



A.S.No. 1250 of 2015

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2025

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

A.S.No. 1250 of 2015

Eswari

... Appellant

Vs.

Krishnappa Chetty (died)

1. Ramamoorthy

2. K.Chandrasekaran

.. Respondents

PRAYER : Appeal Suit filed under Section 96 r/w Order 41 Rule 1 of Code of Civil Procedure, praying to set aside the judgment and decree dated 15.09.2015 made in O.S.No.56 of 2011 on the file of Principal District Court, Krishnagiri.

For Appellant : Mr.P.Mani

For Respondents : Mr.S.Senthilvel for R2

R1 – No appearance



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JUDGMENT

The appellant, who is the plaintiff filed a suit in O.S.No. 56 of 2011 on the file of Principal District Judge, Krishnagiri against the defendants claiming partition of her 1/4th share in the suit property. On hearing both sides, the trial judge dismissed the suit. Aggrieved over the same, the plaintiff preferred this Second Appeal.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. Before the trial court, the plaintiff filed a suit claiming partition of her 1/4th share in the suit property against the defendants stating that the 1st defendant is her father, who had two sons viz., defendants 2 and 3 and one daughter, the plaintiff herein. All were enjoyed the properties as a joint family properties and not amicably agreed for partition. Hence, she came forward with this suit claiming 1/4th share in the suit property.



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4. The 3rd defendant alone contested the suit and other two defendants remained exparte. The 3rd defendant admits the relationship, but denied the plaintiff's claim over the suit property. He stated that already he along with his father and another brother, all the three partitioned the suit property along with other properties by means of registered partition deed dated 14.08.1991. Eversince then, they were in separate possession and enjoyment of properties and in that partition deed, the plaintiff being one of witnesses, but she never claimed any share in the properties nor she raised any objections all these years. Therefore, she is estopped by her conduct, besides she got married long back in the year 1984 before the Amendment Act, 1989. Therefore, 1989 Amendment Act would not support her. The defendants 2 and 3 are enjoying the properties separately and a portion of property was also sold to one Raman by these defendants. Therefore, he prayed to dismiss the suit as no merit.

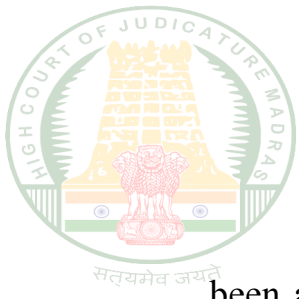
5. Before the trial court, both parties adduced oral and documentary



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evidence. On the side of plaintiff, P.W.1 to P.W. 3 were examined and the documents Ex.A1 to A7 were marked. On the side of defendants, D.W.1 was examined and documents Ex.B1 to Ex.B4 were marked. Considering the evidence on record, the trial court framed four issues. Before the trial court, the plaintiff was examined as P.W.1, wherein she deposed that the suit property originally allotted to her grandfather Venkatappa chetty through partition. Thereafter, the suit properties were given to her father Krishnappa Chetty. Thereafter, sons and daughter of Krishnappa Chetty jointly enjoyed the suit properties. Accordingly, she is claiming 1/4th share in the suit property. But the defendants admit the said aspect, but denied the fact that the plaintiff jointly possessed and enjoyed the properties along with them. Further, they have also took a defence that already partition was effected between his father and other brothers and partition deed was also marked as Ex.B1, in which the plaintiff is one of the attestor. Considering that, the trial judge held that if at all, signature of plaintiff was assigned forcibly as she claimed, she ought to have took steps to cancel the partition deed, but nearly about 12 years, she has not taken any steps, which itself shows that she consented to the partition and the partition deed has also



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been acted upon. Both of her brothers/defendants 2 and 3 ever since from the date of partition i.e. on 14.08.1991, they have enjoyed the properties separately. So, there is no property for division. Accordingly, issues were answered and suit was dismissed. Challenging the said findings, the plaintiff preferred this Appeal Suit.

6. The learned counsel for appellant argues that the trial court failed to take note of the fact that the suit properties are absolute properties of plaintiff's father/1st defendant, who also made an endorsement and he has no objections to grant share to the plaintiff during the pendency of suit, which dehorse the alleged partition put forward by the 3rd defendant. But, the court below instead of granting relief to the plaintiff, erroneously dismissed the suit as such is liable to be set aside. Further he would argue that the defendants 2 and 3 have no right over the entire properties, which was inherited by the 1st defendant from his father. Therefore, Ex.B1 partition deed would not bind the plaintiff nor no reason was assigned for not allotting any share to the plaintiff, without which the said partition deed is not valid one. But, the court below erred in holding that already valid



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partition was effected, thereby defendants 2 and 3 have divided the properties and enjoyed equally. So, there is no property for division as such is totally illegal and liable to be set aside.

7. By way of reply, the learned counsel for 2nd respondent argues that already properties were partitioned between defendants, who are the father and sons through Ex.B1 partition deed of the year 1991 and the same was not disputed by the plaintiff, who had also attested the said document, but not raised any objections nor filed any suit nearly about 12 years. Now, she came forward with the present suit as such is not maintainable and the court below rightly appreciated that the plaintiff has already consented for partition, besides life estate was given to 1st defendant. Therefore, after his demise, both defendants 2 and 3 are liable to enjoy equally. Accordingly, they mutated their names in the records and separately enjoying their share. So, there is no property for division. Accordingly, the trial court rightly dismissed the suit, which needs no interference. Hence, he prayed to dismiss this appeal suit as no merit.

