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R. Ramanathan Vs. M. Arunkumar and Another

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Court : Chennai

Decided On : Aug-13-2012

Judge : G. Rajasuria

Appeal No. : A.S. NO. 25 OF 2009

Appellant : R. Ramanathan

Respondent : M. Arunkumar and Another

Advocate for Pet/Ap. : For the Appellant: P. Valliappan, Advocate. For the Respondents: R1 - K. Kalyanasundaram, R2 - C.R. Prasannan, Advocates.

Judgement :

(Prayer:Appeal against the judgement and decree dated 22.1.2008 passed by the Additional District Court (Fast Track Court No.1), Coimbatore, in O.S.No.119 of 2006.)

JUDGEMENT

1. This appeal is focussed by the D2 as against the judgement and decree dated 22.1.2008 passed by the Additional District Court (Fast Track Court No.1), Coimbatore, in O.S.No.119 of 2006, which is one for partition.

2. The parties, for the sake of convenience, are referred to hereunder according to their litigative status and ranking before the trial Court.

3. A summation and summarisation of the relevant facts, which are absolutely necessary and germane for the disposal of this appeal, in a few broad strokes can be encapsulated thus:

(i) The first respondent herein, as plaintiff, filed the suit O.S.No.119 of 2006 for partition seeking the following relief:

"to grant a decree and judgement in favour of the plaintiff:

a. directing the division of the suit property into ten equal shares by metes and bounds in which allotment of four such share to the plaintiff and put the plaintiff in separate possession thereof."

(extracted as such)

(ii) Separate written statements were filed by D1 and D2, claiming shares as per their own calculations. In fact, D2 filed the additional written statement also.

(iii) The gist and kernal, the pith and marrow of the averments in the plaint would be to the effect that the suit property measuring an extent of 46 cents, as found described in the schedule of the plaint, was purchased by the plaintiff's grandfather, namely, Govindasamy Chettiar and D1's deceased husband, namely, Sivanadiyan and D2-Ramanathan; they contributed the sale price at the rate of 40%, 30% and 30% respectively, and accordingly, they were entitled to the suit property at the same proportion. Accordingly the plaintiff prayed for passing a preliminary decree.

(iv) D1 filed the written statement contending that her deceased husband, namely, Sivanadiyan, was entitled to 40% share and not 30% as alleged in the plaint and accordingly, as the legal heir of the said deceased-Sivanadiyan, she prayed for decreeing the suit in her favour allotting her share.

(v) D2 filed the written statement as well as additional written statement contending that as per Exs.B1-Varthamanam deed dated 16.9.1980 and Ex.B2-the Agreement dated 6.4.1980 marked during the trial, the plaintiff and defendants 1 and 2 are entitled to 40%, 20%, and 40% respectively, so to say, the plaintiff is

entitled to 4 shares and D1 is entitled to 2 shares and D2 is entitled to the remaining 4 shares in the total extent of 46 cents. Accordingly, D2 prayed for passing the decree in her favour allotting her share.

(vi) Based on the above pleadings, the trial Court framed the relevant issues.

(vii) During trial, the plaintiff examined himself as P.W.1 and Exs.P1 to P7 were marked. The defendants examined themselves as R.Ws.1 and 2 along with R.W.3 and Exs.R1 and R2 were marked.

(viii) Ultimately, the trial Court decreed the suit allotting 1/3rd share each in favour of the plaintiff, D1 and D2.

4. Being aggrieved by and dissatisfied with the judgement and preliminary decree of the lower Court, the defendant No.2 filed this appeal on various grounds.

5. The learned counsel for the appellant/D2 would pyramid his arguements which could pithily and precisely be set out thus:

(i) The plaint was as silent as silence could be in respect of Exs.B1 and B2. It is D2, who by marking Exs.B1 and B2 highlighted and spotlighted the fact that the sale deed Ex.A1 was sandwiched by Exs.B1 and B2. In fact, Ex.B2 was entered into among as many as 7 persons in respect of the suit property as well as one other extent of property. So much so, Ex.B1 also emerged among the same persons in respect of the suit property as well as one other extent of property.

