IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2024

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

A.S.No.500 of 2020

1.Krishnamurthy (Died)
2.K.Baskar
3.B.Premalatha
4.K.Jayachandran
5.K.Dilipchandran ... Appellants

A3 to A5 are brought on record as LR's of deceased 1st appellant, viz.Krishnamurthy vide order of Court dated 27.07.2023 made in CMP.No.10762 of 2020 in A.S.No.500 of 2020.

Versus

1.K.Manimozhi
2.J.Uma
3.The Sub-Registrar,
Office of Registrar at Thousand Lights,
Triplicane, Chennai-600 005. ... Respondent

(No relief is claimed in the suit as against the 2rd defendant and hence given up)

Appeal Suit filed Under Section 96 of the Code of Civil Procedure, praying to set aside the Judgment and decree dated 22.08.2019 made in O.S.No.2478 of 2015 on the file of the Court of Principal Judge, City Civil Court, Chennai.

For Appellants : Ms. G.Sumitra
For Respondents : Mr.G.S.Vivekmani
for Gridhar and Sai

ORDER

The appellants have filed this appeal to set aside the Judgement and decree dated 22.08.2019 made in O.S.No.2478 of 2015 on the file of the Court of Principal Judge, City Civil Court, Chennai.

2. Heard Ms. G.Sumitra, learned counsel for the appellants and Mr.G.S.Vivekmani, learned Counsel for the respondents for Gridhar and Sai and perused the materials available on record.

3. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.

4. The appellants herein are the defendant 1 and 2 in the suit O.S.No.2478 of 2015 on the file of the Court of Principal Judge, City Civil Court, Chennai, filed by the respondents/plaintiffs claiming 2/4th share in the suit property with permanent injunction and other consequential reliefs in respect of the suit property.

5. Before the trial court, both parties adduced oral and documentary evidence. Issues were framed, and a common judgment was pronounced by the learned trial Judge along with another suit, O.S.No.4627 of 2015, filed by the same plaintiffs for the relief of declaring the release deeds as null and void. Accordingly, the suit filed by the respondents in O.S.No.2478 of 2015 was decreed as prayed for, allotting 2/4th share in favor of the plaintiffs, and another suit filed by the same plaintiffs for declaration was dismissed.

6. Challenging the findings of O.S.No.2478 of 2015, the defendants 1 and 2 have preferred this appeal. During the pendency of the appeal proceedings, the 1st defendant / 1st appellant / Krishnamoorthy died, and his legal heirs were impleaded.

7. The brief facts of the cases are as follows:

The plaintiffs / respondents 1 and 2 herein and the defendants 1 and 2 are the daughters and sons of one Kuppan, who worked as a Class II officer in the Tamil Nadu Electricity Board. The suit property, as described in the plaint schedule, was purchased by their father from Nungambakkam Co-operative Society Limited through a sale deed dated 27.04.1967, and it is the self-acquired property of the plaintiffs' father. After the purchase, he constructed a building on the said property. While he was alive, he orally stated that all the legal heirs, including their mother, were each entitled to 1/5th share. He died intestate on 27.07.1979, leaving behind his two sons, two daughters, and their mother as legal heirs. Thereafter, their mother and brothers moved into the suit property in 1991, living on the 1st floor and renting out the ground floor. On 30.11.2012, their mother also died. After her death, all the legal heirs, plaintiffs, and defendants were equally entitled to 1/4th share. However, the defendants refused to comply, prompting the plaintiffs to send a notice in 2015, calling for the division of the property. The defendants 1 and 2 replied, stating that their 2/5th share had already been released in their favor, so they did not have any further right over the property. Additionally, their mother had executed a settlement deed for her share in favor of her two sons. Therefore, the defendants 1 and 2 claimed to be the absolute owners of the property and denied the plaintiffs' share.

8. The plaintiffs contend that they signed the document presented by their brothers under the belief that it was a mortgage deed. Consequently, they filed another suit, O.S.No.4627 of 2015, to declare the release deed and settlement deed as null and void and not binding on them. Furthermore, the plaintiffs argue that the property in question is the self-acquired property of their father. They also allege that the defendants, behind their backs,

attempted to obtain a legal heir certificate falsely stating that they were the only legal heirs, thus suppressing the plaintiffs' rights. The plaintiffs claim that the defendants misappropriated the property through undue influence and that the alleged sale deed for 2/15th share over the suit property was falsely presented as a mortgage deed. Hence, they assert that the release deed is invalid and should be null and void, as it was executed without any consideration and without full knowledge of the real facts. Even if the release deed for 2/15th share was executed, the remaining 4/15th share continues to vest in them. The plaintiffs also challenge their mother's claim to 1/3rd share as invalid, alleging that the release deed was obtained through undue influence by the defendants. They are claiming two shares, but the plaintiffs assert that the entire property is the self-acquired property of their father, in which each of the plaintiffs has two shares and the remaining two shares belong to the brothers/defendants 1 and 2 by way of partition.

