



SA.(MD)No.733 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 11/06/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

SA(MD)No.733 of of 2021

and

CMP(MD)No.9733 of 2021

Raja : Appellant/Appellant/
Defendant
Vs.

1.Rajaprabha @ Sudharshini
2.R.Sudharshan : Respondents/Respondents/
Plaintiffs

PRAYER:-Second Appeal is filed under section 100 of the Civil Procedure Code, to set aside the judgment and decree, dated 27/06/2014 made in OS No.303 of 2021 on the file of the District Munsif Court, Uthamapalayam, which is confirmed by the judgment and decree dated 04/12/2020 made in AS No.29 of 2014 on the file of the Subordinate Judge, Uthamapalayam.

For Appellant : Mr.P.Arun Jayatram

For Respondents : Mr.R.R.Kannan

J U D G M E N T

This Second Appeal is filed seeking an order to set aside the judgment and decree, dated 27/06/2014 made in OS No.303 of 2021 on the file of the District Munsif Court, Uthamapalayam, which is confirmed by the judgment and decree dated 04/12/2020 made in AS No.29 of 2014 on the file of the Subordinate Judge, Uthamapalayam.



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2. Plaint averments in brief:-

The suit properties originally belonged to the defendant namely Raja ancestrally. His 1st wife name is Geetha. The plaintiffs are the childrens of the defendant. During her younger age, Geetha died. After that, the defendant married another woman by name Santhi. Since the plaintiffs were not taken proper care by the defendant and his second wife, they were living in the custody of the maternal grand-father, who is their Guardian, by name Kubendran. On 09/11/2000, a registered partition deed was effected between the plaintiffs' Guardian and the defendant, by which 'A' schedule property was allotted to the defendant. 'B' schedule to the first plaintiff. 'C' schedule to the 2nd plaintiff. So, after the partition, the plaintiffs became the absolute owners of the properties and enjoying the same through their Guardian.

3. Later on 16/11/2000, another agreement was entered into between the plaintiffs' Guardian namely Kubendran and the defendant, by which it was agreed by the defendant that if any property is acquired subsequently or in future, the first plaintiff must be allotted with a share. The defendant must take steps to arrange marriage for the second plaintiff at his own costs. It was also



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agreed that the defendant must take care of the plaintiffs. He was taking care of the plaintiffs, later neglected at the instigation of the 2nd wife. So the plaintiffs returned to their maternal grand father namely Kubendran. In spite of panchayat, the defendant did not take proper care. Over the above said issue, police complaints were also given. Later, the defendant unilaterally cancelled the partition deed, dated 09/11/2000 by way of cancellation registered deed, dated 26/04/2011. In pursuance of the cancellation deed, now he is making arrangement to sell the property. The cancellation deed is not valid under law. So, the suit is filed seeking the relief of declaration that the cancellation deed, dated 26/04/2011 is null and void and directing the defendant to restore the property to the plaintiffs; for permanent injunction and for costs.

4.The defendant entered appearance and filed written statement. At the time of death of the 1st wife, the 1st plaintiff was aged about 3, the 2nd plaintiff was 1-1/2 years. She committed suicide. But Kubendran and others created problem at the time of cremation. Pressure was made by force to execute a partition deed. By that way only, the partition deed, dated 09/11/2000 came into effect. At the time of panchayat, it was orally agreed



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that the defendant must take care of the childrens and Bank deposit was made in the name of the 1st plaintiff and the 2nd plaintiff must give ½ kuzhi. Even after the above said promise, Kubendran and his men making trouble, when the defendant attempted to arrange second marriage to take care of the childrens. Only at that time, the partition deed, dated 09/11/2000 came to be executed under force and compulsion. It never came into effect. Kubendran received Rs.1,00,000/- towards cost of the jewels, articles, etc. At the time of execution of the document, dated 09/11/2000, the second wife by name Santhi was pregnant. The educational expenses were owned by him. Without the permission of the defendant, the first plaintiff went to the maternal grand father's house. Because of the problem only, dispute arose between them. Again trouble was made by Kubendran at the time of making the repair work in the properties. On coming to know that Kubendran made arrangements to sell the properties, the partition deed, dated 09/11/2000 was cancelled on 26/04/2011. From the date of the cancellation, the plaintiffs lost their right in the properties. On 13/11/2011, again trouble was made by Kubendran and others. A case was registered in Crime No.238 of 2011 against them for the offences under sections 147, 148, 294(b), 324 and 506(i) IPC. A counter



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case was registered against the defendant in Crime No.239 of 2011 for the offences under sections 147, 148, 379NP and 506(i) IPC. Through the second wife, two childrens were born to the defendant. They are also having shares in the suit properties.