(ii) Pithily and precisely those seven parties to those agreements, intended that the suit property as well as the one other extent of property should be purchased under two sale deeds one in the name of three persons, namely, Govindasamy Chettiar, D1's husband Sivanadiyan and Ramanathan-(as per Ex.A1) and the one other property, which is not the subject matter of the suit property, in the name of the remaining four persons contemplated in Exs.B1 and B2. Now those four persons are not in the picture and they are not raising any dispute. While so, the dispute is now among the parties to the lis here in respect of the suit property referred to in Ex.A1.

(iii) A cue has to be taken from Exs.B1 and B2 and accordingly if worked out the plaintiff is entitled to four shares and D1 is entitled to 2 shares and D2 is entitled to 4 shares out of the total ten shares inconcinnity with the contributions made by them as per Exs.B1 and B2 for the purchase of the property as contemplated under Ex.A1.

6. In a bid to extirpate and pulverise the arguements and pleas as put forth and set forth on the side of the appellant/D2, the learned counsel for D1 would advance his arguments, which could tersely and briefly be set out thus:

(i) The suit itself was bad for want of necessary parties, namely, the four persons who are left out in Ex.A1, as stated supra.

(ii) In a truncated manner Exs.B1 and B2 cannot be implemented. Section 45 of the Transfer of Property Act, if applied, it would at once make it clear that the lower Court was justified in allotting 1/3rd share each in favour of the three parties to the lis.

(iii) The lower Court was justified in ignoring Exs.B1 and B2 on the ground of want of registration as per Section 17 of the Registration Act. As such, no interference with the judgement and decree of the lower Court is warranted,.

7. The learned counsel for the plaintiff/R2 herein would pray for allotting four shares out of the 10 shares in the suit property, virtually as prayed by the learned counsel for the appellant/D2.

8. The points for consideration are as under:

(1) Whether the suit was bad for want of adding necessary parties namely the four persons who were left out in Ex.A1 even though they were parties in Exs.B1 and B2?

(2) Whether Exs.B1 and B2 are bad for want of registration?

(3) Whether the trial Court was justified in allotting 1/3rd share each in favour of the parties to the lis ignoring the contents of Exs.B1 and B2 but however by strictly adhering to the recitals in Ex.A1-the sale deed only?

(4) Whether there is any perversity or illegality in the judgement passed by the trial Court?

9. All these points are taken together for discussion as they are interwoven and interlinked, interconnected and entwined with one another.

10. A r'esume of indubitable and indisputable, unarguable and unassailable facts would run thus:

(i) The suit property measuring an extent of 46 cents of land and one other piece of land were intended to be dealt with by as many as the following seven persons:

1. S. Somasundaram Chettiar(the deceased husband of D1)

2. S. Ramanathan Chettiar

3. L.V. Sivanadiyan

4. M. Palaniappan

5. N. Sivanadiyan

6. P. Govindasamy(The deceased grandfather of the plaintiff)

7. R. Chinnappan

(ii) The gist and kernal, the pith and marrow of the agreements emerged between those seven persons as per Exs.B1 and B2 would be to the effect that they intended to sell a large extent of land including the joint property jointly and share the profits; however, they at one point of time felt that purchasing such large extent from third parties under one sale deed would not be feasible for reasons best known to themselves and hence they resorted to purchasing such large extent in two moieties.

(iii) Ex.A1 is the sale deed relating to 46 cents of land which happened to be the subject matter of the suit, purchased by Govindasamy Chettiar and D1's husband Sivanadiyan and D2-Ramanathan.

(iv) It appears, subsequently, Govindasamy Chettiar died leaving behind the plaintiff to acquire the property as per the undisputed registered Will executed by him.

