



S.A.No.19 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 11.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.19 of 2024
and
C.M.P.No.589 of 2024

Duraisamy

... Appellant

Vs.

1.Sellathal

Nachammal [Died]

... Respondents

[R.2 dies, A.1 and R.1 are recorded as the Legal Representatives of the Deceased R.2 vide Court Order dated 16.11.2023 made in S.A.SR.No.68772 of 2022]

Prayer:- Second Appeal is filed under Section 100 of C.P.C against the Judgment and decree of Additional District cum Sessions Judge No.3 Dharapuram dt. 09.12.2021 made in AS No.26/2016 reversing that of the Judgment and decree of Learned Subordinate Judge Dharapuram dt. 22.03.2016 made in OS No.94/2012.

For Appellant : M/s.S.Sarvanakumar

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For Respondent : M/s.M.Guruprasad for R.1

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JUDGEMENT

The defendant has challenged the judgment and decree passed by the Additional District cum Sessions Judge No.III, Dharapuram in A.S.No.26 of 2016 in and by which the learned Judge has reversed the judgment and decree passed by the Sub Judge, Dharapuram in O.S.No.94 of 2012.

2. The brief facts required for disposing off the above Second Appeal are herein below set out and for ease of understanding the parties are referred to in the same litigative status as before the Trial Court.

3. The plaintiff had filed the suit O.S.No.94 of 2012 against the defendants seeking the relief of partition and separate possession of her 5/9th share in the suit schedule properties.



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4. It is the case of the plaintiff that the 2nd defendant is the mother of the plaintiff and the 1st defendant. Muthusamy Gounder, the father of the plaintiff and the 1st defendant owned the suit schedule property by virtue of a partition deed dated 06.03.1974. The said Muthusamy Gounder was managing and administering the suit properties as the Karta and without making any arrangement in respect of the suit properties he had passed away intestate on 06.01.2012 leaving behind him surviving the plaintiff and the 1st defendant. Despite, the request of the plaintiff to partition and hand over separate possession of her share in the suit property, the defendants had not come forward to execute the same. Therefore, the suit had been filed.

5. The 1st defendant had filed a written statement inter alia admitting that the property belonged to Muthusamy Gounder. It is the contention of the 1st defendant that the plaintiff was given 50 sovereigns of gold and a sum of Rs.50,000/- at the time of her



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marriage. Likewise, the two daughters of the plaintiff, namely, Boomathy and Tamil Selvi were taken care of by the 1st defendant and his father and further it is case of the 1st defendant that he and his father had spent huge amounts on their education and marriage. Therefore, the plaintiff had orally relinquished/released her share in the suit property.

6. The 1st defendant would submit that the father of the plaintiff and the 1st defendant owing to his old age had handed over possession of the suit property to the 1st defendant. The 1st defendant would also submit that the suit is filed on the instigation of the husband of the plaintiff and since the plaintiff had already relinquished/released her right in the suit schedule property in favour of the 1st defendant, she is not entitled to any share in the same.

7. The Trial Court had framed the following issues which when translated from the vernacular would read as follows:



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1. Whether the plaintiff is entitled to the relief of partition?

2. Whether the plaintiff had released her share in the suit property in favour of the defendant in the month of Chittirai of the year 2000 in favour of the her father Muthusamy Gounder and the 1st defendant?

3. To what other reliefs the plaintiff is entitled to?

8. The plaintiff had examined herself as P.W.1 and marked Ex.A.1 to A.4. The 1st defendant had examined himself as D.W.1 and marked Ex.B.1 to B.3.

9. The learned Trial Judge had observed that the defendants had not been able to prove their exclusive right over the suit schedule



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property. The learned Trial Judge had also observed that even as per the amending Act of 1989, the plaintiff was entitled to an equal share in the suit schedule properties as available to a son. Further, the plea of relinquishment had not been proved by the defendants. Ultimately, the Trial Judge had partly decreed the suit granting a preliminary decree granting a 1/9th share.

10. This judgement and decree was taken up on appeal by the plaintiff in A.S.No.26 of 2016 on the file of the Additional District and Sessions Judge No.III Dharapuram. The learned Appellate Judge had allowed the appeal.

11. It is challenging this judgement and decree that the present second appeal has been filed.

12. Heard the learned counsels on either side.



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13. The only defence to the suit for partition is that the plaintiff had orally relinquished/released her right in the suit property taking into account the fact that her father and brother had spent considerable amounts on her marriage and on educating her daughters and getting them married. It is needless to state that there cannot be an oral release. Except for this defense being raised in written statement there is no evidence to support the same. Therefore, the father having died intestate the plaintiff was therefore entitled to a share. By reason of the amending Act of 1989, the plaintiff is entitled to an equal share in the suit schedule properties as available to the son, the 1st defendant.

14. The Courts below have held that the 1st defendant has not let in any evidence to show the possession of the suit property by him exclusively and also with his father. The Courts below on considering the evidence decreed the suit and I see no reason to interfere with this concurrent judgement and decree of the Courts below. Further, no



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substantial question of law has been made out by the 1st defendant/appellant. Accordingly, the Second Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To

1. The Additional District cum Sessions Judge No.3 Dharapuram.
2. The Learned Subordinate Judge Dharapuram.
3. The Section Officer,
V.R.Section,
High Court, Madras.

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