



S.A.No.556 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 06.02.2024	Pronounced on: 01.03.2024
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CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.556 of 2017
and
CMP. No.13548 of 2017

1.Kandasamy
2.Chinnammal
3.Vijayalakshmi
4.Gopi

...Appellants

Vs.

1.Ramasamy
2.Kandhasamy
3.Vijayakumar
4.Revathi
5.Kaliselvi
6.Manimekalai

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure to set aside the decree and the judgment dated 10.04.2017 rendered in A.S. No.43 of 2014 on the file of the Principal District Judge,



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Namakkal, reversing the decree and the judgment dated 25.09.2014 rendered in O.S. No.543 of 1995 on the file of the Subordinate Judge, Namakkal by allowing this Second Appeal.

For Appellants : Mr.S.Subbiah,
Senior Counsel for
Mrs.Elizabeth Ravi

For Respondent : Mr.S.Kalyanaraman for R1 and R2
Notice Dispensed with for R3 to R6

JUDGMENT

The unsuccessful defendants 3 to 6 in a suit for partition are the appellants herein.

2. The parties are described as per their litigative status before the trial Court.

3. The plaintiffs filed a suit for partition and separate possession of Item 1 of the suit property and to declare the half share of the plaintiffs 2 and 3 in the same. The trial Court, dismissed the suit finding that the plaintiffs were not entitled to any share in Item 1 of the suit property.



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4. Aggrieved by the dismissal of the suit, the plaintiff preferred A.S. 43 of 2014 and the First Appellate Court, reversed the findings of the trial Court and decreed the suit for partition.

5. Aggrieved by the reversal findings rendered by the First Appellate Court, the first defendant has come up by way of the present Second Appeal. On 08.11.2023, the above Second Appeal was admitted on the following substantial question of law:-

“Whether the conclusion arrived at by the First Appellate Court that vendor of the respondents 1 and 2 namely Arumugam was son of Chinna Gounder, is vitiated by non consideration of Ex.A4 Settlement Deed?”

6. I have heard Mr.S.Subbiah, learned Senior Counsel appearing for Mrs.Elizabeth Ravi, learned counsel for the appellants/defendants 3 to 6 and Mr.S.Kalyanaraman, learned Counsel for respondents 1 and 2. The respondents 3 to 6 were set exparte even before the First Appellate Court and therefore, this Court, on 08.11.2023, dispensed with notice to them.



7. The learned Senior Counsel Mr.S.Subbiah, would state that Chinna Gounder originally owned a portion of the suit properties. The said Chinna Gounder had only one son by name Kolanda Gounder and the first defendant/Arumuga Gounder was not the son of Chinna Gounder. Admittedly, Chinna Gounder died prior to 1956, leaving behind only the father of the third defendant as his legal heir and after the death of Kolanda Gounder, the entire suit properties were acquired and enjoyed by the third defendant and her husband, 4th defendant. Defendants 5 and 6 are minor children of defendants 3 and 4.

8. According to the learned Senior Counsel the only question that requires determination in the present Second Appeal is as to whether Arumuga Gounder was the son of Chinna Gounder and consequently, whether he was entitled to any right in the suit property. The learned Senior Counsel would also take me through Exhibits A2 and A3 which are birth extracts issued by Deputy Tahsildar, Namakkal. As seen from the certificate Ex.A2, it merely evidences that a male child was born on 26.04.1924 to Chinna Gounder S/o. Rasaa Gounder. However, the name of the child or



the mother does not find a mention in the said birth certificate. Ex.A3, relates to a male child born to Chinna Gounder and one, Kaliammal on 29.01.1929 and this certificate also does not mention the name of the child. Referring to these certificates and also Exhibits B1, which are two cancelled mortgage deeds dated 04.06.1929 and 24.06.1935, coupled with the cross examination of D.W.2, the learned Senior Counsel would state that the first Appellate Court had erroneously, relied on the birth certificates which did not lend any strength or support to the plaintiffs' case.

