



S.A. No. 861 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

S.A. No.861 of 2024

and

C.M.P.No. 27172 of 2024

1. Sulochana
2. Tamil Preethi
3. Minor Manju
rep. by her natural guardian
and mother Sulochana,
1st appellant

... Appellants

Versus

1. Palanisamy
2. Muthathaal

... Respondents

Prayer:- Second Appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 19.03.2018 passed in A.S.No.31 of 2017 on the file of Subordinate Judge, Kangayam confirming the judgment and decree dated 06.01.2015 passed in O.S.No.108 of 2013 on the file the District Munsif, Kangayam.



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For Appellants : Mr.C.Munusamy

JUDGEMENT

The appellants, who are the defendants 2 to 4 in the suit in O.S. No.108 of 2013 and challenging the concurrent findings of the courts below rendered in A.S.No. 31 of 2017 on the file of Subordinate Judge, Kangayam arising out of trial court findings in O.S.No.108 of 2013 on the file of District Munsif, Kangayam, this Second Appeal was preferred by them.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. Before the trial court, the plaintiff filed a suit seeking for the relief of partition claiming half share (8/16) in the suit property against the defendants. The case of plaintiff is that the entire suit property, an extent of 4.03 ½ acres of land with other amenities belongs to his father Muthusamy Gounder through a sale deed dated 28.10.1961 and he died intestate leaving behind his two sons viz., plaintiff and one Duraisamy. The said Duraisamy

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had one son Eswaran and daughter Muthathal, the 1st defendant herein and the said Eswaran died intestate leaving behind his wife and children (defendants 2 to 4). While so, the said Duraisamy and his wife Lakshmi executed a settlement deed in favour of their daughter/1st defendant on 08.06.2006 by settling their 5/16 share in favour of her. The remaining 3/16 share goes to the defendants 2 to 4. The 1st defendant already filed a suit for the relief of partition in O.S.No. 156 of 2009 before the Sub-Court, Dharapuram by not including entire extent of property. But, subsequently the said suit was dismissed for default. Thereafter, the plaintiff demanded for partition claiming half share, but it was denied. Hence, the present suit.

4. The defendants have contested the suit before the trial court and denied the plaintiff's claim, however, they admitted the relationship as well as the property belongs to Muthusamy gounder by way of self-acquisition. Their only contention is that Duraisamy and his wife executed a settlement deed in favour of 1st defendant on 08.06.2006 and it was acted upon for common extent of 1 acre 34 cents and remaining 67 cents, all the defendants are having proportionate share, thereby denied the plaintiff's claim. But, the



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other defendants 2 to 4 contended that the 1st defendant fabricated the settlement deed by taking advantage of mental illness of Duraisamy.

Therefore, they have denied the entire claim.

5. Before the trial court, issues were framed in respect of partition as well as the settlement deed relied on by the 1st defendant. On considering both oral and documentary evidence on record, the trial judge concludes that the alleged settlement deed Ex.B1 was pertaining to common extent of 1.34 acre and the same could bind only to the extent of the share of settlor. Based on that, the 1st defendant was not entitled to claim exclusive possession and enjoyment as per Ex.B1 as it has no boundaries of the property as prescribed, thereby the claim of exclusive possession based on the Ex.B1 by the 1st defendant was not accepted. But, she was permitted to work out her remedy in the final decree proceedings. Furthermore, the trial court held that the property belong to Muthusamy gounder, which is his self-acquired property and he died intestate leaving behind two sons viz. Plaintiff and Duraisamy, thereby the plaintiff is entitled for half share in the property. So also, the objections of the defendants 2 to 4 that the settlement



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deed alleged to have been executed by coercion was not proved, however, the 1st defendant is entitled to work out her limited extent of share belongs to Settlor in the final decree proceedings. Accordingly, half share in the suit property (8/16) was granted in favour of plaintiff. Against which, an appeal suit in A.S.No.31 of 2017 was preferred by the defendants 2 to 4, wherein the first appellate judge independently analysed the facts and evidence on record and finally held that the defendants 2 to 4 not even cross-examined the plaintiff as well as the 1st defendant nor they produced any evidence to support their defence as if the settlement deed was obtained by coercion. Therefore, the objection raised by the defendants 2 to 4 was not accepted. Accordingly, the appeal was dismissed by confirming the findings of the trial court. Challenging the concurrent findings of the courts below, now the present Second Appeal was preferred by the defendants 2 to 4. Accordingly, learned counsel for appellants prayed to set aside the findings by raising the following grounds :-

- i. The courts below failed to consider that the suit for partition is not at all maintainable without ascertaining the rights and liabilities of the parties concerned in the suit properties.



