



A.S.No.72 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Dated 03.02.2025

CORAM:

**THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR**

**A.S.No.72 of 2022**  
**and CMP.No.2829 of 2022**

1.Murugan  
2.Muniammal

... Petitioners

Versus

1.Sathya  
2.Minor Sayilaja  
3.Minor Jeeva

... Respondents

**Prayer:** Appeal filed under Section 96 of Code of Civil Procedure, to set aside the judgment and decree dated 29.10.2021 passed in O.S.No.38 of 2017 on the file of Additional District Judge, Dharmapuri.

For petitioners : Ms.D.Chitra Maragatham  
for Mr.T.R.Rajaraman

For respondent : Mr.Arun Anbumani

**JUDGMENT**

Challenging the decree and judgment passed by the Trial Court granting preliminary decree for dividing the suit properties into three equal shares and allot



A.S.No.72 of 2022

plaintiffs 2 and 3 each with 1/3<sup>rd</sup> share; also setting aside the sale deed dated 19.09.2016 executed in favour of the second defendant in respect of the second and third plaintiffs' undivided 2/3<sup>rd</sup> shares, the present appeal has been filed.

## 2. Brief background of the appeal is as follows:

2.a. Plaintiffs 2 and 3 are the minor children of the first plaintiff and the first defendant. They are represented by the first plaintiff, who is the wife of the first defendant. According to them, the suit properties are ancestral properties of first defendant's father and the same was allotted to the first defendant in a partition deed dated 02.07.2013. According to them, the first defendant started wavered life and addicted to alcohol and developed many bad habits and became spend thrift person and did not bother about plaintiffs welfare. The second defendant made use of weakness of the first defendant and fraudulently obtained sale deed on 19.09.2016 in her favour in respect of 30 cents in S.No.424. The said sale deed is a sham and nominal one and never acted upon and not binding upon the rights of the minor plaintiff.



2.b. The first defendant filed written statement admitting sale of 30 cents.

According to him, sale was made not only on his behalf but also on behalf of his minor children for a valuable sale consideration of Rs.1,88,000/- for his urgent family expenses to clear petty debts and for education and maintenance of his minor children and delivered possession by way of sale deed dated 19.09.2016 which is binding on the plaintiffs. The second defendant is in possession and enjoyment of the same by constructing asbestos sheet house and obtained EB connection and patta is also transferred to her name. The first plaintiff due to some misunderstanding deserted him and living separately for the past three years and children are in the care and custody of both husband and wife. The first defendant met with an accident in the year 2009 and his left hand was amputated and for the legal necessity and to maintain his children and for their educational expenses, he sold the property as he has lost his earning capacity.

2.c. The second defendant filed a written statement contending that she purchased the properties from first defendant on 19.9.2016 by way of Sale deed dated 19.09.2016 for valuable consideration and the sale deed is binding the plaintiffs. She has constructed asbestos sheet house and got patta transferred and



A.S.No.72 of 2022

also obtained E.B. connection. The first plaintiff deserted the first defendant and living separately for the past three years and second and third plaintiff's are under the care and custody of both first defendant and first plaintiff. The first defendant sold the property as he lost his earning capacity and for the maintenance and welfare of the children. The plaintiffs are not entitled to the relief of setting aside the Sale deed dated 19.9.2016. Hence the suit has to be dismissed.

2.d. The Trial Court, based on the pleadings, framed the following issues:

1. Whether the plaintiff's are entitled to partition as sought for?
2. Whether the plaintiffs are entitled to declaration of sale deed dated 19.09.2016 as null and void
3. Whether the first defendant sold property under sale deed dated 19.09.2016 for legal necessity and the same is binding upon the plaintiffs?
4. Whether the plaintiffs are entitled to permanent injunction as sought for?
5. To what relief plaintiffs are entitled to?



2.e. On the side of the plaintiffs, PW1 and PW2 were examined and Ex.A1 and Ex.A2 were marked. On the side of the defendants, DW1 to DW3 were examined and Ex.B1 to Ex.B3 were marked.

2.f. On appreciation of the documentary and oral evidences, the Trial Court granted preliminary decree for dividing the suit properties into three equal shares and allot plaintiffs 2 and 3 each  $\frac{1}{3}$ <sup>rd</sup> share; also setting aside the sale deed dated 19.09.2016 executed in favour of the second defendant in respect of the second and third plaintiffs' undivided  $\frac{2}{3}$ <sup>rd</sup> shares. Challenging the decree, the unsuccessful defendants have filed the present appeal suit.

3. The learned counsel for the appellants submitted that the Trial Court has not considered the evidences of the appellants to the effect that sale has been made for the legal necessity, in fact, made for the maintenance and educational expenses for the minor children. Therefore, the defendant has discharged the burden of proof of the legal necessity. The Trial Court holding that there was no legal necessity is not based on evidences. Further, it is the contention that the sale in respect of undivided share of  $\frac{2}{3}$  ought not to have been set aside by the Trial Court and there



A.S.No.72 of 2022

are other immovable properties available. What was sold is only 30 cents, the share of the plaintiffs can be allotted in other survey numbers taking note of the fact that the second defendant has already purchased the property which has not been considered by the Trial Court. Hence, seeks for allowing this appeal.