9. In fact, I find that Ex.B1 contains two mortgage deeds, dated 04.06.1929 and 24.06.1935. In the first mortgage deed executed by Chinna Gounder, he has mentioned that the said mortgage deed has been executed for himself and also on behalf of two minor sons Kolandan and Kali. However, subsequently, on 24.06.1935, when the second mortgage deed was executed, the father, Chinna Gounder has chosen to mention only one minor son, Kolandan. Both these documents do not support the case of the plaintiff that Arumugam was the son of Chinna Gounder. Both the mortgage deeds in Ex.B1 are more than 30 years old and can be presumed to have been duly executed in terms of Section 90 of the Indian Evidence Act, 1872.



Contrary to the said position, the plaintiff has come forward with a case that the first defendant, Arumugam is the son of Chinna Gounder and he has conveyed 50% undivided share of the suit property.

10. The learned counsel for the respondents 1 and 2, Mr.Kalyanaraman would state both Exhibits A2 and A3 are public documents and therefore, the same cannot be disbelieved. According to him, even going by the two mortgage deeds executed by Chinna Gounder, there is a discrepancy. In one document in the earlier mortgage deed, Chinna Gounder has stated that he has two sons by name Kolandan and Kali. However, in the later document executed in 1935, he claimed that he has only one son, Kolandan. Therefore, the learned counsel for the respondent would state that merely because his name was not mentioned in Ex.B1 mortgage deeds, it cannot lead to a presumption that Arumugam was not the son of Chinna Gounder. He would also refer to Ex.A5 sale deed, which is of the year 1968, under which Arumugam, representing son of Chinna Gounder has sold 50% undivided share in Item I to the plaintiffs.

11. According to the learned counsel for the respondents, D.W.2, one



Ramayee has been examined as witness on the side of the defendants. In cross examination, she has stated that she knew Chinna Gounder and that Chinna Gounder was married to Palaniammal, who pre-deceased Chinna Gounder. She has also stated that Chinna Gounder and Palaniammal were blessed with two sons by name Kolanda Gounder who died about 20 years back. However, she has not been able to recollect the name of the second son and to a suggestion put to her that the second son's name is Arumugam, D.W.2 has not been able deny the said suggestion. Therefore, the learned counsel for the respondents would place reliance of the said evidence of D.W.2 and state that it would amount to an admission that the second son of Chinna Gounder was none else than the said Arumugam and he would therefore, pray for the judgment and decree of the First Appellate Court to be confirmed.

12. The learned Senior Counsel, Mr.Subbiah, would place reliance on the decision of the Division Bench of this Court in the case of *S.V.Ramakrishanan Vs P.R.Sethuraman and others* reported in (2012) 2 *MLJ* page 12, where the Division Bench, while deciding a revocation of Probate Application, held that in the absence of name given in the birth



certificate, the birth certificate produced cannot be correlated to any particular name of the child, who is said to be born on the said date.

13. I have paid my anxious and careful consideration to the submissions made by the learned Senior Counsel for the appellants and the learned counsel for the respondents.

14. As rightly contended by learned Senior counsel, Mr.S.Subbiah, the short point that requires determination in the above Second Appeal is as to whether Arumugam was born to Chinna Gounder or not? If the said Arumugam is the son of Chinna Gounder, then the sale deed in favour of the plaintiffs in respect of 50% undivided share in Item I of the suit property would stand valid in law, thereby, entitling the plaintiffs to declaration of their 50% share in the suit property.

