

(2013) 09 MAD CK 0040
In the Madras High Court
Case No : A.S. No. 845 of 1993

R. Rangarajan and Others	Vs	APPELLANT
K. Ramasamy Naidu and Others		RESPONDENT

Date of Decision : 05-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0040

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

Bench : Single Bench

Advocate : P. Veena for Mr. T.R. Rajagopalan, for the Appellant; D. Krishnakumar for Respondent 5, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—The plaintiffs in O.S. No. 38 of 1985, on the file of the Sub Court, Udumalpet, are the appellants herein. They filed

the suit for partition. The Trial Court, by its judgment dated 31.01.1989, passed a preliminary decree holding that the plaintiffs are entitled to 4/5

share in the suit property. The Trial Court also held that the seventh defendant is entitled to claim the property purchased by her to be allotted to

her vendor.

2. Aggrieved by the findings of the Trial Court in Paragraph Nos. 9 and 11 of its judgment in the abovesaid suit, the present Appeal is filed.

3. The case of the plaintiffs/appellants, as stated in the plaint, is as follows:-

i) The first defendant is the father of the plaintiffs 1 to 4 and husband of the fifth plaintiff. The properties are the joint family properties. The second

defendant is the sister of the first defendant. The defendants 3 to 6 are the children born to Muthu Naicker, viz., the husband of the second

defendant, through his first wife. The suit properties are the ancestral properties in the hands of the first defendant. The first defendant got those

properties in a partition that took place on 31.10.1968, between himself and his brother. Therefore, the plaintiffs 1 to 4 and the first defendant are

each entitled to 1/5 share in the suit properties.

ii) It is further stated in the plaint that in the partition deed, dated 31.10.1968, some properties were allotted to the second defendant, the sister of

the first defendant. Nevertheless, the first defendant executed a gift deed, in respect of item 2 of the suit properties in favour of the said Muthu

Naicker, (viz., the husband of the second defendant) in the year, 1969, and that gift deed is not binding on the plaintiffs 1 to 4, as the first

defendant has no authority to make such a gift in respect of the joint family properties. Item 2 of the suit properties was sold to the seventh

defendant by the second defendant under a registered sale deed, dated 15.12.1984 and under that sale deed, the seventh defendant cannot claim

any right.

4. The seventh defendant filed a written statement, denying the allegations made in the plaint that the properties are the ancestral properties and the

plaintiffs 1 to 4 are having 1/5 share each. She also denied the allotment of the suit properties to the sharer in the partition that took place on

31.10.1968. She further stated that the plaintiffs were aware of the gift deed executed by the first defendant in favour of the husband of the second

defendant and second defendant's husband is in enjoyment of the properties for more than a statutory period and item 2 of the suit properties

absolutely belonged to the second defendant. She further stated that in the event of partition decree being passed, the property purchased, viz.,

item 2 be allotted to the share of the second defendant, so that she can claim the same.

5. The first defendant, though filed a written statement, did not take part in the trial and he was set ex parte. The defendants 2 to 6 also did not file

any written statement.

6. The Trial Court, on the basis of the pleadings, framed the following Issues:-

i) Whether the plaintiffs 1 to 4 are entitled to claim share in the suit properties?

ii) Whether the seventh defendant is the absolute owner of item 2 of the suit properties?

iii) Whether the claim of the seventh defendant for allotment of the property under equity is permissible?

and

iv) To what relief, the plaintiffs are entitled to ?

7. The Trial Court tried Issues i and ii) together and held that the properties are the ancestral properties in the hands of the first defendant and the

plaintiffs 1 to 4 are entitled to 1/5 share each and Item 2 of the suit properties gifted by the first defendant to the second defendant's husband is not

valid. Nevertheless, the purchase of item 2 by the seventh defendant is admitted, but, she cannot claim any right over the property, and, she is

entitled to claim equity for allotment of the properties to the share of the first defendant, the father. Issue iii) was answered holding that the seventh

defendant is entitled to the allotment of item 2 of the properties purchased by her to the share of the first defendant. Finally, the Trial Court passed

a preliminary decree holding that the plaintiffs 1 to 4 are entitled to 1/5 share each and the seventh defendant is entitled to the allotment of item 2 of

the properties and the same can be decided in the final decree proceedings. The findings of the Trial Court, made in Paragraph No. s 9 and 11 are

under challenge in this Appeal.

8. It is submitted by the learned counsel appearing for the appellants that having held that the properties are the joint family properties of the

plaintiffs 1 to 4 and the first defendant, and the first defendant has no authority to execute any gift deed in respect of item 2 and the gift deed is not

binding on the plaintiffs 1 to 4, the Trial Court ought not to have held that the seventh defendant is entitled to equity for allotment of item 2 in the

final decree. The learned counsel, therefore, submitted that the answer given with regard to Issue iii) has to be set aside and the parties may be

directed to workout their remedies in the final decree proceedings.

9. On the basis of the above submissions, the following Point arises for consideration in this Appeal:-

Whether the Trial Court was right in allotting item 2 of the property to the seventh defendant on equity?

10. Normally, in a suit for partition, preliminary decree is passed determining the share, to which the parties are entitled to, and, allotment of

various items of properties will be done only at the time of passing final decree,

and, while passing the preliminary decree itself, the Trial Court cannot be expected to give any finding regarding the allotment of specific item of properties to any sharer.

11. In the case on hand, the Trial Court has held that the properties are the ancestral properties in the hands of the first defendant. Therefore, the plaintiffs 1 to 4 are each entitled to 1/5 share in those properties. When the properties are held to be the joint family properties, any gift by the Manager, without the consent of other family members is not binding on the family members, and it is binding only on the sharer of the Manager.

Further, in a suit for partition, there is no question of bona fide purchaser for value in respect of any property purchased by the third party.

12. Therefore, while passing preliminary decree, the Trial Court is expected to determine the shares and the Trial Court should not proceed to allot

the properties to any sharer by applying equity and that is the duty of the Court only while passing the final decree. According to me, at the time of

passing the final decree, the Court has to take into consideration various factors and decide whether the purchaser is entitled to claim the allotment

of the properties purchased by him/her to the share of his/her vendor and by relying upon the evidence, the same can be considered.

13. Therefore, the observations of the Trial Court in Paragraph No. 9, while answering Issue iii) that the seventh defendant is entitled to the

allotment of properties purchased by her to the share of the first defendant is not correct. However, the Trial Court has made it clear in Paragraph

No. 11 of its judgment that only in the final decree, the claim of the seventh defendant regarding equitable distribution of properties can be decided.

14. Therefore, having regard to the observation made by the Trial Court, in Paragraph No. 11 of the preliminary decree passed in the suit,

wherein, it has made clear that the claim of the seventh defendant regarding equitable distribution of properties can be decided in the final decree

proceedings, the appellants/plaintiffs need not panic.

15. With the abovesaid observations, I do not find any infirmity in the judgment and decree of the Trial Court and I am not inclined to interfere with

the findings of the Trial Court, except, as indicated above, regarding Issue No. 3. In the result, the Appeal is dismissed and the judgment and

decree of the Trial Court are confirmed to the extent, as stated above. No costs.