

S.A. No. 796 of 2012

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2025

CORAM:

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

S.A. No. 796 of 2012

and

M.P.No. 1 of 2012

1. K.Devarajan
2. Manoranjitham

... Appellants

Vs.

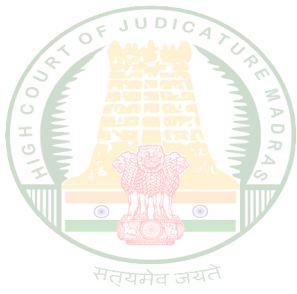
B.Sengottaiyan

.. Respondent

PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure, praying to set aside the judgment and decree dated 28.02.2012 passed in A.S.No.108 of 2011 on the file of Principal District Judge, Namakkal confirming the judgment and decree dated 16.06.2011 passed in O.S.No.257 of 2008 on the file of Subordinate Judge, Rasipuram.

For Appellants : Mr.C.Jagadish

For Respondent : Mr.R.Nalliyappan



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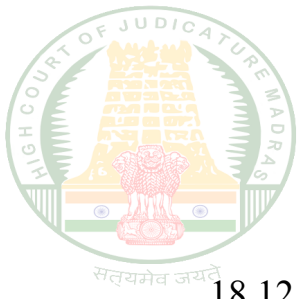
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JUDGMENT

The appellants herein are the plaintiffs filed a suit in O.S.No. 257 of 2008 on the file of Sub-Court, Rasipuram seeking for the relief of partition and on hearing both sides, the trial judge dismissed the suit. Against which, they preferred an appeal in A.S.No. 108 of 2011, wherein the first appellate on analysing the facts and evidence on record, dismissed the appeal by confirming the findings of trial judge. Challenging the concurrent findings of the courts below, the plaintiffs preferred this Second Appeal.

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

3. Before the trial court, the plaintiffs filed a suit for partition claiming 17/24 share in the suit property against defendant. The said suit was contested by the defendant stating that neither the plaintiffs nor their vendor having right and title over the property and also contended that he purchased the property for valid consideration through a sale deed dated

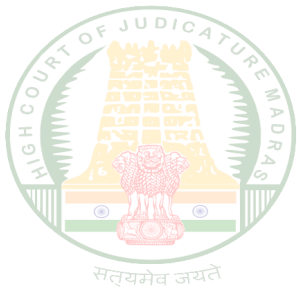


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18.12.1997 and enjoyed the property as absolute owner. Therefore, the alleged claim of partition would not arise. On hearing both sides, the trial judge framed issues and finally held that the plaintiffs have no right and title over the suit property as it is not a joint family property. Therefore, the alleged release deed relied on by the plaintiffs also invalid under law. Accordingly, suit was dismissed. Challenging the said findings, the plaintiff preferred an appeal in A.S.No.108 of 2011, wherein the first appellate judge also analysed the facts and evidence on record, finally held that the suit property is not a joint family property as alleged by the plaintiffs. So also, the alleged release deed also not valid one. Accordingly, confirmed the findings of trial judge by accepting the title of defendant and the appeal was dismissed. Challenging the concurrent findings of courts below, the plaintiff preferred this Second Appeal by raising the following grounds :-

- (1) The non-compliance with the provisions of Order 41 Rule 31 of the Code of Civil Procedure, which imposes an obligation on the part of the first appellate court to frame points for determination and deal with each of those points, renders the judgment of the lower appellate court invalid and liable to be set aside.



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- (2) The learned Principal District Judge erred in holding that the suit properties are separate properties of the defendant solely on the basis that the members of the family of Ramasamy Gounder had separate mess.
- (3) The learned Principal District Judge erred in law in holding that the release deed executed by the members of the family of Ramasamy in favour of Subramanian is not valid since it has been done without the consent of defendant.
- (4) The learned Principal District Judge should have seen that the prohibition regarding transfer of interest in joint family property would apply only to gratuitous transfers and not transfers of consideration.
- (5) The learned Principal District Judge erred in law in holding that the release deed Ex.B1 dated 06.03.2002 is not valid.
- (6) The learned Principal District Judge erred in law in casting the burden of proof on the plaintiffs regarding the nature of the property.

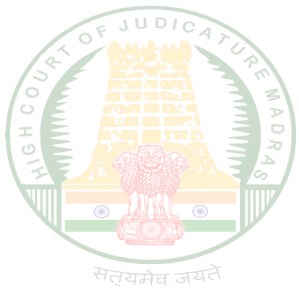


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- (7) The learned Principal District Judge erred in not advertng to the evidence on record independently and coming to his own conclusions on the basis of such evidence.
- (8) The learned Principal District Judge erred in mechanically confirming the findings of trial court.
- (9) The other reasons of learned Principal District Judge are unsound and as such the judgment and decree of learned Principal District Judge are liable to be set aside.

4. The learned counsel for appellants would argue that the first appellate court has not framed proper issues while disposing the appeal as such is gross-violation of Order 41 Rule 31 of C.P.C. Further, the trial judge failed to take note of the fact that the release deed relied on by the plaintiffs was not properly appreciated. He would submit that the learned District Judge has erred in law in casting burden of proof on the plaintiffs regarding the nature of property and mechanically confirmed the findings of trial judge. Hence, he prayed to set aside the findings of the courts below.

5. Considering the facts and circumstances of the case, this Second Appeal is admitted on the following question of law :-



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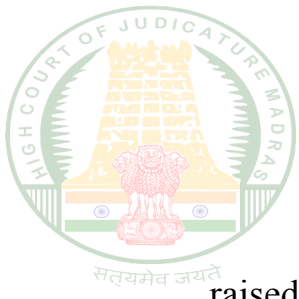
(a) Whether the lower appellate court was right in holding that the Ex.B1 release deed dated 06.03.2002 is invalid for want of consent of the defendant overlooking the fact that the same is a release for consideration?

