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J U D G M E N T

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

2. The defeated defendant is the appellant herein. Challenging the passing of preliminary decree in a partition suit (O.S.No.338 of 2018), the present appeal has been filed by the appellant.

3. The respondent/plaintiff filed a suit for partition of the suit properties consisting of three schedules. He claimed $\frac{1}{2}$ share in the said suit properties.

4. In the written statement, the appellant/defendant has specifically mentioned that Will was executed by the grandfather on 29.03.1965, which was registered as Doc. No.62 of 1965 (Ex.A12) and the same was modified by a codicil dated 10.06.1970 in Doc.No.97 of 1970 (Ex.A.13), thereafter the grandfather died.

5(a) The father of the parties viz., Shanmugam died on 17.04.1999



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(death certification/Ex.A.3) and mother Rajammal died on 22.01.1983 (Death certificate/Ex.A.2).

5(b) After the death of the parents in respect of items 'A & 'C' of the suit schedule property, the younger brother has admitted the share and in respect of item 'B' schedule property, it is a specific plea of the defendant/appellant that there is a conditional clause in the Will that a sum of Rs.15,000/- has to be paid by the father to the son/appellant, after the execution of the Will. Hence, after the death of the grandfather, in an oral family arrangement, the existing property viz., item 'B' schedule property be allotted to the defendant. The case of the defendant was disbelieved by the trial Court and accordingly the trial Court decreed the Suit. Hence the Appeal.

6. Heard the learned counsel appearing for the respondent/plaintiff. The respondent/plaintiff filed suit for partition in respect of the properties (three items). The title of the property and derivative title of the father of the parties are not in dispute. In respect of schedule 'A' & 'C' property, there is no dispute between the parties and in respect of division of 'B' schedule property,



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the defendant who is the younger brother claims that there was an oral agreement between the members of the family that entire 'B' schedule property shall be allotted to the younger brother. In this connection, he has examined DW2, DW3 & DW4. The oral evidence of the said persons have been disbelieved by the trial Court on the ground that it is only a hearsay. The title to the property was not in dispute, quantum of share of the property was also not in dispute.

7. Whether there was an oral partition is the short point for consideration in this Appeal and thus the scope of the Appeal Suit is reduced to whether there is any oral partition between the plaintiff and defendant, as contended by the defendant/appellant that the 'B' schedule property shall be allotted in entirety to the defendant or not.

8. The following points arise for consideration in this appeal -

(i) Whether there is an oral family arrangement, as pleaded by the defendant is true ?

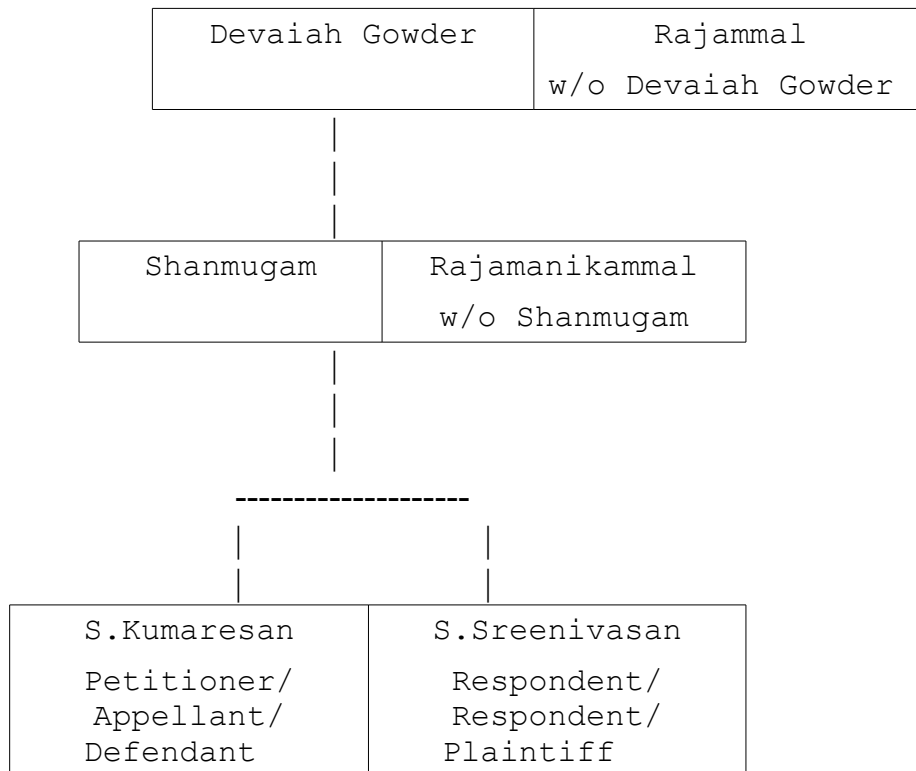


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(ii) Whether the order of the Trial Court is sustainable in law ?

