



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 27.03.2024

Pronounced on: .04.2024

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A. Nos.607 & 608 of 2017

and

Cross Objection Nos.87 & 88 of 2017

S.A. Nos.607 & 608 of 2017

1.Periyathal (Died)
2.K.M.Mohanraj
3.R.Jagadeeswaran
(Appellants 2 and 3 are brought on record
as LR's of the deceased 1st Appellant vide
order dated 26.07.2023)

...Appellants in both S.As

Vs.

1.Vadivel
2.Vanjathal
3.Palanisamy Gounder
4.Sakthivel @ Shanmugasamy
5.C.Periyasamy
6.P.Murugathal
(R5 & R6 are impleaded vide Court
order dated 26.07.2023)

...Respondents in both S.As

COMMON PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decrees dated 22.11.2016 in A.S. Nos.28 & 29 of 2015 on the file of the Subordinate Judge's Court, Dharapuram, Tiruppur District reversing the judgment and decree dated 23.03.2015 in O.S. No.1 of 2003 on the file of the District Munsif's Court,



Dharapuram, Tiruppur District.

Cross Objection Nos.87 & 88 of 2017

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- 1.Vadivel
- 2.Vanjathal
- 3.Palanisamy Gounder
- 4.Sakthivel @ Shanmugasamy

... Cross Objectors/Respondents

Vs.

Periyathal

...Respondent/Appellant

COMMON PRAYER: Cross Objections filed under Order 41 Rule 22 of the Code of Civil Procedure, to set aside the judgment and decree dated 22.11.2016 made in A.S. Nos.28 & 29 of 2015 on the file of the learned Sub Court, Dharapuram reversing the judgment and decree dated 23.03.2015 made in O.S. No.1 of 2003 on the file of the learned District Munsif Court, Dharapuram in respect of the disallowed portion, by allowing this Cross Objections.

For Appellant : Mr.C.R.Prasannan
Respondent in Cross Objection

For Respondents : Mr.C.Umashankar
for Mr.N.Chinnasamy for R1 to R4/
Cross Objectors
Mr.R.Subramanian for R5
Mr.T.Sezhian for R6
in both S.As.



COMMON JUDGMENT

These two Second Appeals as well as Cross Objections arise out of O.S. No.1 of 2003 filed by one Periyathal, seeking a declaration that she is absolutely entitled to the suit property and for a consequential permanent injunction to restrain the defendants from interfering with her peaceful possession and enjoyment.

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

3. The plaintiff, Periyathal is the wife of one Velusamy, who was the son of one Arappa Gounder. Velusamy, died on 10.09.2000 and his father Arappa Gounder, died on 17.02.2002. The second defendant is the sister of the husband of the plaintiff and the first defendant is her son. The third defendant is the husband of the second defendant, and another son of the second and third defendants is the 4th defendant. Admittedly, Arappa Gounder had only one son by name, Velusmay, who is the husband of the plaintiff, Periyathal. He had two daughters besides the son Velusamy viz., Vanjathal and Ponnathal.



4. It is the case of the plaintiff that she became entitled to the suit properties under two documents viz., settlement deed executed and registered by her husband on 19.04.1979 and a sale deed executed by her father in law, Arappa Gounder in her favour on 09.10.2000. The plaintiff basing her claim under these two documents, filed the suit.

5. The suit was resisted by the defendants claiming title under an oral family arrangement and also under a decree in a suit for specific performance. In fact, the defendants filed a counter claim in the said suit in O.S. No.1 of 2003, filed by Periyathal for declaring right and title of the first defendant.

6. The Trial Court, decreed the suit and dismissed the counter claim. However, on Appeal, preferred by the defendants in A.S. Nos.28 & 29 of 2015, the First Appellate Court allowed the Appeals, reversing the judgment and decree of the Trial Court.

7. As against the said reversal findings rendered by the First Appellate Court, the plaintiff has preferred the above Second Appeals. Pending the Second Appeals, the plaintiff, Periyathal died and her Legal Representatives



were brought on record as Appellants 2 and 3.

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8. The above Second Appeals were admitted by this Court on 24.10.2017, on the following three substantial questions of law:-

“a. Whether in law the Lower Appellate Court erred in entertaining the counter claim when the same is barred by limitation and that there is no cause of action for?”

b. Whether in law the Lower Appellate Court erred in overlooking that the onus is cast upon the counter claimants to prove their plea of fraud when the defendants who raised the plea has to discharge their onus especially when a presumption is made in favour of the sale deed marked as Ex.A3 which has been duly registered, under Section 114(e) of the Indian Evidence Act as laid down in the Judgment reported in 2009 (2) CTC 861 and 2008 (2) MLJ 880?

c. Whether in law the Lower Appellate Court erred in overlooking that when the very decree in O.S. No.165 of 2001 being collusive is not binding and enforceable against the defendants, for she was not a party to the said suit and her purchase was much before the date of the suit as per the dictum reported in 1975 (1) MLJ 263 and AIR 1991 Mad 209 thus there being no estoppel for the plaintiff to file the present suit?.”

