

A.S.(MD)No.100 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 28.02.2025

Pronounced On : 29.04.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

A.S(MD)No.100 of 2017

Rayal Appellant / 1st Defendant

Vs.

1.Radha

2.Kamala

... Respondents / Plaintiffs

3.Ravi

4.Sarasu @ Sarasamml

5.Kaliyan

... Respondents / Defendants 2 to 4

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code, to set aside the Judgment and decree dated 20.01.2017 made in O.S.No.146 of 2013 on the file of the II Additional District Judge, Tichy.

For Appellant : Mr.Raguvarangopalan

For Respondents : Mr.C.Vakeeswaran
for R1 & R2

: Mr.P.Kalaiyarasi Bharathi
for R4

: No appearance for R3



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JUDGEMENT

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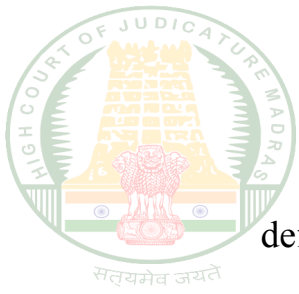
(Judgment of the Court was made by **G.R.SWAMINATHAN, J.**)

This appeal is directed against the Judgment and decree dated 20.01.2017 made in O.S.No.146 of 2013 on the file of the second Additional District Judge, Tiruchirappalli.

2. The first defendant is the appellant. The plaintiffs filed the said suit seeking preliminary decree for partition and separate possession of 2/6th share in the suit properties. The court below granted preliminary decree as prayed for.

3. The case of the plaintiffs is as follows:-

The plaintiffs and the defendants 1 & 2 are the children of D3 & D4. Since the fourth defendant is deaf and dumb and cannot defend himself, the third defendant represented him. The suit properties are ancestral properties. They belong to Rengasamy Naidu / father of the fourth defendant. After his demise, the properties were settled in favour of the fourth defendant through a registered partition deed dated 09.01.1970. In November 1988, the



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defendants entered into a collusive arrangement among themselves and created a deed of family arrangement dated 23.11.1988. The plaintiffs are not parties to the said document. Based on the same, the revenue records were also mutated. After the plaintiffs became aware of the same, they sent legal notice dated 15.06.2011. The first defendant sent a reply controverting the claim of the plaintiffs. Since the plaintiffs have 1/6th share each in the suit properties, they instituted the suit.

4.The first defendant filed written statement contesting the plaintiff averments. It was conceded that there was a partition between Kaliyan/ fourth defendant and the other members of his family. Since Kaliyan was deaf and dumb, it was his wife Sarasammal who was representing him. Sarasammal filed O.S.No.640 of 1983 on the file of the District Munsif Court against her father-in-law and brother-in-law seeking permanent injunction in respect of the properties covered in the schedule to the said suit. During the pendency of the suit, there was mediation on 23.11.1988 in the presence of certain elders. Oral family arrangement was worked out. The first defendant Rayal Naidu was allotted five items. The second defendant Ravi was also allotted five items. Kaliyan was also allotted certain items of property. This was subsequently reduced into writing



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vide Ex.B3. Items allotted to Royal Naidu were shown as “A” schedule.

Items allotted to Ravi were shown as “B” Schedule. Items allotted to Kaliyan were shown as “C” Schedule. This family arrangement was acted upon. 14 cents in T.S.No.276 allotted to Ravi was sold to Shanmugam vide registered sale deed dated 19.03.1992. 50 cents of land in T.S.No. 317 was jointly sold by D1 & D2 in favour of one Kamaraj vide registered sale deed dated 09.08.2007. The second defendant Ravi sold 13 cents in T.S.No.276 in favour of one Shanmugam vide registered sale deed dated 11.03.1992. The first plaintiff Radha herself purchased the house site in T.S.No.542 from the second and third defendants under a registered sale deed dated 09.07.1999. The first plaintiff subsequently availed housing loan from Srirangam Co-operative Housing Society on 09.01.2000 on that basis. Later, the first plaintiff and her husband also sold the same in favour of one Rajagopal under registered sale deed dated 09.12.2004. The first defendant Royal Naidu along with Shankar sold the property in T.S.Nos.200 & 201 in favour of one Srinivasan under registered sale deed dated 06.07.2009. The stand of the first defendant was that these transactions do probabalize that an oral partition had taken place due to family arrangement and that it was reduced into writing on 23.11.1988 and that the plaintiffs were also aware of the same. The first defendant

