



S.A.(MD).No.172 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).No.172 of 2012

and

M.P.(MD)No.1 of 2012

1.S.Sundararajan (Died)
2.Jeya Bharathi
3.Ayyapparaj
4.M.Dhanalakshimi

... Appellants

/Vs./

1.S.Ravindran
2.S.Athilakshimi
3.S.Elangovan

...Respondents

(Appellants 2 to 4 brought on record as LR's of deceased sole appellant, vide Court order, dated 10.03.2016, made in MP(MD)No.1 of 2015 in SA(MD)No.172 of 2012)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 29.10.2011, made in A.S.No.7 of 2011 on the file of the Sub Court, Theni, confirming the Judgment and Decree, dated 30.10.2010, made in O.S.No.12 of 2009 on the file of the District Munsif Court, Theni.



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For Appellants : Mr.R.Balakrishnan
For R1 : Mr.Chamundi Bose
For R2 and R3 : No appearance

JUDGMENT

The present second appeal is preferred by the 1st defendant in the suit challenging the judgment and decree, dated 29.10.2011 passed in A.S.No.7 of 2011 on the file of the Sub Court, Theni confirming the judgment and decree, dated 30.10.2010, passed in O.S.No.12 of 2009 on the file of the District Munsif Court, Theni.

2. The plaintiffs in the suit are the respondents 1 and 2 herein, the 1st defendant is the deceased appellant herein and the 2nd defendant is the 3rd respondent herein. For the sake of convenience, the parties are referred as plaintiffs and defendants per the ranking in the original suit.

3. The suit is filed for partition to divide the three items stated in the schedule of properties as 2/4 to the plaintiffs. The 1st defendant is the elder son,



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the 1st plaintiff is the 2nd son, the 2nd defendant is the 3rd son and 2nd plaintiff is the 4th daughter born to one Sundararaja Naicker.

4. The facts as stated in the plaint is that the 1st plaintiff after completing his studies, he joined the Central Reserve Police Force in the year 1985 and has served until 2006. While he was in service, he started a joint account along with his father. After his personal expenses, he would deposit his money in the joint account. The 1st item of the suit property was purchased from the 1st plaintiff money, which he had deposited in the joint account and the father withdrew the same and purchased the property. As far as the 2nd item of the suit property is concerned, it is an ancestral property consisting of a house, wherein the 1st defendant is residing along with the family. As far as the 3rd item of the property is concerned the same is purchased in the name of the 2nd defendant from the income which was earned by the plaintiff while he was working in mill. The father was not having independent income, the father and the family was living in 2nd item which is an ancestral property. Further the father was living with the 1st plaintiff and the 1st plaintiff was taking care of the father by giving food, shelter and



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medicine. But while the father was ill, the 1st defendant along with his brother-in-law Devadoss and one Ramesh had forcefully taken the father and had created the settlement deed dated 27.12.2006. Since the same is executed under coercion the same may be ignored under law. Hence the three items are available for partition and the plaintiff sought to divide the same, the defendants failed to come forward for partitioning the properties, therefore a lawyer notice was issued. The 1st defendant replied to the said notice raising false allegation. Hence the present suit for partition.

5. The 1st defendant has filed a written statement stating that the father Late. Sundararaja Naicker was rearing goat and sheep around the village and the 1st defendant also reared the goats and sheep by helping the father. The father had purchased and sold the said goats and sheep and earned money. The 1st defendant had never left the village and never gone anywhere and he was completely assisting the father. Further, the defendant has worked as Coolie in the Textile Mill at Theni. Because of less earning, the father could not give education to all his children. After attaining old age, the father sold all the goats and sheep and



