

(2011) 08 MAD CK 0329

Madras High Court

Case No: S.A. No"s. 169 and 170 of 2011 and M.P. No"s. 1 and 1 of 2011

Mrs. Arputhammal, Mrs.
Rukkammal and Mr. Saravanan

APPELLANT

Vs

Mrs. Govindammal and Mr.
Sambasivam

RESPONDENT

Date of Decision: Aug. 17, 2011

Hon'ble Judges: R.S. Ramanathan, J

Bench: Single Bench

Advocate: A.U. Ilango, for the Appellant; S. Parthazarathy for Martin Jayakumar, for the Respondent

Final Decision: Allowed

Judgement

R.S. Ramanathan, J.

The Defendants 2, 3 and 4 are the Appellants herein. The first Respondent/plaintiff filed the suit for partition of her half share in the suit property.

2. The case of the first Respondent/plaintiff was that her father by name Mahadeva Gounder, and his brother by name Parthasarathy Gounder, owned the suit property in common and were in enjoyment of the same, without partitioning it. The first Respondent/plaintiff is the only legal heir of Mahadeva Gounder and the other sharer viz., the Parthasarathy Gounder, died leaving behind the Defendants 1 and 2 and also one son by name Subramani Gounder, whose legal heirs are the Defendants 3 and 4. Even after the death of the Plaintiff's father-Mahadeva Gounder, the Plaintiff and the Defendants 3 and 4, were in enjoyment of the suit property in common and the Plaintiff was given her share from the income in the suit properties. Recently, the Plaintiff came to know that the Defendants are taking steps to sell the property to the third party and when questioned, the Defendants claimed exclusive right over the suit property under the settlement deeds dated 6.12.1968 and 21.5.1971, alleged to have been executed by Mahadeva Gounder, the father of the first Respondent/plaintiff and the first Respondent/plaintiff contended

that those two settlement deeds are not valid and no right or title was passed under those two settlement deeds and the properties are enjoyed in common. Therefore, the first Respondent/plaintiff is entitled to half share in the suit properties.

3. The Defendants contested the suit stating that Mahadeva Gounder and his brother Parthasarathy Gounder, divided the properties even during their life time and after the oral partition effected between them, the said Mahadeva Gounder, settled the properties that was allotted to him under the oral partition, in favor of one Subramani Gounder, the son of his brother Parthasarathy Gounder and the settlement deeds came into force and under those settlement deeds, the Defendants become the absolute owner of the properties and the Plaintiff has no right over the properties and therefore, the Plaintiff is not entitled to the relief prayed for.

4. It was further contended by the Defendants that out of the suit properties, item Nos. 2, 3, 5 and 8, did not belong to the joint family of Mahadeva Gounder and Parthasarathy Gounder and those properties belonged to one Renu Goundar and he relinquished his right over that properties in favour of Parthasarathy Gounder and his son Subramani Gounder and therefore, the Plaintiff is not entitled to claim any share in respect of item Nos. 2, 3, 5 and 8 of the suit properties.

5. The Trial Court held that Exs.B5 and B44, the two settlement deeds alleged to have been executed by Mahadeva Gounder in favour of Subramani Gounder, was not proved by the Appellants and no title has been passed under those two settlement deeds in favor of Subramani Gounder Gounder. Therefore, the first Respondent/plaintiff is entitled to claim her share in the properties covered under those two settlement deeds. The Trial Court further accepted the case of the Appellants that item Nos. 2, 3, 5 and 8 of the suit properties belonged to one Renu Goundar, and therefore, the first respondent/plaintiff is not entitled to claim any share in respect of those properties and decreed the suit only in respect of remaining items of properties, excluding item Nos. 2, 3, 5 and 8. Aggrieved by the same, the first Respondent/plaintiff filed an appeal in A.S. No. 4 of 2001 and the Appellants herein filed the appeal in A.S. No. 3 of 2001, on the file of the Additional District Cum Sessions Judge (Fast Track Court) Vellore, and both the appeals were heard together and a common judgment was passed where in, the Lower Appellate Court dismissed the appeal filed by the Appellants herein and allowed the appeal filed by the first respondent/plaintiff. Hence, these two appeals are filed by the Appellants.

6. Mr. A.U. Ilango, the learned Counsel for the Appellants submitted that both the Courts bellow erred in holding that Exs.B5 and B44, are not true and valid one and the Appellants did not prove that they were executed by Mahadeva Gounder, without properly appreciating the fact that both the documents are registered documents and witnesses were examined to speak about the execution of those documents. The learned Counsel further contended that in respect of Ex.B44, the

attesting witnesses were not available and Scribe was examined to prove the execution of those documents. In respect of Ex.B5, the son of the attesting witness was examined to prove his father's signature as one of the identifying witnesses before the Sub Registrar and therefore, having regard to the nature of documents viz., the registered documents, the Courts below ought to have held that Exs.B5 and B44, are valid documents.

