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S.A.Nos.638 & 695 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.06.2024

PRONOUNCED ON : 22.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A.Nos.638 & 695 of 2012

S.A.No.638 of 2012

Karar Ahamed

Vs.

... Appellant

1.Sankara Reddy

2.Gulla Reddy

3.Pilla Reddy

... Respondents

S.A.No.695 of 2012

1.Gulla Reddy

2.Pilla Reddy

Vs.

... Appellants

1.Sankara Reddy

2.Karar Ahamad

... Respondents

Common Prayer:- Second Appeals have been filed under Section 100 of CPC against the Judgment and Decree of the Additional District Court, Krishnagiri, dated 30.11.2011, in A.S.No.10 of 2010, reversing the Judgment and Decree of the Subordinate Court, Hosur, dated 05.02.2010, in O.S.No.104 of 2007.



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In S.A.No.638 of 2012

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For Appellant	: Mr.V.Sekar
For R1	: M/s.V.Srimathi
For R2 & R3	: Mr.G.Vigneshwar for M/s.V.Nicholas

In S.A.No.695 of 2012

For Appellants	: Mr.G.Vigneshwar for M/s.V.Nicholas
For R1	: M/s.V.Srimathi
For R2	: M/s.V.Sekar for M/s.D.Shivakumar

COMMON JUDGMENT

Challenge in these second appeals is made to the Judgment and Decree dated 30.11.2011, in A.S.No.10 of 2010, on the file of the Additional District Court, Krishnagiri, reversing the Judgment and Decree dated 05.02.2010, in O.S.No.104 of 2007, on the file of the Subordinate Court, Hosur.

2. For the sake of convenience, the parties are referred to as per their rankings in the Trial Court.

3.The case of the plaintiff, in brief, is that the plaintiff filed a suit against the defendants for partition of the suit properties claiming 1/3 share.



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According to the plaintiff, the plaint schedule properties are family properties.

In a family partition held on 10.08.1972, between Chinna Thimma Reddy, his maternal uncle, his brother and sister, this plaint schedule property was allotted to Chinna Thimma Reddy. During the lifetime of Chinna Thimma Reddy, he effected oral partition and divided the properties into four shares. One share for himself and his wife Gouramma, and three shares to his three sons, each son is allotted one share. The said Chinna Thimma Reddy did not get any extent of land in the suit properties when there was oral partition between him and his sons as stated supra. Thus, the suit properties were allotted to the share of his sons, namely, the plaintiff and defendants 1 and 2. The plaintiff and defendants 1 and 2 are the children of Chinna Thimma Reddy. The third defendant is the purchaser from the defendants 1 and 2. The Patta in respect of the plaint schedule properties stands in the name of their father Chinna Thimma Reddy and the Patta number is 20. In the plaint schedule properties, the plaintiff is entitled to 1/3rd share, while 2/3rd belong to the defendants 1 and 2. Defendants 1 & 2 along with their sons, sold the property to the third defendant by executing a sale deed dated 06.06.2006 vide Document No.6686/2006, which was registered at Sub Registrar's Office, Hosur. They have no right to sell the plaint schedule properties. The plaintiff



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is not a party to the document. Therefore, that sale will not bind him. The defendants 1 & 2 have no right to alienate the 1/3rd share of the plaintiff in the suit properties. The third defendant is not a bonafide purchaser. Hence, the plaintiff was constrained to file the suit for partition claiming 1/3rd share in the suit properties.

4.For non payment of batta, the suit was dismissed against the third defendant before the Trial Court.

5.The defendants 1 & 2 contested the suit, denied the allegations in the plaint and filed a written statement, contending that the plaint schedule properties are the family properties and it was allotted to their father Chinna Thimma Reddy and the plaintiff and these defendants got divided the properties in the year 1982. From the date of partition, the plaintiff and the defendants 1 & 2 are in separate possession and enjoyment of the family properties. They denied the oral partition as stated by the plaintiff and denied the division of the suit properties to the shares of the sons, namely, the plaintiff and defendants 1 & 2. The plaint schedule properties stands in the



