale deed dated 28.10.2011, has been created in the name of the



S.A.No.166 of 2024

first defendant, which is null and void and not binding on the legitimate right of the second plaintiff and therefore, legal notice was issued on 09.08.2014 and 24.04.2015 and have come up with the suit for declaration to declare the sale deed dated 28.10.2011 as null and void, for partition and for permanent injunction.

7. The defendants 1 to 4 resisted the suit by filing a written statement admitting the relationship of the parties. The defendants contended that after the birth of the second plaintiff, the first plaintiff deserted the said Madhu and she never cared for him and further, there was a customary divorce done before the Panchayat, as per the custom prevailing in Vanniyar community and therefore, the first plaintiff ceased to be the legally wedded wife.

8. According to the defendants, Madhu had sold entire suit properties to the first defendant through sale deed dated 28.10.2011, for valuable consideration and the first defendant is in possession and enjoyment of the same. The father of the first defendant had given her funds and also she had been doing a business through self help group.



S.A.No.166 of 2024

WEB COPY

From the said income, the first defendant had purchased the suit properties for valuable consideration and therefore, the plaintiffs cannot make any claim over the suit properties. The suit properties have been sold by the said Madhu even during his lifetime for family expenses and for discharging of family debts, which are all legal necessities. Thus, the suit properties were sold for binding purposes by the father/manager viz., Madhu. Therefore, the plaintiff has no *locus standi* in questioning the validity of the sale deed and therefore, the defendants sought for dismissal of the suit.

Evidence and documents:

9. During trial, on the side of the plaintiffs, the first plaintiff examined herself as P.W.1 and marked Exs.A1 to A5. On the side of the defendants, the first defendant examined herself as D.W.1 and marked Exs.B1 to B5.

Findings of the Courts below:

10. After analysing the documents and evidence, the Trial Court decreed the suit, by granting preliminary decree for half share in the suit



S.A.No.166 of 2024

properties in favour of the second plaintiff, however, dismissed the suit, in so far as the declaration of sale deed as null and void is concerned. The Trial Court found that the first defendant has not established that she had independent income to purchase the suit property in her favour for the payment of valuable consideration.

11. Aggrieved by the same, the defendants 1 to 4 filed appeal in A.S.No.50 of 2022 on the file of the Additional District Court, Krishnagiri. The plaintiffs had also filed a cross-objection. The Lower Appellate Court, after re-appreciating the evidence, dismissed the appeal and partly allowed the cross-objection by modifying the decree in respect of declaration declaring the sale deed executed in favour of the first defendant as null and void and they should not disturb the preliminary decree of the half share granted to the second plaintiff and also consequential permanent injunction.

12. Aggrieved by the concurrent finding of fact, the defendants 1 to 4 are before this Court in this Second Appeal.



S.A.No.166 of 2024

Submissions:

WEB COPY

13. The learned counsel appearing for the defendants 1 to 4/appellants argued that the relationship of the parties is admitted and also the nature of the properties is admitted. When the first defendant *i.e.*, the second wife of Madhu, had purchased the suit properties through the sale deed in Ex.A2 for valuable consideration, the first defendant was in a capacity to have income that she earned from the self help group and also money received from her father. Out of her own funds, she had purchased the properties for valuable consideration, thereby, became owner of the suit properties. In such circumstances, the suit filed by the plaintiffs for partition cannot be sustained.

14. Further, the learned counsel contended that Madhu, being Karta of the family, always had right to execute the sale deed in the interest of the minor children and therefore, the sale deed executed by Madhu, who is the Karta, in Ex.A2 was only executed for the welfare of the minor children and it is a settled proposition that the sale deed executed in the interest of the minor is valid and binding on the minor children. The learned counsel further contended that when the first



S.A.No.166 of 2024

WEB COPY

defendant had purchased the property and she is in possession and enjoyment and when the first plaintiff has been divorced by the customary practice existing in the Vanniyar community, the second plaintiff has no right to claim any share in the properties. The learned counsel further contended that the Courts below without appreciating the aspect that Madhu has a right to execute the sale deed and further, the first defendant had purchased the suit properties for valuable consideration, had erroneously arrived at a finding and sought for allowing the appeal.

