



WEB COPY



S.A. No.712 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No.712 of 2024

and

C.M.P.Nos.21842 and 23102 of 2024

1. V.Saroja

2. C.Velusamy

... Appellants

Vs.

N.Eswaran

... Respondent

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the judgement and decree dated 01.09.2023 made in A.S.No.19 of 2022 on the file of the I Additional District Court, Coimbatore, confirming the judgement and decree dated 23.12.2021 made in O.S.No.925 of 2014 on the file of the II Additional Subordinate Court.

For Appellants : Mr.N.S.Suganthan

JUDGEMENT

The appellants, who are the defendants in the suit in O.S.No.925 of 2014, challenging the concurrent findings of the courts below have preferred this 2nd defendant Appeal. Before the trial court, the plaintiff filed a suit



seeking for the relief of partition and the same was decreed in favour of plaintiff. Against which, the defendants preferred an Appeal Suit in A.S.No.19 of 2022 on the file of the I Additional District Court, Coimbatore, wherein the first appellate court independently analysed the facts and evidence on record and finally dismissed the appeal by confirming the judgment and decree dated 23.12.2021 made in O.S.No.925 of 2014 on the file of the II Additional Subordinate Court.

2. For the sake of convenience, the parties are denoted as per their ranking in the suit.

3. According to the plaintiff, the suit property originally belongs to Kulandae Goundan @ Kolandaiappa Gounder S/o.Palani Goundan through the sale deed dated 18.04.1962. The said Kulandae Gounder @ Kolandaiappa Gounder had two sons namely Nanjappa Gounder and Karuppasami Gounder and two daughters namely Valliammal and Karuppathal and each entitled to 1/4th share in the suit property. That Karuppathal was married and she had four children. After the death of Kulandae Goundan @ Kolandaiappa Gounder, the suit property was in joint possession and enjoyment of the legal heirs of deceased Kulandae Goundan @ Kolandaiappa Gounder namely Nanjappa Gounder, Karuppasami Gounder, Valliammal and the legal heirs of the deceased Karuppathal. From



the legal heirs of Kulandae Goundan @ Kolandaiappa Gounder, namely Nanjappa Gounder, Valliammal and Karuppathal, the plaintiff purchased three shares of the suit property on 20.02.2006. The remaining 1/4th share only belongs to the another legal heir of deceased Kulandae Goundan @ Kolandaiappa Gounder namely Karuppasami Gounder. The said Karuppasami Gounder stating to be entitled to the entire property, has executed General Power of Attorney in favour of the 2nd defendant on 16.11.2004 and based on the General Power of Attorney, the 2nd defendant had executed a sale deed in favour of his wife/1st defendant on 07.03.2005. Therefore, dispute arose and the plaintiff approached the Court below for the relief of partition of 3/4th share in the suit property.

4. The suit was contested by the defendants stating that there was a family partition held in the family of the Karuppasami Gounder and the 2nd defendant was informed that by way of inheritance and by compensating other assets, the entire property was allotted to Karuppasami Gounder and subsequently, the said Karuppasami Gounder executed a General Power of Attorney in favour of the 2nd defendant and based on which, the 2nd defendant executed the sale deed in favour of his wife/1st defendant and therefore, they claimed that they are entitled to the entire extent of the suit property.



5. Before the trial court, both parties have adduced their oral and documentary evidence and on considering the facts and evidence on record, the trial court finally held that as per the sale deed stands in the name of Kulandae Goundan @ Kolandaiappa Gounder, in the suit property, his two sons and two daughters are equally entitled to 1/4th share, however one of his sons namely Karuppasami Gounder stating to be entitled to the entire property, has executed a General Power deed dated 16.11.2004 in favour of 2nd defendant and based on that, the 2nd defendant had executed a sale deed in favour of 1st defendant on 07.03.2005. But as per the sale deed dated 17.03.2003, Kulandae Goundan @ Kolandaiappa Gounder sold 0.41 acres in S.No.112/2 and thereafter Nanjappa Gounder and his daughters have sold 0.15 ³/₄ acres in S.No.112/2N, thereby plaintiff purchased three shares measuring a total extent of 0.91 acres. Therefore, the trial Court disagreed with the claim made by the defendants. During the cross examination of D.W.1/2nd defendant, he had stated that the said Karuppasami Gounder had informed him, by way of inheritance and compensating other assets, the entire property was allotted to him and therefore, he is entitled for the right and title over the entire property. But, in respect of the same, there is no recitals found in Ex.A2/Sale Deed as well as in the written statement. As per the sale deed dated 18.04.1962 marked as Ex.A1, it reveals that the suit



