



A.S.No.356 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Judgment	Date of Pronouncing the Judgment
25.06.2024	11.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

A.S.No.356 of 2017
and
CMP.No.13530 of 2017

Nirmala

... Appellant

-VS-

1.K.Rajagopal

2.R.Ramamoorthy

3.Kanniyammal

4.Lakshmi

... Respondents

Appeal suit filed under Section 96 read with Order 41 of the Civil Procedure Code, 1908, as against the judgment and decree made in O.S.No1950 of 2015 dated 11.03.2016, on the file of the learned XVII Additional Judge, City Civil Court, Chennai.



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For Appellant : Mr.M.Bharath

For Respondents : Mr.D.Krishna Pradeep
for Mr.N.Damodaran

J U D G M E N T

Unsuccessful plaintiff is the appellant herein. For the sake of convenience the parties are referred to as per their ranking before the trial Court.

2. The plaintiff is one of the daughter of the first defendant. The first defendant Rajagopal had one son by name Ramamoorthy and three daughters, namely, Nirmala/the plaintiff, Kanniyammal and Lakshmi. He was working as postman in Indian Postal Service. He had acquired two properties, schedule A and schedule B property. One of the daughter of the first defendant Rajagopal namely, Niramala filed a suit in O.S.No1950 of 2015 on the file of the learned XVII Additional Judge, City Civil Court, Chennai, for partitioning both the suit properties and claiming 1/5th share in the suit properties after declaring the settlement deed dated 06.08.2014 executed by the first defendant/father in favour



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of the second defendant as sham and nominal.

3. The plaint proceeds on the basis that the plaintiff along with the first defendant and other defendants are jointly occupied the vacant site. Subsequently, a sale deed was executed in favour of the first defendant/father as a Kartha of the family and while the plaintiff was 15 years old, she worked by milking the cow; selling the milk and gave the money to the father and with the help of the said amount the father/first defendant purchased the A schedule property, so is the contention in respect of the B schedule property and hence, the settlement deed executed by the father in favour of the brother is sham and nominal and prayed for partition and 1/5th share in the suit properties.

4. The first defendant father filed written statement adopted by the other defendants.

5. In the written statement, the first defendant father could state that he was working as a postman at Chennai and he was in occupation of the plot number 89,



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R.S.No.135/1 part, Tiruvanmiyur Village, then Mylapore-Triplicane Taluk, Chennai District to an extent of 63 square meter and described in the suit as "A" schedule property. While so the Tamil Nadu Slum Clearance Board by its proceedings dated 04.02.1984 and in recognition of his occupation of the said plot, allotted the said plot under lease cum sale agreement and as per the conditions of allotment, he had to pay a monthly instalment of Rs.27/- besides Rs.8/- towards development charges and a sum of Rs.2/- towards maintenance charges. Since he remitted the entire plot cost of Rs.2420/- apart from the development charges of Rs.1920/-, the Tamil Nadu Slum Clearance Board executed a sale deed, dated 13.03.2012 and registered as Doc. No. 1803 of 2012 on the file of the Joint Sub-Registrar-I(Temporary), South Chennai in his name.

6. Out of love and affection he has settled this property in favour of one of his daughter Lakshmi, 4th defendant by a settlement deed dated 25.09.2003 whereby an extent of 378 sq.ft., with building thereon. He also executed another settlement deed on 25.09.2003 in respect of the 300 sq.ft., vacant land in favour of another daughter Kanniyammal, the third defendant. It is the specific case that



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out of his own funds, he has purchased vacant site to an extent of 2400 sq.ft by virtue of the sale deed dated 19.05.1980 and put up construction thereon out of his own funds and had executed a settlement deed in favour of his son/2nd defendant on 06.08.2014, which is described as B schedule property. Thus the A schedule and B schedule properties are the self acquired properties of the father/first defendant and in such capacity he had executed three settlement deeds, dated 25.09.2003, 25.09.2003 and 06.08.2014 in favour of the two daughters and his son respectively in respect of the B schedule property.

7. In the trial Court, before trial the following issues have been framed:

1. Whether the plaintiff is entitled for partition of suit properties?
2. If so, whether the plaintiff is entitled to get 1/5 shares over the suit properties?
3. Whether the Settlement Deed dated 06.08.2014 executed by the first defendant in favour of the 2nd defendant is null and void?
4. Whether the 1st defendant is the absolute owner of Suit Properties?
5. Whether the plaintiff is entitled for preliminary decree as prayed for?



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6. To what other relief the plaintiff is entitled?

8. The trial Court held that both A and B schedule properties are self acquired properties of the father/first defendant and also held that three settlement deeds executed by the father in favour of the defendants 1, 3 and 4 are valid and accordingly dismissed the suit.

9. It is specifically pleaded in the written statement that in the year 1981 when the plaintiff was 15 years old, studying IXth Standard, as against the wish of the first defendant/father and her mother, she eloped with her lover and later married to one Maheswaran and settled at Madurai and out of love and affection, the father/first defendant gave Rs.2,00,000/-(Rupees Two lakhs only) to the plaintiff in the year 2003.

