



AS No. 184 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 03.06.2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit No.184 of 2024

and

C.M.P. No. 6524 of 2024

P. Hariharan (Deceased)

1. H.Dhanalakshmi

2. H.Vigneshwaran

3. H.Nithiashree

.. Appellants

Versus

1. P.Murugavalli

2. Indrani

3. P. Jayasankar

4. Shanthi

5. Kalairasi

.. Respondents

Appeal Suit is filed under Section 96 of Code of Civil Procedure to set aside the judgment and decree dated 13.10.2023 passed in O.S.No.325 of 2019 on the file of the learned VII Additional Judge, City Civil Court, Chennai in so far as it relates to the dismissal of prayer for declaration and permanent injunction by allowing the Appeal with costs throughout.

For Appellant : Mr. T. Ramachandran

For Respondents : No appearance



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JUDGMENT

This Appeal Suit is filed to set aside the judgment and decree dated 13.10.2023 passed in O.S. No.325 of 2019 on the file of the learned VII Additional Judge, City Civil Court, Chennai.

2. The brief facts, which are necessary for the disposal of this Appeal Suit, are as follows:

2.1. Originally Item 1 & 2 of the suit scheduled property was owned by Late A. Periyaswamy and he was in possession and enjoyment of the property till his life time. The said A. Periyaswamy expired on 11.02.2015 leaving behind his legal heirs viz., Plaintiff-Hariharan and Defendants 2 to 5. From the date of death of A. Periyaswamy, the Plaintiff and, first and third Defendants are in joint possession of the Item-1 of the suit schedule property. The Defendants 2, 4 and 5 got married and settled in various places. The Plaintiff and his father Periyaswamy jointly carried on rice business in the year 1997 at Thousand Lights and subsequently, he started a provision store at Royapettah opposite to New College upto 1999. Thereafter he switched over to the business of paper and iron scrap business. Hence, from 1996 whatever income derived from the business was spent towards the construction of the building measuring an extent of 1600 sq.ft. consisting of ground, first and



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second floors at Saligramam. The Plaintiff spent Rs.50,000/- each towards 2nd, 4th & 5th Defendants marriage, spent Rs.1,50,000/- towards his father's medical expenses and also paid to the first Defendant for treatment towards the fracture of her back bone. The Plaintiff also paid a sum of Rs.1,00,000/- to purchase the Item-2 in the schedule mentioned property and also spent a sum of Rs.3,00,000/- towards construction. While so, after the death of the Plaintiff's father, the property at Saligramam was let out to various tenants and all the rents were collected by the first Defendant and spent for the daughters. Though oral demand was made for partition, the Defendants had not extended their cooperation either to share the rental income derived out of the schedule mentioned property Item 1 & 2 nor partitioned the property. On 16.12.2011, a deed of settlement was executed in favour of first Defendant by A. Periyaswamy and the same was registered as Doc. No.1223/2011 dated 16.12.2011 in the office of Thousand Lights Sub Registrar's Office. But the Plaintiff gained the knowledge only in the year 2017 i.e., on 27.08.2017 and obtained a certified copy of the settlement deed. Even the above property was purchased by the Plaintiff's father out of the income and business of the Plaintiff. The Plaintiff's father without his knowledge executed the settlement deed in favour of the first Defendant. Hence, the above settlement deed is to be declared as null and void. In the present suit, the said property is shown as Item-2, and the Plaintiff claims 1/6th share. In this regard, notice was issued on



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21.12.2018 to the Defendants calling upon them to come forward for amicable partition. The Defendants received the notice and sent a reply notice through their counsel dated 27.12.2018 but as on date there is no proper response for division of properties. Hence this suit.

2.2. The first Defendant filed a written statement, which was adopted by the Defendants 2 to 5. The Defendants stated that item 1 of the plaint scheduled property was owned by A. Periyaswamy and he had constructed the existing building out of the jewellery and cash contributed by the first Defendant. The Plaintiff had deserted and left the entire family in lurch during the year 1996. The Plaintiff ignored the interest of the family members and had not cared about them. Prior to the death of Periyaswamy, the Plaintiff was not at all residing in the Item No.1 of the suit scheduled property. The Plaintiff was given due share by his father, when he left the home and started his business. Therefore, he is not entitled to any share in the property. Item No.2 of the suit schedule property is owned and possessed by the 1st Defendant and the various allegations contained in the plaint are devoid of merits. The marriage expenses of the daughters were borne by late Periyaswamy and the 1st Defendant only. The Plaintiff has not spent even a single pie for the marriage. After the demise of Periyaswamy, the Plaintiff was creating all kinds of problems and seeking partition, without offering any contribution to the family. The husband of the



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first defendant settled the property pertaining to item no.2 in her favour and the same cannot be questioned by the Plaintiff. The business as alleged by the Plaintiff was not at all shared and contributed by him for buying any property mentioned in the plaint schedule. The notice issued by the Plaintiff was duly replied. There is no cause of action that arose for filing the suit against the Defendants. The cause of action alleged are purely invented for the purpose of filing the above frivolous suit. The relief of partition is not available to the Plaintiff and the declaration to declare the settlement deed executed in favour of the 1st Defendant as null and void. There cannot be an order of permanent injunction as the properties were enjoyed and possessed by the 1st Defendant. Hence, the suit is liable to be dismissed.