7. The learned Counsel for the Appellants also submitted that the said Subramani Gounder, also acted upon the settlement deeds and executed a mortgage deed in respect of properties covered under Ex.B44 and also sold one of the items in favour of his wife-P.W.2 under Ex.B42, which he got under Ex.B5. The revenue records are in the name of Subramani Gounder and his wife. Therefore, the learned Counsel for the Appellants submitted that having regard to Exs.B5 and B44, viz., registered settlement deeds and the subsequent conduct of the parties in acting upon the settlement deeds by creating a mortgage and sale deed and paying kist therefore ,the Appellants have proved the execution of those two documents filed under Exs.B5 and B44, and having settled the properties in favor of brother's son, the said Mahadeva Gounder, did not hold the property at the time of his death and hence, the Respondent/plaintiff will not get any right over the properties.

8. The learned Counsel for the Appellants further submitted that in Exs.B5 and B44, it was clearly stated that Mahadeva Gounder, got the properties under partition and that would also prove the partition between Mahadeva Gounder and Parthasarathy Gounder, during their lift time and therefore, the said Subramani Gounder, got absolute right over the properties, except item Nos. 2, 3, 5 and 8 and the first Respondent/plaintiff is not entitled to the relief prayed for. The learned Counsel also submitted that the trial Court rightly rejected the case of the first Respondent/plaintiff for partition in respect of item Nos. 2, 3, 5 and 8, as admittedly, those properties belonged to one Renu Goundar and that was evidenced by the decree passed in O.S. No. 129 of 1963, under Ex.B1, confirmed in S.A.N.36 of 1970, Ex.B3. That was not properly appreciated by the Lower Appellate Court and the Lower Appellate Court erred in holding that the first Respondent/plaintiff is also entitled to claim partition in respect of those items also.

9. Per contra, Mr. S. Parthasarathy, the learned Senior Counsel for the first Respondent/plaintiff submitted that a perusal of the settlement deeds executed under Exs.B5 and B44, would make it clear that those documents could not have been executed by Mahadeva Gounder and it was denied by the first Respondent/plaintiff in the plaint itself and therefore, when the execution was denied, it was the duty of the Defendants to prove execution of those documents by examining the attesting witnesses and both the Courts below have rightly held that those two documents would not have been executed by Mahadeva Gounder, in favour of Subramani Gounder and the Appellants also did not prove the same. Therefore, the concurrent findings of facts regarding Exs.B5 and B44, need not be

interfered with.

10. The learned Senior Counsel for the first Respondent/plaintiff further submitted that admittedly the properties covered under Exs.B5 and 44, are suit items. 1, 4, 6, 7 and 9. In respect of 2, 3 5 and 8, the Lower Appellate Court rightly held that those properties also belonged to the family of the Plaintiff and Defendants. Therefore, the Plaintiff is entitled to the relief prayed for.

11. On the basis of the above submissions, the following substantial questions of law are framed:

i) Whether the Courts bellow were right in holding that Exs.B5 and B44, were not executed by Mahadeva Gounder and the Appellants also failed to prove the due execution of those two documents?

ii) Whether the Lower Appellate Court is right in holding that the first Respondent/plaintiff is entitled to claim share in respect of item Nos. 2, 3 5 and 8, as those properties originally belonged to Renu Goundar and they are settled by him in favor of Parthasarathy Gounder and his son Subramani Gounder?

12. In these appeals, it is not in dispute that except items Nos. 2, 3, 5 and 8, the other item of properties belonged to the family of Mahadeva Gounder and Parthasarathy Gounder. The first Respondent/plaintiff is the daughter of Mahadeva Gounder and he died in the year 1978 and Parthasarathy Gounder, died in the year 1965. Therefore, in the properties belonging to Mahadeva Gounder and Parthasarathy Gounder, in the absence of any Will or settlement executed by Mahadeva Gounder, the first Respondent/plaintiff, as his legal heir, is entitled to claim half share in the suit properties.

13. As a matter of fact, the plaint proceeded on the basis that both the brothers viz., Mahadeva Gounder and Parthasarathy Gounder, jointly enjoyed the properties and after the death of Mahadeva Gounder, the Plaintiff is also entitled to her half share and when that was refused, she filed the suit for partition. But the Appellants contended that Mahadeva Gounder, executed settlement deeds under Exs.B5 and B44, in favor of Subramani Gounder, the son of Parthasarathy Gounder. Therefore, the Plaintiff cannot claim any share in the suit properties. Therefore, we will have to see whether the settlement deeds, alleged to have been executed by Mahadeva Gounder, were true and valid documents.

