

S.A. Nos.762 & 833 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED :05.12.2024

CORAM

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

S.A.Nos.762 & 833 of 2023

and

CMP.No.26466 of 2023

S.A.Nos.762 of 2023

1.Kavitha N Hegde

W/o.K.Naveen Hegde

2.K.Naveen Hegde

S/o.V.S.Hegde

Represented by their Power Agent

R.Ashok Kumar

... Appellants

Vs

1.Nirmala

2.G.Krishna Reddy

3.G.Manjula

... Respondents

(Cause title accepted vide court order dated 05/10/2023 made in
CMP.Nos.22421 & 22423 of 2023 in SA.Sr.No.122567 / 2023 (PTAJ).

S.A.Nos.833 of 2023

1.Kavitha N Hegde

W/o.K.Naveen Hegde

2.K.Naveen Hegde

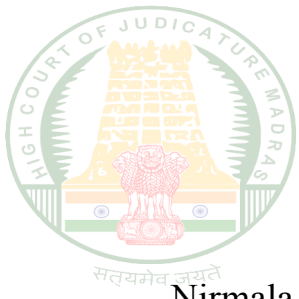
S/o.V.S.Hegde

Represented by their Power Agent

R.Ashok Kumar

... Appellants

Vs



S.A. Nos.762 & 833 of 2024

Nirmala

... Respondent

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(Cause title accepted vide court order dated 11/10/2023 made in CMP.Nos.23197 & 23195/2023 in SA.Sr.Nos.122568 / 2023 (PTAJ).

PRAYER in S.A.NO.762 of 2023: Second Appeal is filed under Section 100 of the Code of Civil Procedure, praying to set aside the Judgment and Decree passed in A.S.No.82 of 2022, dated 21.08.2023, on the file of the Additional District Court, Hosur, reversing the judgement and decree passed in O.S.No.223 of 2021 dated 10.10.2022 on the file of the Additional Subordinate Court, Hosur.

PRAYER in S.A.NO.833 of 2023: Second Appeal is filed under Section 100 of the Code of Civil Procedure, praying to set aside the Judgment and Decree passed in A.S.No.81 of 2022, dated 21.08.2023, on the file of the Additional District Court, Hosur, reversing the fair and decreetal order passed in I.A.No.3 of 2022 in O.S.No.223 of 2021, dated 10.10.2022 on the file of the Additional Subordinate Court, Hosur.

For Appellants	:	Mr.S.Parthasarathy, Senior Counsel for Mr.P.Dinesh Kumar
For R1	:	Mr.V.Nicholas
For R2 & R3	:	No appearance

JUDGEMENT

The appellants have preferred these Second Appeals to set aside the Judgment and Decree passed in A.S.No. 82 & 81 of 2022, dated 21.08.2023, on the file of the Additional District Court, Hosur, reversing the judgement and decree passed in O.S.No.223 of 2021, and in I.A.No.3 of 2022 in



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O.S.No.223 of 2021, respectively dated 10.10.2022 on the file of the Additional Subordinate Court, Hosur.

2. For the purpose of convenience, the parties herein are referred to as they were ranked in the suit.

3. Challenging the reversal findings of the First Appellate Court, the Defendants 3 and 4 preferred these appeals.

4. Before the Trial Court, the respondent, Nirmala, as plaintiff, filed a suit in O.S. No. 223 of 2021, seeking partition by allotting her one-sixth share, a declaration that the sale deed dated 31.10.1986 standing in the name of D-3 and D-4 is null and void, and also prayed for a permanent injunction restraining them from causing trespass. Upon receipt of notice, Defendants 3 and 4 filed I.A. No. 3 of 2022, praying for rejection of the plaint on the grounds that there was no cause of action to file the suit and that the relief claimed by the plaintiff was barred by limitation. They contended that the plaint was vexatious and liable to be rejected. The said application was



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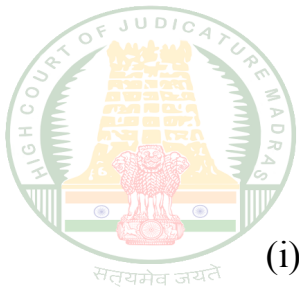
contested by the plaintiff by filing counter-objections.

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5. On hearing both sides, the learned Trial Judge held that the relief claimed by the plaintiff was barred by limitation and that there was no cause of action. Accordingly, the petition was allowed and the plaint was rejected. Challenging both the said orders, the plaintiff preferred A.S. Nos. 81 of 2022 and 82 of 2022.

