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SA(MD)Nos.211 and 212 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	01/08/2024
Date of Pronounced	23/10/2024

CORAM

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

SA(MD)Nos.211 and 212 of 2021

(1) SA(MD)No.211 of 2021:-

1.Anbu Sabari
2.Ala Mahendran (Azhakendran) : Appellants/
Respondents 1 and 2
Plaintiffs 1 and 2

Vs.

1.V.Veerappan
2.Tmt.Janaki
3.M.Muthukumar
4.Tmt.Podumponnu : Respondents
5.Saravanan : 5th Respondent/
3rd Party/
LR of the 3rd Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree passed in AS No.150 of 2006, dated 27/02/2015 on the file of the Subordinate Judge (Melur Camp), Madurai, reversing the judgment and decree passed in OS No.676 of 2004, dated 13/04/2006 on the file of the District Munsif Court, Melur, Madurai

For Appellants : Mr.Gomathi Sankar
for M/s.J.Bala Meenakshi

For R1 to R4 : Mr.R.Bala Krishnan

For 5th Respondent : M/s.M.Maria Vinola



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(2) SA(MD) No.212 of 2021 :-

1.Anbu Sabari
2.Ala Mahendran (Azhakendran) : Appellants/
Respondents 1 and 2
Plaintiffs 1 and 2

Vs.

1.M.Muthukumar
2.V.Veerappan
3.Tmt.Janaki
4.Tmt.Podumponnu : Respondents/1st Appellant/
Respondents 1 to 3/
Defendants 1,2 and 3

5.Saravanan : 5th Respondent/
3rd Party/
LR of the 3rd Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree passed in AS No.199 of 2006, dated 27/02/2015 on the file of the Subordinate Judge (Melur Camp), Madurai, reversing the judgment and decree passed in OS No.676 of 2004, dated 13/04/2006 on the file of the District Munsif Court, Melur, Madurai

For Appellants : Mr.Gomathi Sankar
for M/s.J.Bala Meenakshi

For R1 to R4 : Mr.R.Bala Krishnan

For 5th Respondent : M/s.M.Maria Vinola

COMMON JUDGMENT

SA(MD)No.211 of 2021 is filed against the judgment and decree passed in AS No.150 of 2006, dated 27/02/2015 by the Subordinate Judge (Melur Camp), Madurai, reversing



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the judgment and decree passed in OS No.676 of 2004, dated 13/04/2006 by the District Munsif Court, Melur, Madurai, whereas SA(MD)No.212 of 2021 has been filed against the judgment and decree passed in AS No.199 of 2006, dated 27/02/2015 by the Subordinate Judge (Melur Camp), Madurai, reversing the judgment and decree passed in OS No.676 of 2004, dated 13/04/2006 by the District Munsif Court, Melur, Madurai

2.The plaint averments in brief:-

The suit in O.S No.676 of 2004 was filed by one Anbusabari and others against the defendants seeking the relief of partition and separate possession of their 2/3rd share in the suit property, mesne profits and for costs with the following averments:-

The third plaintiff is the wife of the first defendant namely Veerappan. To them, one Saravanan, Chitra Devi and the first plaintiff namely Anbusabari were born. The first defendant's elder daughter Chitra Devi was married one Dhararaj in 1990 as per the customary rites. The 2nd plaintiff is the children born to them. Chitra Devi died two years prior to the plaint. Dharmaraj also expired. As per the Hindu Succession Act, the second plaintiff was the original legal heir of the



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Chita Devi and Dharmaraj. The first defendant was the Kartha of the joint family. But there was no partition between the plaintiffs 1 and 2 and the first defendant. Some of the properties were ancestral properties and some of the properties were purchased out of the joint family income by selling the third plaintiff's jewels purchased in the name of the first defendant. In October 2003, they were excluded from the joint possession. The first plaintiff returned only on 16/09/2004. As per the partition deed, on 18/09/2003, B schedule was allowed to Saravanan. In the share allowed to Saravanan, plaintiffs 1 and 2 did not claim any right and therefore, Saravanan is not a necessary party in the suit. Even though, the plaintiff A schedule was stated to be allotted to the first defendant, so far as the plaintiffs 1 and 2 are concerned, it is undivided property with the first defendant. In the partition, dated 11/09/2003, the plaintiffs 1 and 2 were not allotted with any properties. B and C schedule properties are not covered in the partition deed dated 11/09/2003. On the date of coming into force of the Amendment Act, the 1st plaintiff was not married. So as per the Amendment Act, the 1st plaintiff and the 1st defendant are entitled to 1/3rd share each. The 1st defendant without taking care of the family indulged in immoral and illegal activities and is having