5.Before the trial court, the following issues were framed:-

(1)Whether the partition cancellation deed dated 26/04/2011 executed by the defendant is valid or not?

(2)Whether the plaintiff is entitled for declaration as prayed for?

6.The trial court, at the conclusion of the trial recorded a finding that the plaintiffs are entitled for the relief sought for in the plaint and accordingly, the suit was decreed in entirety without costs. The plaintiffs were declared to be major during the pendency of the suit.

7.Against which, appeal was preferred by the defendant before the Sub Court, Uthamapalaym, taken in AS No.29 of 2014 and after hearing both sides, it confirmed the judgment and decree passed by the trial court.



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8. Against the concurrent finding of facts, second appeal is preferred by the defendant stating that substantial questions of law are involved in this matter.

9. The following substantial questions of law are framed.

(1) Whether the 1st appellate court properly considered Section 14 of the Transfer of Property Act, when the Appellant proved the presence of child in womb of Appellant's 2nd wife through Ex.B13?

(2) Whether the findings of the Trial Court holding that the children of the appellant born through his 2nd marriage should initiate separate legal proceedings to claim their share is sustainable or not?

10. In the light of the above said, now we will go to the factual aspects as projected by the parties.

11. Before that, we may also take into the account the admitted facts.



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12.The fact that the suit properties are the ancestral properties of the appellants is not under dispute. There is a clear admission on the part of the defendant that the suit properties are the ancestral properties and the plaintiffs were born to him through his 1st wife namely Geetha. Geetha committed suicide. For what reason, she committed suicide is beyond the scope of our discussion. Now whatever it may be, now she died leaving behind the plaintiffs at the tender age.

13.According to the plaintiffs, trouble started when proposal was made by the appellant/defendant herein to perform second marriage.

14.It is the case of the appellant/defendant that only for the purpose of taking care of the childrens, he arranged second marriage. That was objected by the grand-parent of the children by name Kubendran.

15.Per contra, it is the case of the plaintiffs that at the instigation and instance of the second wife, the childrens were not taken care properly and but ill-treated and harassed. The childrens on their own went to the maternal grand-father Kubendran.



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16. So what reason, trouble has arisen between the plaintiffs and the defendant, the appellant herein also need not go into at length. Suffice to say that problem arose between the plaintiffs maternal grand father namely Kubendran and the defendant.

17. In the written statement, it has been stated that even at the time of making arrangement for the burial of the 1st wife, problem was created by Kubendran and his relatives. Panchayat was convened and there was a compromise. Exs.B2 to B9 shows that there was substantial acceptable evidence on the side of the defendant.

18. DW2 was examined on the side of the appellant to prove the above said issue. He has spoken about the first compromise, that was reached between them at the time of death of Geetha. It occurred in 1996. Probably in the month of May. He has stated in his cross examination that on the first day of death of Geetha, he was one among panchayat, it was reduced into writing. He also signed in that document. But no such document was produced on the side of the defendant. At that time, the appellant promised to give 1-1/2 kuzhi to the 2nd plaintiff. So even if we accept that even on the date of death of the 1st wife, it has no effect on the date of subsequent



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partition deed, dated 09/11/2000. Because DW2 was not a witness to Ex.A1. It was admitted by him that he was not present at that time. To some extent, his evidence is helping the court to see the actual issue between them.

19.From his evidence, it is seen that till five years prior to the evidence, the childrens were under the custody of the defendant, which is also supported by the documentary evidence in the form of hostel receipts to the plaintiffs, which were paid by the defendant. It is available upto 08/02/2008. Thereafter, it is not available. It is even admitted by DW2 that for the past five years, the childrens were not in the custody of the appellant, but rather in the custody of Kubendran. The suit was filed in the year 2011. In the meantime, police complaint was also given by both sides against each other. So, it is clear that on the date of the suit, the plaintiffs were under the custody of their maternal grand father namely Kubendran.

20.Apparently, it is seen that after the second marriage performed by the appellant, trouble has arisen and the childrens are in the custody of Kubendran. This is the background of the issue.



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21.Now we will go to the important aspect of Ex.A1's validity. Even though, this document is admitted by the appellant, what he says is that it is executed under force and coercion. When the demand is admitted by the appellant and disputed, it is for him to establish that on the date of the Ex.A1, it was obtained by force and coercion. Except his self-serving evidence, no other corroborating evidence is available to say the force and coercion. Since the plea has been raised by him, it is his duty to prove the same. No one was examined on the side of the defendant to prove that he was not free mind.

