



S.A.(MD).No.260 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 22.07.2024

DELIVERED ON : 14.10.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

S.A.(MD).No.260 of 2021
and C.M.P.(MD).No.3558 of 2021

V.Sivakami ... Appellant/Appellant/Claimant
Vs.

1.Arunachalam ... 1st Respondent/1st Respondent/Plaintiff
2.Vanamoorthy ... 2nd Respondent/2nd Respondent/Defendant

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree dated 20.02.2019 made in A.S.No.47 of 2014 on the file of the Additional District Judge (Fast Track), Palani, confirming the Judgment and Decree dated 08.02.2011 made in E.A.No.277 of 2007 in E.P.No.162 of 2007 in O.S.No.212 of 1999 on the file of the Subordinate Court, Palani.

For Appellant : Mr.P.Athimoolapandian

For Respondents : No Appearance



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JUDGMENT

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This appeal has been filed against the Judgment and Decree dated 20.2.2019 made in A.S.No.47 of 2014 on the file of the Additional District Judge (Fast Track), Palani, confirming the Judgment and Decree dated 08.02.2011 made in E.A.No.277 of 2007 in E.P.No.162 of 2007 in O.S.No.212 of 1999 on the file of the Subordinate Court, Palani.

2.The facts in brief:

Suit in O.S.No.212 of 1999, was filed by Arunachalam, who is the first respondent herein against the second respondent for recovery of Rs.85,000/- on the basis of the pronote executed by the second respondent on 10.02.1998 before the trial Court. In that suit Vanamoorthi remained exparte. So decree was passed on 21.01.2002. E.P.No.162 of 2007 was filed by the decree holder namely the first respondent herein to execute the decree by attaching and sale of the property.

2.1.Pending further proceedings E.A.No.277 of 2007 was filed by the appellant herein under Order 21 Rule 58 of CPC with the following averments.

2.2.The suit property and other properties originally belongs to the



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plaintiff's family comprising the petitioner, her husband namely Veluchamy and children namely Mariammal, Vanamoorthy. According to the petitioner, it is a joint family properties purchased out of the common fund created by joint work. It was enjoyed as such by all the family members.

3.In the course of time there was difference of opinion between the family members. So the claimant namely Sivakami was driven out of the house by her husband. The matter was resolved in the presence of elders, by which, the suit property and other properties were subjected to partition in the presence of elders. It was reduced into writing on 21.01.1998. In the oral partition the property was allotted to the claimant/petitioner. Suppressing all those facts, Arunachalam brought the property for sale with the connivance of Vanamoorthy. The suit was instituted by Arunachalam at the instigation of Vanamoorthy. It is a fraudulent decree. The property is worth about Rs.20 lakhs. But brought for sale for meagre amount.

4.That was resisted by the decree holder by filing counter stating



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that the property originally belongs to the Vanamoorthy separately. It was never treated as joint family property. The claimant/petitioner, her husband and Vanamoorthy are living jointly. The family arrangement dated 21.01.1998 is not valid document creating any right in favour of the claimant/petitioner. To stall execution proceedings only the claim application can be filed.

5.Vanamoorthy also appeared before the Court. But he has not filed any counter. On the side of the claimant, she herself was examined as PW1. 7 documents were marked. On the side of the respondent no witness was examined and no documents were marked.

6.The trial Court recorded a finding that the claim of the claimant is not established and the claimant herself has admitted in E.P.No.181 of 2001 on the file of the Sub Court, Palani, that the present property absolutely belongs to Vanamoorthy.

7.Against which, appeal was preferred before the appellate authority namely the Additional District Judge/ Fast Track Court, Palani



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in A.S.No.42 of 2014. In concurrent with the judgment of the trial Court and dismissed the appeal. Against which this second appeal is preferred.

8.At the time of admission of the second appeal the following substantial question of laws were framed.

1. Whether the document in Exhibit A1 require registration in view of Section 17(2) of the Indian Registration Act, 1908?
2. Whether the Judgment and Decree of the Appellate Court is in conformity under Order 41 Rule 31 of CPC?

9.Regarding the first question of law we will straight away go to the judgment of the Division Bench of this Court touching all the propositions, in the case of *A.C.Lakshmipathy and another Vs. A.M.Chakrapani Reddiar and others* reported in (2001) 1 MLJ 1. The learned counsel for the appellant also relied upon the judgment of the Honourable Supreme Court in the case of *Ravinder Kaur Girewal and others Vs. Manjit Kaur and others*, reported in 2020 SAR (Viv) 839. Wherein, the very same prepositions are laid.