4. Whereas, the learned counsel for the respondent submitted that the Trial Court, in fact, not set aside the entire sale deed, the sale deed was annulled only in respect of 2/3<sup>rd</sup> shares of the minors, the sale deed in respect of 1/3<sup>rd</sup> share of the first defendant is held to be valid. Therefore, it is the submission that the judgment and decree of the Trial Court does not require interference. Hence, seeks for dismissal of this appeal.

5. In light of the above submissions, now, the points arise for consideration are as follows:

- i) Whether the sale in favour of the second defendant is out of legal necessity?
- ii) Whether the plaintiffs are entitled to preliminary decree as prayed for
- iii) To what other the plaintiffs are entitled to?

Points (i) to (iii)



A.S.No.72 of 2022

6. It is the admitted case of the parties that the suit property is an ancestral property allotted to the first defendant in a partition deed dated 02.07.2013. On the date of allotment, the plaintiffs 2 and 3 minors were already born. Therefore, when the minors were already born, any properties inherited by the father the minors will also become co-parceners along with their father. Such view of the matter, on the date of partition, the minors already became co-parceners along with the first defendant and they are equally entitled to each 1/3<sup>rd</sup> share along with their father. When the matter stood thus, an extent of 30 cents in S.No.424 were sold by the first defendant to the second defendant by virtue of a sale deed dated 19.09.2016.

7. Though it is contended by the plaintiffs that the first defendant started wavered life and addicted to alcohol and developed many bad habits and became spend thrift person and did not bother about their welfare, with regard to pleading as to the character of the father has not been established. Be that as it may, it is the contention of the first defendant that the sale has been made for the benefit of the minors children, whereas, except pleadings, no evidences whatsoever has been placed on record to show that the sale proceeds were utilised for the benefit of the family in any manner. Though it is stated by the first defendant that he has met



A.S.No.72 of 2022

with an accident and he has lost his earning capacity, therefore, for maintenance of himself and for family, sale become necessary, on analysis of the entire evidences makes it clear that the first defendant had met with an accident more than 7 years prior to the sale. Therefore, it cannot be contended that only because of his accident and loss of earning capacity, he has made the sale.

8. It is also well settled that any manager of an hindu family relies upon the sale deed for the legal necessity, burden lies upon him to establish such legal necessity. Of course, maintaining minors and taking care of the education of the children is one of the legal necessity, but the fact remains that no materials whatsoever are placed by the first defendant to show that the sale proceeds were utilised for the benefit of the minors at any point of time. In his evidence, he also admitted that he is not even aware where the minors were actually studying. This, in fact, falsify his contention that the sale is made for the welfare of the minor children. It is also relevant to note that admittedly, the first defendant is living separately from his wife and children for more than 3 years. Therefore, his contention that sale is made only for the benefit of the minor children cannot be countenanced and in fact, the legal necessity pleaded by the first defendant has not



A.S.No.72 of 2022

been established.

WEB COPY

9. Therefore, this Court is of the view that the finding of the Trial Court that plaintiffs 2 and 3 are entitled to each  $1/3^{\text{rd}}$  share in the ancestral properties cannot found fault with. The Trial Court has not annulled the entire sale deed, in fact, the Trial Court has annulled the  $2/3^{\text{rd}}$  share of the plaintiffs 2 and 3 which in the opinion of this Court does not require interference. No doubt, as per Section 44 of the Transfer of Property Act, there is no bar for sale of undivided shares by one of the co-sharer. The only restriction on the purchaser is that he cannot claim possession, at the most he is entitled to seek for partition. Thus, the second defendant/purchaser is entitled to  $1/3^{\text{rd}}$  share of the first defendant and the second defendant is entitled to seek for allotment in the final decree proceedings.

10. The contention of the learned counsel for the appellants that 30 cents sold in particular S.No.424 may be allotted to second defendant, since, other properties are also available, this Court is of the view that equity can be worked out only in the final decree proceedings. As a matter of right, mere purchase of the said extent, once cannot seek equity. At any event, the first defendant is entitled to



A.S.No.72 of 2022

1/3<sup>rd</sup> share. Such being the position, sale in respect of 1/3<sup>rd</sup> share is valid and the second defendant at the most can seek 1/3<sup>rd</sup> share in the final decree proceedings.

According all the points are answered.

11. In fine, this appeal suit stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

**03.02.2025**

Index : Yes / No  
Speaking/non speaking order  
dhk



A.S.No.72 of 2022

To,  
WEB COPY

The Additional District Judge  
Additional District Court, Dharmapuri

**N. SATHISH KUMAR, J.**



WEB COPY



A.S.No.72 of 2022

dhk

**A.S.No.72 of 2022**

**03.02.2025**