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S.A.No.856 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

CORAM

THE HONOURABLE MRS.JUSTICE N.MALA

S.A.No.856 of 2021
and CMP.Nos.16356 & 16361 of 2021

Perumayee (died)

1. Periyasamy
2. Krishnan
3. Chinnappaian
4. Kuppayee

... Appellants

Vs.

1. Lakshmi
 2. Chinnaponnu
 3. Balamurugan
 4. Chandra
 5. Natesan
 6. Malliga
 7. Poovayee
- Respondents

...

Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 14.09.2020 passed in A.S.No.32 of 2016 on the file of the Principal District Judge, Namakkal confirming the judgment and decree dated 27.07.2016 passed in O.S.No.28 of 2008 before the Sub Court, Rasipuram.

For Appellants : Mr.R.Babu
for Mr.B.Kumarasamy

For Respondents : Mr.R.Nalliyappan for R5 & R6



JUDGMENT

The plaintiffs in the suit are the appellants in the second appeal. The second appeal arises out of a suit for partition filed by the plaintiffs. The trial Court as well as the lower appellate Court concurrently found that the plaintiffs were not entitled to 2/4th share but were entitled to 1/4th share only. Aggrieved by the concurrent judgments of the Courts below, the second appeal is filed by the plaintiffs.

2. The parties will be referred to as per their litigative rank before the trial Court.

3. The gist of the facts are as follows:-

The 1st plaintiff is the wife of Marappa Gounder and plaintiffs 2 to 5 are the children of Marappa Gounder. The defendants 1 to 3 are the brother and sisters of Marappa Gounder. The suit property belonged to Pavayammal the mother of Marappa Gounder. It is the case of the plaintiffs that they as the legal heirs of Pavayammal who died intestate were entitled to 1/4th share in the suit property and as the 1st defendant executed a relinquishment deed on 17.01.1983 and relinquished her 1/4th share to the 1st plaintiff they were also entitled to 1/4th share of the 1st defendant. The plaintiffs therefore claimed 2/4th share in the suit property.



4. In the written statement the defendants admitted that the suit property belonged to their mother Pavayammal and that she purchased the same out of her own earnings on 20.03.1951. As Pavayammal died intestate on 16.06.1994, the plaintiffs 2 to 5 were entitled to 1/4th share and the defendants 1 to 3 were entitled to 3/4th share in the suit property. The 1st defendant denied the execution of relinquishment deed dated 17.01.1983 by stating that it was forged document. The 1st defendant further stated that the relinquishment deed was sham and nominal and not valid in the eye of law. The defendants 2 and 3 sold their 2/4th share in the suit property to the 7th defendant on 08.06.2000 by registered sale deed. The 1st defendant stated that she executed an agreement deed in favour of the 6th defendant on 02.03.2000 with regard to her 1/4th share. The 1st plaintiff also filed suit in O.S.No.67 of 2000 against the defendants for permanent injunction. The defendants therefore submitted that the plaintiffs 2 to 5 were entitled only to 1/4th share in the suit.

5. Before the trial Court the plaintiffs examined two witnesses P.W.1 and P.W.2 and marked Exhibits A1 to A5 and on the defendants side the 6th defendant in the suit examined herself as D.W.1 and marked documents Ex.D1 to Ex.D4. The trial Court after framing necessary issues and on consideration of the entire evidence on record held that the plaintiffs failed to prove the



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relinquishment deed dated 17.01.1983 executed by the 1st defendant and therefore the plaintiffs were not entitled to the 1st defendants 1/4th share. The trial Court held that in the absence of any evidence to show that the plaintiffs were entitled to 2/4th share, the plaintiffs claim for 2/4th share could not be sustained and therefore decreed the suit for plaintiffs 1/4th share only. Aggrieved by the judgment and decree of the trial Court, the plaintiffs filed an appeal in A.S.No.32 of 2016 before the Principal District Court, Namakkal. The lower appellate Court concurred with the findings of the trial Court and confirmed the plaintiffs 1/4th share in the suit property. Aggrieved by the concurring judgment of the Court below, the plaintiffs have filed the above second appeal.