2.3. On the basis of the above pleadings the following issues were framed

1. Whether the Plaintiff is entitled to get 1/6th share in Item 1 & 2 of the Suit scheduled property as prayed for?
2. Whether the Plaintiff is entitled for declaration that the settlement deed Doc.No.1223 of 2011 dated 16.12.2011 executed by A.Periyaswamy in favour of the first Defendant is null and void?
3. Whether the Plaintiff is entitled for permanent injunction restraining the Defendants from alienating or encumbering the suit property in any



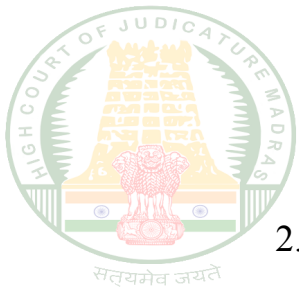
manner without consent of the Plaintiff as prayed for?

4. To what other relief, the Plaintiff is entitled for?

2.4. During trial, on the side of the Plaintiff, the first Plaintiff examined himself as P.W-1 and marked eight documents as Ex.A-1 to Ex.A-8. On the side of the Defendants, the 1st Defendant examined herself as D.W-1 and marked five documents as Ex.B-1 to B-5.

2.5. The trial Court, on analysing the oral and documentary evidence, passed a Preliminary Decree for partition and issued the following directions:-

- i. The suit is partly decreed and a preliminary decree of partition in favour of the Plaintiff in respect of 1/6th share in the suit schedule item 1 of the property alone.
- ii. The Plaintiff is entitled to 1/6th share in the suit schedule item 1 of the property alone and the Defendants 1 to 5 are directed to effect Partition of the suit schedule item 1 of the property and to allot 1/6th share to the Plaintiff; failing which the Plaintiff is permitted to take such steps for Partition of 1/6th share in the suit schedule item 1 of the property through Court by appointment of Advocate Commissioner in accordance with law.
- iii. The claim of the Plaintiff to divide the suit schedule item 2 of the property and to allot 1/6th share to the Plaintiff is hereby dismissed.
- iv. The Plaintiff is not entitled for declaration to declare the settlement deed Doc. No.1223 of 2011 dated 16.12.2011 as null and void.
- v. The Plaintiff is not entitled for the relief of permanent injunction as prayed for. Considering the relationship between the parties, there is no order as to costs.



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2.6. Aggrieved by the same, the Plaintiffs before the learned VII

Additional Judge, City Civil Court, Chennai, had preferred this Appeal Suit.

3. The learned Counsel for the Appellants submits that during trial, after recording the evidence, the first Plaintiff died. Therefore, his wife and children were impleaded as Plaintiffs 2 to 4. The learned Counsel for the Appellants further submitted that in paragraph Nos. 8 and 10 of the impugned judgment, the cross-examination of the first plaintiff was reproduced. In his evidence, the first plaintiff (since deceased) has clearly stated that he has paid Rs.1,00,000/- and Rs.3,00,000/- for purchase of the schedule mentioned properties. While so, the conclusion of the trial court that the plaintiffs did not prove that the amount has been paid by way of documents is illusory. A son can contribute for the development of his family by paying the amount to his father for which he cannot maintain any document. A reading of the deposition of PW1 would adequately prove that item No.2 of the plaint described property is a self-acquired property of the father of the plaintiff which he alienated in favour of the first defendant on 16.02.2011 without the knowledge of the first plaintiff. The alienation of the property in favour of the first defendant was not known to the first plaintiff. Though the first plaintiff adduced evidence, the defendants did not adduce any oral evidence before the trial court but in the written statement they have simply denied the claim of the first plaintiff. The



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learned counsel for the appellants invited the attention of this Court to the discussion of evidence in paragraphs 10 and 11 of the judgment of the learned VII Additional Judge, City Civil Court, Chennai which reads as follows:

“10. In this regard, this Court inclined to go through the evidence adduced by this Plaintiff during his cross-examination:

நானும் என் தந்தையும் ராயப்பேட்டையில் இரும்பு வியாபாரம் செய்தோம் என்பதை காட்ட ஆவணங்கள் உண்டா என்றால் இல்லை. தாவா 2வது இலக்க சொத்தை 1995 ல் அவர் சுயமாக கிரயம் பெற்றார் என்றால் ஆமாம். 2வது இலக்க சொத்தின் மனையை என் தந்தைதான் கிரயம் வாங்கினார் என்றால் சரி. நான் என் தந்தையிடம் ரூ.1,00,000./ மற்றும் ரூ.3,00,000./ கொடுத்தேன் என்பதை காட்ட ஆவணங்கள் ஏதேனும் உண்டா என்றால் இல்லை. என் தாயாரின் பெயரில் செட்டில்மென்ட் எழுதிவிட்டார் என்றால் எனக்கு தெரியாமல் செய்துவிட்டார். அது அ.சா.ஆ.7 அதனை 16.12.2011 ல் நிறைவேற்றிவிட்டார்.

