



WEB COPY

S.A.No.1091 of 2015

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 04.11.2024**

**CORAM:**

**THE HONOURABLE Ms.JUSTICE R.N.MANJULA**

**S.A.No.1091 of 2015**

**and**

**MP.No.1 of 2015**

Govindasamy

...

Appellant /Defendant

Vs.

Kuppammal

...

Respondent/Plaintiff

**PRAYER:** Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree dated 11.04.2014 made in A.S.No.22 of 2014 on the file of the Principal District Judge, Dharmapuri in confirming the Judgement and Decree dated 20.04.2012 made in O.S.No.8 of 2008 on the file of the Additional Subordinate Judge, (Trainee District Judge) Dharmapuri.

For Appellant : Mr.J.Ramakrishnan

For Respondent : Mr.K.Gandhikumar



S.A.No.1091 of 2015

WEB COPY

### **JUDGEMENT**

This Second Appeal has been preferred against the judgement and decree passed in A.S.No.22 of 2014, on the file of the learned Principal District Judge, Dharmapuri dated 11.04.2014 in confirming the judgement and decree dated 20.04.2012 made in O.S.No.8 of 2008, on the file of the Additional Subordinate Judge, (Trainee District Judge) Dharmapuri.

2. The sole defendant is the appellant. The plaintiff, the sister of the appellant, has filed a suit for partition by claiming an equal share of the suit property, and the same has been decreed by the Trial Court and confirmed by the First Appellate Court as well. Now the defendant has filed this Second Appeal.

**3. The short facts of the plaint filed by the respondent /plaintiff are as under:**

The suit properties are the joint family properties of the plaintiff and the defendant. One Boothala Gounder and Nanjammal, are the parents of the plaintiff and the defendant. Boothala Gounder died about 20 years ago, and



S.A.No.1091 of 2015

Nanjammal died before two years from the date of filing the suit. The plaintiff and the defendant are the only legal heirs for their parents. After the death of their parents, the plaintiff and the defendant were in joint possession of the suit properties. The father of the plaintiff predeceased her mother. The mother of the plaintiff had executed a settlement deed in respect of a portion of the suit properties to the plaintiff on 15.05.1987 [Ex.B4]. As the defendant was attempting to create encumbrances over the suit property in order to defeat the rights of the plaintiff; the plaintiff has issued a legal notice on 22.12.2007 [Ex.A3=Ex.B8] for partition. The defendant received the notice and issued a reply on 08.01.2008 with false allegations stating that partition has already been effected on 21.02.1995 [Ex.A4=Ex.B9]. As the defendant is not amendable for partition as claimed by the plaintiff, she has filed the suit for partition by claiming half a share in the suit properties.

**4.The avernments made in the written statement filed by the defendant:**

Though a portion of the suit properties stand in the name of the mother, it is not her separate property, and the property has been purchased from the joint family income, and the mother Nanjammal is only a name lender for the sale deed. In fact, the said property has been allotted to the share of the plaintiff. But



S.A.No.1091 of 2015

in order to avoid stamp duty expenses, a settlement deed was executed in respect of the said property in favour of the plaintiff instead of executing a partition deed. The plaintiff has one male child through her first marriage, which was not successful. Hence, the plaintiff married one Raman and demanded a partition. At that time the plaintiff has been allotted with some properties, and hence the plaintiff is not entitled to another partition. As the plaintiff was fighting with the defendant, a panchayat was convened in the presence of the elders, and as per the panchayat, the defendant has paid a sum of Rs.18,000/- and allotted 50 cents of land to the plaintiff through a Muchalika. The defendant has been in exclusive possession of the suit property for more than 23 years, and hence the plaintiff is not entitled to the relief.

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

*"1. Whether the alleged oral partition some 23 years back as alleged in the statement is true and valid?*

*2. Whether the Muchalikka alleged to have been executed by the plaintiff as alleged in the statement is true and valid?*

*3. Whether the plaintiff and the defendant are jointly entitled to*



S.A.No.1091 of 2015

*the suit properties?*

WEB COPY

*4. Whether the plaintiff is entitled to share in the suit properties?*

*5. Whether the plaintiff is entitled to partition and separate possession?*

*6. Whether the plaintiff is entitled to permanent injunction?*

*7. What reliefs?*

6. During the course of trial, on the side of the plaintiff, two witnesses have been examined as PW.1 and PW.2 and Ex.A1 to A4 were marked. On the side of the defendant, two witnesses have been examined as DW.1 and DW.2 and Ex.B1 to B9 were marked.

