



S.A.No.838 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

S.A.No.838 of 2021

Judgment reserved on 10.04.2024	Judgment pronounced on 24.06.2024
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P.E.Masilamani

...

Appellant

Vs.

1.Alameluammal

2.Vasuki

3.Renuka

4.Arumugam

...

Respondents

Prayer: This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 08.12.2020 made in A.S.No.10 of 2014 on the file of Sub Court, Ranipete confirming the judgment and decree dated 08.10.2013 made in O.S.No.55 of 2009 on the file of District Munsif Court, Ranipet.

For Appellant : Mr.S.Mukunth,
Senior Counsel for
M/s.Sarvabhauvman Associates



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For Respondents : No appearance

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JUDGMENT

Parties are referred to as per their ranking before the Trial Court, for the sake of convenience.

2. The unsuccessful plaintiff is the appellant herein. This Second Appeal was admitted by this Court on 07.02.2022 on the following substantial questions of law.

(i) Whether the lower Court appeal is correct in dismissing the suit for partition despite it is made clear in Ex.A1 that the property was originally owned by Appellant's grandfather and not by appellants grandmother entitling the appellant share in the property, by succession ?

(ii) Whether lower appellate Court is justified in dismissing the suit on the ground that the appellant ought to have filed suit for partition only with reference to 37 cents and not for already partitioned 90 cents, overlooking its power to mould the relief and grant partition in the undivided extent of 37 cents?



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3. Heard the learned Senior Counsel appearing for the appellant/plaintiff and perused the materials available on record.

4. Though respondents have been served and their names are printed in the cause list, none appeared for them.

5(a) The plaintiff/appellant filed suit for partition, separate possession and permanent injunction. The prayer in the suit is to direct the defendants to divide the suit properties and to allot the plaintiff's acre 1.08½ cents out of the total extent of suit land.

5(b) The plaint proceeds on the basis that the lands more fully described in the schedule originally belongs to the plaintiff's grandfather Annu Giramani. The said Annu Giramani died leaving behind his wife Chinnathai Ammal and his sons Ellappa Giramani, i.e. the father of the plaintiff and Karupa Giramani. In the said land of acre 1.27 cents, Chinnathai Ammal got 0.37 cent and Ellappa Giramani and Karupa Giramani each got 0.45 cents in the family arrangement held between themselves.



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5(c) The said Karuppa Giramani sold the extent of 0.45 cents belonging to him to the plaintiff's father Ellappa Giramani under registered sale deed dated 10.04.1951, wherein their mother Chinnathai Ammal was also one of the attestor. Thus, the plaintiff's father and the plaintiff are entitled to the extent of 0.90 cents. The plaintiff's father died during 1961 leaving behind the plaintiff, his mother Rajammal as his legal heirs. The plaintiff's mother Rajammal died during 1962.

5(d) The plaintiff's father purchased the said extent of 0.45 cents under the said registered sale deed from his brother and he was having allotted 0.45 cents even prior to the said purchase. Thus, he was having an extent of 0.90 cents and after the death of his mother, the said 0.37 cents was succeeded by her daughter and the plaintiff. Thus, the plaintiff is entitled to a total extent of Ac.1.08½ cents. The said Santhammal is entitled to 0.18½ cents. The said extent of 0.18½ cents of Santhammal was succeeded by the defendants. The said land was not divided by metes and bounds in the manner known to law. The said Santhammal and the defendants who are entitled to claim under the grand mother of the plaintiff are estopped from denying the said title of



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the plaintiff's father to the said extent of 0.90 cents. Hence, the suit for partition.

