



S.A.No.228 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.02.2024

Coram:

THE HONOURABLE Mr. JUSTICE P.B.BALAJI

S.A.No.228 of 2018
& C.M.P.No.5841 of 2018

Sakthivel.	... Appellant/4 th Defendant/4 th Respondent
	/versus/
1. Palaniammal.	
2. Santhi.	... Plaintiffs/Appellants/Respondents
Subramani (died)	
3. Murugan.	
4. Rajamani.	...Respondents 2 & 3/Defendants 2 & 3

Prayer: Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 11.08.2017 made in A.S.No.44 of 2016 on the file of the III Additional District Court, Salem reversing the judgment and decree dated 10.06.2015 made in O.S.No.75 of 2012 on the file of the Principal Sub Court, Salem.

For Appellant	: Mr.T.Murugamanickam, for Ms.Zeenath Begum
For R1 & R2	: Mr.J.Franklin
For R4	: No appearance
For R3	: Unclaimed



S.A.No.228 of 2018

J U D G M E N T

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The suit has been filed for partition and separate possession by the daughters of one Subramani, who has been arrayed as 1st defendant in the suit. It is the case of the plaintiffs that the suit properties are jointly purchased by the father, Subramani along with the mother Perumayee. It is further case of the plaintiffs that during the lifetime of their parents, the father and mother executed a settlement deed on 21.05.1999, settling 600 sq.ft in S.No.24/17 in favour of the 3rd defendant, in and by a registered document bearing No.1913 of 1999. Subsequent to the demise of the mother Perumayee, the father has executed the sale deed, conveying a portion of the suit properties to a third party purchaser, minor Arunachalam, who was represented by his guardian and grandfather. The plaintiffs also state that in and by three settlement deeds, all dated 07.07.2010, the father has settled various definite portions of the suit property to the 3rd defendant, 1st plaintiff and the 2nd plaintiff. According to the plaintiffs, after factoring the sale deeds and the settlement deeds executed by the father, the portion of the property of an extent of about 20 cents was available for partition and that it was the share of the mother since the properties were all admittedly jointly purchased by the father and mother. Therefore, the suit for partition was filed.

Page No.2/12



2. The suit was contested by the purchaser/4th defendant who had purchased the property under Ex.A.12, from the father and the property which is the subject matter of the said Ex.A.12 is the entire remaining extent of approximately 20 cents. The case of the 4th defendant is that he is a bonafide purchaser for valuable consideration and he had no notice of the suit for partition. It was admittedly filed only few days prior to the sale deed executed in favour of the 4th defendant. It is the further case of the 4th defendant that since the plaintiffs have taken benefit under the settlement deeds in their favour, they are estopped from denying the oral partition between their parents. The 4th defendant, therefore prayed for dismissal of the suit.

3. The 2nd defendant who is the son of the 1st defendant and brother of the plaintiff and 3rd defendant has filed a separate written statement stating that the plaintiffs have no right in the suit property and he has also referred to the settlement deeds and the sale deeds executed by the father. More so, he has also stated that the ownership of the 1st defendant has been accepted by the plaintiffs and therefore, the purchaser cannot be non-suited on the ground of invocation of Doctrine of *lis pendens*. The trial Court found that though the other oral partition



S.A.No.228 of 2018

pleaded by the father was not proved, however, the factum of the settlement deeds established that there was a family arrangement in the family and specific portions were settled on the plaintiffs 1, 2 and 3rd defendant. Further, the trial Court also found that the remaining property had been sold for consideration and the purchaser cannot be imputed with knowledge of pendency of the suit for partition as the suit summons had not been served on 1st and 2nd defendants on the date of sale of the property in favour of the 4th defendant. Thus, the suit came to be dismissed by the trial Court.

4. However, on appeal by the plaintiffs, the First Appellate Court reversed the findings of the trial Court and finding that the suit was filed on 13.02.2012 and the purchase in favour of the 4th defendant was 4 days subsequent to the filing of the suit, the sale deed would be hit by the Doctrine of *lis pendens* and the 4th defendant would not be a bonafide purchaser for value. On these grounds, the First Appellate Court reversed the findings of the trial Court and granted a decree as prayed for in favour of the plaintiffs.



5. The 4th defendant, aggrieved by the reversal findings rendered by the First Appellate Court has preferred the above Second Appeal.

6. On 22.03.2018, the above Second Appeal has been admitted on the following substantial questions of law:

a. Whether the plaintiffs are estopped from filing the present suit for partition, considering that they are acquiesced in the settlements made in their favour by their father-the first defendant under Ex.A.7 and Ex.A.8?

b. Whether the judgment of the lower appellate Court is vitiated in, that, being a final Court of fact is has not rendered any findings on merits for setting aside the judgment and decree of the trial Court?

c. Whether the present suit for partition is maintainable without the purchaser of a portion of suit item Nos.1 and 3 being made a party?

7. I have heard Mr.Murugamanickam, Learned Senior Counsel for the appellant and Mr.J.Franklin, Learned Counsel for the respondents 1 & 2, the plaintiffs in the original suit for partition.



8. Mr.Murugamanickam, Learned Senior Counsel for the appellant

would refer to the relationship between the parties and for convenience of the Court, he has also placed a genealogy tree which is not disputed by the Learned Counsel for the respondents. It is seen that the suit properties are comprised in three items and in respect of item No.1, the 1st defendant's father has executed the sale deed in respect of 20 cents in favour of third party, minor Arunachalam. Similarly, share in the well has also been sold under Ex.A.6 on 14.06.2010 in favour of the said purchaser, minor Arunachalam. The father, 1st defendant has also executed settlement deeds specifically settling 2010 sq.ft in favour of 1st plaintiff, 2514 sq.ft in favour of 2nd plaintiff and 3824 sq.ft in favour of 3rd defendant. The sale deed in favour of the appellant/purchaser was marked as Ex.A.12. Similarly, the settlement deed executed by the father and the mother in the year 1999 was marked as Ex.A.2.