9. The defendants have filed Cross Objection Nos.87 & 88 of 2017, which are also listed and heard along with the Second Appeals.

10. The main grounds that have been taken in the Cross Objections are that the First Appellate Court having rejected the two documents under which the plaintiff claimed right, ought to have dismissed the suit in entirety, instead of declaring a half share in the plaintiff's favour and that the family



arrangement that was disbelieved by the First Appellate Court, ought to have been accepted since a family arrangement can even be oral and the Courts below ought not to have non suited the defendants on the ground that the family arrangement had not been registered.

11. I have heard Mr.C.R.Prasanan, learned counsel for the appellants in Second Appeals/respondent in Cross Objections. Mr.C.Umashankar, learned counsel appearing for Mr.N.Chinnaraj, learned counsel for the respondents 1 to 4 and Cross Objectors. Mr.R.Subramanian, learned counsel for the 5th respondent and Mr.T.Sezhian, learned counsel for the sixth respondent.

12. Admittedly, the suit properties measuring 23 acres and 83 cents are comprised in Kolathupalayam Village, Dharapuram Taluk. It is also not in dispute that the properties were originally purchased by the plaintiff's husband, Velusamy along with her father in law, Arappa Gounder under a registered sale deed dated 19.07.1971. The said sale deed has been marked as Ex.A1. Subsequently, the plaintiff's husband Velusamy, settled an extent of two acres in S.F. No.2503 together with 1/4th right in the Well and Electric Motor pumpsets alongwith another extent of two acres in S.F. No.2503,



totaling in all four acres, forming part of the total extent of 11.91 and half acres. It is also seen that the said settlement deed has been witnessed by none else than Arappa Gounder, father of Velusamy and father in law of the plaintiff and Palanisamy Gounder, the husband of the second defendant i.e, the husband of one of the daughters of Arappa Gounder.

13. The plaintiff's husband, Velusamy died on 10.09.2000, leaving behind Periyathal as his only legal representative. It is also the case of the plaintiff that her father in law, Arappa Gounder executed a registered sale deed in her favour in respect of his share of the suit properties, in and by sale deed dated 09.10.2000, which has been exhibited as Ex.A3. Thus claiming under Ex.A2 and Ex.A3, the plaintiff seeks for declaration that she is the owner of the entire 23.83 acres.

14. However, it is the case of the defendants that the first defendant who is none else than the grandson of Arappa Gounder filed a suit for specific performance against his grandfather in O.S. No.165 of 2001, claiming that there was an agreement dated 20.09.2000, under which Arappa Gounder had agreed to sell 11.91 acres belonging to him. The said suit in O.S. No.165 of 2000 came to be decreed against the defendant



therein, viz., Arappa Gounder appearing before the Court and expressing consent for a decree to be passed against him and in favour of the first defendant herein. Subsequent to the said decree, the plaintiff's father in law, Arappa Gounder executed a sale deed in favour of the first defendant on 26.12.2001 in Ex.A6, which is also marked as Ex.B3 on the side of the defendants. The second defendant also claimed that she has settled a total extent of 7.81 ½ in favour of her son, the first defendant and it is the case of the second defendant that she became entitled to the said lands under an oral family arrangement. In view of the cloud on the plaintiff's title, the plaintiff filed the suit in O.S. No.1 of 2003.

15. The suit was resisted by the defendants on the following grounds:-

(i) the plaintiff was not in good terms with her husband and she was residing separately and in fact, she had also filed an Application seeking maintenance.

(ii) The sale deed executed by Arappa Gounder in favour of the plaintiff has been denied on the ground that it was forged and brought about by impersonation.

(iii) Arappa Gounder had executed a sale deed in favour of the first



defendant and the sale deed in favour of the plaintiff was not binding on the defendants.

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(iv) The defendants also denied the settlement deed in favour of the plaintiff and claim of the plaintiff to be in possession of the suit properties, and in fact, the defendants claimed to be in possession of the suit properties.

16. According to the defendants, in pursuance of the sale deed executed by Arappa Gounder in favour of the first defendant and settlement deed executed by the second defendant, in favour of the first defendant, the entire suit properties belonged only to the first defendant. In order to declare the said right, the counter claim was also filed seeking for a declaration that the suit properties belonged to the first defendant and for a permanent injunction to restrain the plaintiff from interfering with the possession of the first defendant.

17. It is also seen that the plaintiff has filed her reply statement to the counter claim, mainly, contending that the counter claim was barred by limitation and there was no cause of action for the counter claim. The plaintiff also denied the oral arrangement pleaded by the defendants. The plaintiff also stated that she is not a party to the suit for specific performance



in O.S. No.165 of 2001 and the same is not binding on her, besides also contenting that on the date of the said sale deed in favour of the first defendant, Arappa Gounder had no interest in the suit property, having already sold his entire share to the plaintiff, on 09.10.2000.

18. The Trial Court after assessing the oral and documentary evidence adduced by the parties accepted the case of the plaintiff and decreed the suit. The counter claim preferred by the defendants was dismissed.