14. The execution of those two settlement deeds were denied by the first Respondent/plaintiff in the plaint itself and therefore, it is the duty of the Appellants to prove the due execution of those two documents. of course, both the documents are registered documents. The Appellants examined D.W.3 and D.W.4 to prove Exs.B5 and B44. D.W.3, is son of the attesting witness to Ex.B5 and D.W.4, is the Scribe, who had written Ex.B44. The Lower Appellate Court disbelieved Ex.B5, and held that the signature alleged to have been put by Mahadeva Gounder, in each

page in Ex.B5, is different from one another and therefore, it cannot be considered that it was signed by Mahadeva Gounder. Further, the stamp papers used for typing Ex.B5, were also procured from different places and that also created suspicion and held that Ex.B5, was not proved by the Appellants. In respect of Ex.B44, except the Scribe, no one was examined to prove the execution and in Ex.B44, the signature was not found and only thumb impression was found and it was stated that due to Parkinson disease, Mahadeva Gounder, was not able to put his signature and he puts thumb impression and that document was also rejected by the Lower Appellate Court on the ground that no attesting witnesses were examined and it was admitted that the attesting witnesses were alive.

15. I have also gone through Ex.B5 and as rightly held by the Lower Appellate Court, the signature put by Mahadeva Gounder found in each page of Ex.B5, is different from other signatures. Further, the signature found before the Sub Registrar viz., the signature on the reverse of the first page would also make it clear that the person, who signed the documents would not have gone to the Sub Registrar and presented the documents for registration. The signature found in the documents and the signature alleged to have been signed before the Sub Registrar at the time of registration are entirely different and as rightly held by the Lower Appellate Court, the style, stroke, length and the manner of writing are totally different. According to me, the same person, who signed Ex.B5, would not have been present before the Sub Registrar and admitted the execution of the document, having regard to the difference in the signature.

16. Further, Ex.B44, does not contain the signature and the reason stated was that due to Parkinson disease, Mahadeva Gounder, was not able to put his signature. As held by the Lower Appellate Court, no attesting witnesses were examined to prove the execution of Ex.B44, though they are admittedly alive and no attempt was made by the Appellants to summon those witnesses. Further, under Ex.B6, Subramani Gounder Gounder, alleged to have executed a mortgage deed on the basis of the settlement deed-Ex.B44 and in Ex.B6, he has not stated that he got the property under settlement deed Ex.B44. Further, the said Subramani Gounder, executed a sale deed under Ex.B42, to Indirani, the wife of P.W.2, which he got under Ex.B5 and in Ex.B42, it was not stated that the property was obtained by him under the settlement deed Ex.B5, executed by Mahadeva Gounder. Hence, having regard to the difference in signature in Ex.B5 and non examination of the attesting witness of Ex.B44, both the Courts below have rightly held that the Appellants did not prove the execution of Exs.B5 and B44. Hence, the first Respondent/plaintiff is entitled to the relief prayed for in respect of items Nos. 1, 4, 6, 7 and 9.

17. As rightly contended by the learned Counsel for the Appellants that in respect of item Nos. 2, 3, 5 and 8, the Trial Court has rightly held that those properties did not belong to the joint family of Mahadeva Goundar and Parthasarathy Goundar and it belonged to one Renu Goundar. That was also proved by Exs.B1 to B3 and

considering those documents, the Trial Court has rightly held that those properties viz., the properties in respect of item Nos. 2, 3, 5 and 8, did not belong to the joint family of Mahadeva Goundar and Parthasarathy Goundar and therefore, the first Respondent/ Plaintiff is not entitled to the relief of partition. But the Lower Appellate Court, without properly appreciating Exs.B1 to B3, erroneously held those properties also belonged to the joint family of Mahadeva Gounder, and Parthasarathy Gounder, and the findings of the Lower Appellate Court is not correct and it is against Exs.B1 to B3.

18. Hence, the first substantial question of law is answered against the Appellants holding that both the Courts below were right in holding that Exs.B5 and B44, were not proved by the Appellants to have been executed by Mahadeva Gounder and therefore, the first Respondent/plaintiff is entitled to her half share in those properties viz., item Nos. 1, 4, 6, 7 and 9 of the suit properties and the second substantial question of law is answered in favour of the Appellants and I hold that the item Nos. 2, 3, 5 and 8, did not belong to the family of Mahadeva Gounder, and Parthasarathy Gounder, and they belonged to Renu Gounder and therefore, the first Respondent/plaintiff will not get any share in respect of those properties and the judgment of the Trial Court in respect of item Nos. 2, 3, 5 and 8 is confirmed and the judgment of the First Appellate Court in A.S. No. 4 of 2001, is set aside.

19. In the result, the Second Appeal No. 170 of 2011, is allowed and the Second Appeal No. 169 of 2011 is dismissed. In the circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.