



S.A.Nos.84 and 85 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.Nos.84 and 85 of 2024

1. Rajendran
2. Boopathi
3. Raja
4. Renuka Devi
5. Rajathi

... Appellants in
both second

appeals

Vs.

Chandra Sekaran

... Respondent in
both second appeals

PRAYER in S.A.No.84 of 2024: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 26.08.2022 in A.S.No.45 of 2021 on the file of the III Additional District and Session Court, Cuddalore, Virudachalam, confirming the judgment and decree dated 27.04.2021 in O.S.No.357 of 2018 on the file of the Principle Sub Court, Virudhachalam.

PRAYER in S.A.No.85 of 2024: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 26.08.2022 in A.S.No.49 of 2021 on the file of the III Additional District and



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Session Court, Cuddalore, Virudachalam, allowing the appeal and modifying the judgment and decree dated 27.04.2021 in O.S.No.357 of 2018 on the file of the Principal Sub Court, Virudhachalam.

For appellants : Mr.I.Kowser Nissar
in both appeals

For respondent : Mr.C.Munusamy
in both appeals

JUDGMENT

The defendants have filed these second appeals, challenging the concurrent judgment and decree passed against them by the Courts below.

2. It is necessary to briefly allude to the facts of the case for morefully appreciating these second appeals and the parties are referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiff had filed a suit in O.S.No.357 of 2018 on the



file of the Principal Sub Court, Virudhachalam, seeking a preliminary decree declaring the half share of the plaintiff to the suit properties and to grant permanent injunction restraining the defendants, their men and agents from in any manner interfering or disturbing his peaceful possession and enjoyment of the suit schedule properties.

2.2. The plaintiff would submit that the suit properties which are situate in Kattuparur Village, Virudhachalam, belonged to one Chinnasamy, son of Muthusamy who is the father of the plaintiff, the the defendants 1, 4 and 5. Chinnasamy was married to the 6th defendant. The 2nd defendant is the wife of the 1st defendant and the 3rd defendant is the son of the defendants 1 and 2.

2.3. The plaintiff would submit that his father and his sons, viz., the plaintiff and the 1st defendant, constituted an undivided



Hindu joint family. From and out of the income from the said properties, Chinnasamy had purchased the suit properties and they were enjoying the same as joint family properties. The 4th and 5th defendants were given in marriage even during the lifetime of Chinnasamy and they are living with their respective husbands. At the time of the wedding, the defendants 4 and 5 have not claimed any share in the properties. On 14.01.2009, Chinnasamy died intestate and thereafter, the plaintiff and the 1st defendant were enjoying the properties without the same being partitioned. Both of them have a equal share to the suit properties.

2.4. When their father was alive, the plaintiff has borrowed a loan from the Co-operative Bank to meet his family expenses and executed a mortgage deed dated 02.02.1993 in favour of the said bank at Thirukoilur. Chinnasamy had informed that he had no objection for granting of loan and he also gave a consent letter to this effect. The plaintiff had discharged the debts.



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2.5. It is the contention of the plaintiff that he is living at Ulundurpet. During this time, the 1st defendant had clandestinely obtained a settlement deed in respect of item nos.13, 14 and 19 which stood in the name of Chinnasamy. The settlement deed was executed in favour of the 1st defendant's elder son viz., Raja under a registered settlement deed dated 25.08.1995. The plaintiff would submit that this settlement will not bind his half share in the suit schedule properties. The settlement was also not accepted and acted upon by the donee since the said donee Raja had passed away on 18.05.1996. The 1st defendant had, thereafter, named his son born through his wife Boopathi (the 2nd defendant) on 13.06.1997 as Raja and had held out to the Revenue Authorities that Raja described in the settlement deed is his son born through his 2nd wife. The 1st defendant had taken advantage of the fact that the plaintiff is residing in another village and with the active assistance of 2nd and 3rd defendants, he had been creating documents. The 1st defendant was denying the plaintiff his



half share in the suit schedule properties. The plaintiff would submit that it is no longer possible to jointly enjoy the properties and therefore, he has come forward with the suit.

2.6. The 1st defendant had filed a written statement which was adopted by defendants 2 to 6 *inter alia* denying the plaintiff's claim and submitted that the plaintiff had cheated the 1st defendant and his father and mortgaged the properties in the Co-operative Bank, Thirukoilur, for his own expenses. The 1st defendant had questioned this act and only then, the plaintiff had redeemed the loan. The 1st defendant would further submit that his father had executed a settlement deed in favour of his son Raja in respect of item nos. 13, 14 and 19. Therefore, the plaintiff has no right over these items of the properties, in which, the said Raja has right to claim as per equity. Further, the plaintiff and the mother of the 1st defendant, Rukmani, who is the 6th defendant, have a right to claim 1/5th share in the suit properties. This fact is suppressed in the suit filed by the plaintiff.



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2.7. The 1st defendant would further submit that the plaintiff has, with an ulterior motive, executed a settlement deed dated 02.06.2014 in favour of his daughters *viz.*, Indira Priyadharshini and Indira Devi. The 1st defendant objected to the same and thereafter, the above settlement deed was cancelled by the plaintiff. Therefore, the plaintiff has no right to claim a share in item nos.15 to 18 which are the separate properties of the 1st defendant. The 1st defendant would submit that he has purchased item nos.15 to 18 from and out of his separate income. The properties that have been settled in favour of Raja by the deceased Chinnasamy were his separate properties, over which, the plaintiff cannot make a claim.