19. The Appeals filed by the defendants as against the decree in the suit and dismissal of the counter claim in A.S. Nos.28 and 29 of 2015, were allowed and the First Appellate Court rejected the case of the plaintiff that she had purchased half share from her father in law and also rejected the claim under the settlement deed from her husband finding that the settlement deed had not been acted upon. However, the First Appellate Court finding that there was no partition between Arappa Gounder and his son Velusamy, held that the plaintiff would be entitled to a half share which was her husband's entitlement and granted a decree declaring that the plaintiff's half share in the suit property. However, the First Appellate Court



also dismissed the Appeal against the counter claim holding that the oral family arrangement had not been proved by the defendants.

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20. Pending the above Second Appeals, Periyathal died and Appellants 2 and 3 were brought on record. Similarly respondents 5 and 6 were also impleaded by order of this Court dated 26.07.2023, being purchasers of substantial portion of total lands which were forming part of the suit property. It is also brought to my notice that as against the Application allowing the purchasers to be impleaded, Special Leave Petition (Civil) was moved before the Hon'ble Supreme Court in SLP (Civil) No.10088 of 2024 and the Hon'ble Supreme Court refused to interfere with the order of this Court permitting impleadment of the purchasers.

21. In fact, while bringing on record the appellants 2 & 3, it was brought to the notice of this Court that they were purchasers under four registered sale deeds executed by Periyathal and properties were also covered under a Will of Periyathal. However, in and by order dated 26.07.2023 in CMP. No.8474 of 2022, this Court held that the Will would have to be proved as required under Section 68 of the Indian Evidence Act, 1872 and subject to proof of the Will, the impleadment of appellants 2 and



3 was allowed.

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22. This Court also called for findings from the learned District Munsif, Dharapuram regarding the Will dated 17.12.2019 said to have been executed by Periyathal. In and by order dated 12.10.2023, the learned District Munsif, Dharapuram has forwarded her findings to this Court holding that the Will was surrounded by suspicious circumstances and the propounder has not dispelled the same and consequently, rendered a finding that the Will was not genuine.

23. The learned counsel for the appellants has filed his objections to the said findings rendered by the learned District Munsif, Dharapuram. The sum and substance of the objections are that the inconsistencies pointed out by the learned District Munsif, Dharapuram would not invalidate the Will; the defendants did not lead any rebuttal evidence to disprove the Will; the Will was a registered Will and P.W.3, one of the attesting witnesses had clearly spoken about Periyathal affixing her thumb impression and also signature in the Will in his presence and the presence of the other attesting witness., thereby, proving the requirements under Section 63 of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act,



1872; P.W.3, also denied suggestion that the testatrix was not in a sound state of mind to execute the Will; P.W.3 has let in cogent evidence with regard to the execution of the Will and the registration before the Sub Registrar.

24. The learned counsel for the appellants apart from contending and elaborating the objections with regard to the findings of the learned District Munsif, Dharapuram regarding the genuineness of the Will of Periyathal would submit that Periyathal had admittedly executed as many as five Wills and in all the said Wills, Periyathal had intended the property to be taken only by the same beneficiary except under one Will dated 17.12.2013.

25. Apart from the arguments advanced with regard to the findings on the Will, the learned counsel for the appellants would submit that the defence pleaded by the defendants was that the plaintiff had played a fraud and brought about the sale deed alleged to have been executed by her father in law, Arappa Gounder. When such a plea of fraud and impersonation had been taken, the learned counsel for the Appellants, Mr.C.R.Prasannan, would submit that the burden of proof is only on the defendants to establish the said plea of forgery and impersonation. He would also bring to my notice



that though the defendants took out an Application for comparison of the signatures and the plaintiff also expressing no objection, for reasons best known to the defendants, the said Application was not pursued.

26. The learned counsel for the appellants would further state that the document being a sale deed, it was not required to be proved in accordance with Section 68 of the Indian Evidence Act, 1872 and therefore, Ex.A3, sale deed had to be accepted as true and the defendants had miserably failed to establish their plea of forgery and impersonation. Even with regard to the settlement deed executed by the plaintiff's husband Velusamy, the learned counsel for the appellants would submit that the First Appellate Court has erroneously held that the settlement deed was not acted upon and admittedly, the plaintiff's name was included by mutation of revenue records and the First Appellate Court has erroneously proceeded to not advert to the material documents in this regard. The learned counsel for the appellants would also submit that it is not even the case of the defendants that the suit property was joint family property and that by conduct, the plaintiff had chosen to blend the same and therefore, the said findings were absolutely perverse and materially irregular.