9. The relationship between the parties are -



10. The case of the plaintiff / respondent is that the suit property belonged to the father of the plaintiff and defendant herein viz. Shanmugam, by virtue of partition deed dated 03.03.1956 registered under Doc.No.983/56 at Coimbatore Joint 2 ,SRO and it has been marked as Ex.A1.



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11. The father of the plaintiff and defendant viz. D.Shanmugam died intestate on 30.10.1999 leaving his wife Rajamanikkam Ammal, sons, the plaintiff and defendant in the suit. The death certificate and legal heirship certificate of deceased Shanmugam have been marked as Ex.A3 and Sl.No.4 in Ex.A4. During the life time of the deceased Shanmugam, he sold his property got under Ex.A1 and died intestate leaving certain properties to which both the plaintiff and defendant herein alongwith their mother Rajamanikkam Ammal were entitled to 1/3rd share each therein. After the demise of the father of the plaintiff and defendant herein, his heirs (the heirs of the deceased D.Shanmugam) viz. the mother of the plaintiff and defendant viz. Rajamanikkam Ammal, the plaintiff and defendant herein sold a property to one K.Chelladurai s/o Karuppayya under Regd.Doc.No.P/239/38/2001 dated 30.11.2000 registered at Madukkarai SRO which has been marked as Ex.A14 based on a registered partition deed stood in favour of deceased D.Shanmugam in Doc.No.983/56 dated 03.03.1956 marked as Ex.A1.



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12. On going through the recitals found in Ex.A14 wherein, it has been specifically stated that the deceased D.Shanmugam, father of plaintiff and defendant herein and the husband of Rajamanikkam Ammal died intestate. Thereby they got entitled to 1/3rd share each therein. The mother of the plaintiff and defendant Rajamanikkam Ammal died intestate on 09.03.2012 leaving the plaintiff and defendant as her heirs to succeed her share of the property. Her death certificate and legal heirship certificate have been marked as Exs.A6 & A7.

13(a) In the written statement, the defendant has taken a specific plea wherein Item 1 of the suit property has been referred as 'A' schedule and item 2 of the suit property has been referred as 'B' schedule. As item No.2 of 'A' schedule property in the partition dated 27.02.1956 is not part of this, that property is undivided and commonly enjoyed by the plaintiff and the defendant and the same must be included in the suit, without the same, it will amount to seeking of partial partition which is bad in law. Thereby, item 2 of the suit property is not in accordance with the property allotted to his paternal grand father Devaiah Gowdar under partition deed dated 15.03.1931



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registered under Doc.No.1036/31 registered at Coimbatore SRO marked as

Ex.B2. The property allotted to his paternal grandfather Devaiah Gowdar marked as Ex.B2 pertaining to 2nd item of 'A' schedule is shown as it has 88 feet East West on its southern side and 90 feet East West on northern side whereas 2nd item of the suit property is showing only 41 ½ feet East West of southern side 45 feet East West of the northern side and as such it does not tally Ex.A1 which is a partition deed entered between Devaiah Gowdar and his son D.Shanmugam.

13(b) As there is no dispute regarding partition deed entered between Devaiah Gowdar and his son D.Shanmugam, it is to be seen that the partition is sought for the property allotted to the father of the plaintiff and defendant marked as Ex.A1 and the present measurement in the 2nd item of suit property alone is shown in the suit plaint. Further, the suit is to declare the plaintiff's right alone and the defect, if any in the measurement in 2nd item of suit property would not deprive the right of this plaintiff in seeking preliminary decree for partition.



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13(c) In the written statement, the defendant has categorically stated that though the plaintiff and defendant are entitled to $\frac{1}{2}$ share each in the first and third item of the suit property namely 'A' & 'C' schedule properties, thus as stated supra, whether 'B' schedule property is available for partition or not, as stated supra, it is the specific case of the defendant that 'B' schedule property has been allotted in the oral family arrangement to the defendant since the father has not deposited Rs.15,000/- as directed in the codicil executed by the grandfather.

13(d) During the life time of Deviah Gowder, he executed a Will marked as Ex.A12 wherein he bequeathed his property to the male heirs of the plaintiff. It caused his father D.Shanmugam to settle item 2 of the suit property, i.e. 'B' schedule as referred by the defendant, in his favour (which is known to all his family members and close relatives of plaintiff and defendant).