(b) Whether the judgment of lower appellate court is vitiated for non-compliance with the mandatory provisions of Order 41 Rule 31 of Code of Civil Procedure?

6. Brief facts of the case is as follows :-

The 2nd plaintiff and the defendant's wife are sisters, thereby the 1st plaintiff and the defendant are co-brothers. According to plaintiffs, as per the sale deed dated 31.03.2002, they are entitled for 17/24th share in the suit property and the remaining 7/24th share belong to the defendant, all were possessed and enjoyed jointly. Due to inconvenience, they have demanded for partition, for which the defendant evaded. Hence, the suit.

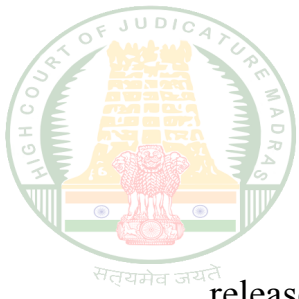
7. The case of plaintiffs is that they purchased the suit properties through sale deed dated 31.03.2002 and the remaining 7/24th share belong to defendant and they have possessed and enjoyed jointly. The defendant



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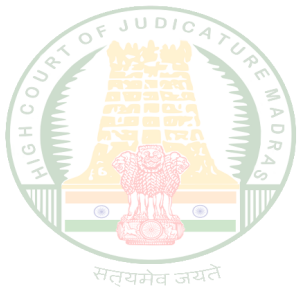
raised strong objections stating that the plaintiffs are husband and wife and 2nd plaintiff as well as defendant's wife are sisters, but without disclosing the relationship between them, the plaintiffs come forward with the suit. In fact, the defendant and plaintiffs' vendor Subramani were sons of one Ramasamy gounder and Lakshmiammal. The said Ramasamy gounder had three sons and two daughters. In respect of joint family property of Remasamy gounder, already there was partition held between them and living separately. The said Ramasamy gounder's wife Lakshmiammal had separate property through sale deed of the year 1961 and 1962 and as her absolute property, she executed a settlement deed in favour of his two sons viz., this defendant and his brother Subramani. Thereafter the suit property became separate property of defendant's mother-in-law Nallayee ammal and his sister Athayee Ammal, who got the suit property by way of settlement deed dated 23.04.1965. With the help of his hardearned money, the defendant purchased the suit property from his mother-in-law and her sister on 18.12.1997, thereafter he enjoyed the same as absolute owner. Moreover, with the collusion of plaintiffs and his brother Subramani, they claimed the suit property as if it is a joint family property and obtained a



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release deed from the other children of Ramasamy Gounder in favour of Subramani. The plaintiffs claimed that they purchased 17/24th share in the suit property. Neither Subramani nor the other family members of Ramasamy having no right to release, thereby the plaintiffs purchase is also invalid under law. Before the trial court, both parties adduced evidence, but the plaintiffs not stated how Subramani, his mother and sisters having right over the suit property and to execute the said release deed. Furthermore, on perusal of sale deed relied on by the defendant shows that he purchased the property from his mother-in-law and her sister through sale deed in the year 1997. Mother-in-law also traced her title through the settlement deed executed by her parents of the year 1965. Admittedly, the said 1965 document not produced on the side of defendant. So also the plaintiffs not produced any parent document to show that the suit property was the joint family property. Furthermore, the plaintiffs not denied that the property was sold by 2nd plaintiff's mother, who is mother-in-law of defendant. If at all, they are claiming that it is a joint family property of one Subramani and others, they ought to have produced the parent documents. Thus, both courts below rightly appreciated those facts, which needs no interference.



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8. Before the trial court, the trial judge framed the issue and finally held that plaintiffs have no right and title over the suit property and dismissed the suit. Against which, an appeal was preferred in A.S.No.108 of 2011. The learned first appellate judge also dismissed the appeal and confirmed the findings of trial judge.

9. The learned counsel for appellants would argue that the first appellate judge has not framed any separate point for consideration. Accordingly, Order 41 Rule 31 of C.P.C. was not complied. But, on perusal of finding of first appellate judge, he has framed a single point for consideration as to “whether the judgment and decree dated 16.06.2011 passed by Sub-Judge dismissing the suit is justifiable?” Considering the facts of the case, the said point for consideration framed by the first appellate judge is sufficient. Therefore, there is no violation of Order 41 Rule 31 of C.P.C. as argued by the appellant's counsel. Accordingly, the question of law (b) is answered.

10. In respect of issue (a) is concerned, as discussed above, the plaintiffs have roved how the persons entitled to release the share in the suit property without any submissions of parent title deeds, on the other



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hand, five years prior to the alleged release deed relied on by the plaintiffs, the defendant purchased the property in the year 1997 having valid right and title and the plaintiffs also not prayed any relief to set aside the said sale, on that score itself, the suit as such is not maintainable in law. Therefore, the findings given by the courts below needs no interference. Accordingly, the question of law (a) is answered. In view of the above, this Second Appeal is dismissed and findings of first appellate court in A.S.No.108 of 2011 is confirmed. Consequently, Suit is dismissed as no merit. No costs. Consequently, connected Miscellaneous Petition is closed.

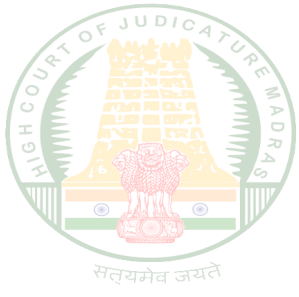
03.06.2025

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To

1. District Court, Namakkal.
2. Sub-Court, Rasipuram.
3. Section Officer, VR Section, Madras High Court.

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T.V.THAMILSELVI, J.

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