(v) D1's husband Sivanadiyan died leaving behind his unchallenged legal heir, viz., his wife-Azhagammai/D1.

(vi) D2 is still alive and he is participating in the proceedings.

11. It appears, some misunderstanding erupted between the plaintiff and the defendants, whereupon this suit did emerge for partition.

12. The genuineness of Exs.B1 and B2 are not in dispute. However, the learned counsel for D1 would try to attack Exs.B1 and B2 not on the ground that those are concocted or cooked up, forged or fabricated documents, but he would try to impeach and impugne those documents on the sole ground that those are bad for want of registration and hence they cannot be relied upon as legal evidence for deciding the lis. According to the learned counsel, in the absence of Exs.B1 and B2, Section 45 of the Transfer of Property Act would be squarely applicable and consequently, the judgement passed by the trial Court in allotting 1/3rd share each in favour of the parties to the lis warrants no interference.

13. It is therefore just and necessary to analyse as to whether Exs.B1 and B2 could be held to be bad for want of registration?

14. Section 17 of the Registration Act, 1908, is extracted hereunder for ready reference:

"17. Documents of which registration is compulsory - (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely,-

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

(1-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53-A of the Transfer of Property Act, 1882, shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001, and if such documents are not registered on or after such commencement then, they shall have no effect for the purposes of the said Section 53-A."

15. The recitals in Exs.B1 and B2 would in no way highlight that any interest in immovable property was created by those documents in favour of any person. The parties to those documents carefully used words and phrases and shed light on the point that they could join together and deal with a large extent of land, so that, they could carve out that big extent of land into plots and sell them to third parties

and in case of their inability to sell it as plots, they could jointly sell them as a whole or partition the property among themselves.

16. No doubt, in Ex.B1 there is a clause to the effect that all the seven persons, who were parties to the suit alone should deal with the properties jointly and none of them could individually to the exclusion of others deal with those properties. Placing reliance on such a clause, the learned counsel for D1 would submit that in the absence of the remaining four persons not referred to in Ex.A1, but contemplated under Ex.B1 and B2, this suit should not have been filed.

17. At this juncture, I would like to fumigate my mind with order 1 Rule 9 of C.P.C and it is extracted hereunder for ready reference.

Order 1 Parties to Suits

Rule 9. Misjoinder and non-joinder - No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it."

18. Pellucidly and palpably, the Legislators embedded in the aforesaid provision, the legal point that a suit should not simply be dismissed on the ground of non-joinder of necessary parties unless such non-joinder was fatal to the very suit itself. This factual matrix would evince and evidence that Ex.A1-the sale deed which is a registered document, stands in the name of only three persons, as stated supra and not in the name of all the said seven persons.

19. The learned counsel for the appellant/D2, without fear of contradiction from the other side, would submit that the remaining extent of property was purchased by a separate sale deed by the remaining said four persons and it is under their enjoyment.

20. It is therefore crystal clear that those four persons so far have not chosen to get themselves impleaded in this proceedings.

21. A plain reading of the written statement and additional written statements would unambiguously and unequivocally shed light on the point that no plea has been taken by either D1 or D2 that the suit was bad for want of impleading the said four persons. Even on merits it has to be seen as to whether the non-joinder of those four persons would be fatal to the very case of the plaintiff.

22. Had Ex.A1 stood in the name of seven persons, then without any hesitation this Court could held that the non-joinder of the said remaining four persons would cut at the very root of the case itself. But here, the main cause of action is based on Ex.A1-the sale deed, wherein only the said three persons were cited as the purchasers and in such a case, the question of the Court holding that non-joinder of the said remaining four persons, is fatal to the case, would be a well-neigh impossibility.

23. In this context I would like to call up and recollect the trite proposition of law that judgements passed by the Court in matters of this nature would be only a judgement in personam and not a judgement in rem. This judgement would not bind non-parties to the lis. As such, those who are not parties to this lis would not be bound by this judgement.

