



AS. No.681 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

AS. No. 681 of 2019
& CMP NO. 20450 of 2019

1.M.Vellingiri
2.M.Shanmugam

...Appellants

Vs.

R.Marimuthu (Died)
1.Lakshmi
2.Saraswathi @ Sarasal
3.M.Kathiresan
4.M.Shanthi
M.Baladhandapani
5.M.Kalimuthu
6.N.Palaniammal
7.S.Kalamani
8.M.Venkatesh
Eswari (Died)
Subbathal (Died)
9.P.Sumasundram
10.P.Ranganathan
11.Revathi
12.P.Ramachandrran
13.Santhamani
14.Ananthi
15.Amsaveni
16.Kavitha
17.B.Nagarathinam



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18.B.Karuppusamy
19.B.Anandhi

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...Respondents.

PRAYER : This first appeal is filed under section 96 read with Order XLI Rule 1 of the Civil Procedure Code, praying to set aside the judgment and decree passed by the learned IV Additional District and Sessions Judge, Coimbatore in O.S No. 581 of 2010, dated 28.02.2019.

For appellants : Mr.E.Karthick Raj

For Respondents : Mr.V.Sivakumar

JUDGMENT

Challenging judgment and decree passed by the learned IV Additional District and Sessions Judge, Coimbatore in O.S No. 581 of 2010, dated 28.02.2019 the plaintiffs filed this appeal.

2. The plaintiffs/appellants are the sons of the 1st defendant through first wife Rayammal. The first defendant Marimuthu (died) through his first wife Rayammal had seven children. Out of which, two are daughters and five are sons namely the plaintiffs 1 and 2, defendants 6 and 7. One son namely Murugesan pre deceased his father 1st defendant. The defendants 3 to 5 are the legal heirs of late Murugan. The second defendant is the second wife of Marimuthu (died) (first defendant). Through her three children were born. out of which, two are daughters and one is son. The relationship



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between the parties are admitted. The case of the plaintiffs is that they were agriculturist doing agricultural operations, cattle trading and taking tea plucking work on lease/Bogiyam in estates at Nilgiris. Out of the plaintiffs and their brothers exertion immovable properties were purchased in the name of their father/first defendant being the eldest member in the family. Accordingly, on 25.02.1965 5 acres of land in S.F.No. 449 at Nellithurai Village was purchased. Thereafter, their mother/Rayammal was died, after her demise, in the year 1988 the said property was sold and out of that sale proceeds the residential plots/suit properties were purchased for that the plaintiffs and his brothers are jointly contributed. But the said property was purchased in the name of the first and second defendants being the eldest members in the family on 13.12.1990. However, the second defendant has not contributed amount either to purchase the property or for construction. The plaintiffs are the joint owners of the suit properties since they contributed amount to purchase the suit property thereby they are entitled to 1/6 th share in the suit property, but the plaintiffs came to know that fraudulent settlement deed dated 20.09.2006 and Will dated 10.03.2009 has been created by the defendants 8 to 10 taking advantage of the first defendant's old age. Those two documents were created taking advantage of



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his sickness, at the instigation of the second defendant with undue influence which would not bind the plaintiffs. In respect of item No.2 of the suit property, it is joint property of the family in which plaintiffs is having equal rights. Further, they submitted that at the time of marriage of the daughters born through first wife and second wife SEERS were given to them hence they have no share in the properties. The alleged Will was created by the defendants 8 to 10 in order to create cloud over the suit property. Therefore, the above said alleged documents created without their knowledge and consent it would not bind the plaintiffs. Hence, they filed the present suit for partition.

3. The first defendant and his second wife/second defendant filed the written statement, wherein, they denied the plaintiffs' claim over the suit property stating that the first item of the suit property was purchased on 13.12.1990 by himself and second wife by self acquisition and second defendant was contributed amount to purchase the same by selling her 50 sovereigns of gold jewels so as they are the absolute owners of the suit property, the plaintiffs have not contributed any amount to purchase the said property more particularly plaintiffs, who are children of the first wife. Further, the property to the extent of 5 acres situated at Nellithurai village



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was sold on 02.03.1988 and that said sale proceeds were equally divided to the sons born through first wife including the plaintiffs. Therefore the plaintiffs have not contributed any amount to purchase the suit property as alleged by them. Further, he would submits that there was suit in O.S No. 705 of 1987 was filed by the plaintiffs and another deceased son Murugan claiming partition, in the said suit compromise was arrived between them with the help of panchayatars and as per the compromise deed the property purchased by him at Nellithurai village was sold for Rs.50,000/-, the said sale proceeds was equally divided into 8 equal shares. Accordingly, the Rs.6250 was given to the plaintiffs on 03.03.1988 and as per the terms of the compromise all the sons were agreed not to claim any share in the property, if purchased by their father in future. Accordingly, the said suit was settled out of Court. Thereafter, in the year 1990, first defendant and second defendant purchased first item of the suit property in which plaintiff has no right to claim any share along with other defendants born through first wife. Further, he submits that first item of the suit property was purchased by the defendants 1 and 2, through settlement deed, thereafter first defendant gave his half share in the property in favour of the second defendant on 28.09.2006, in respect of item No. 2 of the suit property he executed another



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settlement deed in favour of the defendants 2,8,9 & 10 on the same day i.e., 28.09.2016. Thereby, the plaintiff has no right in the property hence prayed to dismiss the suit as no merits. Therefore, the claim of the plaintiffs is totally denied by the defendants.

