



SA.No.1610 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 16.04.2024

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.No.1610 of 2011

and

MP.No.1 of 2011

1. Palani Gounder (Died)
2. Murugesan
3. Shanmugam
4. Nataraj (died)
5. Subhammal (died)
6. Renugadevi
7. Revathi
8. Ramya
9. Saroja
- 10.Sundaramani
- 11.Balasubramaniam

(Appellants 2 to 11 brought on record as LR's of the deceased
sole appellant vide order dated 14.06.2022 made in
CMP.Nos.4945, 4946 & 4947/2022)

... Appellants

- Vs -

1. Arumugham
2. Ramasamy @ Vadamalai
3. Chinna Palani Gounder (Died)
4. Suppana Gounder (Died)
5. Kaliappa Gounder
6. Rangappa Gounder
7. Krishnasamy @ Kitta Gounder (Died)
8. Pongia Gounder
9. Palanisamy



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10.Arumugam

11.Murugesan

12.Rangammal (Died)

13.Kaliyammal

14.M.Lokesh

15.M.Ponmani

16.V.Vijayalakshmi

17.S.Senpakam

(R13 to R17 brought on record as LR's of the deceased 7th respondent
vide order dated 14.06.2022 made in CMP.Nos.4063 to 4065/2022)

18.P.Samiappan Palani

19.Nagammal

20.Masayal

21.Ramayal

(R18 to R21 brought on record as LR's of deceased 3rd respondent
vide order dated 08.03.2023 made in CMP.Nos.23033, 23047 &
23050/2022)

22.Palanisamy

23.Ponusamy

24.K.S.Kavitha

25.Ramani

26.Bavadharani

27.Karupayal

28.Saraswathy

(R22 to R28 brought on record as LR's of deceased 4th respondent
vide order dated 08.03.2023 made in CMP.Nos.23041 to 23043/2022)

29.Sivaraman

30.Ambika

31.Gomathi

(R29 to R31 brought on record as LR's of deceased 12th respondent
vide order dated 08.03.2023 made in CMP.Nos.23036 & 23040/2022)

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code
against the judgment and decree dated 30.06.2011 made in A.S.No.40 of



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2010 on the file of Subordinate Judge, Sathyamangalam confirming the judgment and decree dated 13.07.2010 made in O.S.No.233 of 2005 on the file of the District Munsif Court, Sathyamangalam.

For Appellants : Ms.G.Sumithra

For Respondents : Mr.A.V.Arun for R1, R2 & R6
R3, R4 & R7 – Died
R5, R8 to R12-No Appearance
Mr.Ma.Pa.Thangavel for R13 to R17

J U D G M E N T

The plaintiff is the appellant herein. After his demise, his legal heirs were added as appellants 2 to 11. The defendants were arrayed as respondents herein.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the Trial Court.

3. The brief facts which give rise to the instant second appeal is that, the suit property originally belongs to one Nanjappa Gounder. The plaintiff is the second son of Nanjappa Gounder. The defendants 1 and 2 are the legal heirs of one Karuppa Gounder, son of Nanjappa Gounder. Similarly, the



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defendants 3 to 8 are the sons of Nanjappa Gounder, and the defendants 9 to 12 are the legal heirs of Karuppa Gounder. It is the contention of the plaintiff that the suit property was originally belongs to Nanjappa Gounder and during his lifetime, he directed the plaintiff and the defendants to cultivate the lands temporarily, without allotting the specific shares amongh them. It was the contention of the plaintiff that the said shares were unequal and not by metes and bounds. The father of the plaintiff died intestate in the year 1981 leaving behind the plaintiff and the other defendants to succeed his properties. It is the contention of the plaintiff, that since the shares, which has been in enjoyment of the plaintiff and the defendants are not by metes and bounds, the plaintiff has come forward with a suit for partition to divide the suit property into 8 equal shares and to allot one such share to the plaintiff.

4. The 8th defendant has filed the written statement supporting the plaintiff's contention.

5. The defendants 1 to 4 and 6 have filed written statement by contending that since the plaintiff has not cultivated his land properly and also by having enmity upon the defendants, has come up with the instant suit. It was also pleaded by the defendants that, by virtue of panchayat muchelika dated 07.03.1969 the suit property has already been partitioned with specific



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boundaries and each of the sharers are in separate enjoyment of the property and that the Revenue records have also been mutated in accordance with the said division of the property. Therefore, it is the submission of the defendants that the plaintiff cannot maintain the suit for partition.

6. The 12th defendant has also filed a written statement supporting the contention raised by the defendants 1 to 4.

7. Before the Trial Court, the plaintiff has examined 2 witnesses as PW1 and PW2 and marked 20 documents as Exs.A1 to A20. On behalf of the defendants, 3 witnesses were examined as DW1 to DW3 and 17 documents have been marked as Exs.B1 to B17.

