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A.S.No.561 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2025

CORAM

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

A.S.No.561 of 2018

G.Saroja

...Appellant

...Versus...

1.S.Chandrasekar

2.S.Shanmugam

..Respondents

PRAYER: This Appeal Suit is filed under Section 96 of C.P.C., against the judgment and decree made in O.S.No.154 of 2013 dated 21.12.2017 on the file of the Sessions Court, Mahila Court, Cuddalore.

For Appellant :: Mr.P.Jagadeesan

For Respondents :: No appearance

J U D G M E N T

The appellant herein is the plaintiff and the respondents are the defendants before the trial Court.



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2. According to the plaintiff, the suit property originally belonged to one Samidurai, and the plaintiff and the defendants are the children of Samidurai and Seethammal. Samidurai and Seethammal died six years prior to the institution of the suit. After their demise, the suit property devolved upon the plaintiff and the defendants.

3. It is further submission of the plaintiff that, as heirs, they are entitled to have a 1/3 share in the suit property. Hence, they issued a legal notice calling upon the defendants, to divide the suit property.

4. The said suit was resisted by the second defendant, by contending that there was already a registered partition between the plaintiff and the defendants by virtue of a partition deed dated 19.10.2019. Therefore, the suit is not maintainable. Further, the first defendant was set ex-parte in the suit.



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5. In the second defendant written statement, it was pleaded that there was a partition between the plaintiff and the defendants as early as on 19.10.2009. Therefore, by virtue of the earlier partition, the plaintiffs' present claim for partition is contrary to law. It was also contended that Item 1 of the suit property had already been sold to one Vairakannu Chettiar.

6. The defendants further submitted that a settlement deed had been executed in favour of his son concerning Item Nos. 2, 3, 5, and an extent of 8 cents in Item No. 3 of the suit property, vide settlement deed dated 06.08.2013.

7. Hence, the defendants contended that the plaintiff is not entitled to any share in the suit property, and thus, prayed to dismiss the suit.

8. Before the trial court, the plaintiff examined three witnesses and marked six documents. On behalf of the defendants, the second defendant himself was examined as D.W.1 and relied on five documents.



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9. The trial Court, after considering the pleadings of both sides, formulated the following nine issues:

(i) Whether partition has already been effected by way of partition deed, dated 19.10.2009?

(ii) Whether the settlement deed, dated 12.09.1988 invalid one?

(iii) Whether Vairakannu Chettiar is a necessary and proper party to the suit?

(iv) Whether without setting aside the earlier partition deed dated 19.10.2009 the plaintiff is stopped from filing this suit?

(v) Whether the settlement deed, dated 06.08.2013 is acted upon?

(vi) Whether the suit is barred by limitation?

(vii) Whether the plaintiff is entitled to get partition and separate possession of 1/3 of shares in the suit properties as prayed for?

(viii) Whether the plaintiff is entitled to get decree for permanent injunction?

(ix) To what relief the plaintiff is entitled?

(Extracted as it is)



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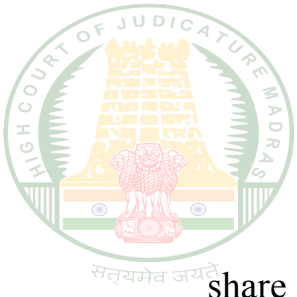
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10. While deciding the 1st issue, the trial court, in light of the partition deed dated 19.10.2009, found that the plaintiff is not entitled to any share in the suit property and ultimately dismissed the suit.

11. I have heard Mr. P. Jagadeesan, learned counsel appearing for the appellant. Despite the matter being posted today under the caption for orders, there is no representation on behalf of the respondents.

12. The learned counsel for the appellant would vehemently submit that the suit property absolutely belongs to Samidurai and that there is no dispute regarding their father's title to the suit property. He further contends that there is also no dispute in the relationship between the parties.

13. It is his submission that the plaintiff, being a co-owner, is not bound by any sale deed executed by other co-owners by ignoring the plaintiff's interest, and therefore, even after the sale of Item No. 1 property to Vairakannu Chettiar, the transaction will in noway bind the plaintiff. Thus, the learned counsel argues that the plaintiff is entitled to have 1/3



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share in Item No. 1 property, even though there is an Ex.B1 partition deed entered between the plaintiff and the defendants.

