



A.S(MD)No.165 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

A.S(MD)No.165 of 2019
and
C.M.P(MD)No.4052 of 2022

1.C.Marudairaj
2.C.Rajagopal

... Appellants/Defendants

Vs

1.C.Annamalai
2.V.Saroja
3.S.Jeyarani
4.V.Indrani

... Respondents/Plaintiffs

Prayer:

This Appeal Suit is filed under Section 96 of CPC, to set aside the Judgment and Decree dated 30.04.2019 in O.S.No.138 of 2015 on the file of the II Additional District Judge, Tiruchirappalli.

For Appellants : Mr.Kathiravan

For Respondents : Mr.S.Vinod Sathya Lazar



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JUDGMENT

[Judgment of the Court was made by RMT.TEEKAA RAMAN, J.]

The defeated defendants are the appellants herein. The respondents/plaintiffs filed a suit in O.S.No.138 of 2015 before the learned District Judge, Tiruchirappalli, it was made over to the II Additional District Judge, Tiruchirappalli. The suit for preliminary decree for partition of 4/6th share.

2(a) The case of the plaintiffs, both these pleadings as well as the evidence, is that as per the registered family arrangement/partition deed dated 30.10.1967, item No.1 to 16, along with another property measuring to an extent of Ac.0.10 cents comprised in S.F.No.375/8 were allotted to the share of their father Chinnadurai @ Periyakaruppan under “B” schedule and he had sold a land measuring to an extent of Ac.0.10 cents comprised in S.F.No.375/8 and item No. 19 and 20 were allotted to him under 'A' schedule of the partition deed. The plaintiffs' grandfather Periyathambi Muthiriar, assigned half share (item No.17 and 18) ie., Ac.0.55-1/2 cents out of Ac.1.11 cents comprised in S.F.No.393/7 and extent of Ac.100 out of Ac.6.02 cents comprised in S.F.No.404/5 to Chinnaiyan



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through a registered settlement deed. After his demise, the properties were devolved upon his mother Mariyayee Ammal and after her demise, those properties and item No.24 and 25 were succeeded by them and were divided between their sons, namely, Chinnadurai @ Periyakaruppan and Muthukaruppa Muthiriar, through a registered partition deed dated 27.09.1972. Their father, Chinnadurai @ Periyakaruppan, purchased item No.21, 22 and 23. Thus, the plaintiffs and the defendants had acquired joint title and possession in respect of item No.1 to 25. The first defendant, who was employed in the police department, is living separately in quarters and he used to visit the plaintiffs only during festivals. The first plaintiff has rendered assistance to his parents till their death and thereafter, he continues to be in possession of the house item No.13. The second defendant is also staying in another portion of the house in item No.13. Thereafter, the defendants have attempted to alienate the properties. Hence, the plaintiffs have filed the above said suit.

2(b) The case of the defendants, both in the written statement as well as D.W.1, contended that the first defendant has retired from the police department, and he alone performed the marriage of his sister Jeyarani, namely, the third plaintiff and has spent all his earnings for the welfare of his parent and siblings



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till his retirement. As a senior member of the family, he has effected division in the presence of Nagaraj and Mariyayee during May 2009 and they have directed the defendants 1 and 2 and the first plaintiff to pay a sum of Rs.1,00,000/- each to the daughters, namely, plaintiffs 2 to 4 and it was agreed and decided that the sons have to get the properties equally among themselves. The well-wisher Nagaraj had approached the V.A.O., surveyor and Thalayari to effect the division of the properties into 3 equal shares and the same was done. Plaintiffs 2 to 4 have also received a sum of Rs.1,00,000/- each from the defendants and the first plaintiff, in the presence of the said Nagaraj. The plaintiffs and the defendants are the grandchildren of Periyathambi and Chinnaponnu Ammal and the children of Chinnadurai @ Periyakaruppan Muthiriar and Mariyayee Ammal. The devolution and ownership of the suit property upon the said Chinnadurai @ Periyakaruppan and his wife Mariyayee Ammal was also admitted. The father and mother of the plaintiffs and the defendants died intestate on 27.05.1995 and 04.07.2010, respectively.

2(c) It is the further case of the defendants that there was an oral partition after the death of their mother, Mariyayee Ammal in the month of May 2009, in which, the defendants have paid Rs.1,00,000/- each to the plaintiffs and they have



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relinquished their share over the suit property. Hence, necessary issues have been framed.