27. The following decisions are rendered by the learned counsel for the Appellants:-

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- (i) *Amit Kumar Shaw and Another vs Farida Khatoon and Another*, reported in (2005) 11 SCC 403
- (ii) *V.L.Dhandapani vs Revathy Ramachandran and others*, reported in 2014 (3) TLNJ 60 (Civil)
- (iii) *Thomson Press (India) limited vs Nanak Builders and Investors Private Limited and others*, reported in (2013) 5 SCC 397
- (iv) *Narayanswamy Mudaliar and others vs Ratnasabapathy Mudali and another*, reported in (1937) SCC Online Mad 117
- (v) *Vimal Chand Ghevarchand Jain and others vs Ramakant Eknath Jadoo*, reported in (2009) 5 SCC 713
- (vi) *Bayanabai Kaware vs Rajendra S/o Baburao Dhote*, reported in (2018) 1 SCC 585
- (vii) *K.V.Narayanan vs K.V.Ranganandhan and others*, reported in (1977) 1 SCC 244
- (viii) *Madanlal Phulchand Jain vs State of Maharashtra and others*, reported in (1992) 2 SCC 717
- (ix) *S.Sathappan (died) and 3 others vs P.S.S.Somasundaram Chettiar and 24 others*, reported in (2002) SCC Online Mad 721
- (x) *K.Meenakshisundaram vs Selvi C.K.Chandra*, reported in 2000 (IV) CTC 100

28. Mr.R.Subramanian, learned counsel appears for the legatees under the Will would contend that sale is governed by Section 54 of the Transfer of Property Act, 1882 and it does not require attestation and therefore, the requirement to examine attesting witnesses was not necessary. He would again reiterate the argument of the learned counsel for the



appellants regarding burden of proof that when plea of forgery and impersonation has been raised in the written statement the person alleging forgery had to establish the same. That apart, Mr.R.Subramanian, learned counsel would contend that Arappa Gounder never challenged the sale deed during his lifetime and it was not open to the defendants to question the sale deed executed by Arappa Gounder, when he himself did not choose to challenge the same. He would further contend that once he has sold his entire entitlement by way of a registered sale deed, the suit for specific performance was only collusive in nature and brought about to defeat the sale deed in favour of the plaintiff. In any event, according to the learned counsel for the legatees, Mr.R.Subramaniam, the said sale deed executed in favour of the first defendant in pursuance of the decree for specific performance was not binding on the plaintiff, especially when Arappa Gounder had no subsisting interest on the date of execution of the sale deed in favour of the first defendant. He would therefore, pray for the judgment of the Trial Court being restored.

29. The learned counsel for the legatees under the Will would also place reliance on the following decisions:



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(i) *Thangam and another vs Navamani Ammal* - Civil Appeal No. 8935 of 2011 dated 04.03.2024.

(ii) *Jagannathan Pillai vs Kunjithapadam Pillai and others*, reported in AIR 1987 SC 1493

(iii) *Gangamma and others vs G.Nagarathnamma and others*, reported in (2009) 15 SCC 756

(iv). *Vaddeboyina Tulasamma and others vs Vaddeboyina Sesha Reddi (Dead) by Lrs*, reported in AIR 1977 SC 1944.

30. Per contra, Mr.C.Uma Shankar, learned counsel appearing for the respondents 1 to 4/Cross Objectors, would submit that under the settlement deed Ex.A2, only a life interest was given to the plaintiff and therefore, the plaintiff could not claim absolute right even to a half share. He would further submit that even insofar as the sale deed executed by Arappa Gounder in her favour, the said sale deed never saw the light of the day until the death of Arappa Gounder himself and the sale deed was brought about under suspicious circumstances and evidence in that regard had been let in by the defendants which have been rightly appreciated by the First Appellate Court.

31. Mr.C.Umashankar, learned counsel would also state that the plaintiff has suppressed materials facts and circumstances viz., filing of



earlier suits in O.S. No.598 of 1980 and O.S.317 of 2001. According to the learned counsel Mr.C.UmaShankar, the plaintiff had included the suit property as one of the items, viz., Item No.4 in O.S. No.598 of 1980 and thereby, the plaintiff had clearly given up her claims under Ex.A2 and Ex.A3, namely settlement executed by her husband and sale deed executed by her father in law. The learned counsel would refer to the evidence let in with regard to Ex.A3 and state that the sale deed was a sham and nominal document and passing of consideration had not been proved. He would also support the findings of the learned District Munsif, Dharapuram with regard to suspicious circumstances surrounding the execution of the Will executed by Periyathal and would contend that the appellants and respondents 5 and 6 have miserably failed to prove the said Will.

32. He would also contend that the daughter in law viz., the plaintiff cannot seek share in joint family property in the absence of other legal heirs of her father in law namely, second defendant Vanjathal and other daughter Ponnathal. The learned counsel would also state that the Courts below have erroneously disbelieved the family arrangement and when admittedly, the first defendant had become owner of the Arappa Gounder's share in and by sale deed in pursuance of a suit for specific performance, the decree having



not been challenged or set aside, the First Appellate Court erroneously dismissed the Appeal preferred as against the counter claim. He would therefore, pray for the Cross Objections being allowed and the Second Appeals being dismissed.

33. The decisions which are relied on by the learned counsel for the Respondents 1 to 4 are hereunder:

(i) *Kuppusamy; Elumalai; Yesodhai Ammal vs Karuppa Padayachi; Kuil Ammal; Palani Ammal; Pavadi Padayachi; Thirumalai*, reported in 2016 (1) MWN (Civil) 280 (Mad).