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kept the sale proceeds in his custody. The alleged savings of the 1st plaintiff and the contribution to purchase the properties are false. The 1st plaintiff was residing in Krishnapuram and never gave any money or never gave proper care to the father. In order to create documentary evidence, the 1st plaintiff had taken the father along with him for some months. But the 1st plaintiff did not provide any medical help to the father. After taking note of the fact that the 1st defendant provided food, shelter and medical assistance to the aged father and has also taken proper care, the father had executed the settlement deed, dated 27.12.2006. The said settlement deed was executed with total sound mind which is an independent decision of the father. The same is known to all the parties and they did not object at the time of execution. In the schedule of properties, the 1st item is a landed property and the 2nd item is a house both are self-acquired property of the father hence the father has got every right to settle the same in his own right as per his wishes. The statement of the plaintiffs that the property was settled under influence of mis-representation is false. Further the 1st plaintiff has admitted certain facts on his own handwriting and the same will prove that the 1st plaintiff suppressed the real facts. As the eldest son of the family, on humanitarian gesture,



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the 1st defendant has given amounts to plaintiffs and their share in house to the tune of Rs.40,000/- and Rs.35,000/- respectively. The 2nd defendant has also received Rs.30,000/-. Hence the settlement deed which was executed in favour of the 1st defendant is legally valid and thereafter, based on the settlement deed, the 1st defendant is in possession and enjoyment of the property. If the plaintiffs have real right over the property, they ought to have filed the suit during the life time of the father. After the death of the father, they had filed the suit belatedly and the same will prove that the plaintiffs have filed the present suit collusively with mala fide intention, in order to give trouble to the 1st defendant. The deceased Sundararaja Naicker who has purchased the land, dated 30.01.1989, is a self-acquired land and the 2nd item is also self-acquired. If the plaintiffs' statement is true, the 1st defendant would have got the 1st and 2nd item in the settlement deed but only the 1st item alone was settled in the settlement deed, dated 27.12.2006. If the plaintiffs are seeking partition, the plaintiffs ought to include the property which was purchased in the Krishnapuram area and Rajapalayam house also, since the suit is not maintainable for partial partition. The 1st defendant has also earned through his employment in the mills and had provided all the basic necessities to



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his father with total affection and has taken care of the parents in the village.

Hence, the 1st defendant prayed to dismiss the suit

6. Based on the above pleadings, the parties went for trial. The plaintiffs have marked Exhibits A1 to A15 and both the plaintiffs deposed as PW1 and PW2. The defendants had marked Exhibits B1 to B13 and the 1st defendant has deposed as DW1 and the 2nd defendant has not deposed, but DW2 who is the attester in the settlement deed has deposed. The Trial Court after considering the rival pleadings had decreed the suit. Aggrieved over the same, the 1st defendant preferred an appeal suit and the same was dismissed confirming the judgment and decree passed by the Trial Court. Aggrieved over the same, the present second appeal is preferred.

7. The second appeal was admitted on 17.04.2012 on the following substantial question of law:

“1) Whether the Courts below are right in negating the claim of the appellant by rejecting the gift deed executed by the deceased Sundarraaj



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which is the self-acquired property of the deceased under Exhibit A1 especially in the absence of any materials on the side of the respondents 1 and 2 as plaintiffs to show that the same was purchased from out of the joint family income?"

8. As far as the 2nd item is concerned the Trial Court had held that property tax receipts stand in the name of the grandmother, hence the same is ancestral property. The 1st defendant has not produced any documents to prove otherwise. Therefore, this Court is of the considered opinion that the 2nd item is ancestral property and thereby confirms the finding of the both the Courts.

9. As far as the 1st item of the property is concerned, the contention of the 1st plaintiff is that he had join the job in the year 1985, then he had opened a joint account in the name of his father and himself on 28.02.1987, had deposited some amount in the account, after his personal expenses and from the said amount the father had purchased the 1st item property. The plaintiff had marked Ex.A5 which are counter foils indicating the plaintiff had deposited the amount. On perusing the Ex.A5 it is seen that the 1st plaintiff had deposited Rs.4,000/- on 25.07.1987,



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Rs.4,000/- on 18.02.1988, Rs.1,200/- on 16.09.1989, Rs.2000/- on 13.04.1991 and Rs.2,000/- on 12.08.1991. The opening account counter foil states that the account was opened on 28.02.1987 by depositing Rs.100/-. If the above amounts are added, it would be Rs.13,300/-. It is seen that the document was executed on 30.01.1989, therefore the deposits on 13.04.1991 and 12.08.1991 cannot be taken into account which was deposited after two years from the date of purchase of the 1st item. Hence it can be taken that the plaintiff had paid Rs.9,200/- only. But it is seen the land was purchased by paying Rs.32,965/-. Even if the 1st plaintiff's claim that he had paid Rs.9200/- is accepted, then the balance amount is paid by the father. If this transaction is accepted then the father might have purchased with the supportive contribution of the 1st plaintiff.

