



S.A.No.44 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on
05.02.2024

Judgment Pronounced on
01.03.2024

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.44 of 2018
and C.M.P.No.1064 of 2024

1.P.M.Sundaram (Died)

2.S.Kanthammal

3.P.Vijaya

4.V.Kalavathi

5.S.Balraj

6.V.Ramani

.. Appellants

[Appellant 2 to 7 brought on record
as LRs of the deceased sole
appellant 1 viz., P.M.Sundaram
vide Court order dated 13.12.2018
made in CMP.No.5023 of 2018]

Vs.

D.Sulochana (since deceased)

1.D.Ramamurthy

2.Gandhi

3.Geetha



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4.Malathi

5.D.Sivakumar

6.Subbaiah

7.Ramkumar

8.Suresh

9.Vijay Anand

10.Hexagon Data Solutions,
rep by its Proprietor,
No.411/18, N.S.K. Nagar,
22nd Street, Arumbakkam,
Chennai – 106.

11.Kamaraj

12.Pushpanathan

..Respondents

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 25.01.2016 passed in A.S.No.431 of 2011 on the file of the VI Additional City Civil Court, Chennai, reversing the judgment and decree dated 26.08.2011 made in O.S.No.1838 of 2008 on the file of the VI Assistant City Civil Court, Chennai, and to this Second Appeal.

For Appellants : Mr.N.Veerassamy

For Respondents

For RR1 to 5 : Mr.Thamizhavel

For RR 6 to 12 : No appearance



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JUDGMENT

This Second Appeal has been filed against the judgment and decree dated 25.01.2016 passed in A.S.No.431 of 2011 on the file of the VI Additional City Civil Court, Chennai, reversing the judgment and decree dated 26.08.2011 made in O.S.No.1838 of 2008 on the file of the VI Assistant City Civil Court, Chennai.

2.The plaintiff, who filed a suit for partition seeking 50% share in the suit schedule superstructure is the appellant in the above Second Appeal.

3.The parties are described as per their litigating status before the Trial Court.

4.The brief facts of the case for the purpose of adjudicating the above Second Appeal are as hereunder:

(a) The suit is for partition. The plaintiff is the son of late Manickam. According to the plaintiff, his brother P.M.Dasarathan and himself were the joint owners of the suit superstructure. The defendants 1 to 6 are the legal



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heirs of the deceased brother of the plaintiff, one P.M.Dasarathan. According to the plaintiff, the superstructure consists of ground, first and second floors with two portions, namely front and rear portions, constructed over the land of an extent of 740 sq.ft each. According to the plaintiff, he and his brother, P.M.Dasarathan, were originally owning larger extent and subsequently, a portion was sold to Thiruvengada Naidu in the year 1991 and from and out of the sale proceeds, a building was constructed in the front portion and they were living there jointly. After the death of his brother P.M.Dasarathan, the plaintiff shifted to the ground floor of the front portion and the defendants 1 to 6 shifted to the first floor of the front portion. The second floor portion and remaining portion of the first floor continued to be under the occupation of the tenants and out of the rental income, that was accruing from the property and also by mortgaging the property and borrowing a sum of Rs.30,000/-, the plaintiff and the defendants constructed the rear portion consisting of a ground floor and first floor, each having a built up area of 1480 sq ft.

(b)According to the plaintiff, after the rear portion was constructed, the defendants 1 to 6 occupied the first floor of the rear portion and except



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the ground floor of the front portion and first floor of the rear portion, the rest of the portions were let out to tenants. The defendants 7 to 13 in the suit are the tenants in occupation of various portions in the suit properties. According to the plaintiff, he is entitled to 50% share of the suit superstructure and since the defendants were denying his right, he has instituted the suit seeking partition and separate possession.

5.The 1st defendant resisted the suit claim by filing a written statement, which is adopted by the defendants 2 to 6 and also by the tenants, namely, the defendants 7 to 13. According to the defendants, the suit property was originally owned by the 1st defendant, the brother of the plaintiff P.M.Dasarathan, and the plaintiff had no iota of right in the suit property. The plaintiff was permitted to live in the front portion of the suit property, by his brother P.M.Dasarathan and even after his death, the defendants have graciously allowed the plaintiff to stay in the front portion, being the brother-in-law/paternal uncle. According to the defendants, all the documents pertaining to the superstructure stand only in the name of P.M.Dasarathan, the brother of the plaintiff, and therefore, prayed for dismissal of the suit for partition.



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6.The Trial Court decreed the suit, finding that the plaintiff was entitled to share in the suit property. However, on appeal by the defendants 1 to 6, the First Appellate Court finding that the plaintiff's plea for partition is based on assertion that the suit property was a joint family property and after assessing oral and documentary evidence adduced by the plaintiff, as well as the defendants, the First Appellate Court held that the plaintiff had failed to establish that the property is a joint family property and that it was acquired from and out of joint family nucleus that was available in surplus.

7.The First Appellate Court also held that the Trial Court had committed an error in placing its decision on an unregistered Koorchit, which was not executed in accordance with law and therefore, proceeded to allow the appeal, thereby denying relief to the plaintiff.

8.The above Second Appeal has not been admitted. However, I have heard Mr.N.Veerassamy, learned counsel for the appellant/plaintiff and Mr.M.Thamizhavel, learned counsel for the respondents 1 to 5 and I have also independently gone through the pleadings, oral and documentary



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evidence adduced before the Trial Court, as well as the judgments of the Trial Court and the First Appellate Court.