(ii) *Perumal Konar vs Esakki @ Mookandi*, reported in 2014 (2) MWN (Civil) 717 (Mad).

(iii) *S.P. Chengalvaraya Naidu (Dead) by Lrs. vs Jagannath (Dead) by Lrs., and others* reported in (1994) 1 SCC 1.

(iv) *Binod Bihari Lal and others vs Rameshwar Prasad Sinha and others*, reported in AIR 1978 SC 1201

(v) *Sarup Singh and another vs Union of India and another*, reported in 2011 (2) CTC 340

34. I have carefully considered the rival submissions advanced by the learned counsel on either side and I have gone through the pleadings, oral and documentary evidence available on record, the judgments of the Courts below, the judgments relied on by the learned counsel on either side and also the grounds of challenge raised in the Second Appeals as well as the Cross Objections, as well as the findings of the learned District Munsif regarding



the Will.



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35. The claim of title to the suit properties hinges on two documents, namely Ex.A2 and Ex.A3. Ex.A2, is a settlement deed dated 19.04.1979, executed by Velusamy, in favour of the plaintiff, Periyathal. Admittedly, under Ex.A2, only a life interest has been given to the plaintiff and it is stated that after her lifetime, the property would go to the children of Periyathal and Velusamy. Though Periyathal has claimed that a child was born to her and Velusamy and had died, there is absolutely no evidence brought on record before the Trial Court and the Courts below had rightly rejected the said contention of the plaintiff and held that Velusamy and Periyathal were not blessed with any issues. However, it is seen in the evidence that D.W.1, who had admitted that his uncle, Velusamy has settled four acres in favour of the plaintiff for her maintenance under Section 14 (1) of the Hindu Succession Act. Any limited interest, in lieu of maintenance gets enlarged into an absolute estate. Further, in any event when admittedly Velusamy and Periyathal were not blessed with any issues, on the demise of Velusamy, being the only surviving legal representative, the limited right gets blossomed in favour of his wife, Periyathal as an absolute right. Therefore, the settlement deed is valid and binding on the defendants.



Further, it is also seen that the plaintiff has included her name alongwith her husband's name in the revenue records and therefore, it also cannot be stated that the settlement deed has not been acted upon. Thus insofar as Ex.A2 is concerned, the plaintiff has clearly established her right and the Trial Court has rightly appreciated the oral and documentary evidence available on record, in coming to the conclusion that Ex.A2, settlement deed is valid and binding on the defendants. In any event, insofar as Velusamy's share, none of the defendants could step into the shoes and claim any right to the detriment of Velusamy's wife viz., the plaintiff.

36. With regard to Ex.A3, sale deed dated 09.10.2000, executed by Arappa Gounder, father in law of the plaintiff in respect of the other half share, transfer of an immovable property, by way of sale, is governed only by Section 54 of the Transfer of Property Act, 1882 which runs thus:-

"54. "Sale" defined. –

"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.

– Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.



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Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property. Contract for sale.

– A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.”

37. Section 68 of the Indian Evidence Act, 1872 has no application to a sale deed, which is not one of documents that requires to be attested. Further, I find from the evidence that the plaintiff who examined herself as P.W.1, has clearly spoken about the manner in which the amount of Rs.4 lakhs was paid to her father-in-law. Therefore, there is no difficulty in holding that the sale has been established as mandated under Section 54 of the Transfer of Property Act, 1882. I find from the written statement, the specific case of the defendants is that Arappa Gounder did not execute the sale deed and his signature was forged, by impersonation. In such circumstances, the burden is only on the defendants to prove such defence plea. Unfortunately, I do not find any evidence, whatsoever, adduced on the side of the defendants to establish the plea of forgery and impersonation. As rightly contended by the learned counsel for the appellants, having taken out an Application to compare the signatures of Arappa Gounder, the Application was abandoned by the defendants and therefore, the



presumption in favour of the genuineness of the sale deed complying Section 54 of the Transfer of Property Act, 1882 would only be available in favour of the plaintiff.

38. In fact, with regard to the theory of blending which has been discussed at length by the First Appellate Court and has been the prime reason for non suiting the plaintiff, I find that even in the written statement filed by the second defendant, the second defendant has only set up an independent claim in respect of the suit property and similarly, the first defendant claims under the sale deed executed by his grandfather Arappa Gounder, pursuant to the decree for specific performance in his favour. It is not the case of the defendants that the plaintiff has blended the suit properties alongwith the other joint family properties and therefore, the First Appellate Court has clearly fell in error in even discussing the doctrine of blending which was absolutely and wholly unnecessary in the light of the pleadings and evidence available on record.

39. With regard to the suits filed by the plaintiff, admittedly she has filed a suit in O.S. No.598 of 1980 against her husband, Velusamy claiming one half share in the suit property. However, excepting for the decree



passed in the said suit in O.S. No.598 of 1980 as Ex.B4/B7, I do not find pleadings namely, the plaint and the written statement being exhibited before the Trial Court. The suit was admittedly filed in the year 1980, prior to purchase of the property by the plaintiff from her father in law, Arappa Gounder and even during the lifetime of her husband, Velusamy. Therefore, the circumstances under which the said suit was filed cannot be determined at this length of time especially when necessary pleadings and documents have not been exhibited on the side of the defendants.

