



S.A.No.190 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2024

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

S.A.No.190 of 2011

1. D.Gunasekaran(died)
S/o D.V.Sami Naidu,
Venugopalapuram,
Karikkal Village,
Arakkonam Taluk,
Vellore Dist
- 2 G. Vasantha
W/o. Late. D. Gunasekaran,
D.No.493, Bajanai Kovil Street,
Venugopalapuram, Karilkal Village,
Sholingur, Ranipet Taluk.
- 3 G. Ethuraj,
S/o. Late. D. Gunasekaran,
D.No.493, Bajanai Kovil Street,
Venugopalapuram, Karilkal Village,
Sholingur, Ranipet Taluk.
- 4 G. Narayanan
S/o. Late. D. Gunasekaran
D.No.493, Bajanai Kovil Street,
Venugopalapuram, Karilkal Village,
Sholingur, Ranipet Taluk.



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5 V.G. Krish Gopi
S/o. Late. D. Gunasekaran
D.No.493, Bajanai Kovil Street,
Venugopalapuram, Karilkal Village,
Sholingur, Ranipet Taluk.

6 G. Sudharashan
S/o. Late. D. Gunasekaran,
D.No.493, Bajanai Kovil Street,
Venugopalapuram, Karilkal Village,
Sholingur, Ranipet Taluk. ...

Appellants

[A1 Died A2 To 6 Are Brought On Record.]

Vs.

1. V.Shanmugam
S/o Venkatasamy,
5/6, M.M.D.A. Maduravayal,
Chennai-600 102.

2 Bama,
W/o Balaji, No.778/1,
Munisami Road,
KK Nagar, Chennai.

3 The Branch Manager
Tamilnadu Industrial Investment Corporation
Ltd, Vellore Branch,
Katpadi Road, Vellore. ...

Respondents

PRAYER: Second Appeal is filed under Section 100 of C.P.C against to set aside the Judgement and Decree in A.S.No.50 of 2005 on the file of the



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Addl. District Court/Fast Tract Court II, Ranipet, Vellore District, dated 6th September 2010 conforming the judgement and Decree in O.S.No.136 of 1998 dated 30th January 2004 on the file of D.M.C. Sholinhur.

For Appellants : Mr.A.S.Vijayaraghavan for
Mr.N.P.Kumar

For Respondents : Mr.C.Kanagaraj for R1

JUDGEMENT

The appellant is the plaintiff, who has filed a suit for partition. The Trial Court had dismissed the suit and the appeal filed by the plaintiff also got dismissed by the First Appellate Court. Hence, the plaintiff has filed this Second Appeal.

2.The short facts leading to the case of the plaintiff, as pleaded in the plaint, are as under:

The plaintiff was involved in hardware and painting business. The defendants had approached the plaintiff to sell the suit property for running a small scale industry. Thereafter, the plaintiff and the defendants jointly purchased the land from plaintiffs' wife Vasantha, through a sale deed dated 18.01.1996. Hence, the plaintiff is entitled to 1/3rd share in the suit property.



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A partnership agreement was entered into between the plaintiff and the defendants.

2.1. Before starting the small scale industry the plaintiff got himself released from the partnership by executing a release deed dated 27.11.1996. However, the small scale industry by name 'Sri Lakshmi Narayana Engineering Works' is being run in the suit property by the defendants 1 and 2. As per the release deed the defendants are liable to settle a sum of Rs.2,00,000/- in 8 installments at the rate of Rs.25,000/- per installment; out of Rs.2,00,000/- a sum of R.1,75,000/- was already paid to the plaintiff. The last cheque given by the defendants was not honored and it was returned for '*want of funds*'. Hence, the plaintiffs has filed the suit in OS.No.29/98 for recovery of money and the same is pending.

2.2. When the plaintiff and the defendants were together in a partnership, buildings were constructed for the small scale industry in the name and style 'Sri Lakshmi Narayana Engineering Works'. As the plaintiffs



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and the defendants were jointly enjoying the property and subsequently, the partnership was revoked, as against the plaintiff. The construction that has been erected in the suit property should be removed and the plaintiff's 1/3rd share should be given to him. As the defendants did not give the plaintiff's 1/3rd share by partition, he has filed this suit claiming partition of 1/3rd share .

3. The written statement filed by the defendants 1 & 2 in brief is as follows:

'Sri Lakshmi Narayana Engineering Works' was run by both the plaintiffs and the defendants. The suit is barred by non joinder of necessary party namely 'Sri Lakshmi Narayana Engineering Works'. The plaintiff had relieved himself from the partnership business on 31.03.1996 by getting a sum of Rs.2,00,000/- and the plaintiff had given his consent to conduct the business by the defendants. Under such circumstances the plaintiff cannot claim that he is one of the joint owners to the suit property. According to the defendants, the suit schedule property belongs to the firm and not to the



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plaintiff. As, the plaintiff has already relinquished his rights by receiving a consideration, he is not entitled for partition. Hence, the plaintiff is not entitled to the relief prayed.

