



S.A.No.994 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A.No.994 of 2013

&

M.P.No.1 of 2013 & CMP.No.19399 of 2022

1.R.Prabhu

2.Renukhadevi

3.Premalatha

4.Sampoornam

...

Appellants

Vs.

1.Susila

2.Vijayalakshmi

3.A.Durairaj

4.Arunraj

...

Respondents

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 17.01.2013 made in A.S.No.61 of 2012 on the file of the Second Additional District Court, Erode, confirming the judgment and decree dated 16.06.2011 made in O.S.No.182 of 2009 on the file of the Sub Court, Perundurai.

For Appellants : Mr.N.Manokaran

Respondent : No appearance
Nos.1 & 2

Respondent : Mr.S.Kaithamalai Kumaran
Nos.3 & 4



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JUDGMENT

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Challenge in this second appeal is made against the judgment and decree dated 17.01.2013 made in A.S.No.61 of 2012 on the file of the Second Additional District Court, Erode, confirming the judgment and decree dated 16.06.2011 made in O.S.No.182 of 2009 on the file of the Sub Court, Perundurai.

2.The suit has been filed by the plaintiffs for dividing the suit properties into 4 equal shares with reference to good and bad soil and allot and put the plaintiffs in separate possession of two contiguous shares and appoint a commissioner to effect such division of the suit properties and cost of the suit.

3.The case of the plaintiffs in brief is as follows:

The 1st plaintiff is the sister of the 2nd plaintiff's husband. The defendants 1 and 5 are brothers. The 2nd defendant is the son of the 1st defendant. The 6th defendant is the son of the 5th defendant. The defendants 3 and 4 are the daughters of the 1st defendant. Originally, half share of the



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suit properties belonged to late Arulanadam @ Kuppan, who is the father of the defendants 1 and 5. The other half share belonged to V.P.Ponnusamy Gounder and S.P.Periasami Gounder as per the registered sale deeds dated 05.09.1980 and 11.03.1981. The father of the defendants 1 and 5 Arulandam @ Kuppan has executed a registered Will dated 04.01.1993 bequeathing his half share of the suit properties to be enjoyed by his two sons for life without making any encumbrances and after their life time, it should absolutely go to his grandsons defendants 2 and 6 equally. He died on 07.06.2000. So, the said Will has come into force. In order to avoid further complications and unnecessary Court proceedings, the 5th defendant entered into a sale agreement dated 05.04.1991 with the owners of the other half share viz., V.P.Ponnusamy Gounder and S.P.Periyasamy Gounder to purchase their $\frac{1}{2}$ share for Rs.27,500/-. Since they did not execute the sale deed, the 5th defendant filed the suit in O.S.No.651 /1991 on the file of the Subordinate Court, Erode and get the sale deed executed by the Court on 28.01.1997 and obtained possession on 19.04.2000 through Court. The 5th defendant sold the half share purchased by him to the plaintiffs as per the registered two sale deed dated 11.07.2006. So, the plaintiffs together are entitled to $\frac{1}{2}$ share



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in the suit properties. The defendants 1 and 2 together are entitled to common $\frac{1}{4}$ share and that the defendants 5 and 6 together are entitled to common $\frac{1}{4}$ share. The father of defendants 1 and 5, Arulanandam @ Kuppan executed a registered last Will on 04.01.1993 in respect of his separate and self acquired property. None of his heirs except the defendants 2 and 6 acquired any right. He had also sold his tiled house property in old G.S.No.309/2 corresponding to new R.S.No.478/2 within specific boundaries measuring 1096 sq.feet by a registered sale deed dated 01.03.1995 to 5th defendant. Though the defendants 3 and 4 have no right or share in the suit properties, they have been impleaded in the suit as necessary and proper party to avoid future legal complications or problems. In spite of repeated demands, the defendants 1 and 2 are not amenable for any compromise or amicable partition outside the court by means of a registered partition deed. They are quarreling with the plaintiffs, the plaintiffs and defendants 1, 2, 5 and 6 are in joint possession and enjoyment of the suit properties. On 2.11.2007, the defendants 1 and 2 flatly refused to have a partition outside the court. The plaintiffs filed the suit to divide the suit properties into 4 equal shares with reference to good and bad soil and



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allot and put the plaintiffs in separate possession of two contiguous shares and for the cost of the suit.

