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A.S.No.1011 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2025

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

A.S.No.1011 of 2012

1. Chandra
2. Kalaiarasi
3. Selvi
4. Santhi

...Appellants

Vs.

1. Ilavarasi

2. Ilavarasan @ Radhakrishnan
(R2 declared as major and the
guardian R1 viz., Ilavarasi discharged
from the guardianship vide court order
dated 22.12.2021 made in CMP.Nos.14727
and 14728 of 2021 in A.S.No.1011 of 2012)

Munusamy (died)

3. Valarmathy

4. Rajarani

(R4- Given up as no relief is sought
by the appellants against R4)

...Respondents

PRAYER: Appeal Suit filed under Order 41 Rule 1&2 r/w Section 96 of
Code of Civil Procedure, against the judgment and decree made in O.S.No.9 of
2010 dated 31.07.2012 on the file of the I Additional District Judge,



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Tindivanam.

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For Appellants : Mr.D.Ravichander

For Respondents : Mr.S.Sathyaraj for R1 & R2
R3-served- No appearance
R4-Given up

JUDGMENT

The defendants 4 to 7 in a suit for partition are the appellants. The respondents 1 and 2/ plaintiffs filed a suit seeking cancellation of the partition deed dated 11-08-2006 entered between them and the first defendant in that suit namely Munusamy. They also sought for a preliminary decree for partition declaring 2/3rd share in the suit A and B schedule properties. Later, the plaintiffs not pressed their relief in respect of “B” schedule properties based on compromise and continued the suit in respect of “A” schedule properties. The Trial Court, partly decreed the suit, by cancelling the partition deed dated 11-08-2006 and granting preliminary decree for partition of two-third share in respect of “A” schedule properties. Aggrieved by the same, the defendants 4 to 7 have come before this Court by way of this appeal.



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2. According to the respondents 1 and 2/ plaintiffs, the suit A and B scheduled properties belonged to a joint family consisting the plaintiffs and their father, the first defendant. The plaintiffs have got 2/3rd share in the suit properties. When the plaintiffs were minor, the first defendant, in order to grab the entire property, created invalid documents. The suit properties were originally allotted to first defendant in a partition deed dated 03-04-1995. In the sale deed dated 11-08-2006 executed by first defendant in favour of third defendant, he admitted the said fact. The 1st defendant created a self-styled partition deed on 11-08-2006 between himself and the plaintiffs. In the said partition deed, the minor plaintiffs were represented by their mother, the 2nd defendant. In the said partition deed, all agricultural lands were included in “A” schedule to the partition deed allotted to the share of the first defendant. Only one vacant site was included in “B” schedule to the partition deed allotted to the share of the minor plaintiffs. On the very same day, the joint family properties, which were not included in the partition deed, were sold to 3rd defendant by the 1st defendant for a sale consideration of Rs.7,50,000/- by joining the 2nd defendant as guardian of the minor plaintiffs. It was stated by the plaintiffs that there was no occasion for the minor plaintiffs to demand partition on 11-08-2006 and the valuable properties were allotted to the share of the 1st defendant. A small vacant plot was allotted to the share of the



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plaintiffs and therefore, the partition deed was not valid and equitable one. It was also stated that the 2nd defendant, mother of minor plaintiffs, was not entitled to act as a guardian of the minor plaintiffs when their father, first defendant, who was also the manager of the Hindu Joint Family, was alive. Therefore, according to the plaintiffs, the partition deed was a void document as they were not represented by proper guardian. The properties allotted to the 1st defendant under above partition deed was sold by him to defendants 4 to 7 on 16-04-2009. The 1st defendant acted against the interest of the minor plaintiffs and created documents. Therefore, the above said suit was filed.

3. The defendants 1, 4 to 7 filed a written statement and resisted the suit on the ground that the partition deed dated 11-08-2006 was entered into in the presence of mediators for the family benefit. Therefore, the plaintiffs were estopped from challenging the validity of the same. It was also stated that the first defendant had no bad habit and he never acted against the interest of the family in his capacity as a family manager. The defendants also denied the allegations in the plaint that the first defendant acted against the interest of the minors and created documents by abusing his position as family manager. On these pleadings, the defendants sought for dismissal of the suit.