6. The contesting 4th defendant filed written statement stating that his mother namely Santhammal was the absolute owner of the property to the extent of 56.5 ares in S.F.No.157/2B situated at Ponnampalayam Village, Arcot Taluk, Vellore District. The plaintiff is having the landed properties to the extent of 46 cents bearing S.F.No.157/3 at Ponnampalayam Village, Arcot Taluk, Vellore District. This defendant's mother Santhammal was already having the landed properties in S.F.No.157/2 and subsequently her mother's properties were also given to the defendant's mother and totally this defendant's mother was in possession and enjoyment of the said landed properties. This defendant's mother Santhammal sold her said landed properties to this 4th defendant for valuable consideration.

7. The Trial Court has framed necessary issues. During the trial, the plaintiff examined himself as PW1 and Exs.A1 to A6 were marked. On the side of the defendants, DW1 and DW2 were examined and Exs.B1 to B3 were marked.



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WEB COPY 8. On consideration of oral and documentary evidence, the Trial Court has come to the conclusion that the sale has been effected by the grandfather of the plaintiff in the year 1962 in favour of his son. At that time, his father was alive. He has sold the entire property. Subsequently the aunt of the plaintiff also sold the property to the second defendant. Hence, in respect of the property already sold in the year 1962, there cannot be partition and hence dismissed the suit.

9. The appeal filed by the plaintiff was also dismissed and hence the present Second Appeal.

10. At the outset, this Court finds that the pleading of the plaintiff is not supported by evidence while there is total inconsistency between the pleadings and the evidence elicited in the cross examination of PW1. Both in the pleadings as well as in his evidence, the plaintiff, as PW1 has stated that the suit properties originally belongs to his grandfather Annu Giramani. The said Annu Giramani died leaving behind his wife Chinnathai Ammal, his two



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sons namely Ellappa Giramani and Karuppa Giramani. The said properties of Annu Giramani were allotted as 0.37 cents to his wife Chinnathai Ammal and 0.45 cents each to his two sons. The said Karuppa Giramani sold 0.45 cents to Ellappa Giramani under registered deed of sale dated 10.04.1951. Thus the said Ellappa Giramani became entitled to 0.90 cents. The said Ellappa Giramani is the father of the plaintiff. After the death of Ellappa Giramani, plaintiff inherited the share of 0.90 cents and after the death of Chinnathai Ammal, her share of 0.37 cents was inherited by him alongwith the daughter. Santhammal is the daughter of Chinnathai Ammal. The said Santhammal had two daughters namely Kamatchi Ammal and Alamelu Ammal. Kamatchi Ammal died. Alamelu Ammal is the first defendant and the defendants 2 to 4 are the issues of deceased Kamatchi Ammal. So, he calculated the share as if the plaintiff and said Santhammal are each entitled to $0.18\frac{1}{2}$ cents from 0.37 cents of Chinnathai Ammal. The defendants are entitled to succeed $0.18\frac{1}{2}$ cents of Santhammal. In total, the plaintiff claimed that he is entitled to $0.90\text{ cents} + 0.18\frac{1}{2}\text{ cents} = 1.08\frac{1}{2}\text{ cents}$.



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WEB COPY 11. As per the written statement as well the evidence of DW1, her mother Santhammal had properties to an extent of 56.5 ares in S.F.No.157/2B and 2.54 ares bearing S.F.No.157/3. The said Santhammal sold her landed properties to the 4th defendant. The case of the 4th defendant is that he purchased the properties from Santhammal. Now the subject matter of the sale is the suit property.

12. PW1 in his evidence has admitted that his grandmother sold 1.27 cents in favour of his aunty in the year 1962. His father was alive during the period of said sale transaction. His father lived 5 to 6 years even after the said sale transaction. They all lived together as joint family. His grandmother died after the death of his father. He did not ascertained why his grandmother sold the property. His paternal aunty sold the property in favour of 4th defendant on the basis of said transaction. Once a person had knowledge about the sale, then he cannot claim partition in respect of said property. All the sale transaction was held during the period of his father. His father acquiesced the action of sale transaction. His father had



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knowledge about the sale. Plaintiff also had knowledge about the sale. Both the plaintiff and his father never cared about challenging the sale.