property is the self acquired property of Kulandae Goundan @ Kolandaiappa Gounder. Therefore, Karuppasami Gounder, vendor of the 2nd defendant is entitled to only 1/4th share. Accordingly, the suit was decreed in favour of plaintiff.

6. Challenging the said findings, the defendants have preferred an appeal suit in A.S.No.19 of 2024, wherein the first appellate Court independently analysed the facts and evidence on record and dismissed the appeal by confirming the finding of the trial court holding that Karuppasami Gounder is entitled to only 1/4th share in the suit property, since the property is a self acquired property of Kulandae Goundan @ Kolandaiappa Gounder who died intestate. Aggrieved over the said findings, the defendants have preferred this Second Appeal.

7. The learned counsel for the appellants would submit that the Court below failed to take note of the fact that the said Kulandae Goundan had several other properties and those were not added in the schedule of suit property by the plaintiff. Furthermore, the legal heirs of the Kulandae Goundan @ Kolandaiappa Gounder were also not added as parties to the suit. He would further submit that both the courts below have failed to consider that the Kulandae Gounder's elder son Karuppasami have one property in S.F.No.112/2B under adverse possession and the same was sold



to 1st defendant under the sale deed dated 07.03.2005 through the power agent/2nd defendant. Thus, the plaintiff, who is son of Karuppasami's younger brother Nanjappan, has fabricated rival sale deed dated 20.02.2006 over the defendants' sale deed dated 07.03.2005 and filed the suit. He would also submit that both the courts below failed to consider that in the sale deed dated 20.02.2006 marked as Ex.A3, Valliammal, Karuppaiah's son and daughter have signed as vendors. However, in the previous sale deeds dated 13.06.1968 and 17.03.2003, Kulandae Goundan's two daughters have not signed as vendors as they have no share, since the property is an ancestral property. Thus, sale deed dated 20.02.2006 is not genuine and is void abinitio. However, the 1st defendant purchased entire properties in S.F.No.112/2B from Karuppasami Gounder under sale deed dated 07.03.2005 who is having 1/4 share in that property. Hence, he prayed to set aside the findings of courts below.

8. On perusal of materials available on record, it reveals that as per the Sale Deed (Ex.A1), the suit property belongs to Kulandae Goundan @ Kolandaiappa Gounder. It is an admitted fact that he died leaving behind two sons and two daughters. From the 3 legal heirs of Kulandae Goundan @ Kolandaiappa Gounder, the plaintiff purchased three shares of the suit property in Ex.A3/sale deed. Admittedly, Karuppasami Gounder, who is one



S.A. No.712 of 2024

of the legal heirs of Kulandae Goundan @ Kolandaiappa Gounder and who is the power holder of 2nd defendant, is entitled to only 1/4th. As rightly observed by the Courts below, the plaintiff is entitled to 3/4th share. Since the plaintiff had proved his case and the same was rightly observed by the courts below, it needs no interference of this court. Hence, I do not find any merit in this Second Appeal as there is no substantial question of law involved for consideration as claimed by the appellants. Accordingly, this Second Appeal is dismissed as no merit and the findings of the appellate court in A.S.No. 19 of 2022 is upheld and the findings rendered in the Suit in O.S.No. 925 of 2014 is confirmed. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

21.10.2024

Index:Yes / No

Internet: Yes / No

Speaking / Non-Speaking order

ksa-2



S.A. No.712 of 20_.

To

1. The I Additional District Court, Coimbatore
2. The II Additional Subordinate Court, Coimbatore

Copy To:-

The Section Officer
VR Section, High Court
Madras.



WEB COPY



S.A. No.712 of 2024

T.V.THAMILSELVI,J.

Ksa-2

S.A. No.712 of 2024

21.10.2024