4. Based on the above said pleadings, the trial court framed the following issues:-



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- 1. Whether the plaintiffs are entitled to the further partition since partition has been effected on 11.08.2006.*
- 2. Whether the partition deed dated 11.08.2006 is liable to be cancelled.*
- 3. Whether the plaintiffs are entitled to the 2/3rd share in the suit properties?*
- 4. Whether the plaintiffs are entitled to the mesne profits?*
- 5. If any remedies?*

5. Before the Trial Court, the first plaintiff was examined as PW-1. The mother of the minor plaintiffs, who was also arrayed as second defendant, was examined as PW-2 and an independent third party witness was examined as PW-3. On behalf of the plaintiffs, three documents were marked as Exhibit A-1 to Exhibit A-3. The 4th defendant was examined as DW-1 and her husband was examined as DW-2. On behalf of the defendants, seven documents were marked as Exhibits B1 to B7.

6. The Trial Court, on appreciation of evidence available on record, came to the conclusion that the partition deed dated 11-08-2006 was not valid and passed a decree cancelling the partition deed dated 11-08-2006. The trial court also granted a preliminary decree for partition declaring 2/3rd share in the suit “A” schedule property. Since the relief in respect of the “B” schedule properties was not pressed by the plaintiffs, the suit was dismissed in respect of



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“B” schedule properties. Aggrieved by the said judgment and decree, the defendants 4 to 7 has come before this court by way of this appeal.

7. The learned counsel for the appellants submitted that since the father of the minor plaintiffs wanted to enter into partition with his minor children, the second defendant, mother of the minors, was shown as guardian in the partition deed. Therefore, the said document is valid in law. The learned counsel further submitted that the plaintiffs failed to challenge the sale deed in favour of defendants 4 to 7 and therefore, the trial court ought not have granted decree for partition ignoring the sale in favour of defendants 4 to 7 in the absence of challenge by the plaintiffs. The learned counsel also submitted that the trial court failed to appreciate oral and documentary evidence available on record while coming to the conclusion that there was no equitable distribution of property in the partition deed.

8. The learned counsel for the respondents 1 and 2 advanced arguments in support of the findings of the Trial Court by taking this Court to the judgment passed by the trial court. Though notice served on the 3rd respondent and her name appears in the list, there is no representation for her. The 4th respondent has been given up.

9. Based on the pleadings of the parties and the submission made by the learned counsel for the appellants and the contesting respondents, the



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following points are arising for consideration in this appeal.

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1. Whether the partition deed dated 11-08-2006 is valid and binding on the plaintiffs?

2. Whether the plaintiffs are entitled to 2/3rd share in the suit "A" schedule properties as decreed by the trial court.

Discussion on point Nos.1 and 2:-

10. It is not in dispute that the suit items 1 to 4 mentioned in "A" schedule to the plaint are joint family properties. In fact, the 1st defendant under whom, the appellants/defendants 4 to 7 are claiming the title clearly admitted that joint family nature of the suit properties in the partition deed dated 11.08.2006 marked as Ex.A1. It is the specific plea of the plaintiffs that suit properties are joint family properties originally allotted to the share of 1st defendant in the family partition dated 03.04.1995 between 1st defendant, his father and brothers. The said plea has not been denied by the defendants in their written statement. Therefore, this Court comes to the conclusion that the suit properties are joint family properties.

11. A perusal of Ex.A1, partition deed dated 11.08.2006, entered between 1st defendant and the minor plaintiffs would establish that income earning agricultural property with an extent of 1.98 acres together with well



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and 5 HB motor was allotted to the share of 1st defendant in the partition deed.

However, a vacant site with an extent of 1810 ½ Sq.feet which will not yield any income was allotted to the share of minor plaintiffs.

12. Though during the course of the trial, the defendants' witness deposed that there was a house in the vacant site allotted to the plaintiffs, in the partition deed, no superstructure was mentioned. Absolutely, there is no evidence available on record to show that at the time of partition, there was a building in the vacant site allotted to the minor plaintiffs. In the partition, it was clearly mentioned as a vacant site with the extent of 1810 ½ sq. ft. Therefore, the partition effected under Exhibit A1 shakes the conscious of the court. The valuable income yielding agricultural land was allotted to the share of the first defendant and a small vacant site which will not yield income was allotted to the share of the minor plaintiffs. Therefore, it is clear that the interest of the minors has not been taken into consideration and there is no equitable distribution of the shares.

13. In the partition deed dated 11-08-2006, the minor plaintiffs were represented by their mother/2nd defendant. Admittedly, the suit properties are joint family properties. The father of the plaintiffs was alive. When the father was alive, the mother is not entitled to represent the interest of the minors in the joint family properties. No attempt was made to get Court appointed



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guardian for the minors to represent their interest in the partition. Even assuming, the mother has legal capacity to act as guardian of minors (Since father is one of the party to partition deed), permission of the Court has not been obtained under Section 8 of Hindu Minority and Guardianship Act. Hence, the plaintiffs, who were minors at the time of partition can avoid it within three years from date of attaining majority as held by Hon'ble Apex Court in ***M.Arumugam Vs Ammaniammal and Others reported in 2020 (11) SCC 103= MANU/SC/0015/2020***. The relevant observation reads as follows:-

16. Even assuming that the property was a joint family property then also we cannot accept the submission that the Karta i.e., Defendant No. 1 was the natural guardian of the minor Plaintiff. The Karta is the manager of the Hindu Undivided Family and acts on behalf of the entire family. True it is that Section 6 of the Act is not applicable in respect of undivided interest of a minor in the joint family property but here we are dealing with a situation where all the family members decided to dissolve the Hindu Undivided Family assuming there was one in existence.