40. With regard to other Ex.B8, namely the amended plaint in O.S. No.317 of 2001, I do not find the suit property to be even forming part of the said suit. Admittedly, the plaintiff has sought for partition in respect of other joint family properties alone and not the suit property. Therefore, Ex.B8 or B7 will not come in the way of the plaintiff seeking a declaration of her right.

41. With regard to the contention of the learned counsel for the respondents that the decree for specific performance has not been challenged by the plaintiff and therefore, the plaintiff cannot succeed in getting the declaratory relief in her favour, I find that once sale deed had been executed



and registered in favour of the plaintiff in Ex.A3, the said Arappa Gounder had no subsisting interest in the suit property and moreover, considering the manner in which the suit for specific performance was filed and decree came to be passed, in furtherance of which the sale deed was also executed, it seems to be clearly an attempt to deprive the plaintiff of her rights under Ex.A3, sale deed. The grandson, first defendant claims to have an agreement of sale with his grandfather. The sale consideration alleged to have been agreed upon was Rs.2,50,000/- and the grandson said to have paid Rs.2,25,000/- even on the date of agreement of sale. Within a few months, a suit has been filed for specific performance and the grandfather submits to a decree. If really the grandfather was ready and willing to execute the sale deed, there would have been no necessity at all for filing the suit for specific performance.

42. Further, immediately after the decree, the grandfather has chosen to execute the sale deed in favour of the first defendant. When the grandfather, Arappa Gounder had already divested himself of all his right, title and interest in the suit property and did not have any subsisting right or interest in the same, to be conveyed to the first defendant, even assuming the decree for specific performance was valid, even then the sale deed executed



by the said Arappa Gounder in favour of the first defendant, behind the back of the plaintiff, who had by then purchased the share of the Arappa Gounder, is clearly a void document and would not bind the plaintiff. I do not find any necessity for the plaintiff to challenge the decree in the suit for specific performance and the plaintiff, not being a party and her father in law, Arappa Gounder also not having any subsisting right in the said property on the date of the sale deed, the said sale deed can be ignored by the plaintiff and it was not incumbent on the plaintiff to seek for a declaration challenging the said decree for specific performance.

43. I also do not merit acceptance in the contention of the learned counsel for the respondents that the plaintiff has suppressed material facts and circumstances. As already stated, when the defence set up by the defendants was that Arappa Gounder did not execute the sale deed in favour of the plaintiff and that it was brought about by fraud, forgery and impersonation, the parties were never at issue with regard to blending or partition and as already set out herein above, the specific case of the defendants themselves was only claiming separate and independent right to the suit properties and not by way of partition or succession. Therefore, the non mentioning of the suits in O.S. No.598 of 1980 & O.S. No.317 of 2001



is not in any way fatal to the case of the plaintiff.

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44. With regard to the contention of the learned counsel for the respondents that the sale deed in Ex.A3 was sham and nominal, I find that no such plea has been taken in the written statement and the only challenge to the sale deed was on the ground that it was brought about by impersonation and forgery. It is a suit filed for declaration of title of the plaintiff and it is not a suit for partition. Even the defence set up does not in anyway point to the direction of a partition lis. Moreover, neither Velusmay nor Arappa Gounder challenge the settlement deed and sale deed, respectively executed by them at any point of time and whileso, it was not lying in the mouth of the defendants to challenge the same that too, on the grounds of not being acted upon or that the sale deed was forged and not executed by Arappa Gounder. Moreover, neither the sale deed nor the settlement deed have been challenged by the defendants and in the absence of the same, they cannot maintain their counter claim. Moreover, as rightly contended by the learned counsel for the legatees, Mr.R.Subramaniam, the very fact that the first defendant claimed only under a decree for specific performance would itself disown the plea of joint family property which was not even taken at the instance of the defendants. However, unfortunately the



First Appellate Court has misdirected itself and heard and disposed of the Appeal Suits as if it arose from the suit for partition.

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45. With regard to the Will executed by Periyathal, admittedly the defendants have no caveatable interest to challenge the said Wills. In any event in terms of Section 68 of the Indian Evidence Act, 1872, the Will has to be proved by examination of atleast one of the attesting witness. In the present case, after remand for the limited purpose of proof of Will, before the Trial Court, one of the attesting witness as well as the scribe have been examined and they have clearly spoken about the execution of the Will by Periyathal. The Will is also a registered Will and in fact, Periyathal has executed four previous Wills on 05.02.2001 in favour of Periyasamy and Loganayaki (Two Wills on the same day) and subsequently, without revoked the Wills dated 05.02.2001) and executed subsequent Wills on 11.02.2008, 21.10.2013 before executing her last Will and Testament on 17.12.2013.