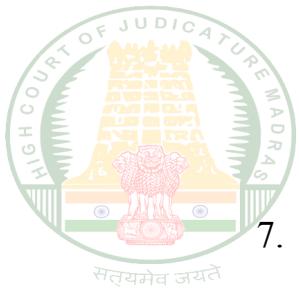


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further contended that the present suit was not only time barred but also bad for non-joinder of necessary parties. He prayed for dismissal of the suit.

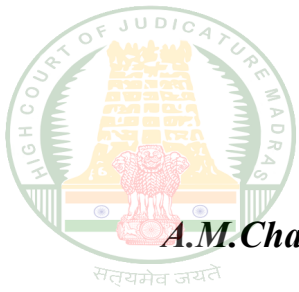
5. Based on the rival pleadings, the court below framed the necessary frames. One of the issues was whether the oral family arrangement projected by the first defendant is true and valid and binding on the plaintiff? The plaintiff examined herself as P.W.1. Ex.A1 to Ex.A10 were marked. The first defendant examined himself as D.W.1 and one Jeyaraman was examined as D.W.2. Ex.B1 to Ex.B12 were marked on the side of the defendants. After consideration of the evidence on record, the trial court granted preliminary decree as prayed for on 20.01.2017. Challenging the same, this appeal came to be filed.

6. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds of appeal. He also filed written notes of arguments and took us through the same. He relied on a catena of case laws. He called upon this Court to set aside the impugned Judgment and decree and allow this appeal.



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7. Per contra, the learned counsel appearing for the respondents submitted that the impugned Judgment is well reasoned and that it does not warrant interference. He pointed out that it is not in dispute that the suit properties originally belonged to Rengasamy Naidu. On 09.01.1970, Ex.A1-registered partition deed was entered into between Rengasamy Naidu and his sons. In the partition deed, the suit properties were allotted in favour of the fourth defendant / Kaliyan. On 25.02.2010, a gift settlement deed (Ex.A8) was executed by the defendants 2 & 3 in favour of the plaintiffs. Thereafter only, the plaintiffs came to know about the so called family arrangement deed dated 23.11.1988. The plaintiffs are not parties to the said document. The said document is also unregistered. During the relevant time, the second plaintiff Kamala was a minor ; she was aged about 15 years. In any event, Ex.B3 is not admissible in evidence. It could be questioned at any point of time. Even though according to the appellant, “C” schedule property was allotted to Kaliyan, the appellant chose to alienate the same even during the life time of his parents. According to the learned counsel, in view of the decision of the Supreme Court reported in ***AIR 2020 SCC 317 (Vineeta Sharma Vs. Rakesh Sharma)***, the plaintiffs are justified in claiming their rival share by way of partition in the suit schedule properties. Relying on the decision of the Hon'ble Supreme Court reported in ***2001 0 AIR(Mad) 135 (A.C.Lakshmipathy Vs.***



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A.M.Chakrapani Reddiar), the learned counsel submitted that Ex.B3 is not a document that can be looked into. D.W.2 was cited as a witness to prove Ex.B3. But the testimony of the said witness is uninspiring. The said witness had stated that the partition took place only between brothers and that no allotment was made in favour of the parents. This itself would show that he was not in the know of things. Hence, his testimony cannot command confidence. He called upon this Court to sustain the impugned Judgment and decree and dismiss the appeal.

8. We carefully considered the rival contentions and went through the evidence on record. The primary point for determination is whether the suit for partition filed by the respondents 1 & 2 is maintainable. The other point that arises for consideration is whether Ex.B3-oral family arrangement deed is admissible in evidence.

9. There is no dispute that the suit properties originally belonged to Rengasamy Naidu and that it was allotted in favour of Kaliyan / father of the plaintiffs, D1 & D2 in a partition took place in the year 1970. Copy of the said partition deed has been marked as Ex.A1. This suit was filed only on 05.10.2013. The first plaintiff admittedly got married even before 23.11.1988.