13 (e) The grandfather of the plaintiff and defendant Deviah Gowder under his Will marked as Ex.A12 directed his son late D.Shanmugam – father



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of the plaintiff and defendant herein to deposit Rs.15,000/- in the name of the defendant. As his father failed to comply the condition imposed in the Will marked as Ex.A12 which caused his father to enter into oral family arrangement between plaintiff, defendant and himself (late D.Shanmugam) agreeing to allot item 2 of suit property to the defendant.

13 (f) Admittedly, the plaintiff/respondent has not filed any document to show and demonstrate that Rs.15,000/- as directed in the Will has been deposited by his father Shanmugam. Be that as it may, grandfather and grandmother have died. Item 'A', 'B' & 'C' schedule properties are left behind. One of the brother by name Sudharsan died at the age of 15 years. On the date of execution of the Will, Ex.A12, the defendant was not at all born and hence under the codicil, Ex.A13, the value of the property said to have been assessed as Rs.15,000/- and father Shanmugam was directed to deposit Rs.15,000/- in the name of the defendant / plaintiff.

14(a) It is the specific case of the defendant that his father has not complied with the condition mentioned in the codicil which resulted in a



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family arrangement whereby in the oral family arrangement, between plaintiff, defendant and the late Shanmugam, it was agreed to allow Item No.2 of the said property to the appellant/defendant. Since the plea of oral family arrangement was raised by the appellant/defendant, thus onus of proof falls on the person who pleads oral family arrangement. When a family oral arrangement is pleaded, the parties must plead so precisely in the pleadings, with regard to the year, month, date of family arrangement/agreement/settlement or atleast year and month ought to have been pleaded with exactitude in the facts and circumstances of the case.

14(b) In the present suit, the defendant has not pleaded as to when the family arrangement was arrived, mentioning the year, month and date. The onus is upon the person who alleges the family arrangement / agreement/settlement to prove by cogent, viable and independent evidence that such a family arrangement / agreement / settlement, in fact, took place between the parties, as alleged by the defendant.



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14(c) In this connection, the defendant examined himself as DW1 and also examined DW2, DW3 & DW4. DW2 is aged about 91 years. She entered into the witness box and she is not a close relative of the plaintiff but she was a neighbour residing nearby item No.2 of the property where late Shanmugam and family members lived. Her evidence is to the effect that it supports the case of the defendant. According to her, late Shanmugam told her about the oral family arrangement. While DW3 is a person who is a tenant in the Item No.2 of the property for about 14 years till she got married. She claims that she knows about the oral family arrangement. So also is the evidence of DW4 who was a tenant in Item 3 of the property. All these three witnesses viz. DW2 to DW4 are independent witnesses. While DW2 is not a relative but a neighbour, DW3 is a tenant in Item 2 of 'B' schedule property and DW4 is a tenant in Item 3 of 'B' schedule property.

15(a) It remains to be stated that oral family arrangement is valid under law. However circumstances are to be pleaded as to the coming into existence of such family arrangement. Admittedly, DW1 to DW4 have not



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given any date or month or year about the alleged oral family arrangement which is said to have been taken place between father and two sons during the life time of the father (Shanmugam). It remains to be stated that conduct of the parties after the alleged oral family arrangement plays a vital role to infer whether any such family arrangement has been arrived at orally and such family arrangement should be acted upon are the two important indicator to decide the issue. Absolutely, the plaintiff has not let in any evidence to show the same. No iota of evidence was adduced on behalf of the appellant/defendant to prove that the 2nd item of the property was allotted to him.

15(b) Admittedly, the appellant/defendant as DW1, in the cross examination had admitted that property tax stands in the name of the deceased father and he has not produced any documentary evidence or record to show that he was enjoying the possession of the 2nd item of the property after the death of his father, namely 15 years have passed.



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16. Had there been a family arrangement, as pleaded by the defendant, the said fact could have been informed to the public authorities including local authorities viz. Commissioner, City Municipal Corporation and revenue records, patta in favour of the person who claims benefit under the alleged oral family arrangement. To dismay, the defendant has not produced any communication to prove that he is in exclusive possession of the 2nd item of the property, pursuant to alleged oral family arrangement assumes significance.

17. Yet another point is that the mother of the parties died in the year 09.03.2012. Paternal grandmother Rajammal died on 22.01.1983. 'C' schedule property was allotted to her vide Doc.No.983/56 dated 03.03.1956. Father Shanmugam died on 30.10.1999 and the suit was filed on 27.06.2018. From the date of death of the father, i.e. 30.10.1999 till the date of filing of the suit, property tax, water tax, sewerage tax and all revenue records including patta stands in the name of father namely Shanmugam assumes significance.