4. The 3rd defendant's written statement is in brief;

The plaintiff and the defendants were partners of 'Sri Lakshmi Narayana Engineering Works'. The plaintiff and the defendants have jointly availed a loan of Rs. 13,67,000/- by showing the suit property as security. The plaintiff had retired from partnership on 29.01.1997. The remaining partners who are conducting the partnership business and the partnership firm are the owner of the properties. Hence, the plaintiff is not entitled to the relief.

5. On the basis of the pleadings the Trial Court has framed the following issues:

- 1. Whether the plaintiff is entitled to get 1/3 share?*
- 2. whether the plaintiff is entitled to the relief of injunction?*



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3. To what other relief is he entitled to?

6. During the course of the trial, on the side of the plaintiff, two witnesses have been examined as PW.1 and PW.2 and Ex.A1 to Ex.A22 were marked. On the side of the defendants, one witness has been examined as D.W.1 and Ex.B1 to Ex.B15 were marked.

7. After the conclusion of the trial and on considering the materials available on record, the Trial Court has dismissed the suit and the first appeal preferred by the plaintiff also got dismissed by confirming the judgement of the trial Court. Hence, the first plaintiff has filed this second appeal.

8. The learned counsel for the appellants submitted that the property has been purchased in the names of three individuals including the plaintiff and not in the name of partnership firm and hence, the plaintiff is entitled to 1/3rd share and the same was not considered by the Courts below. The



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mortgage deed has been executed by the partners in respect of the suit property as security but that will not amount to transferring the ownership of the property in favour of the partnership firm. The mortgage loan has also been discharged subsequently. The Courts have misconstrued the implication of the mortgage deed and denied the plaintiff's 1/3rd title in the suit property.

9. The learned counsel for the respondents submitted that the Courts below dismissed the appellant's claim over the Suit Schedule Property, as the property belongs to the partnership firm 'Sri Lakshmi Narayana Engineering Works' in which the plaintiff and the defendants were partners. By using the suit property as security, the plaintiff and the defendants had jointly obtained a loan of Rs. 13,67,000/-. On 29.01.1997, the plaintiff retired from partnership. The properties are owned by the remaining partners who run the partnership company and partnership firm. Therefore, no amount is due to the plaintiff. The initial investment was Rs.2,00,000/-. The appellant demanded Rs.1,75,000/- as final settlement and the same has



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been paid by instalments @ Rs.25,000/- per month. The respondent settled the entire liability with their own funds, resulting in a double profit for the appellant and a significant monetary loss to the respondents. The appellant had given a release deed for immovable assets, including the Suit Schedule Property, and the property is now owned by the partnership firm. The appellant reaffirmed handing over the parent documents of the suit schedule property to the company together with a 15-year Encumbrance Certificate. Both the Courts below had accepted the release deed by rendering a finding in favour of the respondents and it is correct.

10. After hearing the learned counsel for the appellant, I only feel that the following substantial question of law alone is involved in this appeal:

“Whether in law the Courts below are right in rejecting the claim of the plaintiff for partition by disregarding the fact that the sale deed in respect of the suit property has been obtained in favour of the individuals and not in favour of



the partnership firm?”

11.The plaintiff and the defendants 1 and 2 had executed a partnership deed between themselves on 01.01.1996 in order to run a small scale industry by name and style “M/S. Sri Lakshmi Narayana Engineering Works”. Subsequently they purchased a property for establishing the small scale industry on 18.01.1996 from plaintiff's wife, Vasantha by virtue of a registered sale deed dated 18.01.1996 which is marked as Ex.B2. These facts were not denied by both the parties. The plaintiff claims that buildings were built in the property so purchased through Ex.B2 for the business of “Sri Lakshmi Narayana Engineering Works”.

12. However, the plaintiff had left the business and retired from partnership as early as on 27.11.1996 by executing the release deed. But in the release deed dated 27.11.1996 it is mentioned that the plaintiff had taken a decision to retire even from 31.03.1996. At that time, when the plaintiff was released from business, the defendants 1 and 2 had agreed to pay a sum



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of Rs.2,00,000/- towards his capital account in full and final settlement but in 8 instalments. The plaintiff has received seven instalments at the rate of Rs.25000/- and the last instalment is said to have been issued through a cheque which got dishonoured. The defendants 1 and 2 did not have any quarrel on the said aspect. But the claim of the defendants is that the suit property belongs to the partnership firm and as the plaintiff had released himself from the partnership, he is not entitled to claim any share in the suit property.