6. The learned First Appellate Judge, after hearing both sides, finally held that the relief claimed in the plaint required detailed evidence, without which issues such as limitation and maintainability of the suit on the basis of cause of action could not be decided. Therefore, the findings of the Trial Court were set aside and the suit was directed to be restored to file. Challenging the said orders, Defendants 3 and 4 have preferred these second appeals.

7. The learned counsel for the appellants challenged the findings of the First Appellate Court on various grounds.



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(i) The lower appellate Court has failed to appreciate the case of the appellant in proper perspective which leads to serious miscarriage of justice.

(ii) The lower appellate court ought to have seen that the respondent / plaintiff has no cause of action to file the present suit and therefore the same is liable to be rejected.

(iii) The lower appellate Court ought to have seen that, even assuming if the suit property is the ancestral property of the plaintiff / respondent's father, the same was sold by him on 31.10.1986 and therefore the respondent / plaintiff has no right to claim partition over the suit property which was already sold.

(iv) The lower appellate Court miserably failed to see that both under the State and Central Amendment with respect to Hindu Succession Act protects the alienations done by a co-parcener prior to said amendment. Therefore, the sale done by respondent father in favour appellants is valid and binds the respondent.

(v) The lower appellate Court ought to have seen that sale done by respondent's father in the year 1986, which was much prior to the amendments to Hindu Succession Act in 1989 and 2005 therefore the



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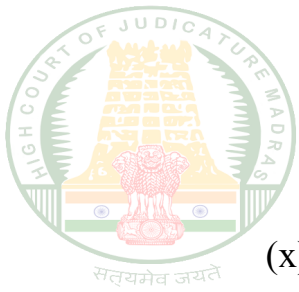
respondent / plaintiff has no right to claim partition over the suit property which was already sold.

(vi) The lower appellate Court ought to have seen that in the sale deed executed in favour of the appellants, the respondent was shown as a nominee party represented by her father / natural guardian Mr.Goopalli Reddy and that being so the respondent / plaintiff ought to have sought the relief of setting aside the sale and cannot merely file the suit for relief to declare the sale deed as null and void and the same is unsustainable in law.

(vii) The lower appellate Court ought to have seen that the plaintiff / respondent ought to have filed the suit within a period of 3 years after attaining the age of majority, to question the above sale deed done by her father / natural guardian.

(viii) The lower appellate Court ought to have seen that present suit has been filed almost 25 years after the plaintiff attained majority and the same is clearly barred by limitation as per Article 60 of the Limitation Act.

(ix) The lower appellate Court miserably failed to see that the plaintiff / respondent suppressed the very many material facts and therefore the plaint as to be rejected on the ground of “ Suppressio very and Suggestio falsi”.



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(x) The lower appellate Court ought to have seen that the claim of the plaintiff / respondent in the suit is clear abuse of process of law and the Court and have also not come to court with clean hands and therefore she is not entitled to any relief as sought in her plaint.

By submitting the above grounds, they prayed to set aside the judgment of the First Appellate Court.

8. The appeals were admitted by this Court on 20.10.2023 and 23.11.2023 respectively, on the following substantial questions of law.

“A. Whether the respondent / plaintiff is having cause of action to file the present suit for partition, when admittedly the suit property was alienated by her father as early as on 31.10.1986?

B. Whether the present suit filed by the respondent for the relief of partition and declaration, to declare the sale deed dated 31.10.1986 as null and void is maintainable, without seeking the relief of setting aside the same, wherein she is eo-nominee party to the said sale deed?



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C. Whether the lower appellate Court is right in allowing the appeal when the claim of the respondent is clearly bared by law as per Article 60 of the Limitation Act, when admittedly she filed the suit almost 25 years after attaining her majority?

D. Is not the suit of the respondent an abuse of process of court in as much as the respondent seeks to get a relief on a claim which has become stale on account of passage of time and barred by limitation by several years?

E. Whether the lower appellate Court is right in allowing the appeal when the respondent has suppressed very many necessary facts that ought to have been disclosed and thus have not come to Court with clean hands?"

9. The learned counsel for the 1st respondent/plaintiff argued that the suit property is ancestral in nature, in which the plaintiff has a lawful share. Without obtaining any permission from the competent court, her father sold



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the property to the appellants/Defendants 3 and 4. Having come to know about the sale deed only in 2021, the plaintiff immediately filed the suit seeking her lawful share in the property and for a declaration that the alleged sale deed was null and void. The amendment of the Hindu Succession Act also conferred rights and title over the suit property in her favor. The First Appellate Court rightly appreciated this aspect, whereas the Trial Court erroneously rejected the plaint without proper appreciation of the legal position. Therefore, the appeal deserves to be dismissed as being devoid of merits.