9. The Learned Senior Counsel for the appellant would take the preamble portion of all the settlement deeds in Ex.A.7, Ex.A.8 and Ex.A.9 to fortify his contention that the settlor namely, the father, while settling the property to the plaintiffs and the 3rd defendant respectively has categorically asserted that



S.A.No.228 of 2018

the property belongs to him, subsequent to the demise of the mother. More over, he would state that the suit has been filed just 4 days prior to the date of the sale deed in favour of the 4th defendant/appellant and therefore, by no stretch of imagination, suit summons would have been served on the contesting defendants 1 & 2. In fact, it is seen from the original plaint that the appellant/4th defendant was not impleaded in the 1st place and he was subsequently impleaded only by filing an application in I.A.No.375 of 2012. The Learned Senior Counsel would therefore, pray for the trial Court judgment and decree to be restored, by setting aside the judgment and decree of the First Appellate Court.

10. Per contra, Mr.J.Franklin, Learned Counsel for the respondents 1 & 2 would state that the defendants have not been able to establish the plea of oral partition and admittedly, when the properties were jointly purchased by the father and mother, the father cannot claim that the entire property belongs to him and therefore, the partition suit filed in respect of the mother's share was very much in order and maintainable. Further, he would also state that admittedly the sale deed in Ex.A.12 having been executed and registered subsequent to the filing of the suit for partition, the appellant cannot claim himself to be a bonafide purchaser for



S.A.No.228 of 2018

value and therefore, sought for the judgment and decree of the 1st Appellate Court to be confirmed.

11. I have carefully considered the rival submissions advanced by the Learned Senior Counsel for the appellant and the Learned Counsel for the respondents.

12. Mr.Murugamanickam, Learned Senior Counsel for the appellant has also placed reliance on the decision of the Hon'ble Supreme Court in ***Bhagwat Sharan (Dead through Legal Representatives) -vs- Purushottam and others*** report in (2020) 6 SCC 387, where the Hon'ble Supreme Court dealt with the Doctrine of Election which is a facet of the law of estoppel. He would also place reliance on the ratio laid down in the said decision to fortify his contention that when the plaintiffs have accepted the settlement deed in their favour, they cannot approbate and reprobate and in fact, they were estopped from even filing the suit for partition.

13. I have gone through the settlement deeds executed by the father in Ex.A.7, Ex.A.8 and Ex.A.9 which are all on the same date. The father has chosen



S.A.No.228 of 2018

to settle distinct portions of the suit properties in favour of all his daughters.

There is a specific covenant in the preamble to all the settlement deeds that the properties were originally purchased by the father, along with the mother and after the demise of the mother, the properties have belonged absolutely to the father and that ever since, he has been in possession and enjoyment of the same in his own right.

14. The plaintiffs have admittedly chosen to take benefit under the said settlement deeds Ex.A7 and Ex.A8 in their favour. Therefore, they are now estopped from taking a stand that the father, the 1st defendant was not the absolute owner of the properties, in order to enable them to challenge the sale deed Ex.A.12 in favour of the 4th defendant. If at all, the plaintiffs could maintained the suit as laid down by the Hon'ble Supreme Court in ***Bhagwat Sharan's case referred supra***, they ought to have elected to disown the settlement deeds executed by their father in their favour, before making a claim for partition. However, from the plaint as well as from the evidence, I am able to see that the plaintiffs have admitted the execution of the settlement deeds by the father in their favour and the fact that those properties do not form part of the suit for partition also implies that



S.A.No.228 of 2018

they have accepted the settlement deeds and taken benefit under the same. Thus, the plaintiffs are not entitled to disown the statement in the settlement deeds in their favour that the father was the absolute owner of the suit property, pursuant to the demise of the mother.

15. However, the First Appellate Court having accepted the share calculations and availability of property, proceeded to non-suit the purchaser only on the ground of Doctrine of *lis pendens*, citing Section 52 of Transfer of Property Act.

16. Admittedly, the suit was filed on 13.02.2012. The sale deed executed by the 1st defendant in favour of the 4th defendant was on 17.02.2012, within 4 days from the date of filing of the suit. It is very likely that the suit would not even have been numbered on the date of execution of the sale deed and in any event, the suit summons would not have been served on the defendants 1 & 2, the vendors in Ex.A.12 sale deed. Moreover, admittedly, the 4th defendant/appellant herein has been impleaded only in the year 2012, pending the suit. Therefore, for all the above reasons, I am not in agreement with the findings arrived at by the



S.A.No.228 of 2018

First Appellate Court, castigating the 4th defendant as being not a bonafide purchaser and applying the Doctrine of *lis pendens* against him.

17. In fine, the ***Second Appeal is Allowed.*** The substantial questions of law are answered in favour of the appellant. The judgment and decree passed by the First Appellate Court is hereby set aside and the judgment and decree passed in O.S.No.75 of 2012 on the file of Principal Sub Court, Salem is restored. No costs. Consequently, connected Miscellaneous Petition is closed.

27.02.2024

Index :Yes/No.
Speaking Order/Non-Speaking order
bsm

Copy to:-
1. The III Additional District Court, Salem.
2. The Principal Sub Court, Salem.



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S.A.No.228 of 2018

P.B.BALAJI, J.

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S.A.No.228 of 2018
& C.M.P.No.5841 of 2018

27.02.2024

Page No.12/12