4. Before the Trial Court, on the side of the plaintiffs, two witnesses were examined and two documents were marked, on the side of the defendants, two witnesses were examined and 22 documents were marked. After considering the oral and documentary evidences the Trial Court concluded that plaintiffs and one deceased Murugan are children born through first wife of the first defendant Marimuthu, were given share by selling the property at Nellithurai Village for Rs.50,000/- and the sale proceeds were equally divided among the sons born through first wife and first defendant and also panchayat Muchalika was executed in which all the sons born through first wife agreed not to claim share in the property in future. Thereafter, item No. 1 was purchased by the defendants 1 and 2 jointly in the year 1990. Subsequently, half share belongs to the first defendant also transferred to the second defendant/wife as it is self acquired property in which the plaintiffs have no right. So also, item No. 2 was given to defendants 2, 8 to 11 through settlement deed, which is self acquired



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property in which the plaintiffs have no right to claim share. Accordingly, suit was dismissed. challenging the said findings, the plaintiffs filed this appeal. This Court framed the following issues:

i. Whether the plaintiffs established that item No.1 of the suit property is purchased in the name of the first and second defendants through joint contribution made by them and whether the settlement deed executed by the first defendant is binding over the plaintiffs ?

5. Heard both sides.

6. It is the contention of the plaintiffs is that item No.1 of suit property was purchased in the name of the first defendant through the joint contribution made by the plaintiffs, thereby they are entitled to 1/6th share in the suit property hence the burden is on the plaintiffs to establish the joint contribution made by them to purchase the suit property.

7. For the sake of convenience, the parties denoted as per the suit. The learned counsel for the plaintiffs submitted that in the year 1965 an extent of 5 acres was purchased at that time first wife of the first defendant was alive, after her demise in the year 1988 the said property was sold, by utilizing the said sale proceeds item No.1 of the suit property was purchased. Countering the same, the learned counsel for the defendants submitted that an extent of



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5 acres situated at Nellithurai vaillage was sold in the year 1988 and sale proceeds were equally divided among the sons born through first wife and the first defendant including the plaintiffs as per the terms of panchayat Muchalika. Besides, they were also agreed not to claim any share in future from their father/first defendant, if at all he purchase any property. The said panchayat compromise was marked as Ex.B6 dated 02.03.1988. Admittedly the plaintiffs have mentioned about the said compromise the Trial Court also made an observation that the plaintiffs suppressed the said facts and approached the Court. On perusal of the plaintiffs averment they have not mentioned about the alleged compromise as well as earliest suit filed by them for partition in O.S No. 705 of 1987 which was marked as Ex.B1, in the said suit they were entered into compromise through panchayatars. Thereafter, the said suit was dismissed as settled out of Court. As per the panchayat muchalika sons born through first wife agreed not to claim any share in the property from the first defendant, the plaintiffs also not denied the said compromise. Therefore, the claim made by the plaintiffs as if that they have contributed the amount to purchase the first item of the suit property is not acceptable for the reason that the plaintiffs have already agreed not to claim any property purchased by their father in future. Besides,



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the sale proceeds obtained through selling the property at Nellithurai Village was shared among themselves and it was not utilized to purchase the first item of the suit property. Subsequently, in the year 1988 the compromise was entered among the sons born through the first wife and the first defendant. Thereafter, in the year 1990, first item of the suit property was purchased in the name of the defendants 1 and 2, sale deed marked as Ex.A1 which clearly reveals that it is self acquired property of the defendants 1 and 2 and as per the terms of the compromise the plaintiffs have no right to claim share over the item No.1 of the suit property which was rightly appreciated by the Trial Court needs no interference.

8. In respect of item No.2 of the suit property, it was assigned to first defendant, who executed settlement deed on 28.09.2006 in favour of the children born through the second wife. Furthermore, half share of the first defendant also transferred to his wife/second defendant through gift deed on the same date which was marked as Ex.B8. Further by executing Will the first defendant **ascertained** the execution of the gift deed in favour of the the defendants 2, 8 to 10, notarized copy of the will was marked as Ex.B22. Furthermore, Will also proved through examining one of the attesor, whose evidence also proved that Will executed by the first defendant with sound



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state of mind as there is no suspicion circumstances over the said Will.

Thereby, the Trial Court rightly held that the plaintiffs has no share in the suit property which needs no interference. Further, the plaintiffs have not filed the suit to declare the said documents as null and void. Therefore, the plaintiffs failed to establish their contribution to purchase the item No.1 of the suit property indeed they suppressed the earlier compromise entered among the sons of first wife of the first defendant, wherein they agreed not to claim any share in the self acquired property of the first defendant in future. Accordingly, issues are answered. The Trial Court rightly dismissed the suit which needs no interference.

9. In the result, this appeal is dismissed. No Costs. Consequentially, connected miscellaneous petition is closed.

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T.V.THAMILSELVI,J.

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To

1. The IV Additional District and Sessions Judge, Coimbatore.
2. The Section Officer,
V.R Section.

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