10. Heard both sides.

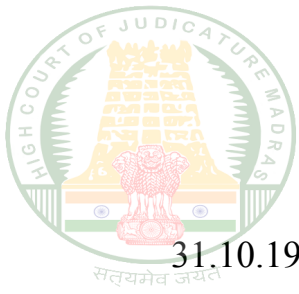
11. The plaintiff and second defendant born through second wife of one Goopalli Reddy. And the first defendant is the son born through first wife of said Goopalli Reddy. Relationship between the parties are undisputed one. According to the plaintiff, suit properties are undivided ancestral Hindu joint family Property of Goopalli Reddy. He died in the year 1995, leaving behind his two wives and their children, the first



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defendant and Goopalli Reddy, each entitled half share. In the half share of Goopalli Reddy, plaintiffs and defendants 1 and 2 each entitled 1/6 share. In March 2021, when the plaintiff and the second defendant were in possession of the suit land, Defendants 3 and 4, along with their men, trespassed into the suit property and claimed that they had purchased two acres from their father on 31.10.1986. Thereafter, the plaintiff came to know that the sale deed stood in the names of Defendants 3 and 4. At the time of sale, she was a minor, and without obtaining permission from the court, her father sold their share. Therefore, she filed the present suit seeking cancellation of the said sale deed and partition.

12. Immediately upon receipt of notice, Defendants 3 and 4, who are purchasers of the suit property, filed I.A. No. 3 of 2022 under Order VII Rule 11, C.P.C., seeking rejection of the plaint. They contended that in Survey No. 85/1, an extent of 3.26 cents originally belonged to Goopalli Reddy as his separate and self-acquired property, which he had purchased by a registered deed in 1955. Thereafter, the undivided UDR patta was transferred in his name, and he enjoyed it as his separate property. On



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31.10.1986, out of the 3.26 cents, he sold two acres with specific boundaries in favor of Defendants 3 and 4 by a registered sale deed. Out of abundant caution, he included the names of all his children, including the plaintiff, who was then a minor, and specifically mentioned that the property was sold for the maintenance and welfare of the family and the minor children, for valid consideration.

13. Ever since 1986, Defendants 3 and 4 have been the absolute owners of the property. The land was subdivided as Survey No. 85/1B, and patta was also transferred in their names by order dated 26.12.1986. Suppressing all these facts, the plaintiff has now filed the present suit in respect of the old Survey No. 85/1 with the intention of grabbing the property. The suit is also barred by Article 60 of the Limitation Act, as the sale deed dated 31.10.1986 should have been challenged by the plaintiff within three years of attaining majority. She failed to do so for nearly 21 years and has now filed the suit belatedly at the age of 44 years. Hence, the suit is clearly barred by limitation and without cause of action, and therefore liable to be rejected.



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14. The plaintiff, however, contested the application stating that she filed the suit immediately after coming to know of the alleged sale and that the suit is within limitation. She further claimed that since the property is joint family property, she has a lawful share and the suit for partition and declaration is maintainable.

15. Considering the submissions of both sides, the learned Trial Judge finally held that the suit is barred by limitation. The reason assigned was that in the sale deed itself, the age of the plaintiff was mentioned as 10 years in the year 1986. Therefore, as per Article 60 of the Limitation Act, the plaintiff ought to have challenged the sale deed within three years of attaining majority. However, she failed to do so and, after nearly 25 years, she has come forward with the present suit, which is clearly barred by limitation. The learned Trial Judge further held that though the plaintiff pleaded that the cause of action arose in the year 1991, there are no corresponding or corroborative averments in the plaint. Hence, the suit was found to be without cause of action and was rejected.



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16. When the said judgment was challenged by the plaintiff before the First Appellate Court, the learned First Appellate Judge held that the nature of the property claimed by the plaintiff, being ancestral joint family property, could be decided only at the time of trial. It was also noted that the Aadhaar card reflected the plaintiff's date of birth, which created a contradiction as to whether she was a minor or a major at the time of execution of the sale deed by her father. Since this required a detailed trial, the findings of the Trial Court were set aside and the suit was directed to be restored.

17. It is a settled proposition that, for rejecting a plaint, only the averments in the plaint can be taken into consideration. The appellants prayed for rejection of the plaint on the ground that it disclosed no cause of action. Order VII, Rule 11 of the CPC provides for rejection of plaints where (a) it does not disclose a cause of action, or (d) where the suit is barred by any law. Thus, while considering rejection, only the plaint averments are to be looked into.



