



WEB COPY

S.A. No.89



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2024

CORAM :

THE HON'BLE MR. JUSTICE K. RAJASEKAR

S.A. No. 890 of 2022

and C.M.P. No.18444 of 2022

Thirumurthi

... Appellant/ Appellant/ Plaintiff

Vs.

1. Pushpa

2. M. Subramaniam

3. S. Gopalakrishnan ... Respondents/ Respondents/ Defendants

Second Appeal filed Under Section 100 of Civil Procedure Code against the Judgment and Decree dated 14.09.2020 made in A.S. No116 of 2013 on the file of the IV Additional District and Sessions Judge of Coimbatore confirming the Judgment and Decree made in O.S. No.1042 of 2010 dated 29.10.2013 on the file of the I Additional Subordinate Judge of Coimbatore.

For Appellant : Mr. C. Deivasigamani

For Respondents : No appearance



JUDGMENT

WEB COPY

This second appeal has been filed by the plaintiff challenging the concurrent finding of both Courts below, wherein the suit for partition has been particularly decreed in favour of the plaintiff and also dismissal of the declaration sought for.

2. The case of the plaintiff is that originally the suit property to the total extent of 33 cents, as an ancestral in nature by way of partition deed dated 24.06.1993, allotted to plaintiff's father. He had two sons namely Sivasubramaniam and Thirumurthi, who is the plaintiff herein. The plaintiff, his brother Sivasubramaniam and father Ramaswamy are entitled to 1/3 share each in the suit property. The brother of the plaintiff, Sivasubramaniam is unmarried and sold his undivided 1/3 share of the suit property i.e., 11 cents to the first defendant - Pushpa on 16.06.1995 and died later on. Subsequent to the sale, the first defendant, as per an oral understanding between the other sharers, had taken her 11 cents in one corner in the 33 cents of the land and laid an construction thereon. The father of the plaintiff Ramaswamy died on 13.04.1999. In the 2nd week of September 2010, the defendants 2 and 3 came to the suit property and take possession of the remaining portion of the land and



immediately, the plaintiff intervened and on verification, he came to know that his father Ramaswamy had executed a sale deed dated 24.11.1997 in favour of the defendants 2 and 3 to an extent of 20 cents and 5 square feet of land in the suit property. The plaintiff also came to know that he has been impersonated and his signature has been forged, as if, he is the witness as well as identifying witness to the sale deed dated 24.11.1997 executed by his father Ramaswamy in favour of defendants 2 and 3. Since, the suit property is an ancestral property, the sale deed executed by his father Ramaswamy in favour of the defendants 2 and 3 is null and void and does not binding on the plaintiff in respect of his 11 cents in the suit property. Thereby, the plaintiff has come forward with the suit for declaration that the sale deed executed by his father in favour of the defendants 2 and 3 is invalid and for partition of the suit property and permanent injunction.

3. The defendants 2 and 3 filed their written statement stating that, originally the suit property belongs to the plaintiff's grandmother namely Nanjakkal, who purchased a larger extent of land in S.F.No.280/5, 281/6 and 282/1 vide sale deed dated 30.03.1941 out of her individual income and after her death, the property has been inherited by her sons and daughters. Subsequently, the legal heirs of Nanjakkal have entered into a partition deed and divided the



self acquired properties of Nanjakkal and as per the partition deed, the plaintiff's father Ramaswamy was allotted "B" Schedule of the property measuring 33 cents, hence the suit property has to be treated as a separate property of the plaintiff's father, hence he is entitled to sell the property. Thereby, the plaintiff's father sold the suit property to the extent of 20 cents and 5 square feet to the defendants 2 and 3 on 24.11.1997 and the plaintiff herein also signed in the sale deed as one of the attesting and identifying witness. Thereby, from the year 1997, the defendants 2 and 3 were in continuous uninterrupted possession and enjoyment of the same for more than 13 years and the plaintiff never questioned or raised any objections, but now the plaintiff has come forward with this suit, hence prays to dismiss the suit.

4. After considering the pleadings made on both sides, the Trial Court has framed following points for consideration:

1. *Whether the plaintiff has got 1/3 share in the suit property?*
2. *Whether the sale deed dated 24.11.1997 is null and void?*
3. *Whether the plaintiff is entitled to the relief of permanent injunction?*
4. *To what relief?*



5. Before the Trial Court on the side of the plaintiff, the plaintiff was examined as P.W.1 and through him Exs.A.1 to A.7 were marked and on the side of the defendants, D.W.1 and D.W.3 were examined and Exs.B.1 to B.6 were marked. After considering the submissions made on both sides and evidence placed on record, the Trial Court has held that the plaintiff has not questioned the sale deed executed by his brother Sivasubramaniam in favour of the first defendant, but he has come forward to question the sale deed executed by his father in favour of the defendants 2 and 3, even though he was one of the attesting witness of the sale deed, that too after a lapse of 13 years is not proper, thereby the plaintiff's right is also barred by limitation. The Trial Court also held that the plaintiff is entitled for a preliminary decree of partition to the unsold lands.