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- ii. The courts below failed to consider that the settlement deed dated 08.06.2006 created a cloud in the suit property and therefore, the validity of the document has to be ascertained in proper perspective.
- iii. The lower appellate court ought not to have confirmed the decree of the trial court when it is found that the document in question viz., Ex.B1 is not valid and acceptable one.
- iv. The courts below failed to consider that the first defendant created a document, which is not binding on the appellants/defendants 2 to 4.
- v. The courts below failed to consider that the settlement deed is not valid in the eye of law since the wife of Duraisamy has no right or whatsoever in the suit property as legal heir of her son, when her husband is alive.
- vi. The courts below failed to consider that the suit for partition is not at all maintainable when the first defendant cannot claim any right over the suit property through the settlement deed dated 08.06.2006.
- vii. The courts below failed to consider that the plaintiff and the first defendant colluded with each other and the plaintiff filed the suit under the instigation of first defendant.



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viii. The courts below failed to consider that the minors' interest was not properly protected. Even the name of 4th defendant itself is wrongly mentioned as Manju instead of Maheswari.

ix. The lower appellate court should have framed points for a determination as mandated under Order XLI Rule 31 of C.P.C. This requirement has been held to be mandatory in a catena of decisions rendered by the Apex Court. The judgments reported in **2001 (3) SCC 179** and **2022 (3) CTC 78** are squarely applicable to the facts of this case.

x. The other reasons given by the courts below are not correct and unsustainable in law.

6. By submitting the aforesaid grounds, the learned counsel for appellant would submit that there is substantial question of law involved is as follows :-

(i) Whether the settlement deed dated 08.06.2006 which is marked as Ex.B1 is valid in the eye of law?



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(ii) Has not the lower appellate court committed grave illegality in not framing the proper point for consideration as is required under Order 41 Rule 31 of C.P.C.?

(iii) Whether the judgments and decrees of the courts below are sustainable on the facts and circumstances of this case?

7. Heard and considered submissions of learned counsel for appellants and perused the materials available on record.

8. On perusal of records, it reveals that before the trial court, the 1st respondent/plaintiff filed a suit claiming half share in the suit property, which belongs to his father. The said Muthusamy gounder died leaving behind the plaintiff and his another son Duraisamy. It is an undisputed fact that it is a self-acquired property of Muthusamy gounder. Therefore, the plaintiff and Duraisamy equally entitled half share, but during the life time of the said Duraisamy and his wife, they have executed a settlement deed in favour of their daughter/1st defendant transferring their 5/16 undivided



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share. Based on that, she claimed exclusive possession of undivided share, which is not permissible under law. She has to work out her remedy under equity before the final decree proceedings. To that effect, the courts below rightly appreciated the fact, which needs no interference. The appellants 2 to 4 are legal heirs of Eswaran and he is son of the said Duraisamy. The said Eswaran died intestate leaving behind the defendants 2 to 4 as his legal heirs. They disputed the validity of the settlement deed stating that the said Duraisamy was mentally suffered. Taking advantage of that, the 1st defendant/daughter obtained settlement deed forcibly as well as by coercion. But, before the trial court, as rightly pointed by the learned trial judge, the 1st defendant has not even cross-examined the plaintiff nor they adduced any evidence to prove that settlement deed was obtained by forcibly and coercion. Therefore, the courts below rightly held that the defendants 2 to 4 not proved their defence, which needs no interference. Admittedly, the plaintiff is entitled for half share, which was rightly granted by the courts below, which needs no interference. Accordingly, this Second Appeal is dismissed and the findings rendered in A.S.No. 31 of 2017 on the file of Subordinate Judge, Kangeyam and also rendered in O.S.No.108 of 2013 on



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the file of District Munsif, Kangeyam is confirmed. Suit is decreed as prayed for. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

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To

Sub-Judge, Kangeyam.



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T.V.THAMILSELVI, J.

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