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illegal intimacy with the 2nd defendant. Along with the 3rd defendant, they are living separately. One Inisangan filed a suit in OS No.155 of 2001 and is pending before the court. The 1st defendant created a settlement deed in respect of items 1 to 4 in the A schedule property and other properties in favour of the 2nd defendant on 20/06/2002. The above said settlement deed is not valid under law and not binding the plaintiffs also. The property was not handed over to the 2nd defendant. The 2nd defendant has no right over the properties by virtue of the above said settlement deed. Later, it was cancelled by the 1st defendant on 01/10/2003. Later, on 01/09/2002, the 1st defendant executed a sale deed on 01/09/2002 and 28/10/2003 without proper consideration. The above said sale deeds were not effected for the benefit of the joint family. It is not binding upon the plaintiffs.

3.The 3rd plaintiff is entitled for maintenance against the 1st defendant. Actually, she is getting maintenance also. So, she is having charge over the properties. The plaintiffs 1 and 2 demanded their 2/3rd share. That was not properly replied by the 1st defendant. So, the suit is laid for partition as mentioned above.



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4.The defendants 1 and 4 have filed written statement stating that Chitra Devi got married in the year 1988 and not in 1990. The properties are not the ancestral properties or self-acquired properties of the 1st defendant. The 3rd plaintiff is not the dutiful wife and she was always making trouble to the 1st defendant. Saravanan is living with the 3rd defendant. But the 1st defendant for the past 18 years is living separately. In the partition deed, the 3rd plaintiff is the attesting witness. In the partition, it was agreed that the suit filed by the 3rd plaintiff against the defendants 1 and 2 must be withdrawn. But the 3rd plaintiff did not withdraw the case. By virtue of the sale deed, dated 28/10/2003, Items 1 to 4 in 'A' schedule sold to the 4th defendant. Item Nos.1 and 2 in the 'B' schedule were sold to the 3rd defendant. C schedule property was already allotted to Saravanan in the partition. Under these circumstances, the suit is filed by the plaintiffs to harass the defendants. The 3rd plaintiff is not entitled to get maintenance. The settlement deed executed in favour of the 2nd defendant is not revokable.

5.On the basis of the pleadings, the trial court formulated the following issues:-



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(1)Whether the plaintiffs 1 and 2 are entitled 2/3 share in the suit property and consequential possession from the defendants?

(2)Whether future income of 2/3rd share of the property is available to the plaintiffs from the defendants?

(3)To what other reliefs, the plaintiffs are entitled to?

6.During trial process, on the side of the plaintiffs, 5 witnesses were examined and 8 documents marked. On the side of the defendants 5 witnesses were examined and 20 documents marked.

7.At the conclusion of the trial process, the suit was decreed as prayed for with costs.

8.Against which, the defendants 1, 2 and 4 filed AS No.150 of 2006 before the Sub Judge, Madurai. The 3rd defendant separately filed AS No.199 of 2006, as mentioned above. The appellate court heard both the matters and finally, allowed both appeals and the suit filed by the plaintiffs was dismissed.



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9. Against which, second appeal is preferred by the plaintiffs 1 and 2 in SA(MD)No.211 of 2021 and plaintiffs 1 and 2 filed another second appeal in SA(MD)No.212 of 2021 against the judgment and decree passed in AS Nos. 150 and 199 of 2026.

10. At the time of admission, the following substantial questions of law were framed:-

(i) Whether the suit properties are ancestral joint family properties and the same have been partitioned unilaterally by the 1st respondent and the 5th respondent without considering that these appellants are also entitled to a share in the ancestral joint family properties as per the Hindu Succession Act (Tamil Nadu Amendment Act 1 of 1990) with effect from 25.03.1989 when the daughters were not given in marriage and they were members of the joint family?

(ii) Whether the contention of the respondents 1 to 4 that the suit properties were self acquired properties of the 1st respondent is sustainable on the face of the partition deed, dated 18.09.2003?



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11.Heard both sides.

12.The relationship of the parties is not disputed and denied.

13.Now we can briefly summarize the issue for better. We will call the parties as referred before the trial court to avoid confusion.

14.There is matrimonial issue between the 3rd plaintiff namely Vellaiammal and the first defendant, over which they are living separately. It is alleged that the 1st defendant is having illegal intimacy with the 2nd defendant and the 3rd defendant was born to them.

15.It is also seen that the 3rd plaintiff and the 1st defendant separated 18 years prior to the suit. There is partition between 1st plaintiff and son namely Saravanan, who is born through the 3rd plaintiff Vellaiammal. Now the problem has arisen, when the 1st defendant alleged to have sold the property to the 4th defendant, as mentioned in the pleadings portion.