2.8. The 1st defendant would submit that the suit is not maintainable and the plaintiff is not entitled to claim any share in item nos.15 to 18, since they were purchased by the 1st defendant on 05.08.1991 out of his own income and with reference to the item

7/15



nos.13, 14 and 19 which have been settled by Chinnasamy in favour of the 1st defendant's son Raja. In the ancestral properties, the plaintiff and the defendants 1 and 4 and 5 are entitled to 1/4th share each and therefore, the defendants prayed for the dismissal of the suit.

TRIAL COURT:

3. On perusing the evidence on record, the Trial Court had framed the following issues.

“1.Whether the suit properties are not ancestral properties and properties purchased out of the income from ancestral properties?

2.Whether the plaintiff is not entitled for partition and separate possession as prayed for?

3.Whether the plaintiff has executed registered gift settlement deed on 02.06.2014 in favour of his daughters and subsequently, cancelled the same?

4.Whether the plaintiff is not entitled for permanent injunction as prayed for?

5.Whether the plaintiff is not entitled for mesne profits



as prayed for?

6.To what other reliefs, is the plaintiff entitled to?”

4. The plaintiff had examined himself as P.W.1 and marked Exs.A1 to A32. On the side of the defendants, the 1st defendant had examined himself as D.W.1 and marked Exs.B1 to B7. The 5th defendant was examined as D.W.2.

5. The Trial Court held that a perusal of the oral and documentary evidences would clearly show that the suit properties are ancestral properties of Chinnasamy. Since Chinnasamy had purchased the other properties from and out of the income from ancestral properties and enjoyed as joint family properties, the said properties are ancestral properties.

6. The 1st defendant, as D.W.1, has admitted to the fact that the properties that are comprised in patta no.207 i.e Ex.A15 are the properties which are the ancestral properties. He has also admitted to the fact that till the date of deposition, the properties have not been



partitioned. The 1st defendant has also admitted that his father was cultivating the lands and out of the income from the properties in Exs.A1 and A15, the properties described in Exs.A14 and A16 were purchased.

7. D.W.2, the sister of the plaintiff and the 1st defendant, has admitted to the fact that till his death, it was Chinnasamy, who was cultivating the lands which would clearly show that the settlement deed in favour of Raja, the deceased son of the first defendant had not been given effect too. Even today, Patta No.207 and the Chitta are standing in the name of her father.

8. Therefore, the Trial Court had come to the conclusion that the plaintiff had proved the fact that the properties are ancestral in nature. Ultimately, the Trial Court held that the defendants were also entitled to their shares and therefore, the suit was decreed and a preliminary decree for 1/5th share was passed.



LOWER APPELLATE COURT:

9. Aggrieved by the said judgment and decree, the defendants had preferred two appeals in A.S.Nos.45&49 of 2021. The Lower Appellate Court has concurred with the judgment and decree of the Trial Court and observed that the suit properties are ancestral properties.

10. Aggrieved by the same the defendants are before this Court.

11. Heard the learned counsel on either side and perused the materials available on record.

12. Both the Courts below have extensively considered both the oral and documentary evidences and come to the conclusion that the properties are Hindu joint family undivided properties (ancestral properties of Chinnasamy). The said Chinnasamy had executed a



settlement deed in favour of the 1st defendant's son. However, on the date when the 1st defendant had executed a settlement deed, he did not have any independent right to the properties but was only a co-sharer. However, though this settlement in respect of item nos.13, 14 and 19 had been executed on 25.08.1995, the plaintiff has filed patta, chitta and adangal extracts which still stand in the name of the deceased Chinnasamy. This would clearly show that the deed was not acted upon and possession was not given to the settlee. After his demise, the properties were managed by the 6th defendant, his wife and the 1st defendant was helping the 6th defendant.

13. Since the Courts below have come to the conclusion that the properties are undivided ancestral properties, the defendants 3 and 4 would also be entitled to a share in the suit properties. Further, the execution of the settlement deed in favour of the 1st defendant's son Raja was also not valid, inasmuch as the father of the 1st defendant himself, did not have right to the property as the same belonged to the



Hindu undivided family.

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14. The defendants have admitted that they have not filed any document to prove their possession of the suit properties. The defendants have not been able to produce any documents to show possession. On the contrary, the plaintiff has filed documents to show his possession. Be that as it may, since the properties are ancestral properties all the sharers would have a 1/5th share in the suit property.

15. Therefore, I see no reason to interfere with the judgment and decree of the Lower Appellate Court and I have also perused the judgment and decree of the Trial Court, which, *in extenso*, has set out the reasons for rejecting the plea of the defendants since the properties in question are ancestral properties.

Accordingly, these second appeals stand dismissed since they do not make out any substantial question of law. No costs.



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Index : Yes/No

Speaking order/non-speaking order

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To

1.The III Additional District and Session Judge, Cuddalore, Virudhachalam.

2.The Principal Sub Court, Virudhachalam.

3.The Section Officer, V.R.Section, High Court, Madras.

P.T.ASHA, J.,

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