



A.S.No.381 of 2

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

A.S.No. 381 of 2023
and
C.M.P.No. 24117 of 2024

'1.S.Kumarasamy

...Appellant

Vs.

1.N.Karuppasamy

2.Subbulaxmi

3.P.Senthilkumar

...Respondents

Prayer: First Appeal filed under Order 41, Rule 1 r/w. Section 96 of C.P.C., against the judgment and decree dated 06.04.2023 made in O.S.No.235 of 2016 on the file of the Principal District Court, Tiruppur.

For Appellant : Mr.N.Manoharan

For Respondents : Mr.E.Prabhu

J U D G M E N T



(Judgment of the Court was made by R.SUBRAMANIAN, J.)

With the consent of the learned counsel appearing for the parties, the appeal itself is taken up for hearing.

2. The 1st defendant in O.S.No.235 of 2016 is on appeal, aggrieved by the decree for partition, declaring the 2/3 share of the plaintiff in the suit properties. The case of the plaintiff was that the suit properties belonged to a Subbaiah Gounder @ Periya Subbaraya Gounder who died on 24.08.2008, leaving behind his wife / Ramathal, son / Kumarasamy and Subbulaxmi / wife of the predeceased son Palanisamy as his legal heirs. The plaintiff claims to have purchased 2/3rd share in the suit property from Ramathal / wife of Subbaiah Gounder and Subbulaxmi / wife of the deceased Palanisamy. While Subbaiah Gounder died on 24.08.2008, Ramathal died on 19.06.2019 and Palanisamy, the son died on 03.07.1999.

3. Contending that Ramathal / 2nd defendant and Subbulaxmi / 3rd defendant had appointed the 4th defendant / P.Senthilkumar as their Power Agent by registered power of attorney dated 31.12.2015 and he entered into an agreement for sale of 2/3rd share of the suit properties to the plaintiff on



the same day on 31.12.2015 and subsequently, he had executed a sale deed on 09.02.2016, the plaintiffs sought for partition and separate possession of 2/3rd share.

4. The 1st defendant / son of Subbaiah Gounder resisted the suit contending that the suit properties are ancestral properties in the hands of Subbaiah Gounder and therefore, they would devolve only under Section 6 and not under Section 8 of the Hindu Succession Act, 1956. If the devolution is under Section 6, according to the plaintiff, the defendants 2 and 3 put together would not be entitled to 2/3rd share, since a notional partition has to be assumed just prior to the death of Subbaiah Gounder. It was also contended that the plaintiff had played a major role in the execution of the Power of Attorney and the agreement of sale and the 3rd defendant in collusion with the plaintiff and the 4th defendant has played fraud on the 2nd defendant, Ramathal and had obtained Power of Attorney. Defendants 1 and 2 filed a written statement and the 3rd & 4th defendants supported the case of the plaintiff.



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5. On the above pleadings, the Trial Court framed the following issues:-

1. Whether the Sale deed dated 09.02.2016 is true, valid and enforceable ?

2. Whether the plaintiff is entitled for 2/3 share in the suit property ?

3. To what relief the plaintiff is entitled to ?

6. At trial, the plaintiff was examined as P.W.1 and Exs.A1 to A5 were marked. The 1st defendant was examined as D.W.1 and one Subbulakshmi, wife of the 1st defendant was examined as D.W.2. Exs.B1 to B16 were marked. The learned Trial Judge on the evidence, rejected the claim of the 2nd defendant / Ramathal that she was coerced into executing the power of attorney dated 31.12.2015. The Trial Court referred to the evidence of P.W.1 as well as the 1st defendant to conclude that the claim of the defendants 1 & 2 that the Power of Attorney was obtained by fraud or undue influence has not been made out.



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7. It was also claimed that the mortgage loan receipt, which was in discharge of a debt obtained by Subbaiah Gounder issued in the year 2016 in the name of Subbaiah Gounder was also relied upon to project the case that the plaintiff has drawn up a scheme to grab the properties. The Trial Court disbelieved the said version also, since discharge receipt was executed by the Secretary of the Co-operative Bank in favour of the Mortgagor. The learned Trial Judge however, without deciding the character of the property concluded that the plaintiff would be entitled to 2/3rd share, since he has purchased 2/3rd share under Ex.A5/ sale deed. Aggrieved by the said decree, the 1st defendant is on appeal.

8. We have heard Mr.N.Manoharan, learned counsel for the appellant and Mr.E.Prabu, learned counsel for the respondents.

9. Mr.N.Manoharan, learned counsel for the appellant would vehemently contend that the fact that the plaintiff has played a major role in



obtaining the power of attorney in favour of the 4th defendant as well as in discharge of the loan. He would invite us to presume that the plaintiff had through the 3rd defendant exercised undue influence over the 2nd defendant, wife of Subbaiah Gounder who was illiterate lady aged about 85 years. He would also contend that the properties being ancestral properties in the hands of Subbaiah Gounder, the Trial Court was not right in granting a decree for 2/3rd share.