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The plaintiffs claim right only by virtue of amendment made to Section 6 of the

Hindu Succession Act, 1956. Section 6(1) & 5 of the Act are as follows:-

“6.Devolution of interest in coparcenary property:-

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by Mitakshara Law, the daughter of a coparcener shall,-

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener.

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before 20th day of December 2004.

5. Nothing contained in this section shall apply to a partition, which has been effected before 20th day of December 2004.”

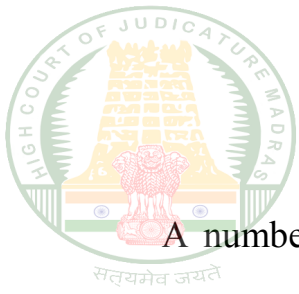
10.A mere look at the aforesaid statutory provision would show that any disposition or alienation of the property that had taken place before 20.12.2004 will not be affected or invalidated. The specific case of the appellant is that the partition had already taken place in the family and that it was reduced into writing vide Ex.B3 dated 23.11.1988. Since it is an unregistered document, this



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by itself cannot defeat the suit claim. But then, the appellant had sought to prove the same by marking Ex.B4 to Ex.B8. Under Ex.B4, a portion of the property allotted to the appellant was sold in favour of one Shanmugam. Interestingly, mother Sarasammal and brother Ravi sold a portion of the property allotted to them under Ex.B6 to the first plaintiff. The first plaintiff and her husband mortgaged the property sold to them in favour of Srirangam Co-operative Housing Board Society under Ex.B7. The first plaintiff herself conveyed the said property in favour of a third party vide Ex.B8.

11. We went through the contents of Ex.B6-sale deed executed in favour of the first plaintiff. There is a clear reference to the family arrangement / Ex.B3 dated 23.11.1988. We therefore have to hold that Ex.B3 stands proved in view of the subsequent registered transactions. They clearly show that the family arrangement was also duly acted upon. It is true that Radha / first plaintiff did not enter the witness box. It was only the second plaintiff who examined herself as P.W.1. Kamala was minor when the family arrangement was entered into. Kamala was also not a party to the registered transactions. But she has chosen to join her sister and file the suit. Kamala cannot feign ignorance of the happenings. It is not in dispute that she is residing in the very same east street, Melur village where her brothers and parents are also residing.

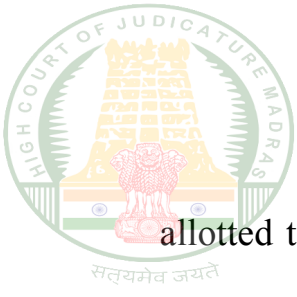


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A number of alienations have taken place and the alienees have also taken possession of the properties conveyed to them. Mutations had also been effected. In these circumstances, the plaintiffs cannot make a naïve claim that it should be deemed that they are in joint possession of the suit properties and maintain the suit for partition under Section 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act.

12.The learned counsel appearing for the appellant relied on the recent decision of the Hon'ble Supreme Court reported in **2025 INSC 434 (Uma Devi Vs. Anand Kumar)**. The Hon'ble Supreme Court held that a registered document provides a complete account of a transaction to any party interested in the property and that it gives notice to the world that such a document has been executed.

13. We had already concluded that the first defendant had proved that there was a partition in the family. When partition had already taken place and it was also acted upon and a number of alienations had taken place, it may be too late in the day to permit the left out sisters to maintain a suit for partition. It is not possible to believe that the second plaintiff was not aware of these developments. The appellant herein had been in possession of the properties



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allotted to him in his capacity as absolute owner and has been enjoying them for more than 23 years when the suit was filed. The suit is hopelessly barred by limitation. The Court below did not take into account these aspects. The impugned Judgment and decree are set aside. The appeal suit is allowed. No costs.

[G.R.S., J.] [M.J.R., J.]
29.04.2025

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

The II Additional District Judge, Tichy.

Copy to:

The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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G.R.SWAMINATHAN, J

and

M.JOTHIRAMAN, J.

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