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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

S.A.Nos.280 & 281 of 2013

Kuppusamy alias Murugesan

.. Appellant
in S.A.No.280 of 2013

vs.

1. Annamalai
2. Omaithurai
3. Devaki
4. Rajaram
5. Kavitha
6. Saradambal
7. Gengammal

.. Respondents
in S.A.No.280 of 2013

1. Kuppusamy alias Murugesan

2. Omaithurai

.. Appellants
in S.A.No.281 of 2013

Vs.

Annamalai

.. Respondent
in S.A.No.281 of 2013

Second Appeal No.280 of 2013 filed under Section 100 of CPC against the judgment and decree dated 29.02.2012 in A.S.No.2 of 2011 on the file of the Subordinate Judge, Gingee, confirming the judgment



and decree dated 08.09.2010 in O.S.No.67 of 1998 on the file of the Principal District Munsif Court, Gingee.

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Second Appeal No.281 of 2013 filed under Section 100 of CPC against the judgment and decree dated 29.02.2012 in A.S.No.44 of 2011 on the file of the Subordinate Judge, Gingee, confirming the judgment and decree dated 08.09.2010 in O.S.No.320 of 2000 on the file of the Principal District Munsif Court, Gingee.

For Appellants in both appeals : Mr.M.Jagadheesan

For R1 and R6 in S.A.No.280/2013

For Respondent in S.A.No.281/2013 : Mr.P.Dinesh Kumar

COMMON JUDGMENT

Second Appeal Nos.280 of 2013 and 281 of 2013 arise out of the judgment and decree in A.S.Nos.2 of 2011 and 44 of 2011 on the file of the Subordinate Court at Gingee. These appeals arose out of O.S.No.67 of 1998 and O.S.No.320 of 2000 on the file of District Munsif Court at Gingee.

2. O.S.No.67 of 1998 was for a declaration that the decree obtained in O.S.No.538 of 1997 is null and void and for consequential relief of partition and separate possession of 1/4th share of the plaintiff.



3. O.S.No.320 of 2000 was presented for a declaration that the sale deed executed by Kuppusamy @ Murugesan in favour of Omaithurai is null and void and for consequential relief of permanent injunction.

4. For the sake of convenience, parties are referred to as per their ranks in the suit.

5. There is no dispute in the relationship between the parties. The father of the plaintiff is one Krishna Gounder. He had three sons namely, Kuppusamy @ Murugesan, Venniyappan and Annamalai, the present plaintiff. The fourth defendant, who is the appellant in S.A.No.281 of 2013 is one Omaithurai. He is the purchaser of the property which had been allotted in favour of the plaintiff in O.S.No.538 of 1997.

6. The relationship between the parties became strained on account of the activities of the members of the family. Therefore, it was decided to go for partition and separate possession of the properties. It is the case of Annamalai that they approached one advocate namely, Arumugam in order to amicably settle the matter between them. He had signed and given the papers to the said Arumugam along with his father



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and brothers. All of a sudden, he came to know that a suit had been presented in O.S.No.538 of 1997 for partition and that ended in a Compromise Decree on 12.01.1998. Consequently, the present suit for cancellation of the decree came to be filed in O.S.No.67 of 1998.

7. Learned District Munsif tried both the suits together with O.S.No.67 of 1998 as the lead suit. On the side of the plaintiff, he examined himself as P.W.1 and two witnesses were examined as P.W.2 and P.W.3. On the side of the defendants, first defendant Krishna Gounder, the father was examined as D.W.1, the second defendant Kuppusamy was examined as D.W.2 and the sixth defendant Rajaram was examined as D.W.3. On the side of the plaintiff, Ex.A1 to Ex.A7 were marked and Ex.B1 to Ex.B7 were marked on the side of the defendants.

8. Learned trial Judge summoned the records in O.S.No.538 of 1997 and marked the following :

- (1) Vakalatnama
- (2) Judgment
- (3) Written Statement



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(4) Compromise Decree

(5) Original plaint and

(6) Copy of cross-examination as Court exhibits namely, Ex.C1 to Ex.C6.

9. After a detailed analysis, the trial Judge came to a conclusion that Kuppusamy @ Murugesan had managed to get a compromise decree passed. The Court noted from the records, which had been summoned, that the compromise decree was fallacious. The endorsements, on the plaint made on behalf of the third defendant and first defendant were one and the same and most crucially, the plaintiff in the present suit Annamalai used to sign only in Tamil whereas the summons shows, as if Annamalai had signed in English. On the basis of this discussion, the trial Court cancelled the decree in O.S.No.538 of 1997 and granted a decree for partition.

10. Aggrieved by the same, regular appeals were preferred before learned Subordinate Judge, Gingee in A.S.Nos.2 of 2011 and 44 of 2011. Learned Subordinate Judge concurred with the findings of the trial Court and dismissed the appeal by way of a judgment and decree on



29.02.2012.

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11. This Court ordered notice regarding admission on 01.07.2013.