4. The above said evidence of P.W-1 categorically and clearly prove that the second schedule property is the self acquired property of his father which he settled in favour of his wife on 16.12.2011, i.e., well prior to his death. It was pleaded on behalf of the plaintiffs that item No.2 of the property was purchased from and out of the common income from the business, and the first plaintiff had contributed Rs.1,00,000/- & Rs.3,00,000/- towards the second schedule property. On the basis of such evidence of P.W-1, the trial court ought to have concluded that the settlement deed with respect to the second schedule property in favour of the first Defendant has to be declared as null and void. However, the trial court, on the basis of specific reasons, declined to grant a decree in respect of the 2nd item of the schedule mentioned property.



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The learned counsel for the appellant, therefore, prayed for allowing this appeal and to decree the suit as a whole.

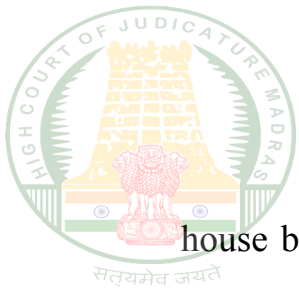
5. Even though, summons were given to the Respondents, Respondents 1 to 5 refused to receive the summons. The printed cause list reflects that the Respondents refused to receive the summons. However, the names of the Respondents are printed in the cause list.

Point for determination:

Whether the Judgment and decree dated 13.10.2023 passed in O.S.No.325 of 2019 by the learned VII Additional District Judge, City Civil Court, Chennai is to be set aside as perverse?

6. Heard the learned Counsel for the Appellant. Perused the Complaint, written statement and the deposition of the witness as P.W-1 and the Judgment of the learned VII Additional Judge, City Civil Court, Chennai.

7. On perusal of the Judgment passed by the learned VII Additional Judge, City Civil Court, Chennai, it is found that the submission of the learned Counsel for the Appellant cannot be accepted. There is an admission made by the Plaintiff/Hariharan as P.W-1 in his cross-examination that there is no document available to prove that he contributed to the construction of the



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house by his father, late Periyaswamy. On the basis of the oral testimony of PW1, it cannot be concluded that the first plaintiff has contributed to the purchase of the second item in the property described in the Plaint. This is more so because the defendants, in the written statement, have categorically denied that the first plaintiff did not contribute any amount towards purchasing the second item of the property described in the Plaint. In fact, it was only stated that the first plaintiff left the family in lurch and he came back to the family after several years. In any event, when the defendants denied that the first plaintiff has not contributed any amount for purchase or construction of the second item of the property described in the plaint, the burden is on the first plaintiff to disprove the same. For this purpose, the oral testimony of the first plaintiff alone is not sufficient. Even though it was stated that a son cannot be expected to produce documentary evidence for having contributed to the purchase of property, when it is the definite case of the first plaintiff that he contributed a sum of Rs.4 lakhs, it is for him to substantiate the same with legally acceptable evidence. In the absence of any such evidence forthcoming from the first plaintiff, the trial court is wholly justified in refusing to grant any relief in respect of item No.2 of the plaint. In fact, the first plaintiff claimed that he suffered loss in the year 1999 in the business he carried on. In any event, when the first plaintiff admitted that he has no document to prove the claim that the father and son carried on business as partners in scrap business



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and in the absence of any proof for having contributed a sum of Rs.4 lakhs for the purchase and construction of the item No.2 of the plaint, the plaintiff cannot be granted any relief in respect of the item No.2 of the plaint.

8. Under those circumstances, the original Plaintiff/Hariharan cannot seek for partition and cancellation of the settlement deed executed by the father in favour of the mother of the Plaintiff in respect of item No.2 of the property described in the Plaint. The trial court has properly passed a decree only in respect of item No.1 of the property described in the Plaint, and it is found reasonable and acceptable in the eyes of law. The claim of the Plaintiffs for the partition of the 'B' schedule property is found unacceptable in the eyes of law. The Plaintiff's claim that he contributed to purchase the house site is not supported by any documents. In such circumstances, the claim of the Plaintiff for partition of the item No.2 of schedule property was rightly rejected by the learned Additional District Judge, City Civil Court.

9. In the light of the above, the submission of the learned Counsel for the Appellants is not at all acceptable in the eyes of law. Hence, the contention raised by the learned Counsel for the Appellant is rejected. The Judgment of the learned VII Additional Judge, City Civil Court is found proper in the eyes of law. The Appeal lacks merits and is to be dismissed.



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WEB COPY In the result, this *Appeal Suit is dismissed.* The Judgment and decree passed by the learned VII Additional District Judge, City Civil Court, Chennai in O.S.No.325 of 2019 dated 13.10.2023 is confirmed. Consequently, connected Miscellaneous Petition is closed. No costs.

03.06.2025

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order
dh

To

1. The VII Additional Judge,
City Civil Court, Chennai.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J

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Pre-Delivery Judgment made
in A.S.No.184 of 2024

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