9. The defendants 1 and 2, the brothers of the plaintiffs, admitted their relationship but denied the other facts. They contend that their father, Kuppan, was the Kartha of the Joint Hindu Undivided Family (HUF) consisting of himself and his two sons (defendants 1 and 2). They claim that the suit property was purchased and treated as HUF property. He died

intestate on 27.07.1979, leaving behind his wife, two daughters, and his two sons to inherit his 1/3rd share in the HUF among the 5 surviving legal heirs, making each legal heir entitled to 1/15th share from the father's share. Accordingly, the plaintiffs were entitled to a total of 2/15th share, which they released through a release deed on 03.03.1988. During her lifetime, their mother, Padmavathi Ammal, settled her share in favor of the defendants 1 and 2, making them the absolute owners of the property. The records were mutated accordingly, and as absolute owners, they obtained the plaintiffs' permission and have since enjoyed the property as absolute owners. Therefore, they prayed to dismiss the suit as devoid of merits.

10. In respect of another suit filed by the same plaintiffs for a declaration, it was contended that the suit is barred by limitation since the release deed was executed in the year 1988, but the suit was filed in the year 2015, which is beyond the three-year period of limitation. The plaint is also barred by Order II Rule 2 of the CPC, as the plaintiffs did not obtain any leave in the earlier suit. Before the trial court, both parties presented oral and documentary evidence. On the plaintiffs' side, Ex.A.1 to Ex.A.12 documents were marked, and the 1st plaintiff was examined as P.W.1. On the defendants' side, D.W.1 and D.W.2 were examined, and no document was adduced.

11. On considering the oral and documentary evidence, the learned trial Judge framed four issues and finally held that, as per the release deed, the plaintiffs have released only 2/15th share and have not released their entire share in the suit property. Therefore, with respect to the remaining share of the plaintiffs, there is no valid release in favor of defendants 1 and 2 and their mother. Accordingly, the release deed is only for 2/15th share, and it is self-acquired property of Kuppan, so only 1/15th share of each plaintiff was released. The remaining 2/15th share of each of the plaintiffs, totaling 4/15th share, has not been released. Consequently, the mother and defendants 1 and 2 are jointly entitled to 11/15th share, and both plaintiffs are entitled to a total of 4/15th share (2/15th share each). The court also held that the mother is not entitled to execute the release deed of 1/3rd share, and the said document is valid only up to her share. Thus, defendants 1 and 2 are jointly entitled to 11/15th share, and both plaintiffs are entitled to 4/15th share. Accordingly, the suit was decreed. Since their shares were given, the declaration of relief claimed in another suit in O.S.No.4267 of 2015 was dismissed. Challenging the findings of O.S.No.2478 of 2015, the defendants, aggrieved over the shares allotted to the plaintiffs, have preferred this appeal.

12. The learned counsel for the appellants submitted that the learned trial Judge failed to appreciate the evidence and documents properly and

erroneously allotted the shares to the plaintiffs, which is unjust and liable to be set aside on the following grounds:

i) The trial Court though by common order dismissed the suit O.S.No.4267 of 2015 in respect of the prayer of the plaintiffs that the release deed dated 03.03.1988 and the settlement deed dated 29.04.2011 executed in favour of the appellants as null and void, but erroneously held that the plaintiffs are entitled to partition of $2/15^{th}$ share in the suit property.

ii) The learned Judge observed that even in their legal notice Ex.A7 dated 08.04.2015, the plaintiffs did not claim that the execution of the release deed dated 03.03.1988 was obtained by the defendants under the pretext of loan documents.

iii) The learned Judge rightly appreciated the facts that a) P.W.1 admitted she was educated up to PUC, b) She knew how to read and write English, and c) Ex.A2 release deed was executed on 03.03.1988 but was challenged only in 2012 after the lapse of her husband accompanying her to the Sub-Registrar of assurances. If the document was executed as a loan document, it would have been executed in favor of some third party. On the other hand, it has been executed in favor of her brothers and mother. Thus, the Court concluded that it is unbelievable that Ex.A2, namely the execution of the release deed as a loan document, and dismissed the prayer.

iv) The trial Court failed to appreciate that the release deed dated 03.03.1988 was challenged after a lapse of 27 years, which is neither permissible under law nor on facts. Consequently, seeking partition of the suit property is also liable to be dismissed.

v) The trial court caused grave injustice by ordering that the plaintiffs first and second are each entitled to a 2/15th share in the suit property while simultaneously dismissing the prayer to declare that the A2 release deed and A3 settlement deed are null and void.