15. Heard the counsel and perused the materials available on record.

Analysis of the submissions:

16. Admittedly, the suit properties, along with several other properties, belonged to one VEDIYAPPAN. VEDIYAPPAN had two sons viz., Madhu and Balan and he had died around 23 years ago leaving behind his wife/5th defendant and his two sons. It is also admitted that his two sons had inherited the properties along with their mother and had been in



S.A.No.166 of 2024

WEB COPY

possession and enjoyment of the properties. Thereafter, they had executed a partition deed among the two sons and the mother/5th defendant through the partition deed dated 17.01.2011 in Ex.A1. By partition, admittedly, the suit properties herein had been allotted in favour of the eldest son Madhu, as 'B' schedule property. It is also admitted by the parties that the suit properties were allotted to the share of Madhu as ancestral property.

17. Madhu had married the first plaintiff, through which, the second plaintiff was born in the year 1996. Therefore, the second plaintiff, being the daughter of Madhu, is entitled to half share in the ancestral suit properties allotted to her father Madhu.

18. It is the claim of the defendants 1 to 4 that there was a customary divorce, in which, the first plaintiff was divorced and thereafter, the husband of the first plaintiff had married the first defendant, through whom, the defendants 2 to 4 were born. However, no material has been produced to establish that there had been a valid divorce and therefore, it is clearly evident that there was no valid divorce



S.A.No.166 of 2024

WEB COPY

and therefore, Madhu had married the first defendant, during the subsistence of the first marriage. Therefore, the second marriage is void and the defendants 2 to 4 are the children, born to the first defendant and the deceased Madhu through void marriage.

19. The first defendant admits that the second plaintiff is the co-parcener and therefore, she is entitled to half share in the suit properties. However, she only contends that her husband, as a Karta, had executed sale deed in Ex.A2 only, in the interest of minor children. When, admittedly, the plaintiffs were not living with Madhu and Madhu had married the first defendant during the subsistence of the first marriage, which is void and there is no materials available on record to show that the sale deed has been executed in the interest of the minor children, it cannot be taken that Madhu had conveyed the suit properties by way of sale in favour of the first defendant in the interest of the minor children.

20. Even when the first defendant claims that she had purchased the properties by way of income derived from the self help group and the



S.A.No.166 of 2024

WEB COPY

money given by her father, she has not been able to establish that she had sufficient funds available to purchase the suit properties for valuable consideration through Ex.B1. However, the first defendant can claim the right only if the vendor i.e., her husband, had any right to convey the entire suit properties in favour of the first defendant. When, admittedly, the second plaintiff is entitled to half share of the suit properties, the sale deed executed by Madhu in favour of the first defendant in respect of the entire suit property cannot be sustained, as he had no right to convey the same.

21. As the issue between the parties is not in respect of the rights of the defendants 2 to 4, who are the children born through void marriage and as the issue has also now been settled, this Court need not go into the same.

22. Therefore, the Courts below have found that the second plaintiff, as a co-parcener of the suit properties, is entitled to half share of the suit properties and the sale deed executed by Madhu in favour of the first defendant for the entire suit properties is not sustainable and has



S.A.No.166 of 2024

WEB COPY

rightly set aside the sale deed in Ex.A2, in so far as half share is concerned and have also granted the preliminary decree for partition, which is based on materials available on record and there is no illegality or perversity. This Court does not find any substantial question of law involved for consideration in this Second Appeal.

23. As such, this Second Appeal stands dismissed. However, there shall be no order as to costs.

24. However, since in paragraph 28 of the judgment of the Lower Appellate Court, only the sale deed in respect of $\frac{1}{2}$ share alone is declared as null and void, but, however, in the cross objection and the decree, the sale deed dated 28.10.2011 is declared as null and void, that portion of judgment and decree alone is modified as “sale deed dated 28.10.2011 is declared as null and void, only in respect of $\frac{1}{2}$ share”.

14.03.2024.

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
apd



S.A.No.166 of 2024

WEB COPY

To

1. The Additional District Judge, Krishnagiri.
2. The Additional Subordinate Judge, Krishnagiri.
3. The Section Officer, V.R.Section, High Court, Madras.



WEB COPY



S.A.No.166 of 2024

G.ARUL MURUGAN,J

apd

S.A.No.166 of 2024
and
C.M.P.No.5751 of 2024

14.03.2024