



S.A.No. 156 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.03.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No. 156 of 2024
&
C.M.P.No. 5400 of 2024

1.Mani Iyer

2.M.Raja

...Appellants

Vs.

P.Natarajan

...Respondent

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 24.11.2021 made in A.S.No.38 of 2021 on the file of the Additional District Court (FTC) Mettur, confirming the Judgement and Decree dated 10.03.2021 made in O.S.No.89 of 2014 on the file of the Sub Ordinate Court, Mettur.

For Appellants : Mr. B.Manoharan

For Respondent : Mr. P.Jagadeesan.



WEB COPY



S.A.No. 156 of 2027

JUDGMENT

The defendants are the appellants challenging the concurrent Judgement and Decree passed against them. The facts are briefly set out herein below and the parties are referred to in the same ranking as before the Trial Court.

2. The plaintiff had filed the suit O.S.No.89 of 2014 on the file of the Sub Court, Mettur, seeking to declare the settlement deed dated 17.02.2009 executed by Lakshmiammal in favour of the 2nd defendant as null and void and for a preliminary decree for partition by dividing the suit property into two equal shares and allotting one share in favour of the plaintiff and also seeking injunction from alienation.

3. It is the case of the plaintiff that the suit property belonged to the plaintiff's father, Perumal Iyer. The plaintiff and the 1st defendant are the two sons of the said Perumal Iyer. The property was jointly



enjoyed by Perumal Iyer, the plaintiff and the 1st defendant. The 2nd defendant is the son of the 1st defendant.

4. The plaintiff would submit that after the death of his father, his mother, the 1st defendant and himself were jointly enjoying the property and after her lifetime, it was only the plaintiff and the 1st defendant who were enjoying the property. Since certain misunderstanding had cropped up between them, the plaintiff desired to have the properties divided and therefore a Panchayat was convened on 10.11.2013, wherein, the 1st defendant was advised to divide the property and allot the plaintiff's half share.

5. The plaintiff would contend that the 1st defendant refused to accept the advice and he proceeded to settle the property on the 2nd defendant. Therefore, the plaintiff was advised to approach the Court. The plaintiff thereafter took the encumbrance certificate in respect of the suit property and during this search he came to learn that on 17.02.2009, the mother of the plaintiff and the 1st defendant has



S.A.No. 156 of 2027

executed a settlement deed in favour of the 2nd defendant which is registered on the file of the Jalakandapuram Sub Registrar's Office as Doc.No.406/2009. The plaintiff therefore issued a notice to the defendants to which a reply dated 17.03.2014 was sent contending false allegations.

6. The plaintiff would submit that the settlement deed is a fraudulent one, since the settlement deed purported to convey the entire property including the plaintiff's share by way of a settlement. The plaintiff would submit that the settlement deed would not bind his share in the property. Therefore, the plaintiff has come forward with the suit in question.

7. The 2nd defendant had filed a written statement, which is adopted by the 1st defendant. It is the contention of the defendants that the plaintiff had nothing to do with the suit schedule property after the death of Perumal Iyer, 24 years ago. After his death, the property had been partitioned between the plaintiff and the 1st defendant. It was



partitioned amongst the sons, however, they would go on to state that Lakshmiammal, the wife of Perumal Iyer had taken care of her husband's share and thereafter under a settlement deed dated 17.02.2009 had executed a settlement deed in favour of the 2nd defendant and the 2nd defendant has taken possession of the property and is in possession of the same. He has also taken out an application for having the revenue records transferred in the name. Therefore, it is their contention that the plaintiff has no share in the property and the suit should be dismissed.

8. The learned Sub Judge, Mettur had framed the issues and the plaintiff had examined himself as P.W.1 and one Govindan and P.R.Uthirasamy was examined as P.W.2 and P.W.3 respectively. The plaintiff had marked Ex.A.1 to Ex.A.6. The 2nd defendant had examined himself as D.W.1 and one Ramalingam as D.W.2. The defendants had marked Ex.B.1 to Ex.B.5 on their side.



S.A.No. 156 of 2027

WEB COPY

9. The learned Judge on considering the evidence held that the plaintiff is entitled to a preliminary decree for partition. The learned Judge has also held that the settlement deed executed by Lakshmiammal was invalid in as much as a person who did not have a right to the entire property has settled the same on the 2nd defendant. Ultimately, the suit was decreed as prayed for.

10. Aggrieved by the said Judgement and Decree, the defendants had filed A.S.No.38 of 2021 on the file of the Additional District Court, Mettur. The learned Judge also confirmed the Judgement and Decree of the Trial Court and dismissed the appeal. The Lower Appellate Court had also observed that when the execution of the settlement deed, Ex.B.5 by Lakshmiammal had been denied by the plaintiff, the defendants had not taken any steps to prove the settlement deed. The defendants had not examined the witnesses to the deed but had examined third parties who had nothing to do with the settlement deed. Therefore, the learned Judge had dismissed the appeal.



Challenging the same, the defendants are before this Court.

WEB COPY

11. Heard the learned counsels and perused the records.

12. The admitted case is that the property belonged to one Perumal Iyer and that he had died intestate. Therefore, on his death the property would devolve on his wife and his two sons, i.e., Lakshmiammal, the plaintiff and the 1st defendant. The defendants have put forward a settlement deed said to have been executed by the said Lakshmiammal. Under this settlement deed Lakshmiammal has settled the entire property upon the 2nd defendant including the share of the plaintiff. Therefore, the settlement deed is not binding upon the plaintiff with reference to his share.

13. The plaintiff has also denied the execution of the settlement deed stating that it was created 10 days prior to the death of the said Lakshmiammal. The defendants have not chosen to examine the persons who are shown as witnesses in the deed. The Lower Appellate



S.A.No. 156 of 2024

Court has given a clear finding on the above issue. Therefore, once the settlement deed has not been executed by the deceased Lakshmiammal, then the property would devolve only upon the 1st defendant and the plaintiff and each would be entitled to a half share.

14. Considering the fact that both the Courts below have decreed the suit on considering the evidence on record and the defendants not having given any reasons for overturning this concurrent finding, the Second Appeal is dismissed. No substantial question of law is made out. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

06.03.2024

Index : Yes/No
Internet : Yes/No
kan



WEB COPY



S.A.No. 156 of 2027

To

1.The Additional District Court (FTC)
Mettur.

2.The Sub Ordinate Court,
Mettur.



WEB COPY



S.A.No. 156 of 2024

P.T. ASHA, J,

kan

S.A.No.156 of 2024

06.03.2024