4.The brief averments of the Written statement filed by the defendants 2 to 4 and 7 are as follows:

The suit is false, frivolous, vexatious and not maintainable in law and on facts. One half share of the suit property belonged to V.P.Ponnusamy Gounder and S.P.Periyasamy Gounder is incorrect. There is a proceedings in O.S.No.604/1981 on the file of the District Munsif Court, Erode regarding the title of suit property in the said suit. The defendant is not in possession of any records of the suit and he is now taking steps to collect the records through his advocate. This defendant is not aware of the proceedings in O.S.No.651 of 1991 on the file of the subordinate Judge Court, Erode. There is no cause of action for the suit and the suit has to be dismissed.



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5.The brief averments of the written statement filed by the defendants

No.5 and 6 are as follows:

The suit is false, frivolous, vexatious and not maintainable in law and on facts. The relationship mentioned in the plaint is true. The defendants 5 and 6 are each entitled to $\frac{1}{4}$ share in the suit property as per the will dated 4.1.1993 and therefore, these defendants have no objection to decree the suit as prayed for and they have also paid the necessary court fees for their respective shares. Hence, the suit may be decreed.

6.The brief averments of the Additional Written Statement filed by the defendant No.3 is as follows:

The total extents of S.F.No.531 of Murugatholuvu village is 6.62 punja acre, in which, Kuppan purchased $\frac{1}{4}$ share in common under sale deed dated 09.06.1944 (document No.918/1944) that is an extent of $1.65\frac{1}{2}$ punja acre. Under the sale deed dated 26.04.1952, Kuppan purchased punja acre $1.03\frac{1}{2}$ acres out of the total extent of punja acre 4.14. The lands in S.F.No.531/1 and 3 had been continued to be in possession of the grandfather of Kuppan during his life. In respect of sale of tiled house



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property in G.S.No.509/2 corresponding to R.S.No.478/2 measuring 1095 square feet is incorrect, G.S.No.509/2 corresponding to R.S.No.478/2 is punja land called “Malanakadu”. Pertinent to note that the house and tiled house site in R.S.No.735/2 of Murugatholuvu village concerned under sale deed dated 01.03.1995 (Document No.342/1995, execution by Kuppan in favour of Durairaj has already been dealt with as a item of property in the Will dated 04.01.1993 (which is earlier) executed by Kuppan in favour of Prabhu son of Raju and Arunraj son of Durairaj the ultimate beneficiaries who are the defendants. The house bearing door No.3/80 village Natham Murugatholuvu is assessed to tax No.271. Not only the house but also the vacant site surroundings the house is also mentioned under the schedule to the Will. As per the Will, Raju and Durairaj are given only life estate and after and after their death, Prabju son of Raju and Arunraj would get the property free of conditions with absolute rights. The will precedes the sale deed dated 01.03.1995 in respect of the house property in favour of Durairaj the said sale deed is invalid in law and no rights flow out of the sale deed to the purchaser. At the time of the sale deed on 01.03.1995 grandfather Kuppan was alive and this defendant's grandfather has not cancelled the