13. It remains to be stated that the plaintiff in his pleadings as well as evidence as PW1 would take inconsistent stand that there was a family arrangement in their family after the death of his grandfather Annu Gramani. His father was in possession and enjoyment of 0.90 cents till death. But in the later paragraph, he pleaded that property was not divided by metes and bounds. The evidence of PW1 was there held a partition in their family in the year 1951. The pleadings and evidence are inconsistent and they are not cogent. The plaintiff's oral evidence was partition held in the year 1951 and the pleading was property not divided by metes and bounds. The oral evidence does not support the pleadings. There cannot be partition more than one time in respect of a property. A property can be partitioned only one time.

14. It is also noticed by both the Courts below that the plaintiff claims share in respect of the property succeeded by Chinnathai Ammal, then the suit



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must be in respect of her share of 0.37 cents. There cannot be a claim in its entirety. The plaintiff claims right in respect of 0.90 cents by way of inheritance and also sale by his father. So, the relief of partition including 0.90 cents is not maintainable. Thus, the plaintiff is not entitled for the relief.

15. Thus, the suit property is a property covered under sale deed in the year 1962 that was during the lifetime of his father. Plaintiff had knowledge over the sale is also demonstrated during the cross examination of PW1. All the sale transactions were held during the lifetime of his father and hence, both the Courts below has rightly come to the conclusion that the father of the plaintiff has acquiesced by the actions of the sale transaction between the grandmother to the aunt and subsequently by the aunt to the other defendants. Grandfather of the plaintiff died and the grandmother sold the property in favour of the aunt in the year 1962. The plaintiff's father was alive during the period of said sale transaction and he appears to have been alive after six years, after the sale in question.



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16. As admitted by PW1 in his cross examination, all of them are living together as joint family, The grand mother died after the death of his father and hence the Trial Court has rightly come to the conclusion that after so long period of the sale effected by the grandmother in favour of the aunt that was during the lifetime of the plaintiff's father, cannot be questioned and called upon for partition. Even as per the admission of PW1, he would state that there was a partition in the family in the year 1951. While pleadings being so, the pleadings and evidence are found to be inconsistent with regard to the relief of partition. Hence, both the courts below have rightly come to the conclusion that the pleadings of the plaintiff and his evidence as PW1 are merely descriptive. When PW1 has admitted in his cross examination that the partition was held in the year 1951, in the pleadings, he would take a stand that the property was not divided by metes and bounds. Therefore, both the courts below has disbelieved the plaintiff's case and dismissed the suit.

17. After perusing the evidence and also the other submissions made by the learned Senior Counsel for the appellant/plaintiff, I find that the plaintiff has not come to the Court with clean hands and he has approached



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this Court with inconsistent case seeking the relief of partition. While in the pleadings, he seeks for partition and in his evidence, he has admitted that there was partition in the year 1951. The sale effected by the grandmother was in the year 1951 and the father of the plaintiff was very much alive during the said sale transaction. He died after six years of sale and now, in the year 2009, the plaintiff has challenged the said sale of grandmother by filing the suit. Hence, both the courts below has rightly awarded cost for the vexatious litigation. Accordingly, I find no merits in this Second Appeal.

18. In the result, **the Second Appeal is dismissed** confirming the judgment and decree dated 08.12.2020 made in A.S.No.10 of 2014 on the file of Sub Court, Ranipet confirming the judgment and decree dated 08.10.2013 made in O.S.No.55 of 2009 on the file of District Munsif Court, Ranipet. No costs. Consequently, the connected Miscellaneous Petition is closed.

24.06.2024

Index : Yes/No
Neutral Citation : Yes/No
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To

1.The Subordinate Judge,
Ranipet.

2.The District Munsif Court,
Ranipet.

3.The Section Officer
VR Section, High Court
Madras.



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RMT.TEEKAA RAMAN, J.

(rgr)

**Judgment in
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24.06.2024