3.During the trial, the plaintiffs were examined as P.W.1 and P.W.2 and marked Ex.A.1 to Ex.A.7 and on behalf of the defendants, the first defendant has examined as D.W.1, VAO and the Revenue Officials, who are said to have been present at the time of the alleged oral partition were examined as D.W.2 to D.W.4.

4.On consideration of both oral and documentary evidence, the learned II Additional District Judge has come to the conclusion that the defendants have not proved his plea of oral partition and the alleged release deed executed by the plaintiffs 2 to 4 in favour of their brothers, the first plaintiff and the first defendant herein and accordingly, rejected the case of the defendants and also decreed the suit. As admitted by both parties, item No.10 of the suit property was already sold on 27.03.2003 and hence, with respect to that, the suit was dismissed. Aggrieved against the said judgment and decree passed by the trial Court, the defeated defendants have preferred this appeal.



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5.The learned counsel for the appellants would contend that in the pleadings, the defendants have specifically stated that the presence of the parties and also the details of the oral partition effected and hence, the trial Court ought not to have dismissed the suit. He further contended that when the sisters have relinquished their share in favour of their brothers, the preliminary decree should not have been granted.

6.The learned counsel for the respondents/plaintiffs made a submission in respect of the judgment of the trial Court.

7.The points for consideration is,

(i) Whether the respondents/plaintiffs are entitled to 4/6th share of the property except item No.10?

(ii) Whether the oral partition pleaded by the defendants is proved in the manner known to law?

(iii) Whether the alleged release deed is said to have been executed by the sisters (plaintiffs 2, 3 and 4) in favour of the first plaintiff and the first defendant is true?



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(iv) Whether the order of the trial Court is sustainable in law?

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(v) To what other reliefs?

8.After perusing the evidence of D.W.2 to D.W.4, we find that in the pleadings as well as the written statement filed by the first defendant, Marudairaj, he has mentioned the names of those persons, who are said to have been present at the time of the alleged oral partition. But they do not support the case of the defendants. Though the defendants in the written statement raised the said plea that there was an oral partition and in the oral partition, properties were divided in the presence of D.W.2 to D.W.4, they do not support the case of the defendants assuming significance. In the cross examination, D.W.1 has categorically admitted that there was no release deed of the share by his sisters in their favour and hence, the trial Court has come to the conclusion that though the first defendant has come forward with a specific plea of oral partition, the burden of proof falls on him to prove the said pleadings.

9.In the instant case, on a combined reading of the oral evidence of D.W.1 coupled with oral evidence of D.W.2 to D.W.4, we find that the case of the



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defendants was not proved in the manner known to law. At the risk of repetition, it is to be stated that D.W.2 to D.W.4 are the independent witnesses and also the revenue witnesses and hence, personal bias could not be attributed to him. D.W.2 also stated that there is no positive order from the higher authority to inspect the property for effecting the partition and hence, by assigning the reasons, the trial Court has rightly come to the conclusion that the evidence of D.W.2, namely, the Village Administrative Officer, was not credible. It remains to be stated that the defendants have come forward with two specific pleas, ie., there is an oral partition and there is an oral relinquishment of shares by the sisters in favour of their brothers. Hence, the burden of duty is cast upon the defendants. The first defendant (D.W.1) has miserably failed to prove both the pleas and no revenue record has been produced to show the alleged oral partition as indeed taken and acted upon. In the absence of any details about the oral partition, the trial Court has rightly come to the conclusion that there is no positive oral or documentary evidence in support of the case and in respect of the second plea of oral relinquishment of shares, there is no positive evidence much less any evidence to the said fact and hence, the trial Court has rightly negatived both the claims of the defendants.



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10. For the above reasons, we find that no reasons to interfere with the said findings of the trial Court do not suffer from any irregularity or illegality warranting interference at the appellate stage and all the points that have been framed above are answered in negotiation against the appellants.

11. Accordingly, the First Appeal is dismissed and the judgment and decree passed by the learned II Additional District Judge, Tiruchirappalli, in O.S.No.138 of 2015, dated 30.04.2019, is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

[T.K.R., J.] [N.S., J.]
06.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1. The II Additional District Judge, Tiruchirappalli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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