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registered will. Such being the fact, the property which has already been dealt with in the will executed by the grandfather Kuppan cannot be as subject matter in the subsequent sale deed dated 01.03.1995. The 5th defendant – Durairaj is not entitled to the house property in R.S.No.735/2 (Murugathluvu village Natham). As already stated in para 7 of the written statement filed at the first instance, it is false to allege that the defendant has no right in the suit property. This defendant's grandfather Kuppan purchased 2.69 acres (i.e) 1.651/2 acres under sale deed dated 09.06.1944 and 1.031/2 acres under sale deed dated 26.04.1952 in S.F.No.531. Grandfather of this defendant executed a registered will dated 04.01.1993 in respect of S.F.No.531/3 (R.S.No.517/2.30 extent in R.S.No.517/2 P.Hec.0.05.5 + 517/3 P.Hec.1.03.0 = P.Hec. 1.08.5 = 2.52 acres out of this 1/2 share in common punja acre 1.26 and in S.F.No.531/1 R.S.No.520/2 punja acres 1.26 + 0.82 totally punja acre 2.08 and half share in common well in R.S.No.520/2. This defendant's grandfather purchased 2.69 acres and in the will an extent of 2.08 acres is bequeathed. The remaining extent of 0.61 cents remains even on this date as the property of grandfather Kuppan. The kist was paid by father of this defendant A.Raju for half share and for the



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remaining half share 5th defendant Durairaj paid the kist. After the demise of father Raju in the year 2008, this defendant is paying kist for the half share in the property. The 2nd and 5th defendants are joint possession of the remaining extent of 0.61 cents left by grandfather Kuppan to be inherited by the legal heirs of Kuppan in equal shares.

7.The brief averments of the additional written statement filed by the defendants No.5 & 6 as follows:

As per the sale deed dated 9.6.1944 Kuppan had purchased $\frac{1}{4}$ share i.e. 1.65-1/2 Acres land in Ka.Sa.No.531 Punja Acre 6.62. As per the sale deed dated 26.04.1952, Kuppan had purchased 1.03-1/2 Acre out of 4.14 Acre is true. But it is false to state from the total extent of 2.69 Acre, the extent of 2.08 mentioned in the Will, there is an extent of 0.61 Acre is still available. On the date of purchase by Kuppan on 7.6.1944, ka.Sa.No.531 was not subdivided from which only he had purchased a common $\frac{1}{4}$ share. But after that on 26.4.1992 when the Kuppan obtained the sale deed, Ka.Sa.531 was subdivided as 531/1 punja Acre 1.63, 531/2 punja Acre 2.48 and 531/3 Punja acre 2.51. The Ka.Sa.531/2 punja acre is 2.48 and is the land acquired by the Govt. for L.B.P.channel. Therefore, from the remaining



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land of 4.14 acre, the said Kuppan had purchased 1.03 – ½ Acre on 26.4.52.

Therefore, it is false to allege that 61 cents of land is available for Kuppan.

Therefore, in respect of the properties of Kuppan, he had executed the will dated 4.1.1993 and the same was accepted by all the parties. Therefore, the defendants No.3 claimed right over the properties acquired by L.B.P. Channel is not correct. This defendant agreed to deposit a sum of Rs.2000/- as mense profits. Hence the suit may be decreed.

8. Before the trial Court, in support of the plaintiff's case, PW1 was examined and 8 documents were marked as Ex.A1 to Ex.A8. On the side of the defendants, DWs 1 & 2 were examined and 13 documents were marked as Ex.B1 to Ex.B13.

9. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court has decreed the suit and passed a preliminary decree for partition as prayed for by the plaintiffs and the defendants 5 & 6. Aggrieved over the judgment and decree of the trial Court, the defendant Nos.2 to 4 & 7 preferred the first appeal and the same has



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been dismissed. Consequently, the second appeal has been preferred by the defendants 2 to 4 & 7.