13. The above stand has been accepted by the trial Court and the First Appellate Court, in pursuant to the release deed executed by the plaintiff, had arrived at a conclusion that the plaintiff had released his right in respect of the suit property also, because the suit property belongs to the firm and not to the individuals.

14. Initially when the partnership deed was executed on 01.01.1996, all the three partners namely the plaintiff and the defendants 1 and 2 had



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invested a sum of Rs.2,00,000/-each towards capital. At that time when the plaintiff got released from the partnership firm, the defendants 1 and 2 appears to have settled him the amount of Rs.2,00,000/- invested by him however in instalments. But the only question which remains to be determined is whether the property purchased vide Ex.B2 sale deed belongs to the individuals or to the partnership firm. The Courts below have persuaded to rely on the recitals of the partnership release deed wherein it is stated that the releasing partner had relinquished his right in respect of all movable and immovable properties including the firms name, Good Will, capital, etc.,

15. By placing reliance on the above recitals, it is decided that the plaintiff has relinquished his right in respect of the suit property also and hence he is not entitled to any share as claimed by him. It is claimed by the appellant that the suit property is different from the firm and the properties purchased in the individuals' name cannot be considered as the property belonging to the firm. Admittedly, the partners who purchased the property



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did not choose to purchase the property in the name of the partnership firm.

After the business was started also, the partners did not deem it fit to transfer the property in the name of the partnership firm. The properties continued to remain in individuals' name, though the business has been set up in the property. In fact, at some point of time, the property has been mortgaged for the loan availed for the business from the 3rd defendant. However the said mortgage got discharged. The lower Courts have got influenced by the fact that the property has been mortgaged as security for the loan availed for the partnership business and hence, the property should be construed as the immovable property belonged to the business.

16. The individuals and the partnership firm are two different entities.

Just because the property belongs to the partners in their personal capacity has been offered as security for the loan availed for the partnership firm, it cannot be construed that the property itself belongs to the partnership firm. In the event of any default in repaying the loan amount no doubt the property which has been offered as a security by the partners will be



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subjected to the realisation of the mortgaged amount irrespective of the fact whether the property has been purchased in the names of individuals or in the name of the firm.

17. Whatever may be the case, the character of the suit property is that it belongs to the individual and not to the partnership business will not change. In the instant case the plaintiff, while going out from the partnership firm had executed a release deed by releasing his interest in the business and the remaining partners namely defendants 1 and 2 who continued to run the business and agreed to settle the share of capital invested by the outgoing partner. But the plaintiff was not paid with any consideration for releasing his interest in the immovable property jointly purchased under Ex.B2 sale deed.

18. As stated already at no point of time the property, which was purchased through Ex.B2, in the names of the plaintiff and defendants 1 and 2 has been transferred to the name of the partnership firm. Neither the



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defendants 1 and 2 had claimed that subsequent to the Ex.B2 sale, the purchasers had executed any transfer of title or interest in the immovable property in favour of the partnership business namely 'Sri Lakshmi Narayana Engineering Works'. As on the date of the suit, the suit property continues to be in the name of individuals who had purchased the suit property jointly from the plaintiff's wife. As joint purchasers, they are entitled to 1/3 rd share each in the suit property. Even at the time when the plaintiff left the partnership firm, no release deed was obtained from him in respect of the immovable property in favour of the remaining partners or in the favour of the firm.

19. Having failed to get any document of release in respect of the immovable property either in favour of the defendants 1 and 2 or in favour of the firm, now the defendants 1 and 2 cannot come and say that the plaintiffs had relinquished his interest in the immovable property purchased vide Ex.B2. As on today, the suit property stands in the name of the individuals namely, the plaintiff and the defendants 1 and 2. As the joint



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purchaser of the suit property vide Ex.B2, the plaintiff is also entitled to 1/3rd share in the suit property. As the Courts below have confused themselves by the release deed executed by the plaintiff in respect of his joint interest in the business as that of release in the immovable property purchased by them in Ex.B2, I feel the judgement of the Appellate Court is liable to be reversed. Hence, **the substantial question of law is answered in favour of the plaintiff.**

20. In the result, the Second Appeal is **allowed** and the judgement of the appellate Court is directed to be reversed and the suit is decreed in respect of the 1/3rd share in the suit property and a preliminary decree is passed in favour of the plaintiff to that effect with cost.

19.12.2024

jrs

Index: Yes/No
Speaking: Non-Speaking Order
Internet: Yes/No
Neutral: Yes/No



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To
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1. The Addl. District Court/Fast Tract Court II,
Ranipet, Vellore District.
2. The District Munsif, Sholinhur.
3. The Branch Manager
Tamilnadu Industrial Investment Corporation
Ltd, Vellore Branch,
Katpadi Road, Vellore.



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R.N.MANJULA, J

jrs

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