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A.S.No.632 of 2018

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2024

CORAM:

**THE HONOURABLE MR JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR JUSTICE C.KUMARAPPAN**

**A.S.No.632 of 2018
and
C.M.P.No.17120 of 2018**

C.Pakkiri

...Appellant

Vs.

1. Chandra

2. Amsa

3. Saraswathy

4. Vimala

...Respondents

Prayer: Appeal filed under Section 96 read with Order 41 Rule 1 of the Code of Civil Procedure, 1908, praying to set aside the preliminary judgment and decree dated 28.03.2018 passed in O.S.No.1 of 2016 on the file of the Principal District Court, Vellore.

For Appellant : Mr.T.S.Baskaran
for Mr.R.Ramesh

For Respondents : Mr.Ravichandran
Sundaresan



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J U D G M E N T

*(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)*

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

2. The Sole Defendant, in O.S.No.1 of 2016 on the file of the II Additional District Judge, Vellore, is on appeal challenging the preliminary decree granted in the said suit declaring the 3/4th share of the plaintiffs in the suit properties.

The case of the plaintiff sans frills is as follows:-

3. The plaintiffs filed a suit for partition contending that the suit property belongs to one Chokkalinga Gounder, who died leaving behind two sons and two daughters viz., Chandra [1st plaintiff], Pakkiri [Defendant], Amsa [2nd plaintiff] and Munusamy. The said Munusamy died leaving behind his wife and daughter by name Saraswathi [3rd plaintiff] and



Vimala [4th Plaintiff]. Contending that the defendant attempted to create documents by settling the entirety of the property in favour of his sons, the plaintiffs sued for partition. According to the plaintiffs, the plaintiffs 1 and 2 as daughters and the plaintiffs 3 and 4 as the heirs of the deceased son Munusamy would each be entitled to 1/4th share.

4. The defendant resisted the suit contending that though the properties belonging to Chokkalinga Gounder, the brother Munusamy died unmarried. Therefore, the plaintiffs 3 and 4 are not entitled to any share in the suit property. He has also claimed that the properties are ancestral properties of Chokkalinga Gounder and therefore, the plaintiffs are not entitled to any share. A plea to the effect that the plaintiffs 1 and 2 had waived their rights was also set up by the defendant. The written consent by the plaintiffs 1 and 2 was also pleaded.

5. On the above pleadings, the learned Trial Court framed the following issues:-

1) Whether the plaintiff has any right for partition over the scheduled mentioned property?



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2) If so, whether the plaintiff is entitled for partition of 3/4th share in the scheduled mentioned property as prayed for ?

3) What other relief ?

6. At trial, the 2nd plaintiff was examined as PW1 and Exhibits A1 to A10 were marked. One Panchaiyappan was examined as PW2 but he had not made himself for cross examination. Sole defendant was examined as DW1 and one Mani was examined as DW2. Exhibits B1 and B2 were marked.

7. The learned Trial Judge, on the evidence on record, concluded that there is no evidence to prove that Chokkalinga Gounder had any ancestral property, the income from which served as source for purchase of the suit property. On the said findings, the claim of the defendant that the properties are ancestral properties was rejected. On the claim that the plaintiffs 3 and 4 are not the legally wedded wife and daughter of the deceased Munusamy, the learned Trial Judge found that they have signed as witnesses in Exs.A6



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and A7 Settlement deeds executed by the defendant in favour of his sons.

The learned Trial Judge also found that the defendant had in his cross examination admitted that he informed plaintiffs 3 and 4 to be present in the Registrar's Office while executing the Settlement deeds Exs.A6 and A7 and therefore, they were present at his request.

8. A reading of the cross examination in full would demonstrate that the defendant candidly admitted that the 3rd plaintiff is the wife and the 4th plaintiff is the daughter of Munusamy. The Trial Court therefore held that the claim that the plaintiffs 3 and 4 had nothing to do with Munusamy cannot be accepted. The plea of written consent was also rejected as no document was placed before the Court. The Trial Court also took note of the fact that the revenue records were mutated in the name of the plaintiffs and the defendant after the death of Chokkalinga Gounder. On the above conclusion, the learned Trial Court granted a decree in favour of the plaintiff declaring $\frac{3}{4}$ share in the suit properties.

9. We have heard Mr.T.S.Baskaran, learned counsel appearing for



the appellant and Mr.Ravichandran Sundaresan, learned counsel appearing for the respondents.

10. Mr.T.S.Baskaran, learned counsel appearing for the appellant would vehemently contend that in the absence of any proof of marriage of the 3rd plaintiff with Munusamy and the paternity of the 4th plaintiff, the Trial Court erred in granting a decree for partition of 3/4th share for the plaintiffs. The learned counsel would also point out that no legal heir ship certificate or birth certificate has been produced to show that the 3rd plaintiff had married Munusamy and the 4th plaintiff was born out of the said wedlock. Based on Ex.B2, a copy of the attachment order made in EP No.184 of 1988, the learned counsel would also contend that the debt was discharged by the defendant.