8. The Trial Court, after having considered the oral and documentary evidence, has arrived at a conclusion that there was a partition between Nanjappa Gounder's legal heirs by virtue of the family arrangement dated 07.03.1969, and that the factum of such division of property has also been admitted by the plaintiff. Therefore, dismissed the suit, however, without prejudice to the rights of the plaintiff to seek partition against his father's



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share. Not satisfying with the judgment of the Trial Court, when the plaintiff approached the First Appellate Court, the First Appellate Court has also concurred with the finding of the Trial Court and dismissed the First Appeal. Aggrieved with the same, the plaintiff has approached this Court by way of the instant Second Appeal.

9. At the time of the admission on 23.12.2011, this Court has formulated the following substantial question of law:-

“(1) Are Courts below committed error in relying on the Ex.B1, the un-registered Panchayat Agreement and came to the conclusion that there was a partition between family members, based on Ex.B1?

(2) Whether Courts below are correct in admitting Ex.B1, the un-registered document only for collateral purpose but deciding the main issue of partition based on the unregistered document Ex.B1?

(3) Whether the Courts below, without considering the settled principles that separate enjoyment of the property between the parties for the sake of convenience is not a partition, are correct in holding that there was a partition between plaintiff and defendants?

(4) Whether the Courts below are correct in construing



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the Ex.B1 as partition deed ignoring the fact that it is only a panchayat agreement?”

10. The learned counsel for the appellants would vehemently contend that the mere admission of signature found in the Panchayat Agreement will not be considered as due execution of Ex.B1. Therefore, contended that since the Ex.B1 is an unregistered document, through which the defendants cannot derive any title. Therefore, the reliance made by both the Courts below is erroneous and perverse. The learned counsel also contended that the evidence of PW1 and PW2 would suffice to hold that there was no partition at all in their family, and that what had happened is, only an enjoyment of the property, without dividing the same by metes and bounds. Therefore, the learned counsel would submit that the suit for partition is maintainable.

11. Per contra, the learned counsel for the respondents would vehemently contend that the findings recorded by the Trial Court is the finding of fact, wherein both the Courts below have concurred that there was a partition on 07.03.1969 and in pursuance of such partition, the parties have been in physical possession and enjoyment of their respective shares. Therefore, when such concurrent finding has been arrived based upon the



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evidence, while exercising jurisdiction under Section 100 of CPC, this Court cannot interfere with such finding. Hence, prayed to dismiss the Second Appeal.

12. I have given my anxious consideration to either side submissions.

13. The learned counsel for the appellants would submit that the non registration of Ex.B1-Partition Agreement would make the very finding of the Trial Court as perverse. However, this Court is not in a position to agree with the submissions made by the learned counsel for the appellants on the simple reason that, notwithstanding Ex.B1-Partition Agreement, the plaintiff himself has independently admitted that there was a partition among the family members and that the family members have been enjoying the properties separately.

14. At this juncture, the learned counsel for the respondents would invite the attention of this Court in respect of the findings made in paragraph 24 and 25. Wherein the Trial Court has found that in pursuance of Ex.B1-Partition Agreement, there was a division among the legal heirs of Nanjappa



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Gounder and that mutation has been effected in the Revenue records. In pursuance of Ex.B1-Partition Agreement, the name of the respective sharers have been mutated in the Revenue records. Such finding of fact is based upon the documents submitted by the plaintiff. Therefore, though Ex.B1-Partition Agreement is an unregistered document, notwithstanding its registration, the plaintiff has independently admitted the division among the family members. Which factum further vindicated through the Revenue records filed by the defendants.

15. At this juncture, this Court would like to rely upon the judgment in ***Syed Malik Batcha (deceased and others Vs. Syed Ahamed Batcha and others*** reported in **2004 (3) MLJ 480**, wherein the Hon'ble Supreme Court has categorically held that the unregistered Koor Chit can be relied for collateral purpose. But, the learned counsel for the appellants would submit that the factum of division cannot be construed as a collateral purpose. Both the Courts below have placed it finding based upon the admission made by PW1 in respect of the partition, which has been supported by the Revenue records. On the harmonious reading of the judgment of the Trial Court, the Court has relied Ex.B1 only for a collateral purpose, since the plaintiff



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himself admitted about the division of properties between the legal heirs.

Therefore, this Court is of the firm view that the findings recorded by both the Courts below is not only based upon the Ex.B1, but also based upon the evidence of PW1. Hence, this Court could not find any perversity over such finding. In view of the above detailed discussion, the substantial question of law are answered in favour of the respondents.

16. In the result, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is also closed.

16.04.2024

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Index : yes

Speaking Order

Neutral Citation Case: Yes

To

1. The District Munsif Court,
Sathyamangalam.

2. The Subordinate Judge,
Sathyamangalam.



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C.KUMARAPPAN, J

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