15. The relevant documents exhibited before the Court in connection with the parentage of Arumugam are Exhibits A2 and A3 on the side of the plaintiffs and Ex.B1 on the side of the contesting defendants. No doubt, as contended by Mr.Kalyanaraman, the Birth Certificates are public documents and have evidentiary value, however, when admittedly both the certificates



do not contain the name of Arumugam, no presumption can be drawn from the said Ex.A2 and A3 Birth Extracts, that Arumugam was the son of Chinna Gounder. Further, I find from Ex.B1 mortgage deed that Chinna Gounder himself has executed both the mortgage deeds and in the mortgage deed dated 04.06.1929, he states that he has two sons Kolandan and Kali and in the second mortgage deed dated 24.06.1935, he states that he represents his minor son, Kolandan. Even though, as contended by the learned counsel for the respondents, these two documents themselves contradict each other, one thing become certain, Chinna Gounder never went on record stating that he had a son by name Arumugam. Only placing reliance on Ex.A2 and A3 and Ex.A5, sale deed, Arumugam mentions that he is the son of Chinna Gounder. There is no other document produced on the side of the plaintiffs. Though Arumugam was impleaded as first defendant in the suit, he chose to remain exparte and the plaintiffs also have not taken any steps to even attempt to examine him during trial and establish the fact that he was the son of Chinna Gounder alone.

16. Further, even assuming Ex.A3, relates to Arumugam, even then the said certificate mentions the name of the mother of the child born on



29.01.1929 as Kaliasammal. There is absolutely no evidence or pleading regarding Chinna Gounder's wife being Kaliasammal and that the said Arumugam was born to them. In fact, the evidence of D.W.2 who is aged 90 years appears to be natural and creditworthy. She has asserted that Chinna Gounder's wife was Palaniasammal and that they had no female children but only male children. Unfortunately, she could not clear the main doubt with regard to Arumugam's paternity. She has been only able to recollect the name of elder son Kolandan. Merely because, she has not been able to deny the suggestion that Arumugam is the second son of Chinna Gounder, it will not amount to an admission in favour of the plaintiffs.

17. Further, Ex.A4, is a settlement deed dated 07.03.1967, executed by Kaliasammal, claiming to be the mother of Arumugam. Surprisingly, I find in the said settlement deed that the father's name of Arumugam is not mentioned in the said document and especially, in those times, it is really strange that the father's name was not mentioned and instead the mother's name is mentioned to describe the beneficiary under the document. Therefore, I do not find any of the documents excepting Ex.A1 and Ex.A5, sale deeds executed by the first defendant in favour of plaintiffs 1 and 2 and



sale deed in favour of the first defendant respectively, attempting to establish the fact that Arumugam was the son of Chinna Gounder. The First Appellate Court has inferred that the defendants are not disputing the name of Chinna Gounder's wife to be Kaliammal, which, unfortunately appears to be an incorrect findings, not borne out of any pleading or evidence. In fact, the contesting defendants have examined D.W.2 who was aged about 90, at the time giving evidence and she has clearly stating that Chinna Gounder was married to one Palaniammal, through whom he has two sons. No suggestion is even put to D.W.2 that Chinna Gounder's wife was not Palaniammal but only Kaliammal. The trial Court rightly came to a finding that the plaintiffs failed to establish that the first defendant was the son of Chinna Gounder and the suit properties have always been in the possession of the contesting defendants. The sale deed in favour of the plaintiff is only a self serving document and reliance cannot be placed on the same to affirm that Arumugam was the son of Chinna Gounder.

18. The First Appellate Court erroneously assumed that there was no dispute with regard to relationship between the parties and proceeded to apply Section 112 of the Indian Evidence Act, 1872. The First Appellate



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Court has thus on a misapplication of admitted facts, proceeded to hold that Arumugam was the son of Chinna Gounder and Kaliasammal. Therefore, the said findings arrived at by the First Appellate Court are perverse and wholly unsustainable in the eye of law.

19. For all the above reasons, I am inclined to allow the Second Appeal answering the substantial question of law in favour of the appellant. Accordingly, this Second Appeal is allowed. Consequently, connected Miscellaneous Petitions is closed. No costs.

01.03.2024

Index :Yes/No
Internet : Yes/No
Neutral Citation :Yes/No.
Speaking order/Non-speaking order
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To
1.The Principal District Judge, Namakkal.
2.The Subordinate Judge, Namakkal.



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P.B.BALAJI, J.

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