46. I have gone through the evidence of the attesting witness as well as the scribe who is an Advocate. I do not find the discrepancies in their evidence, amounting to be serious or fatal to the factum of execution and attestation of the Wills. Insofar as the execution and attestation of the Will,



the attesting witness clearly spoke about the execution of the Will by the Testatrix in his presence and also in the presence of the other attesting witness. The reference to left thumb impression would have probably been a result of the registration of the Will on the same day, where admittedly Periyathal has also affixed her left thumb impression. Therefore, merely because the attesting witness has stated that Periyathal has signed as well as executed her left thumb impression in the Will cannot be put against due execution of the Will. Further, from the fact that Periyathal had consistently intended to benefit Periyasamy under all the previous Wills would manifest her intention to bequeath the suit properties in favour of the said Periyasamy. The scribe and Advocate, has also spoken about due execution and attestation and also spoken about the earlier Wills and his assistance rendered to Periyathal in executing the Will dated 17.12.2019. He has also spoken about the registration of the Will on 17.12.2019. I do not find the evidence of P.W.2 and P.W.3 to be contradictory and minor contradictions are always bound to arise when parties give evidence with regard to an event that occurred 4/5 years back. In fact, such minor inconsistencies only go to show that the evidence is natural and not tutored. Therefore, I am unable to countenance the findings of the Trial Court with regard to the genuineness of the Will. The suspicion raised by the Trial Court is not surrounding due



execution and attestation of the Will, but only with regard to certain other irrelevant circumstances which do not in anyway go to be little the truth and genuineness of execution of the Will.

47. With regard to the counter claim, admittedly, the Courts below have concurrently held that the plea of oral partition has not been proved by the defendants by adducing satisfactory evidence. Moreover, as rightly contended by the learned counsel for the appellant, the counter claim was admittedly not filed along with the written statement and it was filed much later and clearly after a period of three years from the date on which, the time for filing the written statement expired. Therefore, even from the angle of limitation, applying the ratio laid down in the *K.Meenakshisundaram's* case, referred herein supra, besides also on merits, confirming the findings of the Trial Court and the First Appellate Court that the plea of oral partition has not been proved, I see no reason to entertain the Cross Objections.

48 (i). In *Amit Kumar Shaw's* case, (referred herein supra) the Hon'ble Supreme Court, discussed the doctrine of *lis pendens* and the rationale behind it and held that the doctrine would apply only when the *lis* is pending before the Court and not otherwise.



48 (ii). In *Bayanabai Kaware's* case, referred herein supra, the Hon'ble Supreme Court held that the sale deed does not require any attesting witness like a gift deed and therefore, Section 68 of the Evidence Act, would not apply to a sale deed.

48 (iii). In *Vimal Chand Ghevarchand Jain's* case, referred herein supra, the Hon'ble Supreme Court, held that right of possession over a property is a facet of title and as soon as a sale deed registered, title passes to the vendee. The Hon'ble Supreme Court further held that heavy burden of proof lay upon the defendant to show that transaction was a sham one and on the facts that case, the Hon'ble Supreme Court held that it was not necessary to go into the question as to whether extrinsic evidence was admissible to show a transaction of sale was sham and nominal transaction.

48 (iv). In *Thomson Press (India) limited's* case, referred herein supra, the Hon'ble Supreme Court again dealt with the doctrine of *lis pendens* and held that Court had a power to add *transferee pendete lite* purchasers as parties, independent of power under Order I Rule X of CPC.

48 (v). In *K.V.Narayanan's* case, referred herein supra, the Hon'ble Supreme Court, held that when a plea of blending of properties was taken, it must be established that there was a clear intention on the part of the coparcener to lay his separate rights and such intention cannot be inferred



merely from the physical mixing of properties with joint family or from the fact that other members of the family were allowed to use the property jointly or that income of the separate property is utilised out of generosity and kindness to support persons to whom the holder is not bound to support or from the failure to maintain separate accounts, for an act of generosity or kindness cannot ordinarily be regarded as an admission of a legal obligation.

48 (vi) In *Madanlal Phulchand Jain's* case, referred herein supra, the Hon'ble Supreme Court again dealt with the doctrine of blending and held that evidence had to let to show clear intention of abandoning separate claim and to give up separate rights and allow the separate property to be treated as ancestral property and be enjoyed by the coparceners. The Hon'ble Supreme Court further held that such an intention has to be proved by tendering evidence and no inference can be drawn.

48 (vii). In *K.Meenakshisundaram's* case, referred herein supra, this Court held that though a counter claim need not relate to or be connected with the original cause of action pleaded by the plaintiff, there is an inbuilt condition that cause of action should arise before the time fixed for filing of written statement had expired.

48 (viii). In *S.Sathappan's* case, referred herein supra, the Division Bench of this Court held that in order to establish blending, there should be



a joint family nucleus in which the person who wants to blend the property must have a share and there should be an unequivocal declaration on the part of a co-sharer giving up or abandoning his interest in self acquired property and the property should be thrown into the common hotchpot and even if it had been declared that the coparcener is the Kartha of the joint family, the property belonging to the joint family, it cannot be said that he had given up his absolute right in respect of his share inherited through his mother and treated the same as belonging to joint family.