6. Heard both sides and perused the materials available on record.

7. The second appeal has not been admitted. Notice was served to the respondents and respondents are represented by counsel.

8. The relationship of the parties as given in the genealogical table is as under:-

Kandasamy Gounder – Pavayammal

Marappa Gounder
(died)

Lakshmi
(D1)

Chinnaponnu
(D2)

Arumugam
(died) (D3)



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Balamurugan Chandra
(D4) (D5)

Perumayee (wife) (P1) | Periyasamy (son) (P2) | Krishnan (Son) (P3) | Chinnapaiyan (Son) (P4) | Kuppayee (Daughter) (P5)

9. Admittedly the suit properties belonged to Pavayammal, wife of Marappa gounder, she having purchased the same under the sale deed dated 20.03.1951 with her own savings and earnings. The said Pavayammal died on 16.06.1993 as is evident from Ex.B3 (death certificate). It was the plaintiffs case that the 1st defendant executed a relinquishment deed dated 17.01.1983 in favour of the 1st plaintiff by receiving consideration and therefore on the basis of the relinquishment deed the plaintiffs claimed 2/4th share in the suit property. The 1st defendant's case was that the relinquishment was a forged document as she never executed such document. The defendant's case was that Pavayammal died intestate on 16.06.1994 and therefore all the legal heirs (i.e.,) the plaintiffs as well as defendants 1 to 5 were entitled to 1/4th share each in the suit property. At the time of arguments, the only point raised by the learned counsel for the appellant was that the Courts below erred in not giving an opportunity to the plaintiff to file the unregistered relinquishment deed to establish their right to



1/4th share of the 1st defendant.

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10. Along with the plaint, court certified copy of the relinquishment deed was filed as Document No.2. As the document was unregistered, the defendant's counsel objected to the marking of the same. The plaintiffs counsel therefore withdrew the vital document from the list of documents. The learned counsel for the plaintiff therefore submits that an opportunity ought to have been given to the plaintiffs to produce the unregistered document before the appellate Court. It is to be seen if the appellate Court was justified in denying opportunity to the plaintiff to file the unregistered relinquishment deed. The execution of the relinquishment deed is denied by the 1st defendant and it is also an unregistered document. The document is per-se inadmissible in evidence by virtue of Section 17 & Section 49 of the Registration Act. Even otherwise a genuine doubt arises as to the execution of the unregistered relinquishment deed because it was executed much before succession to the suit property opened. According to the plaintiffs the unregistered relinquishment deed was executed on 17.01.1983 which is 10 years prior to the demise of Pavayammal on 16.06.1993. It is incomprehensible that the 1st defendant would have relinquished her share in favour of the plaintiffs even before she even got a right to the same, as admittedly, on the date of the unregistered relinquishment deed, Pavayammal was very much alive. In the light of the aforesaid facts the



lower appellate Court cannot be faulted for denying the plaintiffs an opportunity to produce the unregistered relinquishment deed. I find that the Courts below have elaborately considered the entire evidence on record and have given cogent reasons for their findings on fact.

11. I therefore find no convincing reasons to interfere with the concurrent judgment and decree of the Courts below. Absolutely no substantial questions of law arise for consideration in the second appeal and hence the same is dismissed at admission stage itself. It will be useful to refer to the judgments of the Hon'ble Supreme Court of India in the case of ***Kirpa Ram (D) Tr.Lrs. Vs Surrender Deo Gaur*** reported in ***2021 (3) SCC 57*** and the judgment in the case of ***Ashok Rangnath Magar Vs Shrikant Govindrao Sangvikar*** reported in ***2015 (16) SCC 763***. Following the latter judgment in ***Kirpa Ram's*** case the Hon'ble Supreme Court has held that the second appeal can be dismissed without even formulating the substantial questions of law, if, it is satisfied that no substantial question of law is involved in the appeal. On a comprehensive appreciation of the entire materials, I find that there is absolutely no perversity in the findings of facts of the Courts below and therefore, the second appeal is dismissed at the admission stage itself. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are also closed.



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N. MALA, J.

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To

1. The Principal District Court, Namakkal
2. The Sub Court, Rasipuram.



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