24. Here, the three purchasers under Ex.A1 have been fighting as against one another and because of that the lis has arisen and now the matter is before this the appellate Court. As such, this Court is expected to decide the dispute among three persons. Scarcely could it be held that the case could simply be thrown away because some persons might come and challenge this judgement on the ground that they were not added as parties. Even though the trial Court remarked that non-joinder of those persons was not proper, yet it decreed the suit.

25. I would like to observe that in the absence of any objection having been raised by D1 and D2 and also in the absence of any vital point to show that those four persons are ex facie and prima facie entitled to claim right under Ex.A1, this Court need not on mere surmises, conjectures and apprehensions simply throw the baby along with bathe water and accordingly, the points are decided to the effect that the suit is not bad for want of adding those said four persons in the suit.

26. The recitals in Exs.B1 and B2 would not in any way be construed as the ones conferring any vested right in the immovable property. It is only a mere agreement as to how the parties should deal with the property and nothing more. Certain excerpts from Exs.B1 and B2 would run thus:

Ex.B1

“ Tamil ”

Ex.B2

“ Tamil ”

27. In this connection I would like to fumigate my mind with the following decisions:

(i) **2008(1) CTC 308 - VINCENT LOURDHENATHAN DOMINIQUE and ANOTHER VS. JOSEPHINE SYLA DOMINIQUE, (judgment of the High Court of Madras)** certain excerpts from it would run thus:

"12. In the judgment rendered in A.C.Lakshmipathy v. A.M.Chakrapani Reddiar and others, 2001(1) CTC 112 : 2001(1) LW 257, the Division Bench of this Court, while construing a memorandum recording partial partition in the family which was sought to be marked, after elaborately discussing the entire issues relating to the Indian Registration Act and the Indian Stamp Act and also the concept of estoppel, held that the document in question being unstamped and unregistered cannot be looked into for any purpose. In this regard the Division Bench has summed up the legal position as under:-

"41. We hold that the document in question being an unstamped and unregistered, cannot be looked into for any purpose. Similarly, oral evidence cannot be let it about the contents of the said document.

42. To sum up the legal position:

I. A family arrangement can be made orally.

II. If made orally, there being no document, no question of registration arises.

III. If the family arrangement is reduced to writing and it purports to create, declare, assign, limit or extinguish any right, title or interest of any immovable property, it must be properly stamped and duly registered as per the Indian Stamp Act and Indian Registration Act.

(IV) Whether the terms have been reduced to the form of a document is a question of fact in each case to be determined upon a consideration of the nature of phraseology of the writing and the circumstances in which and the purpose with which it was written

(V) However, a document in the nature of a memorandum, evidencing a family arrangement already entered into and had been prepared as a record of what had been agreed upon, in order that there are no hazy notions in future, it need not be stamped or registered.

(VI) Only when the parties reduce the family arrangement in writing with the purpose of using that writing as proof of what they had arranged and, where the arrangement is brought about by the document as such, that the document would require registration as it is then that it would be a document of title declaring for future what rights in what properties the parties possess.

(VII) If the family arrangement is stamped but not registered, it can be looked into for collateral purposes.

(VIII) Whether the purpose is a collateral purpose, is a question of fact depending upon facts and circumstances of each case. A person cannot claim a right or title, to a property under the said document, which is being looked into only for collateral purposes.

(IX) A family arrangement which is not stamped and not registered cannot be looked into for any purpose in view of the specific bar in Sec.35 of the Indian Stamp Act."

(ii) **(2001)1 M.L.J.1 - A.C.Lakshmipathy and another v. A.M.Chakrapani Reddiar and others.**

"13. In Ram Charam Das v. Girija Nandini Devi and others, (1966)1 S.C.J.61: (1961)3 S.C.R.841: A.I.R.1966 S.C.323, the Supreme Court held that the word family has not to be understood in a narrow sense of being group of persons whom the law recognises as having a right of succession or having a claim to a share in the disputed property. In fact, in a subsequent ruling reported in M/s.D.N.Roy v. State of Bihar, (1971)1 S.C.J.30: A.I.R. 1971 S.C.1041, the Supreme Court held that if the dispute is settled between near relations, then the settlement of dispute can be considered as a family arrangement.