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name of Chinna Thimma Reddy. The family had debts about Rs.6,00,000/-

while Chinna Thimma Reddy was alive, for which, the abovesaid plaintiff schedule properties were reserved only for discharging the family debts, for which, the defendants 1 & 2 sold the properties to the third defendant. The sale amount was utilized for discharging the family debts. The plaintiff is well aware of the debts of the family. There was an enmity between the plaintiff and the defendants 1 and 2 for the past 8 years. The plaintiff had filed O.S. No.376 of 2006 for partition and separate possession, on the file of the District Munsiff Court, Hosur, O.S. No. 104 of 2007, on the file of this Court for partition and separate possession and further, the plaintiff has filed another suit in O.S.No.325/2007, on the file of the District Munsif Court, Hosur, for declaration of title and injunction, the same is pending on the file of the District Munsif Court, Hosur. The plaintiff had filed two suits for partition and one suit for declaration of title and injunction, which is against law and against the principles of C.P.C. The plaintiff filed the suit without adding the necessary parties and it is also hit by non joinder of parties for non inclusion of the other members of the family. Without filing the suit for general partition, plaintiff had filed partition of two survey numbers. Partial partition is not maintainable and thus pleaded to dismiss the appeal.



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6. On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial Court for consideration:

1. Whether the plaintiff is entitled to the relief of partition as claimed in the suit?

2. Is it correct to say that in the year 1982 the plaintiff 1st defendant had partitioned the family property?

3. Whether the defendants are correct in stating that the plaintiff had filed 2 suits for partition and one suit for declaration of title and injunction contrary to the Code of Civil Procedure?

4. Whether the suit is bad for non joinder of necessary parties?



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5.What is the remedy available to the

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plaintiff?

7.Before the Trial Court, in support of the plaintiff's case, PWs 1 & 2 were examined, 2 documents were marked as Ex.A.1 & Ex.A.2. On the side of the defendants, DWs 1 & 2 were examined and 2 documents were marked as Exs.B.1 & B2.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Trial Court dismissed the suit.

9.Aggrieved over the same, the plaintiff had filed A.S.No.10 of 2010 before the Additional District Court, Krishnagiri. The First Appellate Court, after considering the entire materials and evidence on record, allowed the appeal and set aside the decree and judgment of the Trial Court. Aggrieved by the same, the present second appeals have been filed.

10. The second appeals have been admitted on the following substantial questions of law:



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a) Whether the lower appellate Court had assigned proper reasons while differing with the findings of the Trial Court and allowing the appeal filed by the plaintiff?

b) Whether the sale deeds executed in favour of the third defendant through Exs.A1 and A2 can be disregarded by the lower Appellate Court even without the same being put to the challenge by the plaintiff?

c) Whether the findings of the lower Appellate Court suffers from perversity due to improper appreciation of oral and documentary evidence available on record?

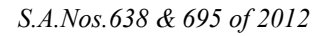
11.The substantial arguments of the learned counsel for the appellants is that the suit against the third defendant was dismissed for non payment of batta. He being the bonafide purchaser of the plaint schedule properties, an opportunity has to be given to the third defendant to participate in the proceedings. The First Appellate Court had grossly erred in not appreciating the fact while deciding the appeal. The lower Appellate Court ought to have remitted the matter back to the Trial Court for the purpose of fresh trial after



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giving an opportunity to the third defendant herein to putforth his pleadings.

When the suit was dismissed against the third defendant, he was added as a party in the appeal. Without giving an opportunity to the third defendant to participate in the trial proceedings and the appeal was allowed and thus, the First Appellate Court grossly erred in not appreciating while deciding the appeal. The learned counsel further contended that the suit for partition filed by the plaintiff is not maintainable since it has been categorically admitted in the plaint that the suit properties were orally partitioned by the sons for the purpose of the convenience but there are no records to evidence the same. The First Appellate Court failed to appreciate the pleadings and facts and failed to see that according to the plaintiff, even during the life time of Chinna Thimma Reddy, an oral partition was effected and he divided the properties into four shares, one share for himself and his wife and three shares to his three sons, each son was allotted with one share and as such in the share allotted to Chinna Thimma Reddy his three sons and two daughters are equally entitled to a share in the share of Chinna Thimma Reddy. Therefore, the suit is bad for non joinder of necessary parties. Further, the First Appellate Court failed to see that the other properties are not included in respect of which a separate suit for partition has been filed by the plaintiff in



12. The learned counsel for the respondents supported the judgment of the First Appellate Court and contended that admittedly the properties stands in the name Chinna Thimma Reddy. After his death, his legal representatives are entitled to get a share. Defendants 1 & 2 alone have no right to sell the property including the plaint schedule property. Therefore, the First Appellate Court rightly allowed the appeal that the plaintiff is entitled to a preliminary decree for partition of 1/3rd share in the suit properties and thus pleaded to dismiss the both the second appeals.