18(a) The defendant has not filed any suit against the father claiming Rs.15,000/- as per the codicil. Under Ex.A14 - sale deed in Doc.No.38 of



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2001 dated 30.08.2001, both the brothers, viz. plaintiff and defendant sold the property to a third party wherein they have stated that the father Shanmugam died intestate.

18(b) It remains to be stated that when Ex.A14 was confronted with PW1, he admits the same in the cross examination assumes significance. He has admitted that both the plaintiff and defendant, while selling the property of the brother, have categorically stated that their brother died without executing any statement intestate. In view of the specific admission made by the defendant witnesses DW1 to 4, that they never spoke about the date, month and year as to the alleged oral family arrangement which is also specifically admitted by the defendant.

18(c) Besides, the defendant, neither in the written statement nor in the additional written statement or in the proof affidavit have stated who are all present during the alleged oral family arrangement. He has also admitted that he has not mentioned or whispered the persons who have witnessed the alleged oral family arrangement. In the cross examination, so also the DW2 to



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DW4 who are all deposed in support of the case of the defendant have also not whispered any particulars of the oral family arrangement namely date, month and year of the oral family arrangement. DW2 would state that she came to know about the family arrangement that had taken place in the family who was a close neighbour in the locality. While DW3 is a tenant in the 'B' schedule property would claim that she was present but in the absence of any particulars regarding date, month and year of the alleged oral family arrangement, the Trial Court has rightly disbelieved the evidence of DW2 to DW4. Furthermore, the onus is upon the persons who alleges the family arrangement.

19. Here, in the instant case, it is the first defendant namely DW, as cited supra, had neither in the written statement nor in the additional written statement has disclosed any particulars regarding alleged oral family arrangement. Moreover, he has not whispered about the persons who are present at the time of the alleged oral family arrangement. He has not even whispered the name of DW2 to DW4 in the proof affidavit filed in support of his own case assumes significance besides, causes serious doubt about the



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very persons or the alleged hearsay of DW2 to DW4.

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20. Oral family arrangement is valid under the law. Here, in this case, even assuming that there was a family arrangement, oral family arrangement whether acted upon is yet another question that has to be decided in this appeal. As admitted by DW1 in the cross examination that neither the revenue records nor mutation of name has been effected in the local body records nor mutation of records has been taken despite father died on 30.10.1999, suit was filed in the year 27.06.2018. Hence, I find that when the plea of oral family arrangement was raised by the appellant/defendant, it is for him to discharge the onus of proof on his shoulder, however, in the instant case, there is no reliable evidence to make believe that there was any such oral family arrangement. In such view of the matter, I find that the findings rendered by the Trial Court to disbelieve the evidence of DW1 to DW4 appears to be just and proper and does not require any interference at this appellate stage.

21. The Trial Court has also rendered a finding that except 'A' , 'B' & 'C' schedule properties, no other property was left by late Shanmugam and



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hence rightly negated the plea of the defendant that the suit is bad for partial partition. A conjoint reading of the plaint 2nd item and Ex.A1 - 'A' schedule 3rd item and its 'C' schedule shows that there lies a 45 feet East West measurement property on the western side of plaint schedule 2nd item of property which is the plaint 'C' schedule. And further, a consideration of Exs.A1 and B2 shows that the property lies in an inverted 'L' shape with two houses facing east and one house facing north. When a reading of Exs.A1 and B2 clearly shows that no property of Shanmugam was left out by the plaintiff in the suit, as claimed by the defendant, this Court holds that the suit is not bad for partial partition and accordingly, plea of partial partition raised by the appellant/defendant was rightly rejected by the Trial Court.

22. As per Ex.B9 – property tax still stands in the name of late Shanmugam which was admitted by DW1 in the cross examination. Ex.A11 is the property tax receipt of the year 2017 - 2018 which also stands in the name of late Shanmugam. Suit was filed on 27.06.2018 and hence, the Trial Court has rightly appreciated the facts and rejected the case of the defendant as to the alleged plea of oral family arrangement and therefore, this Court



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finds that there is no merits in this case warranting interference at the appellate stage and the appeal is devoid of merits.

23. Accordingly, **this appeal suit is dismissed** confirming the judgment and decree dated 14.03.2022 passed by the III Additional District Judge, Coimbatore in O.S.No.338 of 2018. In such finding, 'A', 'B' & 'C' schedule properties are available for partition. Both the parties are entitled to $\frac{1}{2}$ share as determined by the Trial Court. Considering the relationship between the parties, no costs.

05.07.2024

Index : Yes/No

Neutral Citation : Yes/No

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To

1.The III Additional District Judge,
Coimbatore

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

RMT.TEEKAA RAMAN, J.

(rgr)



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