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10. Let me reproduce the observation of the Honourable Supreme Court in this regard, which was laid down in the case of ***Kale and others Vs. Deputy Director of Consolidation and others*** reported in ***AIR (1979) 3 SCC 119***. This judgment is followed by the Division Bench of this Court report in ***A.C.Lakshmipathy and another Vs. A.M.Chakrapani Reddiar and others*** reported in ***(2001) 1 MLJ 1*** as noted above. For more clarity, the relevant portion is extracted herein.

“10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

“(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangement may be even oral in which case no registration is necessary;

(4) It is well-settled that registration would be necessary only if the terms of the family



arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible,



which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.”

11. We can also extract relevant portion of the judgment of the Division Bench in A.C.Lakshmipathy's case.

“42. To sum up the legal position

(I) A family arrangement can be made orally.

(II) If made orally, there being no document, no question of registration arises.

(III) If the family arrangement is reduced to writing and it purports to create, declare, assign, limit or extinguish any right, title or interest of any immovable property, it must be properly stamped and duly registered as per the Indian Stamp Act and Indian Registration Act.

(IV) Whether the terms have been reduced to the form of a document is a question of fact in each case to be determined upon a consideration of the nature of phraseology of the writing and the circumstances in which and the purpose with which it was written.

(V) However, a document in the nature of a Memorandum, evidencing a family arrangement



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already entered into and had been prepared as a record of what had been agreed upon, in order that there are no hazy notions in future, it need not be stamped or registered.

(VI) Only when the parties reduce the family arrangement in writing with the purpose of using that writing as proof of what they had arranged and, where the arrangement is brought about by the document as such, that the document would require registration as it is then that it would be a document of title declaring for future what rights in what properties the parties possess.

(VII) If the family arrangement is stamped but not registered, it can be looked into for collateral purposes.

(VIII) Whether the purpose is a collateral purpose, is a question of fact depends upon facts and circumstances of each case. A person can not claim a right or title to a property under the said document, which is being looked into only for collateral purposes.

(IX) A family arrangement which is not stamped and not registered cannot be looked into for any purpose in view of the specific bar in Section 35 of the Indian Stamp Act.”



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12.In the light of the above said settled proposition of law, now we will see whether the document under Ex.A1 requires proper registration. Before that we must also bear in mind that the property is standing in the name of Vanamoorthy namely the second respondent herein. It is the case of the petitioner that the property was purchased out of the joint family fund. But, the claimant is the mother of the second respondent. So whether the property was treated as joint family property, since it was purchased out of the joint family fund, absolutely, there was no material. Even if we consider that it was purchased out of the joint family fund, for the first time, right was created in favour of the appellant by virtue of Ex.A1. So, when, for the first time right is created in favour of the appellant through this document, necessarily, it got to be registered in view of the settled proposition of law.

13.With that we will go to the recitals to find out whether it is a past transaction or the arrangement that was reduced into writing later or whether the properties were divided in presentee that is by virtue of this document.



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14.The document reads that because of difference of opinion between family members especially between the husband and wife, oral partition was entered between the parties 1 ½ years back. Evidencing the same this document is reduced into writing. It must be first established on the side of the claimant that there was an oral partition between the family members some 1 ½ years back from the date of Ex.A1. Except the oral statement of evidence of claimant/petitioner no other evidence is available to substantiate her case. Unless that is established, Ex.A1 cannot be considered as a document of title.

15.Another aspect is that a similar claim application was filed by her in E.P.No.181 of 2001 on the file of the Sub Court, Palani. That was dismissed. So I find that with the connivance of the Vanamoorthy namely the second respondent herein the claim application was moved by the appellant herein. So it is nothing but a petition to delay and defeat the decree.

16.So in the light of the above said discussion, the first substantial



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question of law is answered that Ex.A1 requires proper registration and due to the non registration it is not admissible in evidence confirming any title upon the claimant.

17.The second substantial question of law need not be answered in the light of the above said answer to the first substantial question of law.

18.Even I am of the considered view that the appellate Court has not formulated points for consideration in a proper manner, but, it does not improve the appellant's case. Even otherwise, no purpose is going to be served in remanding the matter back to the appellate Court on that aspect. Appeal fails.

19.In the result, this second appeal stands dismissed. There shall be no order as to costs. The Judgment and Decree passed by the trial Court as well as the appellate Court are hereby confirmed. Consequently, connected miscellaneous petition is closed.

14.10.2024

Index : Yes / No
Internet : Yes / No
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To

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- 1.The Additional District Judge, Palani.
- 2.The Sub Judge, Palani.
- 3.The Section Officer, E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVAN,J.

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