



*S.A.(MD).No.522 of 2021*

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.03.2024**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.522 of 2021

1.Manjula

2.Megala

... Appellants

Vs.

1.Kanagaraj

2.Karuppaiah

3.Panneer Selvam

4.Ganesan

5.Nallu @ Nagarajan

6.Palanisamy

...Respondents

**PRAYER:** Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 07.01.2021 passed in A.S.No.9 of 2019 on the file of the Principal District and Sessions Judge, Pudukkottai, modifying the Judgment and Decree dated 17.09.2018 made in O.S.No.417 of 2012 on the file of the Principal Subordinate Court, Pudukkottai.

For Appellants : M/s.J.Anandhavalli

For R1 to R3 : No Appearance

For R4 to R6 : Mr.Shangar Murali

\*\*\*\*\*



WEB COPY



*S.A.(MD).No.522 of 2021*

## **JUDGMENT**

The present second appeal is filed against the Judgment and Decree of the Principal District and Sessions Judge, Pudukkottai, dated 07.01.2021 passed in A.S.No.9 of 2019, modifying the Judgment and Decree of the Principal Subordinate Court, Pudukkottai, dated 17.09.2018 in O.S.No.417 of 2012.

2. The Plaintiff in the suit is the Appellant herein and the Defendant in the suit is the Respondent herein. For the sake of convenience, the contesting parties shall be referred to as per the ranking in the suit.

3. The plaintiff had filed the suit for declaration of share and the nullification of Sale Deeds dated 09.05.2005 and 27.04.2012. The brief facts stated by the plaintiff are that the properties in question are ancestral properties initially owned by the plaintiff's great-grandfather, Kamatchi Malavarayar. Balamuthu Malavarayar is the son of Kamatchi Malavarayar. The 1<sup>st</sup> and 3<sup>rd</sup> defendants namely Karuppaiah and Ganesan are the sons of Balamuthu Malavarayar. The plaintiffs namely Manjula and Megala are the daughters of the 1<sup>st</sup> defendant and the 2<sup>nd</sup> defendant namely Pannerselvam is the son of the 1<sup>st</sup>



*S.A.(MD).No.522 of 2021*

defendant. The 4<sup>th</sup> and 5<sup>th</sup> defendants namely Nallu@Nagarajan and Palanisamy are the sons of the 3<sup>rd</sup> defendant. After the demise of the said Balamuthu Malavarayar, the plaintiffs and defendants 1 to 5 enjoyed these properties together as his legal heirs. The defendants 1 and 3 each possess an undivided half share of the properties, while the plaintiffs each hold 1/8<sup>th</sup> share within the undivided half share of the 1<sup>st</sup> defendant. On 09.05.2005, the defendants 1 to 5 executed a forged sale deed in favour of the 6<sup>th</sup> defendant concerning the eastern portion of items 5 and 7 of the suit properties. On 27.04.2011, the 1<sup>st</sup> and 3<sup>rd</sup> defendants executed another forged sale deed in favour of the 4<sup>th</sup> and 5<sup>th</sup> defendants regarding the western portion of items 5 and 7 and 11 and 12, all to the detriment of plaintiff's rights and hence these sale deeds ought to be declared as invalid, forged documents and has no legal force. The plaintiffs and defendants 1 to 5 jointly enjoy the suit properties and the defendants 4 to 6 are aware of this joint enjoyment. On 15.01.2012, the plaintiffs, unwilling to continue this joint enjoyment, approached defendants 1 to 5 for partition of the properties, but their requests were evaded. Subsequently, on 27.11.2012, defendants 4 to 6 attempted to commence building construction in collusion with Defendants 1 to 3. The plaintiffs successfully prevented this attempt. Given these events, the plaintiffs



*S.A.(MD).No.522 of 2021*

seek legal redress to resolve the matter of partition and to invalidate the fraudulent sale deeds executed by the defendants, hence the suit for partition.

4. The defendants remained *exparte* before the Trial Court. The 6<sup>th</sup> defendant has contested the suit and had filed written statement. The contention of the defendants is that the plaintiffs have filed this suit seeking partition and separate possession of the suit properties, along with a declaration that the sale deed executed by defendants 1 to 5 in favour of the 6<sup>th</sup> Defendant is invalid. The defendant admit that the properties originally belonged to their great-grandfather, Kamatchi Malavarayar, but deny that after Balamuthu Malavarayar's death, the properties were not inherited and enjoyed by defendants 1 to 5 as Hindu Joint Family properties and the plaintiffs ought to prove that the suit properties are ancestral and that they have rights. According to the Hindu Succession Act, the plaintiffs cannot claim shares in the suit properties. The 6<sup>th</sup> defendant submitted that he lawfully purchased the eastern portion of the property in Item Nos. 5 and 7 from defendants 1 to 5 for valuable consideration through a registered sale deed and hence the plea of defrauding the plaintiff would not arise. The 1<sup>st</sup> plaintiff acknowledged this sale and hence she is estopped from claiming any share in Item



*S.A.(MD).No.522 of 2021*

Nos. 5 and 7. Further, it is denied that the 6<sup>th</sup> defendant did not obtain possession and enjoyment of the properties upon purchase. After purchase the 6<sup>th</sup> Defendant was in in possession and enjoyment of the property as absolute owner without any interference. Further the relief in the plaint is barred by limitation. There is no cause of action to file the suit. The suit is not properly valued.

5. After considering the pleadings of the parties, documentary evidence and depositions of the parties, the Trial Court allowed the suit by granting 1/8<sup>th</sup> share to the plaintiff and nullified the Sale Deed dated 09.05.2005 as far as the plaintiff are concerned. Aggrieved over the same, the defendant had preferred an appeal and the First Appellate Court has allowed the appeal in part and confirmed the finding of the Trial Court as far as the declaration of 1/8<sup>th</sup> share but set aside the finding as far as the nullification of the Sale Deed dated 09.05.2005. Aggrieved over the same, the plaintiff has preferred this Second Appeal.