16.Now the 1st plaintiff namely Anbusabari says that the 1st daughter Chitra Devi married in 1990. The 2nd



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plaintiff is the daughter of Chitra Devi. The 1st plaintiff namely Anbusabari was not married on 25/03/1989, the date on which the Tamil Nadu amendment to Hindu Succession Act came into force. So, according to the plaintiffs, since it is ancestral property and joint family property of the 1st defendant, Anbusabari got half share. The deceased Chitra Devi and the 1st defendant got 1/3rd share leaving Saravanan, since already partition was effected between Saravanan and the 1st defendant on 18/09/2003.

17.*Prima facie*, it may be seen that it is a simple suit for partition filed by the living daughter and the legal heirs of the deceased daughter of the 1st defendant. But the manner in which, the suit is filed and the plea taken by the plaintiffs was considered by the first appellate court.

18.Even during the course of argument before this court, it is contended by the respondents that when the suit is filed for partition, all the persons interested the suit properties as well the family must be impleaded. But accepting the partition deed that was effected between the 1st defendant and Saravanan, now the plaintiffs have left the property allotted to Saravanan



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and they have not impleaded Saravanan also. The 4th defendant is a stranger to the family. He is a *bona fide* purchaser for valid consideration without notice as to the right of the 1st plaintiff and the deceased Chitra Devi. Since already partition was effected between the 1st defendant and Saravanan that too through a registered partition deed, it was believed by him. So, his interest must be protected and the motive or ill-motive as the case may be behind the suit was appreciated by the appellate court. So, no interference is called for.

19.Per contra, the learned counsel appearing for the appellants would submit that pending OS No.155 of 2001, the property was sold by the 1st defendant to the 3rd defendant. The partition deed is also not binding upon the plaintiffs. Even the 1st defendant himself admits the ancestral character of the properties. So, according to him, the right which was conferred upon the 1st plaintiff and the deceased Chitra Devi cannot be defeated, either by partition or by sale.

20.It is further submitted that it is a clear finding of the trial court that the properties are ancestral in nature. Without proper appreciation of the evidence on record, the appellate court recorded a



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finding that it is a self-acquired properties. So, wrong finding rendered by the appellate court must be interfered.

21.He would further submit that the date of came into force of the Tamil Nadu Amendment Act to the Hindu Succession Act, the 1st plaintiff was not married and also the deceased Chitra Devi. By virtue of the Amendment Act, both are entitled to equal share.

22.The 4th defendant would submit that being a *bona fide* purchaser, She can be allotted with a share that may be allotted to the 1st first defendant, the Vendor. Having admitted the partition between Saravanan and the 1st defendant, now to make a trouble to the 4th defendant, the suits are filed. There is no proof to show that some of the properties were purchased out of the joint family nucleus. In substance, the 4th defendant's right must be protected, in any event, the property purchased by him. She got every right to get the property purchased, but allotted to the share of the vendor.

23.Now in the background of the above said rival submission, let us straightaway go the findings of the appellant court.



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24. Reading of the appellate court judgment shows that it unnecessarily entered into the controversy regarding the relationship between the 1st defendant Veerappan and the 2nd defendant namely Janaki. Whether Pothumponnu was born to the 1st defendant and the 2nd defendant are all matters, which are not necessary to be decided in this matter. The 3rd plaintiff came on record only as an individual. Simply because, some issue has been raised, the appellate court went into that issue, which is not required at all. More particularly, when a criminal case was filed by the 3rd plaintiff against the defendants 1 and 2 under section 494 IPC in CC No.332 of 2022 on the file of the Judicial Magistrate, Melur. I am avoiding discussion on the relationship between the 1st defendant and the 2nd defendant, which are not required for considering the issue.

25. Now we will go to the main issue.

26. The appellate court recorded a finding that separate source of income to the 1st defendant was established through Exs.B7 to B17. Those documents show that the 1st defendant was doing separate business and took lease of the coconut trees earning money. So, the contention on the part of the plaintiffs that some of the



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properties were purchased out of the joint family nucleus is not correct on record. Absolutely, there is no evidence on record also, which are the properties are ancestral and which are the properties are the separate properties of the 1st defendant. It is not a clear finding by the appellate court. In the plaint also, there is no clarification with regard to the above said issue namely which properties are ancestral and which are not.

27. Now we will go to the recitals in Ex.A1. In the partition deed, dated 18/09/2003, it has been specifically stated that the properties covered in the partition deed are the joint family ancestral properties. Some of the properties were purchased out of the joint family income in the name of the 1st defendant. The properties divided into 'A' and 'B' schedule. A schedule property was allotted to the 1st defendant and B schedule property was allotted to Saravanan. In the partition, provision is also made in respect of the 3rd plaintiff's regarding her maintenance. It is specifically agreed that Saravanan must maintain the 3rd plaintiff, more properties were allotted to Saravanan than the 1st defendant since Saravanan was not married on the date of the partition.