13. I have considered the matter in the light of the submissions made on either side and perused the materials on records as well as the Judgments passed by the Courts below.



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14. On perusal of the records and evidence, it is seen that the plaint schedule properties are the family properties of Chinna Thimma Reddy. In the family partition held on 10.08.1972, the plaint schedule properties and the other properties were allotted to Chinna Thimma Reddy. The plaintiff and the defendants 1 & 2 are the sons of Chinna Thimma Reddy. His daughters are not included as parties to the suit.

15. It is not in dispute that the plaint schedule properties is the family properties of Chinna Thimma Reddy and he got the properties in the partition held on 10.08.1972, with his brothers and sisters, by way of a registered partition deed. Thus, the plaint schedule properties were allotted to Chinna Thimma Reddy by way of a registered partition. According to the plaintiff, during the life time of Chinna Thimma Reddy, he effected oral partition and he divided the properties into four shares, one share for himself and his wife Gouramma, and three shares to his three sons, each son is allotted one share. The said Chinna Thimma Reddy did not get any extent of land in the suit properties when there was oral partition between him and his sons. The allotment of the suit properties to the share of his sons, namely, the plaintiff



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and defendants 1 & 2 is not evidenced by any document and there is no evidence for the same. Therefore, the burden is upon the plaintiff to prove the oral partition, by adducing evidence to show that this plaint schedule properties were allotted to the share of the plaintiff and defendants 1 & 2 . On a careful perusal of the oral and documentary evidence, it is not proved by the plaintiff that when the alleged oral partition took place and when the plaint schedule properties were allotted to the share of the plaintiff and defendants 1 & 2. Admittedly, Chinna Thimma Reddy died in the year 1985. There is no evidence to show that after 1985, the plaintiff is enjoying the property along with the defendants 1 & 2 or not. Therefore, the entire evidence in this case did not reflect about the oral partition and in which the plaint schedule properties were allotted to the plaintiff and defendants 1 & 2. Further, it is noted that the plaintiff filed a suit in O.S.No.376 of 2006, on the file of the District Munsif Court, Hosur, against his brothers and sisters and the purchaser claiming 1/3 share, which is marked as Ex.B1. It is not disputed by the plaintiff. On a careful reading of the plaint in O.S.No.376 of 2006, it is seen that the plaintiff had not stated anything about the oral partition during the life time of his father Chinna Thimma Reddy.



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16.The entire plaintiff's case rests on the pleadings that the suit properties were allotted to the share of the plaintiff and the defendants 1 & 2 in an oral partition held during the life time of their father Chinna Thimma Reddy. But the plaintiff has miserably failed to prove the oral partition held during the life time of Chinna Thimma Reddy and that the plaint schedule properties were allotted to the plaintiff and the defendants 1 & 2. Therefore, the Trial Court had rightly dismissed the suit and the First Appellate Court had without any evidence and proof for oral partition allowed the appeal. The judgment and decree of the First Appellate Court is unsustainable and it is liable to be set aside and accordingly, set aside. The substantial questions of law formulated in the second appeals are accordingly answered.

17.For the aforesaid reasons, the judgment and decree of the Trial Court, dated 05.02.2010, in O.S.No.104 of 2007, on the file of the Subordinate Court, Hosur, is confirmed and the second appeals are allowed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

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22.07.2024

Index : Yes/No

Internet: Yes/No



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Speaking order/Non-Speaking order
Neutral Citation : Yes/No

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V.SIVAGNANAM, J.

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To

- 1.The Additional District Court, Krishnagiri.
- 2.The Subordinate Court, Hosur.

Pre-Delivery Judgment made
in S.A.Nos.638 & 695 of 2012

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