10. The learned counsel appearing for the plaintiff and defendants are heard.



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11. Perused Ex.A1-sale deed and Ex.A2-settlement deed executed by the first defendant in favour of the 2nd defendant in connection with the B schedule property. The first defendant is DW1 and attestor of the settlement deed is DW2. The settlement deeds executed by the first defendant in favour of the defendants 2, 3 and 4 are marked as Ex.B1, Ex.B2 and Ex.B3 and they have taken possession and put up the construction. Property tax, electricity consumption charges and water charges are marked as Ex.B4 to Ex.B9.

12. The following points are arises for consideration:

1. Whether A and B schedule properties are the joint family property of the first defendant Rajagopal?
2. Whether the settlement deed-Ex.B1 executed by the first defendant in favour of the 3rd defendant is true and valid?
3. Ex.B2-release deed dated 21.09.2003, executed by the plaintiff and her husband in favour of the first defendant is valid?
4. Whether Ex.B3-settlement deed executed by the first defendant in favour of the 4th defendant is true and valid?



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5. Whether settlement deed-Ex.A2 executed by the first defendant in favour of the 2nd defendant is true and valid?

13. The plaintiff both in her pleadings as well as the evidence as PW1 has categorically stated that while she was minor she used to milking the cow and sell the cow milk from door to door and earn money and hand over the money to her father first defendant. Her statement that out of that money, B schedule property was purchased by the first defendant is oral and there is no other document to substantiate the said plea. Furthermore, the trial Court rightly disbelieved the evidence of PW1 on the ground that since she has already eloped even at the age of 15 years with person of her choice, the alleged contribution said to have been made by the plaintiff is unbelievable. I find no good reason to interfere with the said finding. Furthermore, from the sale deed executed in the name of the first defendant(Ex.A1), it is clear that in the year 2012 sale deed has been executed in favour of the first defendant in respect of the A schedule property from the Tamil Nadu Slum Clearance Board. Admittedly, the first defendant was working as a



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postman. The nature of the employment of the first defendant is not in dispute. Even in the sale deed, it has been mentioned so and hence in the absence of any positive evidence to interfere otherwise the trial Court has rightly come to the conclusion that the sale deed standing in the name of the first defendant that the Tamilnadu Slum Clearance Board has executed the sale deed by virtue of his possession in the said area is well considered and well emerged. Accordingly, I have no hesitation to held that A schedule property is the self acquired property of the first defendant.

14. In respect of the B schedule property it is a self acquired property of the first defendant having acquired the land to an extent of 2400 sq.ft., by a sale deed dated 19.05.1980 from his vendor and hence both A and B schedule properties are self acquired properties of the first defendant and the Point No.1 is answered accordingly.

15. Taking into consideration that the first defendant is a sole and absolute owner of A and B schedule properties, I find no reason to disbelieve the execution



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of Ex.A2-settlement deed Ex.B1 settlement deed and Ex.B3 settlement deed executed by the first defendant in favour of the 2nd defendant/son and 3rd and 4th defendants/daughters. DW2 also spoken about the same. As a sole and absolute owner, the first defendant has got every right to sell the property according to his wish.

16. From the oral and documentary evidence, the first defendant having proved that the suit properties are self acquired properties of the first defendant which were purchased out of his own earnings. Hence he is the absolute owner, as such entitled to alienate the suit property. It remains to be stated that when the sale deeds are clear as to the title pointing out that the first defendant is the owner, the settlement deed executed by the first defendant, who is competent to do so and also deposed that on the date of the execution of the settlement deed, he was in a good and sound state of mind and the evidence of DW2 duly corroborated the same. Hence, the trial Court has rightly come to the conclusion that the settlement deeds in question viz., Ex.A2, Ex.B1 and Ex.B3 are clear and proved in the manner known to law. Accordingly, Point Nos.2,4 &5 are answered.



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17. It remains to be stated that the first defendant is the absolute owner of the A and B schedule properties and executed the settlement deed in favour of the son and daughters and they have also taken possession of the same and made improvements by construction and obtaining electricity consumption from the date of the settlement deed and accordingly, the settlement deeds are duly acted upon by the respective defendants. Hence, I find that the settlement deeds executed by the first defendant is true and valid and he is competent to execute the said settlement deed and accordingly, I find that both the suit properties in view of the discussion in the preceding paragraphs that both A and B schedule properties are self acquired properties of the first defendant and he having executed the settlement deeds under Ex.A2, Ex.B1 and Ex.B3 in favour of the defendants 2, 3 and 4, they are the absolute owners of the properties and hence the plaintiff is not entitled to any share in the property and the order of rejection of partition suit is in accordance with law. It is not suffer from any irregularities and illegalities warranting interference. All the points raised are answered accordingly in favour of the first defendant.



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18. In the result,

1. The Appeal Suit is dismissed.
2. The judgment and decree made in O.S.No1950 of 2015 dated 11.03.2016, on the file of the learned XVII Additional Judge, City Civil Court, Chennai, is hereby confirmed.
3. There shall be a cost of Rs.5000/- to be paid by the plaintiff to the first defendant. Consequently, connected miscellaneous petition is closed.

11.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

PJL

To:

- 1.The XVII Additional Judge, City Civil Court, Chennai.
- 2.The Section Officer,
VR Section,
Madras High Court,
Chennai.



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RMT.TEEKAA RAMAN, J.

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JUDGMENT
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