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28.Now we can take that the properties covered in the partition deed are the ancestral joint family properties.

29.In the property allotted to the 1st defendant, now the plaintiffs 1 and 2 are claiming share. B and C schedule properties are not covered in the partition deed. As mentioned above, according to them, B and C schedule properties were also joint family properties purchased out of the joint family income. But, as mentioned above, there is no evidence on record.

30.The appellate court says that by virtue of the above said partition deed, the 1st defendant became the exclusive owner of the property, in which the plaintiffs cannot make any claim.

31.But, as mentioned above, when the plaintiffs says that all the properties are the ancestral joint family properties and they are also having share, either they can reopen the partition that took place between the 1st defendant and Saravanan or they ought to have filed a suit including the properties allotted to Saravanan and by impleading him also. Without doing so, they filed the suit. In the absence of any one of the coparcener or co-



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owner, as the case may be, the character nature of the properties now under dispute cannot be and should not be decided. In the event of making any finding or observation, it will directly affect Saravanan also. In the plaint, it has been stated that since the properties allotted to Saravanan were not included in the plaint, he is not a necessary party. But such sort of contention is not acceptable. Unfortunately, no issue was framed in this regard by the trial court and no point for consideration was also framed by the appellate court.

32.Without going into the aspect, whether the 1st plaintiff was unmarried, the date on which the Tamil Nadu Amendment Act to the Hindu Succession Act, 1956 came into effect, so also the Chitra Devi are not taken up for consideration.

33.Another important aspect is that suit in OS No. 155 of 2020 was filed by the 1st plaintiff Anbusabari, the 3rd plaintiff Vellaiammal and Saravanan against the defendants 1 and 2 before the District Munsif Court, Melur in respect of the plaint properties subject matter in the above said suit and the settlement deed executed by the 1st plaintiff in favour of the 2nd defendant. Later that was cancelled by the 1st defendant. As mentioned



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above, the suit was decreed in favour of the above said persons. Against which, Veerappan and the 2nd defendant filed AS No.148 of 2006 before the Fast Track Court, Madurai. Appeal was partly allowed, declaration was granted and in respect of the properties allotted to the 1st defendant, permanent injunction was refused. But against the judgment, it appears that the 1st plaintiff, 3rd plaintiff or Saravanan did not file any appeal. There cannot be any contra finding with regard to the ancestor nature of the properties in the light of the 1st defendant to execute the sale deed executed. etc. Without challenging the above said finding, the appeal itself is not proper. Similarly, the 3rd defendant also purchased some properties from the 1st defendant. What applies to the purchase made by the 4th defendant also applies to the 3rd defendant also. The appellate court ought to have decided and clubbed in AS No.150 of 2006, 199 of 2006 and 148 of 2006 for common judgment. But it appears that AS No.150 of 2006 was taken up by the Sub Court, Madurai, whereas AS No.148 of 2006 was taken up by the Fast Track Court No.3, Madurai.

34. Reading of the judgment of the appellate court in AS No.148 of 2006, there was a finding to the effect that the properties settled in favour of the 2nd defendant by



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the 1st defendant is not valid under law, in view of the fact that it is also joint family properties and the properties were purchased out of the joint family properties, which run quite contrary to the finding recorded by the appellate court in the subject. That is why, I have stated that all the matters ought to have been taken up together. Now damage has been done, which was under the subject matter now. There is yet another finding by the court that in Ex.A1 itself the 1st plaintiff Anbusabari and the 3rd plaintiff Vellaiammal have also signed as witnesses. In this aspect, it was concluded by the first appellate court that Ex.A1 came into existence after some sort of compromise and negotiation and mediation effected during the pendency of that suit, by the panchayadhars. When the property was allotted to the 1st defendant in pursuance of the family arrangement, no injunction can be passed against the 1st defendant from executing the sale deed in respect of the properties allotted to him. So, this finding is also standing against the plaintiffs herein. Having accepted the partition between the Saravanan and the 1st defendant and having made provision for the 3rd plaintiff towards maintenance, now it is too late for the plaintiffs to contend that they got share in the property and the sale effected to the 3rd and 4th defendants are not valid under



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law and are not acceptable. As mentioned above, there is ill motive behind the suit. The plaintiffs have not come to the court with clean hands. On that aspect also, the appellants cannot sustain the second appeal.

35.For all the reasons stated above, both second appeal fail and the same are **dismissed** answering the substantial questions of law by making above said observations..

36.In the result, both second appeals are **dismissed**, confirming the judgment and decree passed by the first appellate court. No costs.

23/10/2024

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

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



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G.ILANGOVAN, J

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