



S.A.No.114 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 06.03.2024	Pronounced on: 15.03.2024
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CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.114 of 2019

Mrs.Gandhimathi

...Appellant

Vs.

1.Mr.K.Mariappan
2.Mrs.K.Kuppathal

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure to set aside the judgment and decree passed in A.S. No.8 of 2014 dated 16.12.2016 by the learned Subordinate Judge, Udumalpet and restoring the decree and judgment in O.S. No.263 of 2004 dated 25.01.2012 by the learned District Munsif, Udumalmet.

For Appellant : Mrs.V.S.Usharani

For Respondents : Mr.D.R.Arunkumar for R1
R2- Died

JUDGMENT



S.A.No.114 of 2019

The unsuccessful plaintiff in a suit for partition, having succeeded before the trial Court and having lost before the First Appellate Court, is the appellant before me.

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

3. The brief facts that are necessary for deciding the above Second Appeal are as follows:

3.1. The case of the plaintiff is that the suit property was originally belonging to her late father-in-law, one Kitta Navithan. According to the plaintiff, the suit property was ancestral in nature and the plaintiff's husband died in the year 2001; the plaintiff and her husband were blessed with a daughter by name Tamilselvi, who died in the year 2000, at the age 14 years and being a coparcenary property, the daughter would become entitled to a share by birth and consequent to her untimely demise at the age of 14 years, in the year 2000, her share would devolve upon her mother, i.e., the plaintiff.



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4. It is the case of the defendants that there was a partition in the family in the year 1997 between the plaintiff's husband, her brother-in-law, mother-in-law and sister-in-law and thereafter, a release deed was executed in the year 1999. The plaintiff's husband has released his share in the suit property in favour of his brother, Mariyappan, the first defendant and therefore, the plaintiff was not entitled to any share in the suit property.

5. The trial Court finding that the plaintiff was entitled to the share of her daughter, Tamilselvi granted a preliminary decree of 1/8th share in favour of the plaintiff. However, the First Appellate Court reversed the judgment and decree of the trial Court and dismissed the suit for partition, holding that the plaintiff's husband had admittedly executed a registered release deed and as he was the Karta of the HUF, he was competent to release the entire share including the share of his daughter. The First Appellate Court also found that there was a specific mention in the release deed that the plaintiff's husband was suffering from serious medical ailments and only in order to meet his medical expenses, he had decided to release his



share in the suit property to his brother.

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6. Aggrieved by the reversal findings rendered by the First Appellate Court, the plaintiff has preferred the above Second Appeal.

7. The above Second Appeal was admitted on 01.02.2019 on the following substantial question of law:

“Whether the Lower Appellate Court is correct in law in coming to the conclusion that Subramanian has a right to release his entire share, especially, when 29(A) of the Hindu Succession Act is applicable”

8. I have heard Mrs.V.S.Usharani, learned counsel for the appellant and Mr.D.R. Arunkumar, learned counsel for first respondent.

9. The learned counsel for the appellant would submit that even though the plaintiff's daughter was a minor and had died at the age of 14, pre-deceasing the plaintiff's husband, who died in the year 2001, being a coparcenary property, the plaintiff would be entitled to the share of her minor daughter and the release deed executed by her husband would not bind the minor daughter's share, as she would be entitled to it even at birth.



She would therefore, pray for the Second Appeal being allowed.

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10. Per contra, the learned counsel for the first respondent would submit that without challenging the release deed executed by the plaintiff's husband, the suit would not be maintainable. Further, he would also state that the legitimacy of daughter Tamilselvi, was also called in question by the defendants and the plaintiff has miserably failed to establish that the said daughter Tamilselvi, was born to the plaintiff and her husband Subramanian.

11. The learned counsel would place reliance on the decision of this Court in the case of *N.Ramachandran Vs. E.Varadarajan and Ors*, reported in *MANU/TN/8470/2007*, where this Court had held that even assuming that the release deed was executed by the father of first plaintiff in favour of the defendant under Ex.B.11, is not binding on the first plaintiff, it can at the most be a voidable instrument which can be set aside at the option of the aggrieved parties and since the release deed was never assailed by the plaintiffs, it would be fatal to their case for partition.

12. I have carefully considered the rival submissions advanced by the



learned counsel on either side. I have also gone through the pleadings, oral and documentary evidence and the judgments of the Courts below besides also the decisions on which reliance has been placed by the learned counsel on either side.

13. The relationship between the parties is not fully admitted, since the defendant claimed that the daughter Tamilselvi, was not born to the plaintiff, Gandhimathi and her husband Subramanian. On going through the oral and documentary evidence, I find that the plaintiff has exhibited substantive documents in the nature of Bus-pass, Record Sheet issued by School Head Master, Maturity Invitation, Family Card and Death Certificate of Tamilselvi establishing her parentage. Therefore, I do not find the argument of the learned counsel for the respondents deserving any merit especially, when the Courts below have also found that Tamilselvi was indeed the daughter of the plaintiff and K.Subramanian, rightly appreciating the evidence on record.

14. With regard to seeking the relief of cancellation of release deed, Mr.D.R.Arunkumar, the learned counsel for the first respondent has placed



reliance on the decision of this Court, in *N.Ramachandran's* case, referred herein supra. I am fortified by a recent judgment of the Hon'ble Supreme Court in the case of *Umadevi Nambiar Vs. Thamarasseri Roman Catholic Diocese* reported in (2022) 7 SCC page 90, where the Hon'ble Supreme Court has clearly held that it is not necessary for the plaintiff to seek annulment or declaration of the release deed executed by her husband in similar set of facts.

15. The next question that begs consideration, is as to whether the release deed executed by the plaintiff's husband would bind the minor daughter's share as well. The First Appellate Court has reversed the judgment and decree of the trial Court only on this score.

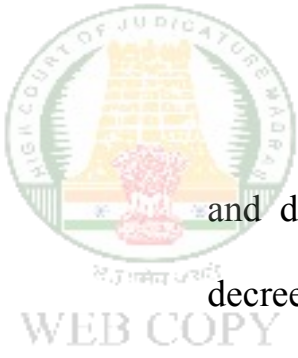
16. Admittedly, in the release deed marked as Ex.B1, I do not find that the said release has been executed by the plaintiff's husband as Karta of the HUF, which would have atleast let to an inference that he has released even his minor daughter's share. Moreover, I find from the preamble of the said release deed, the plaintiff's husband has given up his share in the suit property for consideration only in order to meet his personal medical



expenses. Therefore, it cannot be even said to a case of release by a Karta for family necessity, which would have atleast been binding on the minor coparcener's share. The First Appellate Court, has erroneously reversed the judgment and decree of the trial Court on the said ground which requires interference in this Second Appeal.

17. Further, in the light of the pronouncement of larger bench *Vineeta Sharma vs. Rakesh Sharma and Ors*, reported in (2020) 9 SCC 1, irrespective of whether the father is alive or not, the daughter married prior to 2005 would also become entitled to a share in the coparcenary property. Thus viewed from any angle, the release of share in favour of the plaintiff's husband's brother can at best be the individual and separate share of the plaintiff's husband and not his daughter, Tamilselvi's share. The trial Court has rightly considered these aspects and proceeded to grant a preliminary decree in favour of the plaintiff.

18. In fine, the substantial question of law is answered in favour of the appellant and the Second Appeal is allowed, setting aside the judgment



S.A.No.114 of 2019

and decree of the First Appellate Court and restoring the judgment and decree of the trial Court. There shall be no order as to costs.

15.03.2024

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

P.B.BALAJI, J.

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S.A.No.114 of 2019

S.A.No.114 of 2019

15.03.2024