



WEB COPY

S.A. No.69



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2024

CORAM :

THE HON'BLE MR. JUSTICE K. RAJASEKAR

S.A. No. 691 of 2022

1. Munusamy @ Muthusami Reddy
2. Govindammal ... 1st and 3rd Defendants / Appellants /
Appellants

Vs.

1. Srinivasan
2. Pushpa ... Plaintiffs/ Respondents 1 &2/
Respondents 1 & 2

Second Appeal filed Under Section 100 of Civil Procedure Code against the Judgment and Decree dated 28.02.2022 made in A.S. No.7 of 2021 on the file of the Additional District Judge, Dharmapuri, confirming the Judgment and Decree dated 25.02.2021 made in O.S. No.59 of 2013 on the file of the Principal Subordinate Court, Dharmapuri.

For Appellants : Mr. R. Rajaraman
(For Mr. M. Muthappan)

For Respondents : No Appearance



JUDGMENT

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This appeal filed by the defendant challenging the decree passed by both Courts below decreeing the suit for partition. The Trial Court has decreed the suit by declaring that the plaintiffs are having each $4/27^{\text{th}}$ of share in the suit property and the same has been modified by the lower Appellate Court stating that the plaintiffs are having each $1/9^{\text{th}}$ share in the suit property.

2. Aggrieved over the passing of preliminary decree, these appeals have been filed by the defendant Nos.1 and 3.

3. The case of the plaintiff is that the originally suit property belongs to one Nallan @ Chennappa Reddy and he married one Nallammal and through her begotten defendant Nos.1 and 4, sons and daughter, respectively. Subsequently, Nallan @ Chennappa Reddy also married the grandmother of the plaintiffs, namely Obiliyammal and through her, the plaintiff's father Madhu Reddy was born. Since the suit property is separate property of the grandfather of the plaintiffs, they have come forward with the suit for partition, claiming $8/18^{\text{th}}$ shares.



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4. The suit was resisted by the defendant Nos. 1 and 3 on the ground that already Nallan @ Chennappa Reddy already gifted his property under a Settlement deed dated 19.09.1958 in favour of the second defendant/ Thulasiammal, mother of the plaintiffs, thereby denied the shares to the plaintiffs over the suit property and also claimed that the plaintiffs were not in possession and enjoyment of the suit property. Thereby, they are not entitled for partition over the suit property, as claimed by the plaintiffs.

5. The Trial Court after considering the pleadings on both sides and framed the following issues:

1. *Whether the plaintiffs are entitled for 8/18 each and separate possession of the schedule property?*
2. *Whether the plaintiffs are entitled for permanent injunction restraining the defendants from encumbering the suit property?*
3. *Whether the plaintiffs are entitled for mesne profits in a separate enquiry?*
4. *Whether the plaintiffs are in joint possession of schedule property?*
5. *Whether it is true that the plaintiffs and 2nd defendant sold the property to third parties on 12.07.1990?*



6. *What are the other reliefs that the plaintiffs are entitled to?*

Additional issue:

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1. *Whether the first defendant has right of partition in the property sold by Amsaveni?*

6. After considering the pleadings and evidences placed on record, the Trial Court has held that the suit property was the separate property of Nallan @ Chennappa Reddy and he had also executed a settlement deed in favour of the second defendant, for a portion of the land. Since the second defendant also died, who is none other than the mother of the plaintiffs, the property gifted in favour of the second defendant is to be inherited by the plaintiffs herein, hence the plaintiffs are entitled for 4/27th of shares over the suit property.

7. Subsequently, the defendant Nos.1 and 3 preferred an appeal suit against the decree and judgment of the Trial Court. The lower Appellate Court after considering the arguments and evidence of both sides, dismissed the suit and confirmed the decree and judgment of the Trial Court with modification in respect of allotment of shares to plaintiffs and second defendant. It held that the plaintiff's father was totally entitled for 1/3rd of the shares in the suit property, thereby the plaintiffs are each entitled to 1/9th share in the suit property.



Challenging the same, this second appeal has been filed.

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8. The learned counsel appearing for the appellants submits that the Nallan @ Chennappa Reddy transferred the portion of suit property along with a house, by way of settlement deed in favour of defendant No.2. In the settlement deed, Life estate was created in favour of defendant No.2 and after her life time, it shall be devolved on her children. Since the defendant No.2 and her children already allotted with property, they come forward to file this second appeal, disputing the rights of the plaintiffs.

9. Both Courts found that the suit property is the separate property of Nallan @ Chennappa Reddy, and his legal heirs i.e., defendant Nos.1 and 4 are entitled for 1/3rd share, each and the defendant No.2 and the plaintiffs are entitled to remaining 1/3rd share in the suit property. The defendants have not disputed the relationship and during pendency of the first appeal, the second defendant Thulasiammal was died and her legal representatives, who are the plaintiffs are entitled for the share of the defendant No.2. The lower Appellate Court also found that, properties covered under Settlement Deed, shall not be subjected to partition, since the same was gifted in favour of defendant No.2 and the same was also a separate property of Nallan @ Chennappa Reddy, thereby, the



defendant Nos. 1 and 4 have no manner of right to object the partition. The lower Appellate Court, after considering the factum of death of defendant No.2, modified the shares of partition. This Court finds no infirmity in the alteration of shares.

10. Considering the above facts, this Court finds no substantial question of law involved in this appeal. The plaintiffs have not filed any appeal disputing the shares fixed by the lower Appellate Court, hence this Court without venturing into the validity of the allotments made by the lower Appellate Court, inclined to dismiss this appeal on the ground that there is no substantial question of law involved in this case.

11. Accordingly, this second appeal is dismissed. No cost.

23.10.2024

stn

Index: Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

To:



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

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K. RAJASEKAR, J.

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