vi) The learned trial Judge ought to have dismissed the claim for partition on the sole ground that the claim is barred by limitation since the subject matter of the document is challenged after 27 years, irrespective of whether it is self-acquired or Hindu Undivided Family property.

vii) The learned Judge erred in holding that the admission in the reply to the legal notice, namely Ex.A8 by their counsel, is sufficient to hold that it is a self-acquired property of Kuppan, brushing aside the oral and documentary evidence applicable to the facts of the case.

viii) The learned trial Judge, when dismissing the claim of the plaintiffs to declare the release deed dated 03.03.1988 and the settlement deed invalid, consequently, ought to have dismissed even the prayer for partition as no property is available for partition to their share and it has become absolute property owned by the appellants.

ix) The learned trial Judge's holding that the share of the release deed is only 2/15th share, therefore, with respect to the remaining share of the plaintiff, there is no valid release in favor of defendants first and second, is misconceived.

13. **Points for consideration are to be decided as follows:**

i. Whether the plaintiffs are entitled to claim a share in the suit property by way of partition?

ii. Whether the release deed executed by them dated 03.02.1988 pertains to 2/15th share only, and they are still entitled to claim relief of partition from their brother / defendants 1 and 2?

iii. Whether the defendants have established that it is HUF property as they claim, or it is self-acquired property of their father Kuppan?

14. The plaintiffs 1 and 2 and defendants 1 and 2 are the brothers and sisters, and son and daughter of one Kuppan, and Pathmavathi Ammal is an undisputed fact. The contention of the plaintiffs is that the suit property was originally purchased by their father on 27.04.1967 by way of purchase from the Nungambakkam Co-operative Society Ltd. Thereafter, he put up construction and enjoyed the same as the absolute owner. After his demise, his legal heirs, sons and daughters, and their mother, each were entitled to a 1/5th share. Their mother died intestate; therefore, each of the plaintiffs is entitled to a 1/5th share, and the remaining 2/5th share belongs to the defendants. Hence, they issued a notice for the division of the property. By way of a reply notice in 2015, the defendants informed that their mother also

released her share; therefore, they are the only absolute owners of the property, and the plaintiffs have no share.

15. Considering the objections raised by defendants 1 and 2, they claimed that their father Kuppan owned and persistently owned the suit property as a Kartha of the Hindu Undivided Family property, in which the father and two sons, namely defendants 1 and 2, each were entitled to only a 1/3rd share. After the demise of their father, the said 1/3rd share belonged to the 5 legal heirs. Accordingly, each plaintiff is entitled to a 1/5th share (totally 2/5th share), and the same was also released by them in 1988 through a release deed (marked as Ex.A2). The plaintiffs submit that they were not aware of the alleged release deed and came to know about it only after the reply notice. They claim their brothers applied their signatures to the documents, informing them that it was a mortgage deed. Believing this, they signed the documents, only now realizing that it was a release deed. They contended that the release deed was executed under undue influence and coercion by their brothers. Therefore, after issuing the said notice in 2015, they filed another suit, O.S.No.4627 of 2015, to challenge the release deed as null and void.

16. The learned counsel for the respondents/plaintiffs submitted that

while issuing the reply notice, Ex.A8, on 28.04.2015, the defendants admitted that it was a self-acquired property of their father Kuppan. Therefore, the foremost point to be decided is whether the property is self-acquired by Kuppan or treated as Hindu Undivided Family property. It is an admitted fact that on 27.04.1967, a sale deed was executed in favor of the plaintiffs' and defendants' father Kuppan by the Nungambakkam Co-operative Society Ltd.

17. Admittedly, both parties did not produce the sale deed. However, during cross-examination, DW.1 admitted that he was aware of the sale deed, but no documents were produced by the defendants to establish that the said property was treated as Hindu Undivided Joint Family property. There is no evidence from the defendants' side. However, the reply notice issued by the defendants, Ex.A8, categorically admits that the property is a self-acquired property of their father. Therefore, the contention of the defendants that it is Hindu Undivided Joint Family property has not been proved.

18. Upon perusal of the release deed dated 03.02.1988, marked as Ex.A2, the recitals reveal that the release deed pertains to a 2/15th share in favor of their mother and their two brothers (D1 and D2). The recitals show that it is a Hindu Undivided Joint Family property, in which the father and

two sons each are entitled to a 1/3rd share. Upon the death of their father intestate, his 1/3rd share was to be divided among his 5 legal heirs, each entitled to a 1/15th share. Accordingly, the plaintiffs are entitled to a 2/15th share, and the same was released in their favor. Therefore, in the release deed, the plaintiffs released only a 2/15th share.