15. It is now settled law that to effect a family arrangement, "all that is necessary is that the parties must be related to one another in some way and have a possible claim to the property or a claim or even a semblance of a claim on some ground as, say affection It was so held by the Apex Court in Ram Charan Das's case, A.I.R.1966 S.C.323.

For the purpose of completeness, reference can be made to:

(a)Pullaiah v. Narasimhan, (1967)2 M.L.J.(S.C.) 14:(1967)1 S.C.J.848: (1967)2 An.W.R.(S.C.) 14:A.I.R.1966 S.C.1836; (b) Shambhu Prasad v. Phool Kumari, (1971)2 S.C.J.650: A.I.R. 1971 S.C.1337.

16. In the ruling reported in Kale v. Deputy Director of Consolidation, A.I.R.1976 S.C.807, the court after referring to various earlier rulings, observed thus:

"Conflict of legal claims in praesenti or in futuro is generally a condition for the validity of the family arrangement, it is not necessarily so. Even bona fide disputes, present or possible, which may not involve legal claims will suffice. Members of a joint family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such a family arrangement is entered into bona fide and the terms thereof are fair in a circumstance of a particular case, courts will more readily give recent to such an agreement than to avoid it.

Family arrangements are bring about harmony in a family and do justice to its various members and avoid, in anticipation, future disputes which might ruin them all will be favoured."

17. Even disputes based upon ignorance of the parties as to their rights were sufficient to sustain the family arrangement (1967)2 M.L.J.(S.C.)14: (1967)1 S.C.J.848: (1967)2 An.W.R.(S.C.) 14 : A.I.R.1966 S.C.1836.

To sum up: To effect a family arrangement all that is necessary is that the parties must be related to one another in some way and have a claim or a possible claim to the property or even a semblance of a claim or spes successionis or even on some other ground as, say, affection or ignorance of the parties of their rights and when the purpose of object of maintaining peace and harmony in the family.

23. It is now fairly well settled that the co-owners can partition the immovable properties orally. But, however where a document is employed to effectuate a partition or any of the transactions specified in Sec.17 of the Registration Act such document must be registered, notwithstanding that the transaction is one which the law does not require to be put into writing. Such unregistered document cannot be looked into to prove the terms of the partition. But, however the same is inadmissible in evidence for the purpose of creating, declaring, assigning, limiting or extinguishing a right to immovable property. The expression "collateral purposes" is no doubt a very vague one and the court must decide in each case whether the parties who seek to use the unregistered document for a purpose which is really a collateral one or as is to establish the title to the immovable property conveyed by the document. But by the simple devise of calling it "collateral purpose", a party cannot use the unregistered document in any legal proceedings to bring about indirectly the effect which it would have had if it registered.

(a) Siromani v. Hemkumar, A.I.R.1968 S.C.1299:

"Of course, the document is admissible to prove an intention on the part of the coparceners to become divided in status; in other words, to prove that the parties ceased to be joint from the date of the instrument . . . . "

28. A mere running of eye over those precedents would unambiguously and unequivocally, pellucidly and palpably highlight and spotlight the fact that the documents which are not conferring any right on immovable property require no

registration. Accordingly, I am of the considered view that Exs.B1 and B2 cannot be eschewed from the evidence on the ground of want of registration.

29. The learned counsel for D1 would submit that Section 45 of the Transfer of Property Act should be applied in stricto sensu. It is therefore just and necessary to extract the said Section.

"Sec.45 of T.P.Act - Joint transfer for consideration - Where immovable property is transferred for consideration to two or more persons and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced."