6. The second appeal was admitted on the following substantial questions of law:



*“a) Whether the Judgment and decree of the lower Appellate Court is sustainable in law in setting aside the finding on Ex.A3 by the Trial Court?*

*b) Whether the Judgment and decree of the lower Appellate Court on the interpretation of Ex.A3 is sustainable in law?*

*c) Whether the lower Appellate Court is right in granting equity to the 1<sup>st</sup> respondent, who is the purchaser from co-owners?*

*d) Whether the lower Appellate Court is right in relegating the finding on Ex.A3 in final decree proceedings and setting aside the finding of the Trial Court on Ex.A3 in so far as the share of the appellant are concerned?”*

7. The defendants 1 to 5 remained exparte in both the Courts. The sale of western portion of Items 5 and 7 and Items 11 and 12 to defendants 4 and 5 is also challenged by the plaintiffs in the suit and the Trial Court had decreed the same in entirety by holding that the plaintiffs are entitled to 1/8<sup>th</sup> share in the suit properties and had set aside the sale to defendants 4 and 5, but the said defendants 4 and 5 has not filed any appeal and the same had attained finality. However, the sale of eastern portion of Items 5 and 7 to 6<sup>th</sup> defendant was challenged in A.S. No.9 of 2019 by the 6<sup>th</sup> defendant and the Appellate Court had held that the plaintiffs are entitled to 1/8<sup>th</sup> share in all the properties, but had not set aside the



sale deed executed in favour of the 6<sup>th</sup> defendant and held that setting aside can be relegated to the final decree and the Trial Court shall make endeavour to allot the properties executed under Ex.A3 (the eastern portion of Items 5 and 7) in favour of defendants 1 to 5, thereby releasing the same in favour of 6<sup>th</sup> defendant.

8. The contention of the plaintiff is that when the plaintiff is entitled to the undivided share in suit properties, then the sale ought to be set aside, since the co-owners share cannot be sold without the consent of the co-owners. The contention of the 6<sup>th</sup> defendant is that he had purchased the eastern portion of Items Nos.5 and 7 of the suit properties for valuable consideration. Further he had submitted that the 1<sup>st</sup> plaintiff was paid Rs.40,000/- for her share in the said suit property. But it is seen that the Trial Court had disbelieved the said contention of the 6<sup>th</sup> defendant and the reason stated is that the 1<sup>st</sup> plaintiff had not deposed the same before the Court. Also stated that only the 2<sup>nd</sup> defendant had deposed, who is not competent person to confirm the same. Further held that the said amount is paid after the sale deed is executed. This Court is of the concerned opinion that such reasoning is erroneous, since the said statement is not denied by the 1<sup>st</sup> plaintiff. Any admitted facts need not be contested. Infact the 6<sup>th</sup> defendant had



*S.A.(MD).No.522 of 2021*

specifically taken a plea in the written statement that “the 1<sup>st</sup> plaintiff had acknowledged the sale to him and hence she is estopped from claiming any share in Item Nos. 5 and 7”. But the plaintiff had not specifically denied the same. Hence the reasoning of the Trial Court is erroneous.

9. When the 1<sup>st</sup> plaintiff had not denied the receipt of Rs.40,000/-, then the 6<sup>th</sup> defendant is entitled to equity relief. Therefore, the Appellate Court had relegated the issue to be decided at the time of passing final decree. And there is no impediment in relegating the same to the final decree.

10. The specific stand of the plaintiffs is that the eastern portion cannot be granted to the 6<sup>th</sup> defendant, when the plaintiffs are co-owners. At the time of passing final decree the said eastern portion ought to be available for 1/8<sup>th</sup> partition. However, it is seen that the sale deed is dated 09.05.2005 and the 1<sup>st</sup> plaintiff is aware of the said sale deed when she had received Rs.40,000/-. Further it is seen that the said amount was paid after the sale deed was executed. However, the plaintiff had filed the suit in the year 2012 which is after a period of 7 years. In such circumstances, the 6<sup>th</sup> defendant is entitled to equity relief since



*S.A.(MD).No.522 of 2021*

after the sale deed the 6<sup>th</sup> defendant had muted the revenue records and was in possession and enjoyment of the same for the past 7 years (until filing of suit).

11. As co-owners, the plaintiffs are entitled to 1/8<sup>th</sup> share in the items 5 and 7 after along with other defendants. The share of 1 to 5 defendants shall be allotted in the eastern portion and then the same shall be released in favour of the 6<sup>th</sup> defendant would be the appropriate equity relief to the plaintiff and the Appellate Court had rightly granted the said relief and the same needs no interference. All the substantial questions of law are answered against the plaintiffs / appellants herein.

12. For the reasons stated supra, the second appeal is dismissed confirming the Judgment and Decree, dated 07.01.2021, made in A.S.No.9 of 2019 on the file of the Principal District and Sessions Judge, Pudukkottai. No costs.

**12.03.2024**

Index : Yes / No  
NCC : Yes / No

Tmg



*S.A.(MD).No.522 of 2021*

**TO:**  
WEB COPY

1. Principal District and Sessions Judge,  
Pudukkottai.
2. Principal Subordinate Court, Pudukkottai.
3. The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



WEB COPY



*S.A.(MD).No.522 of 2021*

**S.SRIMATHY, J.**

Tmg

Judgment made in  
**S.A.(MD)No.522 of 2021**

Dated:  
**12.03.2024**