10. Contending contra, Mr.E.Prabhu, learned counsel for the 1st respondent / plaintiff would contend that though a complaint is said to have been alleged with the Superintendent of Police against the plaintiff by 2nd defendant, the Trial Court has found as of fact that it was engineered by the 1st defendant. He would also point out that the sale deed in favour of the plaintiff would show that the sharers had treated the property as their property and they had equal share in it. The learned counsel would also submit that the conclusions of the Trial Court regarding the plea of undue influence should be sustained as it is based on evidence. We have considered the rival submissions.



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11. On the contention of the learned counsel for the parties, the following points arise for determination in the appeal:-

i) Whether the Trial Court was justified in granting 2/3 share to the plaintiff.

ii) Whether the plea of undue influence said to have been exercised by the plaintiff on the 2nd defendant has been established.

12. It is seen from the evidence that the suit first item was allotted to Subbiah Gounder at a partition between him and his brother dated 07.03.1963. The said document specifically recites that the properties are ancestral properties in the hands of the brothers. The second item was purchased by Periya Subbaiah Gounder on 06.06.1973. Admittedly, the Periya Subbaiah Gounder have possessed of ancestral properties and he was the Manager of the family so, any purchase made by him is normal, presumed to be from and out of the joint family nucleus. The burden to prove the contrary on the person who asserts that it is self-acquisition. There is nothing on record to show that the plaintiff was aware of the source of



purchase or that the Periya Subbaiah Gounder have separate income from other avocation which would have been utilized for purchase of the property.

In the absence of such evidence and in the absence of examination of the 3rd defendant, who is a family member, it has to be necessarily presumed that the property in the case hands of Periya Subbaiah Gounder part took the character of ancestral property.

13. Once it is found that the property is ancestral property in the hands of Periya Subbaiah Gounder, it will devolve under Section 6 of the Hindu Succession Act. If it is a devolution under Section 6 of the Hindu Succession Act, the two sons of Subbaiah Gounder namely, Kumarasamy and Palanisamy will take 1/3 share and the property that would be allotted to Periya Subbaiah Gounder at the notional partition namely, 1/3 share would again devolve on his wife, Ramathal / 2nd defendantat, his son Kumarasamy / 1st defendant and his daughter-in-law / 3rd defendant, being the widow of the predeceased son. Therefore, Ramathal, wife of Palanisamy will get 1/9 share and Subbulaxmi will inherit the 1/3 share of the Palanisamy + 1/9 share from the share of the Periya Subbaiah Gounder. Therefore, the 1st defendant / Kumarasamy would be entitled to 4/9 share



and the defendants 2 & 3 put together would be entitled to 5/9 share.

Therefore, the plaintiff would get only what belong to the defendants 2 & 3, his Vendors i.e., 5/9 share in the suit properties and not 2/3 share as held by the Trial Court. Point No.1 is answered accordingly.

14. Point No.2: Though a plea regarding coercion or undue influence has been projected in the written statement. We find, evidence completely lacking on that aspect. The 2nd defendant, Ramathal filed a proof affidavit even before she could be subjected to cross-examination who passed away. Thus, rendering her evidence inadmissible. What here left is only the evidence of P.W1 & D.W.1. Certain Police complaints said to have been alleged by Ramathal has been placed on record. But, the Trial Court has found those were given at the instance of the 1st defendant. The 1st defendant admittedly has not taken any action to have the sale deed nullified. We therefore, do not think we could go into the question today, in the absence of evidence in that regard. A plea of undue influence or coercion must be established as a fact and enough evidence should be placed on record for the Court to decide on that.

15. The Trial Court has considered the evidence of P.W.1 as well as



D.W.1 and has come to the conclusion that the evidence available would not be sufficient only to conclude that there was coercion or undue influence on Ramathal at the time of execution of the Power of Attorney which is a registered instrument. We therefore, do not see any reason to disturb the finding of the Trial Court on the question of fraud and undue influence. Accordingly, Point No.2 is answered against the appellant.

16. In view of the answers to the points raised for determination, this Appeal is **partly allowed**. The preliminary decree granted by the Trial Court is modified and there will be a preliminary decree declaring 5/9th share of the plaintiff in the suit properties. The suit in other aspects will stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M., J.) (C.K., J.)
19.11.2024

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Internet: Yes

Index: No

Speaking

Neutral Citation : No

To:-

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The Principal District Court,
Tiruppur.

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