49. Mr.R.Subramaniam, learned counsel would place reliance on the *Jagannathan Pillai's* case, referred herein supra, where the Hon'ble Supreme Court discussed the scope of Section 14(1) of the Hindu Succession Act (30 of 1956) and held that a limited estate held by a widow would blossom into a full estate on the commencement of the Hindu Succession Act (30 of 1956).

49 (i). In *Gangamma's* case, referred herein supra, the Hon'ble Supreme Court held that the rights of the female heir who had acquired property like Stridhan cannot be subject to partition and by the operation of Section 14(1) of the Hindu Succession Act, 1956, she was the absolute and full owner of such properties.



49 (ii). In *Vaddeboyina Tulasamma's* case, referred herein supra, the Hon'ble Supreme Court held that a Hindu female acquires property under a compromise in view of satisfaction of right of maintenance and compromise prescribing a limited interest, then Section 14 (1) would apply and her limited interest would enlarge into a full rights.

49 (iii). In *Thangam's* case, referred herein supra, regarding genuineness of the Will, the Hon'ble Supreme Court held that Order VIII Rules 3 and 5 of Civil Procedure Code, 1908 provides for specific admission and denial of pleadings in the plaint. A general or evasive denial is not treated as sufficient and referring to proviso to Order VIII Rule V CPC, the Hon'ble Supreme Court held that the general rule is that facts admitted are not required to be proved and held that when there was no specific para-wise reply given, a general or evasive denial would not suffice and the plaint allegations would have to be taken as admitted.

50. Per contra, the learned counsel for the respondents 1 to 4 would place reliance on the following decisions. In *Kuppusamy's* case, referred herein supra, where this Court held that in a suit for declaration and injunction, the burden of proof was always on the plaintiff and the plaintiff can obtain a decree only on his own strength and not on the weaknesses of



the defendant's case.

50 (i). In *Perumal Konar's* case, referred herein supra, this Court held that when the plaintiff was claiming title to the suit property under a sale deed and execution of sale deed was denied by the defendant and valid payment of consideration had not been proved by the plaintiff, this Court held that title of the plaintiff had not been proved.

50 (ii). In *S.P. Chengalvaraya Naidu 's* case, referred herein supra, the Hon'ble Supreme Court held that the judgment and decree obtained by fraud would be a nullity and partition suit filed by the respondent without disclosing the deed of release executed by him, relinquishing his right in the property and preliminary decree obtained, would amount to a decree obtained by non disclosure and would thereby amount to fraud and held that the decree was liable to be set aside.

50 (iii). In *Sarup Singh's*, referred herein supra, the Hon'ble Supreme Court held that when a decree is a nullity, it can be challenged and interfered with at any subsequent stage, including the stage of execution or in collateral proceedings.

51. I have kept in mind the ratio laid down by this Hon'ble Court as well as the Hon'ble Supreme Court in the above referred decisions. Any



decision is an authority only, for what it states and therefore, unless the facts of the present case warrant, reliance need not be placed on decisions where ratio is laid down for other propositions. The same would not be of any value addition in the present case. However, I find that the decision of this Court in *K.Meenakshisundaram's* case, referred herein supra, regarding counter claim being squarely applicable to the facts of the present case.

52. With regard to the decisions regarding the Will and blending, I do not see any necessity for applying the same, since the parties were never at issues that the property was coparcenary property and that the plaintiff had voluntarily thrown her self acquired property into the common hotchpot and thus it became ancestral property. As already discussed, at the risk of repetition, it was neither the plaintiff's case nor the defendants' case, that the plaintiff had blended her self acquired property. Unfortunately, the First Appellate Court, lost sight of the scope of litigation and traversed beyond its jurisdiction in treating the suit as if it is one for partition and granted a decree in respect of half share of the suit property in favour of the plaintiff. In the process, the First Appellate Court has overturned the well merited findings of the Trial Court. The reasonings of the First Appellate Court and the findings arrived thereon have clearly illegal, perverse and materially



irregular warranting interference.

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53. In fine, the Second Appeals are allowed. The judgment and decree dated 22.11.2016 in A.S. Nos.28 & 29 of 2015 on the file of the Subordinate Judge's Court, Dharapuram, Tiruppur District are hereby set aside and judgment and decree dated 23.03.2015 in O.S. No.1 of 2003 on the file of the learned District Munsif, Dharapuram, Tiruppur District is hereby restored. Cross Objections filed by the respondents 1 to 4 are dismissed. No order as to costs.

.04.2024

Index :Yes/No
Internet : Yes/No
Neutral Citation :Yes/No.
Speaking order/Non-speaking order
rkp
To

1. The Subordinate Judge, Dharapuram, Tiruppur District.
2. The District Munsif Court, Dharapuram, Tiruppur District.

P.B.BALAJI, J,

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S.A. Nos.607 & 608 of 2017
Cross Objection Nos.87 & 88 of 2



Pre-delivery Judgment in

S.A. Nos.607 & 608 of 2017

and

Cross Objection Nos.87 & 88 of 2017

.04.2024