10. As far as the contribution of the father is concerned, the contention of the 1st defendant that the father was eking his livelihood by rearing goat and sheep. This Court has already confirmed that the 2nd item of the property is the ancestral property which is 1 ½ cents land and house wherein the father & mother with four children and grandmother were living. Further, from the said house there



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cannot any income, hence this Court is of the considered opinion that there is no nucleus amount from the house. In such situation the contention of the 1st defendant is acceptable that the father was rearing goat and sheep and also it is also acceptable that the 1st defendant assisted the father in rearing goat and sheep.

11. If the above fact is accepted, then the property is not purchased from the nucleus of the ancestral property, in fact there is no nucleus at all, hence the 1st item is not an ancestral property, but a self-acquired property of the father with a supportive contribution of the plaintiff to the tune of Rs.9,200/- only.

12. Having held that the plaintiff might have contributed Rs.9,200/-, now the right of the plaintiff ought to be determined, since the said contribution alone will not give a right to the plaintiff. It is seen that it is a bare statement that the plaintiff had contributed. The plaintiff ought to prove that the said amount was withdrawn by the father. To be specific the plaintiff ought to prove that he had paid the said amount through the bank account to purchase the property. The plaintiff had filed the copy of the first page of the pass book in Ex.A4 but has not



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filed the entries of the pass book at all. Therefore, this Court is of the considered opinion that the plaintiff had not proved that the said amount was utilised for purchasing the property, thereby had not discharged his burden of proof. It is pertinent to state that during the lifetime of the father, this account was closed and the balance amount was withdrawn by the 1st plaintiff. In other words, the account was closed in the year 2001 and the father died in the year 2007. As held supra, since the property is registered in the name of the father, then a presumption is in favour of the father that the property was purchased by the father through his source of income, consequently the property would become self-acquired property. Therefore, this Court holds that the 1st item of suit property is self-acquired property. Consequently, the father is having right to deal with the property as per his wishes. And the father had settled in favour of the 1st defendant through Settlement Deed dated 27.12.2006 marked as Ex.A1 and the same is valid.

13. The next issue is whether the genuineness of the Ex.A1 Settlement Deed is proved by the parties and whether the plaintiff has to prove or the defendant has



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to prove the same. Generally, the beneficiary of the document is bound to prove the document. In the present case the 1st defendant is claiming right over the property under the Settlement Deed, hence the 1st defendant ought to prove the same. However the execution of the Ex.A1 is admitted by the plaintiffs. Any admitted facts need not be proved by evidence. Therefore, the burden is not on the 1st defendant to prove the execution of Ex.A1.

14. The plaintiffs had not denied the execution of settlement deed but question the same since the plaintiffs alleges that the same was executed by coercion. That too by forcibly taking the father with the help of the 1st defendant's brother-in-law namely Devadoss and one Ramesh. If such a plea is raised, then the plaintiff ought to prove that the Ex.A1 was executed under coercion. But the plaintiffs failed to prove the same. It is seen the allegation of coercion is only a bare statement. If there is coercion then the plaintiffs ought to have preferred police complaint for forcibly taking the father away from the plaintiff house, but the plaintiff had not preferred any police complaint. Or else immediately the plaintiffs ought to have preferred protest petition or objection petition before the



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Sub Registrar, but the plaintiff had not preferred such objection or protest petition.

At least the plaintiff ought to have filed a suit to declare the Ex.A1 Settlement Deed as null and void, but no such steps taking by the plaintiffs. Infact one of the pleas taken by the 1st defendant in the present second appeal is that the plaintiff had filed a suit for partition without asking for setting aside the settlement deed and without declaring the settlement deed as null and void. But the contention of the plaintiffs is that the said settlement deed need not be challenged and it may be ignored under law since the same is executed under coercion. Such a plea of the plaintiffs cannot be accepted since the fact of coercion is only a bare statement and not supported by iota of evidence.