14. The learned counsel for the appellant also contends that, despite the partition deed Ex.B1 dated 19.10.2010, the plaintiff did not receive any share as specified in the deed. Therefore, even in respect of Item No. 4 property, the plaintiff is entitled to a share.

15. It is further contended that the execution of the settlement in favour of the second defendant's son does not affect the plaintiff's right to a partition in Item Nos. 2, 3, 4, and 5 of the suit property.

16. The plaintiff contends that the trial court's finding is not in accordance with legal principles and is contrary to the available evidence. Hence, the plaintiff prays the suit be decreed by allowing the appeal.



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17. I have given my anxious consideration to the submissions made by the learned counsel for the appellant. From the submissions, the following points arise for our consideration:

- (i) Whether the plaintiff is entitled to a share in the suit property?
- (ii) What is the effect of the partition deed dated 19.10.2009?

18. Point Nos. 1 & 2:

Before addressing the plaintiff's entitlement to the partition, it is appropriate to consider the effect of Ex.B1 partition deed. On perusal of Ex.B1, it is clear that this partition deed, only deals with Item No. 4 of the suit property. In the above partition deed, Item No. 4 property was divided into 'B' & 'C' schedule properties, and the 'A' schedule to the above deed is sum of Rs. 2,50,000/-. The plaintiff was allotted with A schedule, qua a cash sum of Rs. 2,50,000/- towards her share, while the defendants were allotted Item No. 4 property as 'B' & 'C' schedule of the said document.

19. Although the learned counsel for the appellant vehemently contends that the plaintiff did not receive the sum of Rs. 2,50,000/- as



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referred to in the partition deed, the trial Court took notice of the fact about the absence of objection from plaintiff from 2005 until 2013, regarding the non-receipt of the sum, disbelieved her contention. Thus, the trial Court rightly concludes that, by virtue of the partition deed under Ex.B1, the plaintiff cannot claim any right in Item No.4 of suit property.

20. Regarding suit Item No. 1,2,3 and 5 property, the defendant claims that Item 1 property has already been sold to one Vairakannu Chettiar. However, a perusal of the pleadings reveals no dispute about the plaintiff's right to Item No. 1 property or Item Nos. 2, 3, and 5 of suit property. The defendant's sole contention is that, after the sale of Item No. 1 property to Vairakannu Chettiar, the plaintiff cannot seek claim. But no documents were filed to substantiate this claim, and the only document is a power of attorney (Exs.B3 and B4). It is pertinent to note that the plaintiff is not a party to the documents in question. Therefore, any sale executed by the power of attorney holder in favour of Vairakannu Chettiar will in noway bind the plaintiff. As a result, the plaintiff is unequivocally entitled to have share in Item No. 1 property.



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21. In respect of Item Nos. 2, 3, and 5, the defendants claims to have settled the property in favour of his son. While the defendant is entitled to settle his share in these items, he cannot deal with the plaintiff's share. To put it differently the defendant cannot transfer better title than what he possess. Here admittedly the plaintiff being Class 1 legal heir of Samidurai, is entitled to have share in these items, and such right could not be snapped by the co-owner by executing settlement deed in his children name.

22. The trial court by relying on Ex.B2 legal notice, mistakenly concluded that the plaintiff was only claiming rights to Item No. 4 property. However, a thorough reading of Ex.B2 reveals that it only indicates an attempt of the defendant to encumber Item No. 4 property. The trial court's reliance on Ex.B2 to deny the plaintiff's claim is therefore erroneous.

23. In conclusion, this court holds that the plaintiff is entitled to have 1/3 share in Item Nos. 1, 2, 3, and 5 of the suit property.



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24. In the result, this Appeal Suit is partly allowed, and the suit in

O.S. No. 243 of 2005 is decreed, granting the plaintiff 1/3 share in Item Nos. 1, 2, 3, and 5. As against item 4 of the suit property, the suit is dismissed. No costs.

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Internet:Yes/No

Speaking Order:Yes/No

To

1.The Sessions Court, Mahila Court, Cuddalore.

2.The Section Officer, V.R.Section, High Court, Madras.



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C.KUMARAPPAN,J.,

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Judgment in
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