7. After the conclusion of the trial, the Trial Court has decreed the suit, and the defendant has preferred a First Appeal. The First Appellate Court having got convinced with the judgment of the Trial Court, confirmed the same. Now the Second Appeal has been filed and it has been admitted on the following substantial question of law:



S.A.No.1091 of 2015

*"Whether the Courts below were right in decreeing the suit*

*for partition when there is an admission on the part of the plaintiff that there was already a partition effected 23 years before filing of the suit?"*

8. The learned counsel for the appellant submitted that the plaintiff, who was examined as P.W.1, admitted in her evidence during the cross-examination that already a partition was effected. She has stated [தான் செட்டில் மென்ட் அன்று பாகப்பிரிவினை ஏற்பட்டதா என்றால் ஆம்]. In the deed of settlement executed by the mother of the plaintiff in favor of the mother, the western boundary is shown as the property allotted to Govindasamy, and that would also confirm that the partition has already taken place. Even in the plaint, the plaintiff has pleaded that her mother has settled the property '*allotted to her*', and hence the above words would show the impact of partition.

8.1. It is further submitted that admitted facts need not be proved. But both the Trial Court and the First Appellate Court did not appreciate the above legal position and had chosen to grant the relief sought by the plaintiff, which is not correct.



S.A.No.1091 of 2015

WEB COPY

9. The learned counsel for the respondent submitted that both the Trial Court and the First Appellate Court have appreciated the evidence on the basis of the records produced before the Court and had decreed the suit and the judgment of the First Appellate Court in confirming the judgment of the Trial Court does not require any interference.

10. This Court heard the submissions made by both sides learned counsels and perused the materials available on record.

11. The relationship between the appellant and the respondent is not in dispute. When the plaintiff claims that both the plaintiff and the defendant were in joint enjoyment of the suit property subsequent to the death of their parents, it is claimed by the appellant/defendant that the respondent/plaintiff has already been allotted her share in the joint family properties and the suit property exclusively belongs to the share of the appellant/defendant. The appellant relied on the settlement deed executed in favour of the plaintiff by her mother on 15.05.1987 [Ex.B4] in order to substantiate his argument that the settlement deed has been executed in lieu of partition deed, in order to avoid the stamp duty commitment.



S.A.No.1091 of 2015

WEB COPY

**12.** The further submission is that though the property comprised in the settlement deed was the properties in the name of his mother and his mother is only a name lender and the property has been purchased from and out of the joint family income. It is needless to state that when a sale deed stands in the name of a particular person the presumption is that the property belongs to the person in whose favour the sale deed has been executed. When the disposition of the private property is reduced into writing and if the documents so written is produced before the Court, that would exclude for the oral evidence for the purpose of proving the content of the same. However any contrary evidence can be dealt by the party who disputes the same. Though the appellant/defendant is not a party to the settlement deed, he questions the settlement deed stating that the settlement deed was only a substitute to a family partition through which the property conveyed through the settlement deed has been allotted to the share of the plaintiff.

**13.** The one and only evidence which the plaintiff is attempting to rely to substantiate the defendants is the one line statement of P.W.1 which she had given in her evidence during the course of the cross examination. In the cross examination P.W.1 [plaintiff] has stated that " தான் செட்டில் மென்ட் அன்று



S.A.No.1091 of 2015

பாகப்பிரிவினை ஏற்பட்டதா என்றால் ஆம் ". But in the preceding sentences it

has been specially asked to P.W.1 that there was a partition happened in the family prior to the execution of the settlement deed and for which the PW.1 has denied. So the evidence of P.W.1 has to be read comprehensively and not by adopting pick and choose method.

**14.** Despite the settlement is of the year 1987 the appellant/defendant never thought of challenging the same or to get a relief of declaration to the effect that the property involved in the settlement deed is out of a family partition. On perusal of the documents produced by the defendant himself it is seen that there are joint pattas standing in the name of his mother and himself [Ex.B5] and another patta is standing in the name of his mother, himself and his sister. These pattas are dated 02.01.2012 and 16.04.2010 respectively. Had the property subjected to the settlement also considered as a family property and the same has been allotted in favour of the plaintiff, the pattas of the subsequent period would not have included the other shares namely the mother and the sister of the defendant.

**15.** In the absence of any materials to show that the property conveyed through the settlement deed [Ex.B4] is a joint family property or that the said



S.A.No.1091 of 2015

property represents the share of the plaintiff in a family partition, it is right for the trial Court to decree the suit for partition as prayed. As the trial Court has rightly appreciated both the oral and documentary evidence and has decreed the suit, the first Appellate Court though it fit to confirm the same. As the appellant /defendant has filed the second appeal just by relying on an isolated sentence in the evidence of PW.1 without adverting to read her evidence in a comprehensive manner, the appeal lacks in merit.

**16.** In the result, this second Appeal stands **dismissed** and the Judgement and Decree of the learned Principal District Judge, Dharmapuri dated 11.04.2014 made in A.S.No.22 of 2014 is confirmed. No costs. consequently, the connected miscellaneous petition is closed.

**04.11.2024**

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

**To,**

1. The Additional Subordinate Judge,  
(Trainee District Judge) Dharmapuri.
2. The Principal District Judge, Dharmapuri.



S.A.No.1091 of 2015

3. The Section Officer, V.R.Section,  
High Court, Madras.

WEB COPY



WEB COPY



S.A.No.1091 of 2015

**R.N.MANJULA, J.**

jrs

**S.A.No.1091 of 2015**

**and**

**MP.No.1 of 2015**

04.11.2024