



S.A.No.284 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2024

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.284 of 2021
and
C.M.P.No.5733 of 2021

Santhi ... Appellant

Vs.

Vendamani ... Respondent

Prayer:- Second Appeal is filed under Section 100 of C.P.C to set aside decree and Judgment, dated 24/01/2020 passed in AS No. 4/2019 on the file III Additional District Court, Vellore at Tirupattur reversing the Judgment and decree dated 07/03/2019 passed in OS No.51/2014 on the file of Sub Court, Tirupattur, Vellore District.

For Appellant : M/s.PA. Sudesh Kumar

For Respondent : M/s.Elizabeth Ravi



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JUDGEMENT

The defendant has filed the above Second Appeal challenging the judgement and decree passed by the III Additional District Judge, Vellore at Tirupathur in A.S.No.4 of 2019 in and by which the learned Judge has reversed the judgement and decree passed by the Sub Court Judge, Tirupathur in O.S.No.51 of 2014.

2. The facts are briefly set out herein below and the parties are referred to in the same ranking as before the Trial Court.

3. The plaintiff herein had filed the suit O.S.No.51 of 2014 for a partition and separate possession of her 3/4th share in the suit schedule properties and for a permanent injunction. She would contend that item Nos.1 to 5 of the suit properties were purchased by one Manicka Gounder under a sale deed dated 16.09.1964 and from the date of the



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purchase he has been in enjoyment of the same. Manicka Gounder had dug a well in S.No.415/2 and also obtained E.B. service connection. He was personally cultivating the suit schedule properties. Thereafter, Manicka Gounder had entered into an agreement of sale for purchasing 1 acre 13 cents in S.No.418/2 on 16.02.1971 for a total sale consideration of Rs.4,500/- and a sum of Rs.1,500/- was also paid as advance.

4. Manicka Gounder died intestate on 29.07.1978, leaving behind surviving his wife Mangaiammal and 5 daughters, namely, Indhirani, Vasantha, Vendamani (the plaintiff), Santhi (the defendant) and Saundari as his legal heirs. The marriage of Indhirani and Vasantha and the plaintiff had taken place even during the lifetime of Manicka Gounder and the marriage of the other two daughters were solemnised after this death.

5. After the death of Manika Gounder, his wife was enjoying the



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property and she had from out of the income derived from the suit property purchased the property in S.No.418/2 measuring an extent of 1.13 cents situate at Madapalli Village under a registered sale deed dated 05.02.1979. This was the property in respect of which Manicka Gounder has entered into an agreement of sale. The plaintiff would contend that her mother had no source of income or occupation and the property was purchased from out of the income from Items 1 to 5. The legal heirs of Manicka Gounder were jointly enjoying the properties and joint patta was also mutated in their name. Therefore, each of them were entitled to $1/6^{\text{th}}$ share in the suit property as well as the property comprised in S.No.418/2 to an extent of 1.13 cents.

6. Since the plaintiff's sisters Indhirani and Vasantha were living away from the suit schedule properties, they had demanded for partition of the suit properties in the year 1995. Hence, the parties had entered into an oral partition only with reference to S.No.418/2 and an



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extent of 1.13 cents was allotted to the share of Vasantha and Indhirani.

The suit property to an extent of 1.68 cents was jointly allotted to the plaintiff's mother, the plaintiff, the defendant and Soundari. After this oral partition, Vasantha and Indhirani had insisted upon written documents evidencing the allotment of the property upon them. Therefore, the plaintiff's mother had executed a settlement deed in favour of Indhirani and Vasantha separately in respect of S.No.418/2 to an extent of 1.13 cents and patta was also changed in their name as Patta No.1428.

7. The plaintiff would submit that from the date of the oral partition, the suit property was being jointly enjoyed by the plaintiff's mother, the plaintiff, the defendant and Shanthi. However, Vasantha who had been allotted property in S.No.418/2, had filed a suit for partition in O.S.No.37 of 1994 in respect of the suit property against the mother and all her other sisters including the plaintiff and defendant herein. The plaintiff, the defendant and Saundari had also



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filed a suit for injunction in O.S.No281 of 1995 and O.S.No.774 of 1995 on the file of the District Munsif, Tirupattur. All the suits were tried jointly and the suit filed by Vasantha for partition was dismissed by holding that Vasantha and Indhirani were already allotted other properties in an oral partition.

8. The plaintiff had already got a share in the suit property and thereafter under a sale deed dated 14.03.2014, she had purchased the 2/4th share from her mother and one sister. Therefore, the plaintiff is entitled to a 3/4th share in the suit property. The defendant was trying to encumber the suit property and therefore the plaintiff had issued a legal notice calling upon the defendant to partition the suit property. Though the defendant had received the notice she had not bothered to reply to the same and hence the plaintiff has come forward with the suit for partition of her 3/4th share in the suit schedule property and for an injunction against the defendant.