Thereafter, the matter came up before me.

12. Since the allegations of fraud and abuse of Court proceedings have been made, I summoned the original records from the trial Court.

13. Apart from that, Mr.P.Dinesh Kumar, learned counsel appearing for the respondent / plaintiff has produced the certified copies of all records that have been filed before the trial Court.

14. In order to satisfy myself, I went through the previous Court proceedings.

15. I am able to perceive the following.

(i) In Ex.C1, the signature of the plaintiff Annamalai is found in Tamil whereas the summons which has been marked as Ex.C2, the signature of Annamalai is found in English. A perusal of the same



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shows that there is absolutely no similarity between both the signature. In fact, I will be surprised if a person residing in the outback of Gingee is able to sign in such a sophisticated manner in English.

(ii) Further, the written statement that had been filed in the suit has been marked as Ex.C3. Even in Ex.C3, the signature of Annamalai / plaintiff is only in Tamil.

(iii) The crucial document namely, the compromise deed is Ex.C4. As found by the trial Court and Lower Appellate Court, there are lot of insertions in the same and the signature in the document at Page No.10 of the compromise deed shows that the deed had been typed in order to manipulate the said document to bring the signatures within the four corners of the compromise deed.

(iv) Apart from that, I see from Ex.C5, the endorsement on the bundle there is no signature of D.W.3. The handwriting of the person who has closed the evidence of P.W.1 and the handwriting of the person



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who has closed the evidence of P.W.3 are identical. It is surprising that the same advocate has appeared for the plaintiff and the defendants. All the above discrepancies found, taints the manner in which O.S.No.538 of 1997 has been conducted.

16. The most crucial aspect is that there is only the evidence of Kuppusamy @ Murugesan in the record and all the other evidences are not found. These records namely, Ex.C1 to Ex.C6 were not marked through the officials but were admitted by the defendant during the course of his cross-examination as D.W.2 in the present suit. In other words, all is not right with the manner in which the decree was obtained in O.S.No.538 of 1997. D.W.2 Kuppusamy curiously has taken a stand that he had never been to the Court and the plaintiff had never given evidence in the suit.

17. From the earlier Court records that have been perused by me as well as by the Courts below, I am able to come to a conclusion that Kuppusamy @ Murugesan, the defendant in the suit had connived to obtain a decree in O.S.No.538 of 1997 by pulling the wool over his



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father and brothers. This is fortified by his own evidence as D.W.2 in the present case.

18. Consequently, the only conclusion that I can come is that the compromise decree that has been obtained in O.S.No.538 of 1997 cannot stand for a moment's scrutiny. Hence, the detailed discussion and finding of the trial Court as confirmed by the Lower Appellate Court does not require any interference. Since the decree in O.S.No.538 of 1997 is set aside, the Court has come to the conclusion that there is no partition amongst the family members. Since there is no dispute in the relationship between Krishna Gounder and his sons Kuppusamy alias Murugesan, Venniyappan and Annamalai and there being no other sharers, the plaintiff's relief for partition has to be granted. Therefore, the questions of law suggested by learned counsel for the appellant do not arise for consideration in the facts and circumstances of the present case.

19. In fine, the Second Appeal is not admitted. It is dismissed. The judgment and decree of the Court of Subordinate Judge, Gingee in A.S.Nos.2 of 2011 and 44 of 2011 dated 29.02.2012 in confirming the judgment and decree of the Court of District Munsif at Gingee in



O.S.No.67 of 1998 and O.S.No.320 of 2000 dated 08.09.2010 stands confirmed.

20. I make it clear that the purchaser Omaithurai would be entitled for seeking allotment of properties purchased by him from Kuppusamy as he is the purchaser of the joint family properties from a sharer and to work out his equity in the final decree proceedings in O.S.No.67 of 1998.

21. Learned trial Judge is requested to follow the recent verdict of the Supreme Court in *Shub Karan Vs. Sita Saran (2009) 9 SCC 689* and not wait for the parties to file final decree application. He shall initiate final proceedings immediately on receipt of a copy of this judgment or act upon by the web copy of the judgment produced before him by any of the parties and take up the matter for final decree. He shall appoint an Advocate Commissioner to suggest the mode of division and for dividing the properties in accordance with law within a period of six months thereafter.

22. The Lower Court is requested to initiate final decree proceedings on 11.03.2024 and conclude the proceedings by



31.10.2024. I am giving this direction for early conclusion of this proceedings as parties have been litigating for partition for more than 24 years. Considering the fact that the parties are brothers and that one of the brothers has been misled by his legal advisor, I am not inclined to impose costs on the appeal.

09.02.2024

Index: Yes/No

Neutral Citation: Yes/No

Speaking Order / Non-speaking order

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To

1. Learned Subordinate Judge,
Subordinate Court,
Gingee.
2. Learned Principal District Munsif,
District Munsif Court,
Gingee.



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V. LAKSHMINARAYANAN, J.

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