19. The learned counsel for the appellants/defendants 1 and 2 submitted that, even assuming it is a self-acquired property, the plaintiffs are entitled to a 2/5th share, but they had already relinquished their share. Therefore, the release deed is binding upon the plaintiffs. Further, they also submitted that if the plaintiffs had agreed, they should have filed within 3 years from the sale deed of 1988. However, they filed a suit in 2015, more than 17 years later. Therefore, the relief is totally barred by limitation. Though the same was rightly appreciated by the learned trial judge by dismissing the other suit filed by the plaintiffs for the said relief of declaration, the relief of partition granted in favor of the plaintiffs is totally illegal and liable to be set aside.

20. On a perusal of the common judgment passed by the learned trial Judge, it is true that the suit filed by the plaintiffs for declaration to declare the release deed as null and void and not binding on the plaintiffs was based on claims of undue influence and false information. However, the learned trial

Judge found that even if the release deed were assumed valid, the plaintiffs only released a 2/15th share, leaving a remaining 4/15th share available to the plaintiffs, and they had not executed a release deed for the entire share. Therefore, the plaintiffs were granted the relief of each being entitled to a 2/15th share (totaling a 4/15th share). The declaration suit was filed in time, but the release deed was not executed for the entire share of the property, so the declaration was not granted. According to the release deed (Ex.A2), 2/15th share was released by the plaintiffs.

21. Furthermore, the mother executed another release deed in favor of her sons through which she released a 1/3rd share. However, in both documents, the correct shares of the parties were not properly mentioned. According to the defendants' reply notice, the property was purchased by their father and is his self-acquired property. Therefore, after his death, there are five legal heirs: two sons, two daughters, and the mother, each entitled to a 1/5th share. If the defendants had obtained the release deed, they should have acquired a document for a 2/5th share. However, in the release deed, the plaintiffs released a 2/15th share as if it were joint family property.

22. The plaintiffs contended that the brothers sought their signatures on the documents under the pretense of wanting to mortgage the property.

However, an encumbrance certificate marked as Ex.A10 and produced on the plaintiffs' side reveals that immediately after the alleged release deed, the property was mortgaged on 14.03.1988. Ex.A2 - the release deed - was executed on 03.02.1988, and the property was subsequently mortgaged in 1988 through private finance, thus it probablize the case of plaintiffs.

23. As discussed above, the said property is not a Hindu Undivided Family property as claimed by the defendants. The plaintiffs still have a share in the property, because, according to Ex.A1 - settlement deed - they released only a 2/15th share. The plaintiffs have proved that it is their father's self-acquired property. Therefore, the plaintiffs did not execute a release deed for the entire share. The learned trial Judge rightly concluded this, requiring and it requires no interference by this Court. Accordingly, each of the plaintiffs is entitled to a 2/15th share (totaling a 4/15th share), and the defendants 1 and 2 are entitled to an 11/15th share in total. The suit property is the self-acquired property of the plaintiffs' father, so the plaintiffs still have a share, each entitled to a 2/15th share (totaling a 4/15th share), and 11/15th share goes to defendants 1 and 2. The third party is a formal party. Though their mother executed a release deed for a 1/3rd share, she was not entitled to a 1/3rd share. Hence, the findings given by the learned trial Judge are confirmed, and the appeal is dismissed, as it has no merits. Accordingly, points 1 to 3 are

answered.

24. Furthermore, the release deed executed by the plaintiffs covered only a 2/15th share and not the entire share. Therefore, the other suit filed by the plaintiffs was rightly dismissed by the learned trial Judge, requiring no interference by this Court. Additionally, the defendants did not provide proof that they put up construction in the property, after the demise of their father and enjoyed it as absolute owners. They did not produce any documentary evidence before the trial court. The release deed was executed in English, and there is no evidence from the defendants' side that the plaintiffs were made aware of the entire content of the release deed. Since the property is not a Hindu Undivided Joint Family property of the plaintiffs' father, the plaintiffs still have a share in the property, which was rightly appreciated by the trial Judge and needs no interference by this Court.

25. Accordingly, the appeal is dismissed as having no merits, and the findings rendered by the learned Principal Judge, City Civil Court, Chennai, in O.S.No.2478 of 2015 are confirmed. No costs. The suit is decreed in favor of the plaintiffs, with each of the plaintiffs allotted a 2/15th share (totaling a 4/15th share), and the defendants 1 and 2 are entitled to an 11/15th share in total.

08.08.2024

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

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To
1.The Principal Judge,
City Civil Court, Chennai.

2.The Section Officer,
VR-Section, High Court of Madras.

T.V.THAMILSELVI, J.

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A.S.No.500 of 2020

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