15. It is pertinent to record that the father had not complained about coercion. Infact the 1st defendant has raised a plea that the plaintiff has not filed a suit during the life time of the father and deliberately after the demise of the father the suit had been filed. The said submission may prove that there may not be any coercion and the claim of the plaintiffs are not correct. Therefore, the plea of the plaintiffs that the settlement deed was executed under coercion can be ignored, is



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rejected.

16. Therefore, this Court is of the considered opinion that the 1st item is self- acquired property of the father and the father is entitled to deal with the property during his life time. Consequently the Ex.A1 Settlement Deed is valid and the 1st defendant is entitled to the property and the same is not available for partition.

17. Both the Trial Court and the Appellate Court had held that the 1st defendant had not proved his case by producing the 2nd defendant as witness. It is seen that the 2nd defendant was absent throughout the litigation and had not contested the suit. It is the plaintiff who ought to prove his case, therefore such a reasoning is erroneous. The plaintiff ought to prove his case based on his own documents, evidence and pleadings. The plaintiff ought to stand or fall on his own legs, in other words the plaintiff ought to raise or fall based on his own facts and documents. Therefore, the finding rendered by both the Courts that the 1st defendant has not proved by producing the 2nd defendant as witness is erroneous



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besides being perverse.

18. As far as the 2nd item is concerned this Court has already held the same is ancestral property. Now it has to be seen whether the same is available for partition. The 1st defendant has taken a plea that on humanitarian ground the 1st defendant had paid Rs.40,000/- Rs.35,000/- and Rs.30,000/- to the 1st plaintiff, 2nd plaintiff and 2nd defendant respectively. Since the 2nd item of the property is only 1 ½ cents, it may not be possible to divide the same. Therefore, it is can be safely confirmed that in lieu of the share of the plaintiffs and 2nd defendant in the 2nd item of the property the amount is settled to the parties as stated above. However, the Trial Court had held that the said plea is not supported by any evidence. But this Court is of the considered opinion that the said contention is acceptable for the reason that the plaintiffs have not denied the same. Further, the Trial Court had held that the 1st defendant had not proved by producing the 2nd defendant as his witness. But the contention of the 1st defendant is that the plaintiffs and the 2nd defendant have colluded and had framed the present suit. In such circumstances the Trial Court has erred in holding that the 1st defendant had not proved by



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producing the 2nd defendant as his witness. Therefore, this Court is of the concerned opinion that the 2nd item had already been partitioned among the parties. Even though this Court had held that the 1st defendant had paid the amount, an additional amount of Rs.25,000/- shall be paid to the plaintiffs and 2nd defendant by the 1st defendant in order to meet the ends of justice.

19. As far as the 3rd item is concerned it is the case of the 1st defendant that the same was allotted to the 2nd defendant and the 2nd defendant has sold the same and had taken the entire sale proceeds. This fact further proves the case of the plaintiff that during the life time of the father the 1st plaintiff was allotted Krishnapuram property, the 2nd defendant was allotted 3rd item Rajapalayam property and the 1st defendant was settled the 1st item and allotted 2nd item of the property. Therefore, the 3rd item belongs to 2nd defendant, who had already sold the same and taken sale proceeds and the same is not available for partition.

20. The substantial question of law is answered in favour of the appellant. With the above said observations, the second appeal is allowed with the above



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direction to pay an additional amount of Rs.25,000/- each to the plaintiffs and 2nd defendant by the 1st defendant. The judgment and decree, dated 29.10.2011 passed in A.S.No.7 of 2011 on the file of the Sub Court, Theni is set aside and the judgment and decree, dated 30.10.2010, passed in O.S.No.12 of 2009 on the file of the District Munsif Court, Theni is also set aside. No costs. Consequently, connected miscellaneous petition is closed.

05.12.2024

Index : Yes / No
NCC : Yes / No

Tmg

TO:

1. Sub Court, Theni.
2. District Munsif Court, Theni.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.172 of 2012

Dated:
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