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9. The defendant had filed a written statement inter alia denying all the averments contained in the plaint. She would contend that the settlement deed executed in favour of Vasantha and Indhirani was null and void since the property was a joint family property. Further, the defendant had contended that the suit was bad for partial partition as the properties in S.No.418/2 measuring an extent of 1.13 cents had not been included. That apart, all the legal heirs of Manicka Gounder had not been added as parties to the proceedings and therefore the suit was bad for non-joinder of necessary parties.

10. The defendant would submit that the husbands of the plaintiff and defendant are the registered cultivating tenants in respect of the properties of Manicka Gounder and had been cultivating the entire lands. She would further submit that Vasantha had not challenged the judgement and decree in O.S.No.37 of 1998 in and by which she had been denied her claim for partition in respect of the suit schedule



property. Therefore, this suit is liable to be dismissed.

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11. The learned Trial Judge had framed the following issues:-

- 1. Whether the plaintiff is entitled to the partition?*
- 2. Whether the plaintiff is entitled to the relief of permanent injunction?*
- 3. To what other relief?*

12. The plaintiff had examined herself as P.W.1 and one Gunasekaran and Nagaraj as P.W.2 and P.W.3 and had marked Ex.A.1 to A.12. The defendant Santhi examined herself as D.W.1 and one Anandan @ Balu as D.W.2 and marked Ex.B.1 to B.7. The Village Administrative Officer, Madapalli was examined as C.W.1 and Ex.C.1 to C.4 were marked through him.

13. Upon considering the evidence and pleadings, the learned Trial Judge had dismissed the suit for partition and decreed the suit with reference to permanent injunction. Challenging this judgement and decree the plaintiff had filed A.S.No.4 of 2019 on the file of the



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Additional District Court, Vellore at Tirupattur. The learned Appellate

Judge on reconsidering the evidence on record had decreed the suit as prayed for. The learned Appellate Judge had taken note of the fact that the admitted case of all parties was that the suit property was the property of their father Manicka Gounder who had died intestate. Further, the learned Judge had taken note of the earlier suit O.S.No.37 of 1998 filed by Vasantha for partition which had been dismissed on the ground that they were allotted lands in S.No.418/2 under the oral partition. The learned Judge had taken note of the evidence of the defendant who had admitted to the dismissal of the suit O.S.No.37 of 1998. Challenging this Judgement and Decree the defendant is before this Court.

14. Heard the learned counsels on either side.

15. The admitted case of both parties is that the suit schedule properties were the separate property of Manicka Gounder. It is seen

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that Manicka Gounder had died intestate on 29.07.1978 and besides the plaintiff and the defendant, Manicka Gounder had 3 other daughters, Indhirani, Vasantha and Saundari. On his death, his wife, the mother of the plaintiff and the defendant, namely, Mangaiammal and the 5 daughters became equally entitled to the properties of Manicka Gounder. Manicka Gounder had also entered into an agreement of sale for purchasing an extent of 1.13 cents in S.No.418/2 for a consideration of Rs.4,500/-. He had paid an advance of Rs.1,500/- and after his death his wife had purchased the property after paying the balance sale consideration. The case of the plaintiff is that the amount for paying the balance sale consideration was derived from out of the income earned from the suit property. The plaintiff had pleaded an oral partition in which she had contended that the property comprised in S.No.418/2 measuring an extent of 1.13 acres was allotted to Indhirani and Vasantha and the suit property was allotted to the mother, Mangaiammal, the plaintiff, the defendant, and Soundari and they are



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entitled to a 1/4th share in the said property.

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16. It is also seen that Vasantha, the daughter in whose favour the mother had executed a settlement deed had filed a suit for partition in O.S.No.37 of 1998 only with reference to the suit property. That suit was dismissed upholding the oral partition. The defendant as D.W.1 has admitted to the fact that the suit O.S.No.37 of 1998 had been dismissed since properties had been allotted to Vasantha and Indhirani in S.No.418/2. Further, the mother and the sister, Saundari had conveyed their 2/4th share in the suit property in favour of the plaintiff under Ex.A.5. Therefore, the oral partition stood proved. The plea of non-joinder of necessary parties and partial partition therefore has to necessarily fail. Since the suit property admittedly was not divided between the parties, the same requires to be partitioned.

17. The Lower Appellate Court has rightly analysed the evidence in the above matter, both oral as well as documentary, and had allowed



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the appeal granting the decree for partition. I see no reason to interfere with the same more particularly when the appellant has not made out any Substantial Question of Law warranting interference of this Court. Accordingly, the Second Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

09.02.2024

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To,

1. The III Additional District Court, Vellore at Tirupattur.
2. The Sub Court, Tirupattur, Vellore District.
3. The Section Officer,
V.R.Section,
High Court, Madras.

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P.T.ASHA, J.,

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