9. Admittedly, the suit land belongs to Tamil Nadu Slum Clearance Board and there is no dispute about this fact. However, it is the case of the plaintiff that he has contributed for construction of the superstructure over the said land, belonging to the Tamil Nadu Slum Clearance Board and therefore, he along with his brother are entitled to 50% share each, in the suit superstructure. The plaintiff has relied on an unregistered Koorchit, Ex.A4 dated 23.09.1994, in which, the plaintiff and the defendants 1, 2 and 6 have mentioned that the property has been jointly purchased and the construction has also been put up, out of the joint contribution of the parties. However, the execution of the said Koorchit is totally and specifically denied by the defendants. It is their specific case that the assignment patta, Ex.B1, was way back in the year 1994 and which stands in the name of P.M.Dasarathan, the brother of the plaintiff, and not in the joint names of the plaintiff and the said P.M.Dasarathan.



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10.The defendants have also exhibited property tax receipts and bills as well as Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB) receipts, which are only in the name of P.M.Dasarathan/defendants 2 to 6. The mortgage deed dated 26.09.1994, executed by the defendants 1, 2 and 6 in and by which, a sum of Rs.30,000/- was borrowed has also been exhibited as Ex.B5. On a perusal of Ex.B5, it is seen that the defendants have asserted that the property is a self acquired property of the said P.M.Dasarathan and nobody else is entitled to any right over the suit property.

11.According to the plaintiff, there has been an oral arrangement between the brothers, which is himself and P.M.Dasarathan and the plaintiff is in possession of a portion allotted to him. However, the Koorchit, under which the plaintiff claims, has come into existence only after the death of his brother P.M.Dasarathan. It has also come out in evidence that originally, the mother of the plaintiff and the said P.M.Dasarathan, had applied to the Tamil Nadu Slum Clearance Board, requesting for allotment and thereafter, an assignment patta was issued in favour of the brother, P.M.Dasarathan. It is also admitted that both the plaintiff and his brother P.M.Dasarathan were



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doing carpentry work for Government and Private institutions and being the elder brother, P.M.Dasarathan was looking after the entire family, including the plaintiff and all the sisters.

12.It is also the specific case of the tenants that the said P.M.Dasarathan alone is entitled to rent and at no point of time, they had paid rents to the plaintiff. In a case of its nature and in the light of the pleadings, the plaintiff has to establish that he had contributed his might to the construction of building over the land belonging to the Tamil Nadu Slum Clearance Board. Unfortunately, the plaintiff has not been able to produce any evidence, much less satisfactory evidence, to show that there was a joint contribution by the brothers to put up the construction. The said unproved claim is also fortified by the documentary evidence filed on the side of the defendants, which are records standing in the name of the brother, P.M.Dasarathan or in the names of the legal heirs, namely the defendants, who are contesting respondents herein. There can be no implied existence of a joint family property, especially, in a case of this nature, where the land belongs to the Government namely Tamil Nadu Slum Clearance Board and it is only the superstructure rights over which the parties are battling it out.



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13.The plaintiff, having come to Court claiming that the property is a joint family property, was called upon to establish the same by adducing oral and documentary evidence, in support of his contentions. The only documents which in my opinion, supports the case of the plaintiff are the unregistered Koorchits, Ex.A3 and Ex.A4. No doubt an unregistered Koorchit can be pressed into service. However, it is subject to the Koorchit not resulting in a division of the status or the property under the said document and as long as it relates to merely confirmation of a past transaction. However, on perusal of Ex.A3, I find that the said document styled in the nature of partition, the Koorchit dated 07.10.2007, the parties have chosen to divide the property under the very same document.

14.Admittedly, the said Koorchit, Ex.A3, is neither stamped nor registered and it does not record the factum of an earlier partition and division of status and/or property in the family. Therefore, Ex.A3 is a document, which was required to be duly stamped and also compulsorily registered. Therefore, the Courts are not bound to look into Ex.A3, which is inadmissible in evidence. According to Ex.A4, it is also named and styled as a Koorchit dated 23.09.1994, and it has been executed by the plaintiff and three of the defendants alone, namely the defendants 1, 2 and 6. Even in



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Ex.A4, the parties have created rights under the said document. Ex.A4 is also insufficiently stamped being typed on mere Rs.10/- Non-judicial Stamp Paper, besides also being unregistered. Therefore, it suffers the same fate as Ex.A3 and is consequently inadmissible in the eye of law.

15.Unfortunately, the Trial Court has placed reliance on these two Exhibits, in order to decree the suit for partition. The First Appellate Court has rightly refused to look into these two unregistered and unstamped/insufficiently stamp Koorchits and negated the relief of partition, especially, in the absence of any positive evidence on the side of the plaintiff to establish his contribution or the existence of joint property.

16.I do not find any substantial question of law arising for consideration in this Second Appeal and I do not find any illegality or perversity in the findings arrived at by the First Appellate Court.

17.Accordingly, the Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

01.03.2024

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

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P.B.BALAJI., J.

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To

1. The VI Additional City Civil Court, Chennai
2. The VI Assistant City Civil Court, Chennai.
3. The Section Officer,
V.R.Section,
High Court, Madras.

Pre-delivery judgment made in

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