6. Aggrieved over the same, the plaintiff has approached the lower Appellate Court. After considering the submissions on both sides and evidence placed on record, the lower Appellate Court had held that the plaintiff is one of the attesting witness in the sale deed dated 24.11.1997 executed by plaintiff's father in favour of defendants 2 and 3, hence he cannot claim that his signature was forged and further held that the plaintiff has to challenge the document, if it is forged within a period of limitation. The lower Appellate Court also held that



the sale deed dated 24.11.1997 executed by the plaintiff's father in favour of defendants 2 and 3 is valid and they were in continuous possession and enjoyment of their purchased portion in the suit property for more than 13 years, thereby the plaintiff is not entitled to question the possession of defendants 2 and 3 in the suit property and accordingly, confirmed the judgment and decree of the Trial Court and dismiss the appeal.

7. Aggrieved over the dismissal of the appeal by the lower Appellate Court, the plaintiff has come forward with this appeal. At the time of admission, I have heard the appellant/ plaintiff to find any substantial question of law involved in this case, since the appeal is filed challenging the concurrent finding.

8. The learned counsel appearing for the appellant/ plaintiff submits that both Courts have not properly appreciated the facts and documentary evidence placed on record. He further submitted that even though the plaintiff is shown as one of the attesting witness to the sale deed dated 24.11.1997, the plaintiff's signature has been forged in the sale deed. He further submitted that the plaintiff is claiming partition in the suit property, hence the Limitation Act is not applicable for seeking suit for partition. Further the plaintiff is pleading that



the fraud has been committed by the defendant Nos. 2 and 3, no limitation is applicabe.

WEB COPY

9. I have considered the submission made by the learned counsel appearing for the appellant/ plaintiff and perused the evidence placed on record.

10. Based on the evidence adduced in the suit, both Courts have concurrently found to the effect that the plaintiff could not claim that he was not aware about the execution of the sale deed in favour of defendants 2 and 3, after appearing before the Sub Registrar, attested the document and witnessed the execution of the sale deed by his father in favour of defendants 2 and 3. This appeal is filed challenging the above findings on the ground that both Courts have not property appreciated the evidence placed on record by the plaintiff.

11. The Courts below also rendered yet another finding that the plaintiff has not come forward to challenge the sale deed dated 16.06.1995, marked as Ex.A.2, executed in favour of the first defendant by plaintiff's brother Sivasubramaniam for selling undivided share of 11 cents of land in the suit property. If the plaintiff has come forward to challenge the sale deed executed in favour of the defendants 2 and 3 by his father on the ground that his father has



no right over the entire suit property, he should have also challenged the sale deed executed in favour of the first defendant by his brother for the undivided share in the suit property.

12. There is a categorical finding rendered by both Courts that the defendants 2 and 3 were able to establish their case that they have purchased 20 cents and 5 square feet of land in the suit property from the plaintiff's father in the year 1997 and they were in continuous possession and enjoyment of the same. It is also admitted by P.W.1 - plaintiff in his evidence, that defendants 2 and 3 were in possession and enjoyment of the portion they have purchased in the suit property. Further, P.W.1 also stated that he has not demanded or raised any objection regarding the possession of the land by the defendants 2 and 3 at that point of time and only in the year 2000, the plaintiff has come forward to question the sale deed executed by his father in favour of defendants 2 and 3 and also claims himself that he is in the possession of the suit property. Therefore, both Courts have concurrently held that the claim of the plaintiff after the lapse of 13 years is barred by limitation. Since the plaintiff challenges the Registered document - Sale deed/ Ex.A.3, the burden is on the plaintiff, but he failed to establish that the same is not valid.



13. The power of this Court, while entertaining the Second Appeal under Section 100 of Civil Procedure Code is very limited. This Court can interfere, if the Trial Court or the First Appellate Court misdirected themselves in appreciating the facts or placed onus on the wrong party or ignored material evidence or on a finding of fact has ignored admissions or concession made by the witnesses or parties. In this case, no such grounds are made out for interference of this Court.

14. In view of the above discussions, this Court finds no reason to interfere in the findings rendered by both Courts and no substantial question of law involved in this case, thereby inclined to dismiss this appeal. However, the Trial Court, while dismissing the claim of partition of properties by the plaintiff, has held that the property sold to defendant Nos. 2 and 3 are not liable for partition. Both Courts have failed to consider the pleading of the plaintiff that another 11 cents of land already sold to defendant no.1 and for which, no challenge is made, ordered partition to the remaining lands i.e., 12.5 cents of land, which is not sustainable. This Court is empowered to rectify the above error committed by the Trial Court, even though, there is no challenge made by the defendant No.1, by invoking the power granted under Order 41 Rule 33 of Civil Procedure Code. Accordingly, the plaintiff is entitled for partition only to



the portion of land, which was not sold to defendants 1 to 3.

WEB COPY

K. RAJASEKAR, J.

stn

15. Accordingly, this second appeal is dismissed with above observations. Consequently, connected civil miscellaneous petition stands closed. No cost.

30.10.2024

stn

Index: Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

To:

1. The Section Officer,
VR Section,
High Court, Madras.