30. T**he scope of the aforesaid Section would run thus:**

(1) If the property is purchased or obtained on payment of consideration from a common fund, they have interest in the property in proportion to their share in the common fund.

(2) If consideration is paid from their separate funds, then their interest is proportionate to their contribution.

(3) In the absence of evidence as to their share in joint fund, the interest is equal. All this is subject to the contract to the contrary.

31. The cited Section comprised of various components and ingredients. The pith and marrow of the law points got embedded in the said Section is to the effect that if at all there could be any evidence to prove on what proportion the individuals contributed for purchasing a property, then according to the said proportion the property should be divided among them; in the event of the parties concerned are not in a position to adduce clinching and clear evidence in that regard then the

Court has to hold that all the joint purchasers are equally entitled to the said property.

32. To the risk of repetition and pleonasm but without being tautalogous, I would like to point out that my above discussion supra would convey and demonstrate that Exs.B1 and B2 are not bad for want of registration and those documents are admissible in evidence and the lower Court erroneously and on wrong appreciation of law rejected those documents. Accordingly if viewed it is glaringly and axiomatically clear that the plaintiff was entitled to four shares and D1 was entitled to two shares and D2 was entitled to four shares out of the total 10 shares.

33. The learned counsel for D1 would raise a question as to how when Exs.B1 and B2 itself contemplate something like one share is equal to Rs.5100/- etc., this Court would be in a position to accept the suggestion of the appellant that the plaintiff, D1 and D2 are entitled to the shares on the proportion of 4:2:4.

34. I would like to highlight and elucidate that the suit has not been filed to enforce in stricto senso Exs.B1 and B2; those documents have been relied on for the purpose of enabling the Court to take a cue to arrive at the conclusion concerning the shares to which each party to the lis is entitled.

35. The learned counsel for D1 also would try to point out that there are no adequate pleadings concerning Ex.B1 and Ex.B2 in the plaint, to which, the learned counsel for D2 would appropriately and appositely, convincingly and legally highlight the Home truth that in this partition suit D2 is having independent right and that he pleaded specifically in the additional written statement about Exs.B1 and B2 and as such, the marking of those documents cannot be assailed on the ground that those documents did not have the back up of the pleadings.

36. No doubt, for the suit property as well as for one other property, the shares are found detailed in the aforesaid manner in Exs.B1 and B2. Here, there are only three parties and incommensurate with their shares, the suit property has to be divided and as a sequela it should be in the proportion of 4:2:4 only.

37. Wherefore, I could see no ambiguity to disambiguate in the facts and circumstances of this case anything more. I am of the view that the objections on the D1's side would tantamount to let loosing red herrings in the litigative process and nothing more.

38. Ex.A2 is the Will executed by Govindasamy Mudaliar in favour of his grandson-the plaintiff, bequeathing his share in the suit property, which is not under dispute. Ex.A3 is the death Certificate of the testator to show that Ex.A2-Will came into effect in favour of the plaintiff. Exs.A4, A5, A6 and A7 are only the advocate notice, the related acknowledgements and the return postal covers respectively, which are formal documents in this case.

39. Wherefore, I am of the view that the judgement and decree of the trial Court should be modified to the effect that the plaintiff is entitled to 4 shares, D1 is entitled to 2 shares and D2 is entitled to four shares and accordingly the aforesaid points are decided.

40. There is no denying or gainsaying that in a partition suit, the plaintiff is defendant and vice versa and accordingly the claim of the appellant could be accepted based on his contentions.

41. I would like to agree with the explanation given by the learned counsel for D2 and accordingly, I am of the considered view that the judgement and preliminary decree of the trial Court should stand modified as under.

The plaintiff is entitled to 4 shares and D1 is entitled to 2 shares and D2 is entitled to 4 shares out of a total 10 shares of the suit property.

42. In the result, the appeal is allowed to the extent indicated above. However, there is no order as to costs.

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