11. Contending contra, Mr.Ravichandran Sundaresan, learned counsel appearing for the respondents would submit that the defendant had created two settlement deeds on 14.11.2014, which was marked as Ex.A6 and Ex.A7. In the said documents, according to the plaintiffs, he had forged



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signatures of all the four plaintiffs as witnesses and an FIR was filed against the defendant for offence of forgery and subsequently, by two documents dated 13.09.2017, the defendant himself cancelled the settlement deeds. Drawing our attention to Ex.A6 and Ex.A7 Settlement deeds, Ex.A9 and Ex.A10 Cancellation Deeds and Ex.A8, the copy of the FIR, the learned counsel would submit that plea that the plaintiffs 3 and 4 have nothing to do with Munusamy has been invented for the purposes of the suit. Learned Counsel would also draw our attention to the evidence of DW1 in cross examination wherein he had admitted the fact that he requested the plaintiffs 3 and 4 to sign as witnesses in the settlement deeds dated 14.11.2014. As regards the claim that the defendant had discharged the debt due by Chokkalingam, the learned counsel would submit that the attachment was effected way back in the year 1987 and there is no evidence to show that the defendant discharged the debts. Ex. B2 the proceedings of the Court in the Execution petition would only show that there was an attachment of the property in 1988. The learned counsel would also point out that the defendant was at best 23 years old at that time and therefore, he cannot claim that he had discharged the debts that too when his father was very



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much alive.

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12. We have considered the rival submissions.

13. On the above contentions, the following points arise for determination in the appeal:-

- (a) Whether the plaintiffs 3 and 4 are the wife and daughter of the deceased Munusamy?
- (b) Whether the defendant had discharged the debt evidenced by Ex.B2 ?

Point No.1:-

14. It is the claim of the plaintiffs that the 1st and 2nd plaintiffs are the daughters of the deceased Chokkalinga Gounder and the 3rd and 4th plaintiffs are the wife and daughter of the deceased Munusamy, Son of Chokkalinga Gounder. While Chokkalinga Gounder died on 30.10.2001, Munusamy his son died on 14.12.2004. Therefore, on the date of death of Chokkalinga Gounder, he had left behind four legal heirs viz., two daughters Chandra



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and Amsa (Plaintiffs 1 and 2) and two sons viz., Pakkiri (Defendant) and Munusamy. Therefore, each one of them is entitled to 1/4th share. On the death of Munusamy on 14.10.2004, his share in the property would devolve to his heirs viz., the plaintiffs 3 and 4. No doubt the defendant would contend that the plaintiffs 3 and 4 are not the legal heirs of the Munusamy. The following circumstances would strongly indicate that the case of the defendant is false. On the death of Chokkalinga Gounder and Munusamy, the revenue records were mutated in the name of the plaintiffs and the defendant. Though, there is an error in the name of the 4th plaintiff as it is shown as Nirmala instead of Vimala, such errors are not new to the revenue department. The revenue records are sufficient to show that Munusamy was married and he had a child. It is also fortified by the fact that the defendant had made them to sign as attesting witnesses in the settlement deeds executed by him under Ex. A6 and Ex.A7. Though the plaintiffs would deny their signatures therein, DW1 in his cross examination has admitted that he only invited the plaintiffs 3 and 4 to sign the settlement deeds and he bought them lunch also after they had signed. Unless they had something to do with the estate of Chokkalinga Gounder, the defendant would not have invited



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them to sign as witnesses in the document of settlement executed by him in favour of his sons. Apart from that, the plaintiffs 1 and 2 who are the daughters of Chokkalinga admit that the plaintiffs 3 and 4 are the wife and daughter of the deceased son Munusamy. We are therefore unable to find fault the Trial Court for having held that the plaintiffs 3 and 4 are the heirs of Munusamy. Nothing has been brought before us to compel us to take a different view.

Point No.2:-

15. Ex.B2, is an order of attachment made in an execution petition viz., EP No.184 of 1988 in execution of a decree in OS No.765 of 1985. The said attachment was made even during the life time of Chokkalinga Gounder and no other evidence has been produced to show that this debt was discharged by the defendant. Though it is claimed that the defendant has discharged the debt, nothing has been produced to show such discharge by the defendant. Chokkalinga Gounder was alive till 31.10.2001 i.e., atleast thirteen years after the order of attachment. The sole defendant would have been only 23 years old at the time when the attachment was



effected. Therefore, it is very hard to believe that the defendant had repaid the debt. No doubt that Mr.Baskaran, learned counsel would vehemently contend that plaintiffs have not disputed the claim of the defendant with reference to discharge. Discharge is a plea projected by the defendant to claim a larger share in the property. It is his duty to prove discharge. In the absence of any evidence to show that it was he who paid the money, we do not think that we can conclude that defendant had repaid the debt.

16. Once it is held that the plaintiffs are the legal heirs of Chokkalinga Gounder, being his daughters and Widow and daughter of the predeceased son, they would admittedly be entitled to 1/4th share each in the suit property. We should also point out that the defendant had obtained signatures of all the four plaintiffs in the two settlement deeds executed by him and he had subsequently cancelled the settlement deeds after registration of an FIR against him. In the cancellation deeds, it is specifically recited that it was done as per the advice of this Court. We therefore do not find any reason to take a different view on the claim of the defendant, which has been rejected by the Trial Court.



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17. We therefore affirm the findings of the trial Court. The appeal therefore fails and it is accordingly **dismissed**. Considering the relationship between the parties, we direct the parties to bear their own costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M., J.) (C.K., J.)

18.11.2024

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Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-Speaking order

To

Principal District Court, Vellore.



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and
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