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A.S.No.244 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.02.2025

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Appeal Suit No.244 of 2022
and CMP.No.8783 of 2022

Rukmani.

.. Appellant

/versus/

1.Sampoornam
2.Vijayakumar
3.Padmavathi

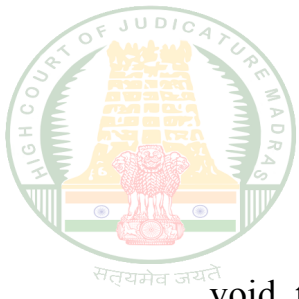
.. Respondents

Appeal Suit has been filed under Section 96 of C.P.C., praying to set aside the judgment and decree dated 23.04.2021 made in O.S.No.226 of 2016 on the file of the I Additional District Court, Salem.

For Appellant :Mr.S.S.Rajesh
For Defendant :Mr.V.Raghavachari, Senior Counsel
For Mr.S.Kalyanaraman

JUDGMENT

Challenging the decree and judgment dismissing the suit filed for partition and declaration of the settlement deed dated 29.06.2015 as null and



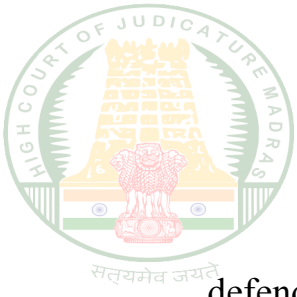
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void, the present appeal came to be filed.

2. The plaintiff is the daughter of the first defendant. The defendants 2 to 4 are the wife and children of one Chellappan, who is the brother of the plaintiff. According to the plaintiff, the suit property is ancestral properties and she is entitled to 1/3rd share and the property is in joint possession. The alleged settlement deed executed by the first defendant dated 29.06.2015 not binding on her, hence, the plaintiff sought for partition of ½ share of the property.

3. The defendants filed written statements denying the right of the plaintiff. According to them, after the marriage of the plaintiff, she was never in joint possession of the property. It is the further contention that on 11.03.1971, the first defendant and his son have partitioned the property, wherein, the property has been allotted to Chellappan and first defendant, thereafter, the first defendant has executed the settlement deed dated 29.06.2015 in favour of the grandson/third defendant. Similarly, the second



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defendant and the fourth defendant have also released their share in favour of the third defendant. Mutation is also effected in their favour. Hence, sought for dismissal of the suit. Hence, opposed the suit

4. In the light of the above pleadings, the following Issues were framed by the trial Court for consideration:-

(1)Whether there was an oral partition effected between the first defendant and his son during the year 1971?

(2)Whether the plaintiff is entitled to $\frac{1}{2}$ share in the suit property as prayed?

(3)Whether the property is the joint family property as stated by the defendants 1 to 4?

(4)Whether the settlement deed dated 29.06.2015 is true and valid?

(5) Whether the plaintiff is entitled for declaration of the settlement deed dated 29.06.2015 as not valid?

(6) To what other reliefs, the plaintiff is entitled to?



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5. On the side of the plaintiff, PW-1 and PW-2 were examined and Ex.A1 and A8 were marked. On the side of the defendants, DW-1 to DW-3 were examined and Exs.B1 to B13 were marked.

6. Based on the oral and documentary evidence and materials placed on record, the trial Court dismissed the suit on the ground that the property has been orally partitioned between the first defendant and son and that apart, the plaintiff is not in possession of the property. Challenging the judgment and decree, the present Appeal Suit came to be filed.

7. The learned counsel for the appellant submitted that the Trial Court has non-suited the plaintiff mainly on the basis of her admission and revenue records. According to him, the oral partition has not been established in the manner known to law. Therefore, the Trial Court dismissing the suit is not valid in the eye of law. As per the Hindu Succession (Amendment) Act, 2005 (39 of 2005), the plaintiff is entitled for her share in the suit property.



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8. Whereas, the learned counsel for the respondents submitted that the plaintiff herself has clearly admitted the oral partition and her evidence also indicate that she was never in possession of the property. Further, the oral partition is also proved by public documents like patta and other revenue records, thus, it has to be held that there was a valid partition. Hence, the plaintiff cannot claim any share under Act 39 of 2005 as alleged by the plaintiff.

9. In the light of the above submission, the following Points arise for consideration in this appeal:-

- (i) Whether there was partition between the first defendant and third defendant much prior to the Act 39 of 2005 came into force
- (ii) Whether the plaintiff is entitled to any share in the suit property?

Points (i) & (ii)

10. The plaint is proceeded as if the property has been originally allotted to the first defendant in a partition deed in Ex.B1 dated 11.03.1971.



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According to the plaintiff, the property is ancestral property, therefore, by virtue of amendment brought under Section 6 of the Act 39 of 2005, she is entitled to share. Whereas, it is the contention of the defendants that property is ancestral property allotted to the first defendant in the year 1971, there was oral partition effected between the first defendant and Chellappan/father of the third defendant and the parties were enjoying the property. Though in Act 39 of 2005, proviso to Section 6 makes it clear that partition ought to have been made only by registered partition, the law has been interpreted by the Hon'ble Supreme Court in the case of *Vineetha Sharma vs. Rakesh Sharma* reported in (2020) 9 SCC 1, wherein, it has been held that in exceptional cases where plea of oral partition has been established prior to the Act came into force, i.e., 23.12.2004, such oral partition supported by any public documents may be relied upon. In that context, when evidence of PW1 perused, it is the specific stand of the first defendant that what was allotted to the first defendant under Ex.B1, there was a oral partition between the first defendant and his son, pursuant to such oral partition, the parties were enjoying the property separately and

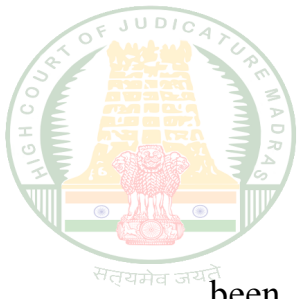


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mutation has also been taken. To substantiate such stand, Ex.B5 and B6 documents filed, when the documents perused same would clearly indicate that sub-division has been made in favour of the first defendant and his son. Plan attached to the Ex.B5 also makes it clear that the sub division has been effected in the name of the Chellappan/first defendant's son. Similarly, Ex.B6 patta clearly shows that sub division is effected in the name of first defendant and his son Chellappan.

12. When the above documents seen in the context of the admission of PW1 in evidence, she has admitted about the division of the property between the father and son. She also admitted that her brother was in separate possession pursuant to the said sub division. She has also admitted about the revenue records, patta issued by the Government. When the plaintiff herself has clearly and categorically admitted about the oral partition effected in the year 1971 and she is not in possession of the property and further, the oral partition is proved by the revenue records and sub division also effected. Further, plaintiff is married long back and never



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been in possession of the property she cannot claim any share in the properties, particularly, in view of Vineetha Sharma's case, wherein, it has been held that exceptional cases where plea of oral partition is supported by the public document and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. Therefore, once the revenue records proves the sub division of the property between other coparceners which is also admitted by the plaintiff, it has to be necessary held that oral partition pleaded by the first defendant has been clearly established. Therefore, this Court is of the view that Act 39 of 2005 will not come into aid to the plaintiff to claim any share. Accordingly, these points are ordered.

13. In view of the above, this appeal suit stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

24.02.2025

dhk
Index:yes/no
Speaking order/non speaking order
Neutral citation: yes/no



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To

1. The I Additional District Court, Salem

2. The Section Officer
VR Section
Madras High Court



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N.SATHISH KUMAR, J.

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