22.Now let us go to his evidence to the nature of coercion and force. He has stated that when he arranged second marriage, again Kubendran started creating trouble. To buy peace, the document was executed on 09/11/2000. Except that, no other direct or circumstantial evidence was let in by the appellant. Since no proper oral and documentary evidence or circumstantial evidence was let in by the defendant to say that it is executed under force and coercion, naturally the document cannot be challenged and it must be held to be valid.



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23.We can confirm the validity of the document from another angle also.

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24.As stated above, it is admitted by the appellant that the suit properties are the ancestral properties, naturally the childrens born to him are also entitled to share. It is also even admitted by himself during the course of cross examination. On the ground of right also, that document cannot be disputed. On any ground, Ex.A1 cannot be construed as invalid document executed under threat and coercion.

25.Now coming to the cancellation of the document, he has stated that the second plaintiff made arrangement to sell the property. So, he executed the cancellation deed. Whether a document of partition can be unilaterally cancelled is beyond the pale of any doubt. A partition deed cannot be cancelled. If at all, the partition effected can be reopened in the subsequent dates, if sufficient reason or change of circumstance arises. In support of reopening the partition, now the cancellation deed was executed, which is *per se* illegal. The property was already vested with the plaintiffs by virtue of birth. It is recognized and specific shares were allotted to them by way of a registered partition deed. So, the



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right which was vested and it was later confirmed by way of specific allotment of shares will not divest the plaintiffs from their right. On that point also, the cancellation deed is not valid under law.

26. Even though, the appellant/defendant relied upon the judgment of this court in **Sasikala Vs. Revenue Divisional Officer-cum-Sub-Collector, Devakottai, Sivagangai District and another [(2022(5) CTC 257)]**, it was only referring to the sale deed not about the partition deed. As mentioned above, it is not amenable for cancellation that too unilaterally. Accordingly, the findings of the trial court, as confirmed by the first appellate court on this aspect requires no consideration. But the appellant would rely upon the change of circumstances by way of birth of two childrens to them through the second wife. That was pointed by him, in the written statement also. There is an observation by the trial court that at the time of Ex.A1, the second wife carrying a child in womb. On that account, the cancellation is not permissible under law. Even if we consider that a child was in the womb at the time of Ex.A1, the partition that was entered before his birth will not be invalid. If at all the children born subsequent to the partition can claim right over the



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parties allotted to the defendant. The partition already effected prior to the birth will not affect the validity of the document.

27.Now the learned counsel appearing for the appellant would rely upon section 14 of the Transfer of Properties Act. But section 14 of Transfer of property Act has no application at at in this matter.

28.Regarding the right of the child born to the defendant through the second wife, as mentioned above, they got right, but they can get the share in the property allotted to the defendant only.

29.We can refer to section 6 of the Hindu Succession Act:-

"S.6.Devolution of interest in coparcenary property.-(1) *Hindu Succession (Amendment) Act, 2005 (39 of 2005), in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,-*

(a)by birth become a coparcener in her own right the same manner as the son;



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(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.



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(3)Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivor-ship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,-

(a)the daughter is allotted the same share as is allotted to a son;

(b)the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c)the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased



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son or a pre-deceased daughter, as the case may.

Explanation.-For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4)After the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt: Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), nothing contained in this sub-section shall affect-



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(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 (39 of 2005) had not been enacted.

Explanation.-For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005).

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.



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Explanation.-For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.]

30. So from the reading of the provisions, it is clear that the female child born to the appellant through the second wife is entitled to reopen the partition provided that it was not a subject matter of any partition, testamentary disposition taken place before 20/12/2004. Here, the partition deed was executed on 09/11/2020, which is much earlier to the amendment. As pointed earlier, that will not invalidate document. On that account also, the judgment passed by the trial court, as confirmed by the appellate court requires no interference.

31. Another document is in the form of Ex.A5, dated 16/10/2000 or came into existence confirming the partition deed, dated 09/11/2000. It was in reference to the future acquisition and income of the appellant. So, continuous documents came into existence between the parties over the issue. So, from this document, the



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validity of Ex.A1 is confirmed. I find that absolutely no interference is called for in the judgment of the trial court as confirmed by the appellate court.

32.So the point of law answered by the trial court as confirmed by the appellate court also requires no interference, which is perfectly valid under law. Accordingly, the substantial questions of law are answered.

33.In the result, this second appeal is **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

11/06/2024

Index:Yes/No
Internet:Yes/No
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To,

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



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G.ILANGO VAN, J

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