8. Heard and considered rival submissions made by learned counsel for appellant as well as 2nd respondent and perused the materials available



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on record.

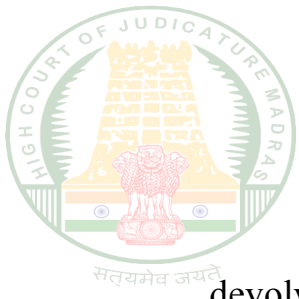
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9. The points for consideration is as follows:-

(a) Whether the plaintiff is entitled to claim 1/4th share in the suit properties?

(b) Whether the endorsement made by the plaintiff's father that he had no objection to give share in the property to the plaintiff dehorse Ex.B1 partition deed relied on by the defendants 1 and 2?

10. Admittedly, the plaintiff and defendants 2 and 3 are daughter and sons of 1st defendant and the suit properties were originally allotted to the share of 1st defendant's father through the grandfather of plaintiff and after grandfather's demise, the suit properties devolve upon his son, 1st defendant and the same was jointly enjoyed by the plaintiff and defendants 2 and 3, thereby the plaintiff claiming that it is a joint family properties. The suit properties allotted to the plaintiff's grandfather was an undisputed fact. The 3rd defendant stated that already properties were partitioned in the year 1991 and to prove the same, he has produced the partition deed, which was marked as Ex.B1. As per the recitals of document, 'A' schedule was given to 1st defendant's father and the life estate, after his demise, it would rightly



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devolves upon other sons/defendants 2 and 3, besides, 'B' schedule was allotted to first son and 'C' schedule was allotted to second son (defendants 2 and 3). Therefore, the 3rd defendant contended that after demise of his father, 'A' schedule property equally devolves upon the defendants and they have enjoyed suit properties separately. During the pendency of proceedings, the 1st defendant, father of plaintiff made an endorsement to give share for the plaintiff that was also taken note of by the trial court.

11. The objections raised on the side of 3rd defendant that partition held in the year 1991 was known to the plaintiff and she was also one of attestor of the said document. But, the plaintiff/P.W.1 stated that she was forced to sign in the blank paper and not aware of the partition. That being so, she ought to have raised objections much earlier, but nearly about 12 years later, she came forward with the present suit. The Village Administrative Officer was one of the witness of Ex.B1, who went to registration office and affixed the signature as identified by him. Another witness of Ex.B1 is also a retired conductor. So, the evidence of both witnesses not disclosed that the signature was obtained in blank paper. Therefore, the plaintiff failed to establish that she signed as one of the



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witness in Ex.B1 partition deed without knowing the contents. Therefore, as per Ex.B1, during the pendency of proceedings, 1st defendant, father of plaintiff made an endorsement that he has no objection to give share to the plaintiff. But, as per Ex.B1 partition deed, the 1st defendant was given life estate and defendants 2 and 3 were given absolute right over the properties. However, on perusal of Ex.B1, no reason was assigned for not giving any share to the plaintiff and 3rd defendant also not given any valid reason to get a signature from the plaintiff in the said Ex.B1 partition deed. The 1st and 2nd defendants remained exparte. The 3rd defendant alone contested the suit. If at all, the plaintiff was given any share, the same ought to have been mentioned in the partition deed, but no reason was assigned for not giving any share to the plaintiff. This itself shows that with ulterior motive, they have obtained signature from the plaintiff. Furthermore, the plea of ouster is raised by the defendants, but not established the said fact with material evidence. So, considering the consent given by the 1st defendant, this court is inclined to grant share in the property allotted to her father. Moreover, as per Ex.B1, life estate was given to father, but during his life time, during the pendency of proceedings, he has endorsed that he has no objection to



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give share to the plaintiff. Admittedly, the suit property was originally belong to plaintiff's father by way of partition held in the family. It is not the case that the defendants 2 and 3 have purchased the properties by self-acquisition. Therefore, it is a joint family properties, in which plaintiff is also entitled to have share, but her share was not given. Considering the no objections given by the 1st defendant, this court is inclined to grant share in the property to the plaintiff, which was allotted to his father in the said partition. But, the trial court failed to take note of the endorsement made by plaintiff's father and dismissed the suit as invalid as such is liable to be set aside. Therefore, the plaintiff is entitled to have share in the 'A' schedule property, which was allotted to her father in the partition held in the year of 1991. Accordingly, the issue No.(a) is answered. In respect of second issue, the plaintiff also entitled share in the 'A' schedule property to allotted to her father. Accordingly, the issue No.(b) is answered.

12. Furthermore, during the life time of the 1st defendant, he was inclined to give share in the property in favour of plaintiff, to that effect, he has also made endorsement before the trial court. Therefore, the partition deed Ex.B1 relied on by the defendants to that effect taken into



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consideration. The 2nd defendant also remained exparte and not raised any objection to the plaintiff's claim. The 3rd defendant alone contested the case. No reason was assigned for not giving any share to the plaintiff. Hence, his father has no objection during his life time. Therefore, 1/3rd share belong to plaintiff's father is directed to be given to the plaintiff. Though life interest was given to father, he revoked the said life estate by making such endorsement before the trial court. Therefore, 1/3rd share belong to father is liable to be granted in favour of plaintiff, thereby, the plaintiff is entitled to 1/3rd share in the properties. Suit is decreed granting 1/3rd share in the suit property. Accordingly, this Appeal Suit is allowed and the findings rendered by the trial judge in O.S.No. 56 of 2011 is set aside. No costs.

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Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To
Principal District Judge,
Krishnagiri.

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T.V.THAMILSELVI, J.

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