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18. On perusal of the plaint averments, the plaintiff claimed to be the daughter born through the second wife of Goopalli Reddy. She alleged that the suit property belonged to him and that it constituted undivided ancestral Hindu joint family property. She claimed partition to the extent of 2 acres in Survey No. 85/1, Ozur Taluk, Krishnagiri District, asserting one-sixth share therein. She further pleaded that, on 01.04.2021, when she and the second defendant (her brother) were in possession of the suit property, Defendants 3 and 4 trespassed and proclaimed that they had purchased the property in 1986. At that point, she came to know about the sale deed, which she described as bogus. She contended that, at the time of the alleged sale, she was a minor, and without obtaining court permission her father had executed the sale, which was liable to be declared null and void. She also pleaded that the cause of action arose in 1991, upon the death of her father, thereby entitling her to one-sixth share. She further stated that in 2021, when the defendants attempted trespass, the cause of action once again arose, and hence she filed the suit.



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19. On the other hand, Defendants 3 and 4 filed I.A. No. 3 of 2022 under Order VII, Rule 11, producing the registered sale deed dated 31.10.1986, patta transfer proceedings dated 26.12.1986, and kist receipts in their names. They contended that, out of 3.26 acres in Survey No. 85/1, Goopali Reddy had sold 2 acres with defined boundaries to them, and patta had been duly transferred and subdivided as Survey No. 85/1B. The plaintiff, however, described the property in the suit schedule as if it continued in the old Survey No. 85/1, despite the fact that, in the partition deed executed in 2016 among the plaintiff, D-1, and D-2, the subdivided numbers 85/1A and 85/1B were expressly mentioned. This clearly shows that by 2016 itself, the plaintiff was aware of the subdivision of the survey number. Suppressing this fact, she has come forward with the present suit as if the property had not been subdivided. This suppression of material facts, as rightly pointed out by the appellants, makes the plaint unsustainable.

20. Further, the plaintiff has claimed one-sixth share only in the extent of 2 acres sold to Defendants 3 and 4, but has not claimed any share in the

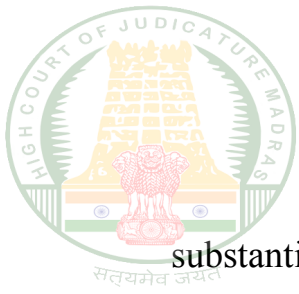


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remaining 1.26 acres, nor has she explained why partition is sought only in respect of 2 acres. This again shows that the plaint has not been filed with full and true disclosure of facts. Accordingly, question of law D and E are answered.

21. As per the sale deed executed in 1986, the father of the plaintiff sold the property both for himself and on behalf of all his minor children, including the plaintiff, who was shown as 10 years old at the time. Hence, she ought to have questioned the sale deed within three years of attaining majority, in terms of Article 60 of the Limitation Act. Instead, she has approached the Court nearly 25 years later, falsely pleading that she came to know of the sale only in 2021. Moreover, the records clearly establish that the property was subdivided in 1986 itself and has since been enjoyed by the defendants.

22. Therefore, the plaint averment that the defendants trespassed in 2021 is not acceptable. Though she has vaguely pleaded cause of action from 1991, there are no specific averments or supporting material to



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substantiate the same. The plaint clearly shows that she has filed the suit nearly 25 years after attaining majority, making it barred by limitation and devoid of cause of action. The plaint, on its face, appears to be vexatious.

23. The First Appellate Court, however, failed to properly appreciate the plaint averments and the settled legal principles. Accordingly, Question of Law A and C are answered in favour of the appellants. Furthermore, as rightly contended by the learned counsel for Defendants 3 and 4, the plaintiff was eo nomine party in the sale deed represented by her father. Without seeking the specific relief of setting aside the sale deed, she cannot merely seek a declaration that the sale deed is null and void. On this ground also, the relief claimed in the plaint is not maintainable. Hence, Question of Law B is also answered in favour of the appellants.

24. In view of the above discussion, the findings of the First Appellate Court are set aside. Both the second appeals are allowed. The findings of the Trial Court are confirmed, and the plaint stands rejected. Consequently, the



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connected miscellaneous petition is closed. There shall be no order as to costs.

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Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order
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To

- 1.The Additional District Judge, Hosur.
- 2.The Additional Subordinate Judge, Hosur.
- 3.The Section Officer, VR Section, High Court of Madras.

T.V.THAMILSELVI, J.

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