17. A Karta is the manager of the joint family property. He is not the guardian of the minor members of



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the joint family. What Section 6 of the Act provides is that the natural guardian of a minor Hindu shall be his guardian for all intents and purposes except so far as the undivided interest of the minor in the joint family property is concerned. This would mean that the natural guardian cannot dispose of the share of the minor in the joint family property. The reason is that the Karta of the joint family property is the manager of the property. However, this principle would not apply when a family settlement is taking place between the members of the joint family. When such dissolution takes place and some of the members relinquish their share in favour of the Karta, it is obvious that the Karta cannot act as the guardian of that minor whose share is being relinquished in favour of the Karta. There would be a conflict of interest. In such an eventuality it would be the mother alone who would be the natural guardian and, therefore, the document executed by her cannot be said to be a void document. At best, it was a voidable document in terms of Section 8 of the Act and should have been challenged within three years of the Plaintiff attaining majority.(Emphasis supplied by this Court)

14. In the above decision, the Hon'ble Apex Court held that the general rule, only Kartha can represent minor in respect of his interest in Hindu Joint



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Family is not applicable in peculiar cases where family settlement takes place among members of HUF including kartha. It is held that in order to avoid conflict of interest, the mother, the other natural guardian (in the absence of father) can represent interest of minor. It was also held that in such cases, permission under Section 8 of Hindu Minority and Guardianship Act is necessary. In the light of above mentioned position of law declared by Hon'ble Apex Court, let us see the present case. In the case on hand, minor plaintiffs filed this suit within time. The 1st plaintiff was 19 year old at the time of presentation of suit. The minor 2nd plaintiff represented by 1st plaintiff was aged 17 years. Hence, they avoided partition deed by seeking necessary prayer within time allowed by law. In view of the fact that the distribution of share was not equitable and also the fact that Court's permission has not been obtained to deal with minor's interest, this Court comes to the conclusion that the partition dated 11-08-2006 is untenable in law and the same is liable to be declared as invalid. Accordingly, the findings rendered by the trial court that the partition deed was liable to be cancelled is affirmed in this appeal.

15. As mentioned earlier, the suit properties are joint family properties. Once the partition entered between first defendant and minor plaintiffs was declared as invalid as a necessary consequence, the plaintiffs are entitled to 2/3rd share in the suit properties. Therefore, the trial court was justified in



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granting preliminary decree for partition declaring plaintiffs' 2/3rd share in the suit properties.

16. The learned counsel for the appellants vehemently contended that there was no prayer to set aside the sale deed executed by 1st defendant in favour of defendants 4 to 7 subsequent to the partition deed dated 11-08-2006. The said sale deed was executed by the first defendant not in his capacity as a manager of the Hindu Joint Family. The same was executed by him in his individual capacity on the ground that the properties covered by the sale deed were already allotted to him under partition deed dated 11-8-2006. This Court already came to the conclusion that the partition deed dated 11-08-2006 was not valid and liable to be set aside. Once the partition deed is set aside, the sale executed by 1st defendant in his individual capacity can be upheld only to the extent of his interest in the joint family properties namely one-third share. The same will not be valid in respect of the interest of minor plaintiffs namely 2/3rd share. The said conclusion stems out of the decision of this court that partition deed dated 11-08-2006 is invalid and hence, there is no necessity for the plaintiffs to seek cancellation of the sale deed as they were not party to the said document. Further, the sale deed was not executed by the first defendant as a family manager and the same was executed by him only in his individual capacity. Therefore, the said submission made by the learned counsel for the



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appellants is not acceptable to this Court.

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17. In view of the discussion made earlier, the Point Nos.1 and 2 are answered against the appellants and in favour of the respondents 1 and 2. Accordingly, the first appeal stands dismissed by confirming the judgment and decree passed by the Trial Court in O.S.No.9 of 2010 dated 31.07.2012. In the facts and circumstances of the case, there shall be no order as to costs.

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Index : Yes
Internet : Yes
Neutral Citation Case : Yes
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To

The learned I Additional District Judge, Tindivanam



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