10.The learned counsel for the appellants/defendants 2 to 4 & 7 submitted that the plaintiffs have not produced any acceptable revenue documents to prove their possession and enjoyment over the suit property. The appellants have specifically stated in their written statements that from the date of death of Kuppan @ Arulanandam on 07.06.2000, the appellants have been in possession and enjoyment of 30 ½ cents out of total extend of 61 cents. The appellants have produced the mutation of records in the form of Ex.B3 to Ex.B11 which would establish the appellants' possession and enjoyment. The plaintiffs/respondents 1 & 2 have not disclosed about the acquisition of land for LBP canal and they have also conveniently suppressed the other material facts in the plaint. The Courts below have not even considered the documents marked as Ex.B1 to Ex.B10 which would lend support to the case of the appellants and the extent of land has not been measured and identified as per the documents relied upon by the plaintiffs and defendants. When the plaintiffs have taken possession on 19.04.2000



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with specific extent as per Ex.A5 dated 20.01.1997, there is no need for filing the suit for partition. The Will (Ex.A3) has not been proved in the manner known to law under Section 63 of the Indian Succession Act. The remaining extent of 61 cents out of the total extent of 2.69 acres covered under the Will Ex.A3 has not been identified on land. The other reasons given by the Courts below are not correct and unsustainable in law.

11.The learned counsel for the respondents 3 & 4/defendants 5 & 6 supported the judgment of the Courts below and thus, pleaded to dismiss the appeal.

12. I have considered the matter in the light of the submissions made by the learned counsel appearing for the appellants as well as the learned counsel appearing for the 3rd and 4th respondents and perused the materials available on record.

13.On perusal of records, the fact reveals that the



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plaintiffs/respondents 1 & 2 filed the suit against the defendants /appellants and respondents 3 & 4 claiming partition of four equal shares in the plaintiff schedule properties upon sale deeds Exs.A7 & A8 dated 11.07.2006. The defendants filed their written statements and contested the claim. According to the defendants, the entire properties belonged to Kuppan have been bequeathed through Ex.A3 Will dated 04.01.1993. Further, it reveals that the trial Court found that Kuppan has got half share in the suit properties and he has other properties in the same survey number and it was also not disputed by the parties. The other half share in the suit properties belonged to V.P.Ponnusamy Gounder and S.P.Periyasamy Gounder as per the sale deeds dated 05.09.1980 and 11.03.1981 Exs.A1 and A2. From V.P.Ponnusami Gounder and S.P.Periyasami Gounder, the 5th defendant purchased the properties by way of the sale deed dated 28.01.1997 Ex.A5 and took possession as per document Ex.A6 through Court proceedings. Thereafter, the plaintiffs purchased the same from the 5th defendant by way of sale deeds dated 11.07.2006 Exs.A7 & A8. It is not denied by the defendants. Though the defendants by filing an additional written statement raised the plea that Kuppan had bequeathed only an extent of 2.08 Acres out of total



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extent of 2.69 Acre, it is not supported by any material and evidence. Under such circumstances, the trial Court decreed the suit in O.S.No.182 of 2009 as prayed for by the plaintiffs, which was also confirmed by the first appellate Court.

14.In this circumstances, there cannot be any doubt whatsoever for consideration of irrelevant fact and non consideration of relevant fact would give rise to substantial question of law. Further, it does not meet out the parameters laid down by the Hon'ble Supreme Court in the following decisions:

- (i) AIR 2008 SC 379 – Moses Wilson Vs. Kasturiba.**
- (ii) AIR 2008 SC 956 – AbdulRaheem Vs.
Karnataka Electricity Board.**
- (iii) AIR 2008 SC 1749 – Kashmir Singh Vs.
Harnam Singh and another.**

15.The Courts below had decided the case based upon the evidence and documents submitted by the parties. There are no perverse findings, no



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mis-consideration of evidence and no substantial questions of law are involved in this case. There are no merits in this case and the second appeal fails.

16. Accordingly, this Second Appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions, if any, are also closed.

Internet: Yes
Index: Yes/No
Speaking/Non speaking order
sms

03.04.2024

To:

1. The Second Additional District Court,
Erode.
2. The Sub Court, Perundurai.

V.SIVAGNANAM, J.

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