

SUPREME COURT OF INDIA**REPORTABLE****Bench: Justice Vikram Nath and Justice Rajesh Bindal****Date of Decision: January 03, 2024**

CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. OF 2024
(Arising out of S.L.P.(C) No.15541 of 2023)

RAJENDHIRAN**...APPELLANT(S)****VERSUS****MUTHAIAMMAL @ MUTHAYEE & ORS.****...RESPONDENT(S)****Legislation:**

Section 68 of the Indian Evidence Act, 1872

Section 63 of the Indian Succession Act, 1956

Section 100 of the Code of Civil Procedure, 1908

Subject: Involving issues around the proof of an oral partition, the validity of a will, and the rightful ownership of property.

Headnotes:

Property Dispute – Suit for Declaration and Injunction – Dismissal of suit by Trial Court and First Appellate Court upheld; High Court's decision reversing their findings set aside – Plaintiffs failed to prove oral partition and will as per statutory requirements – Appeal allowed. [Paras 2, 3, 6-8, 12-15]

Evidence – Burden of Proof – Plaintiffs unable to substantiate claim of oral partition and execution of will in favor of plaintiffs – Reliance on unconnected documents insufficient to establish oral partition or plaintiffs' ownership. [Paras 6, 12, 13]

Partition – Oral Partition – Requirement of Proof – Oral partition not established through credible evidence – High Court's reliance on unrelated sale and mortgage deeds to conclude oral partition erroneous. [Para 10, 12, 13]

Will – Execution and Proof – Plaintiffs' claim based on will not established as per Section 68 of Indian Evidence Act, 1872 and Section 63 of Indian

Succession Act, 1956 – Trial Court and First Appellate Court's findings on lack of proof upheld. [Para 6]

Civil Procedure – Second Appeal – High Court's interference in factual findings of lower courts found unwarranted – High Court's judgment set aside for not conforming to the scope of Section 100 of CPC and for being perverse in appreciating evidence. [Paras 10, 14]

Decision – High Court's judgment in favor of plaintiffs set aside – Trial Court and First Appellate Court's dismissal of suit confirmed – Appeal allowed with no order as to costs. [Para 15]

Referred Cases: None.

J U D G M E N T

VIKRAM NATH, J.

1. Leave granted.

2. This appeal, by the defendants, assails the correctness of the judgment and order dated 28.07.2022 of the High Court of Judicature at Madras whereby the Second Appeal No.351/2021 filed by the plaintiff was allowed and the concurrent judgments of the Trial Court and the Sub-Judge dismissing the suit of the plaintiff-respondents were set aside and the suit was decreed.

3. Facts in nutshell are :

- 3.1 The respondent instituted a suit before the Munsiff Court, Tiruchengode registered as OS No.200/2011 claiming relief of declaration that the sale deed dated 10.02.2011 executed by the first defendant in favour of second defendant was null and void and to declare that suit property belonged to the plaintiffs and further for relief of an injunction against the defendants.
- 3.2 According to the plaint case, the property in question originally belonged to one Avinashi Gounder who had four sons namely, Arunachalam, Arumugam, Ramasamy and Palaniyappan. Plaintiff No.1 is the wife and plaintiff no.2 is the adopted son of Arunachalam. The first defendant is the daughter of Palaniyappan and the second defendant is the vendee of the suit property from defendant no.1.
- 3.3 According to the plaintiffs, the four brothers had entered into an oral partition and the suit property came to the share of Arunachalam. Subsequently

Arunachalam on 16.07.2003, had executed a will whereby the suit property and other properties belonging to Arunachalam were bequeathed in favour of the plaintiffs. Upon the death of Arunachalam on 30.04.2006, the plaintiffs became the absolute owners of the property in suit. Further case of the plaintiffs was that plaintiff no.2 and defendant no.2 were running a partnership business and the property in suit was offered as a security to the Karur Vysya Bank. It was the second defendant who had signed the loan papers and the security papers with the Bank. As the loan amount could not be repaid by defendant no.2, it was plaintiff no.2 who had cleared the outstanding loan of the Bank. Further it is claimed that defendant no.2 clandestinely obtained the sale deed on 10.02.2011 in respect of the suit property from the first defendant. It was further the case of the plaintiff that the entire property which was allotted to Palaniyappan (father of defendant no.1) had been sold by defendant no.1 on 15.07.1981 with specific boundaries to one Mathiyalagan. It was thus the claim of the plaintiffs that the defendants would not have any right over the properties of Avinashi Gounder and that the plaintiffs were in possession and were cultivating the land in suit but as the defendant no.2 tried to trespass the suit property on 24.07.2011, the necessity for filing the suit arose.

3.4 The defendants filed their written statement denying that there was any oral partition between the sons of Avinashi Gounder with respect to the suit property. They also denied that plaintiff no.2 was the adopted son of Arunachalam. The defendants had further pleaded that survey number in question had a total area of 2.17 cents in which Avinashigounder's family had 1/3rd share i.e. 72 cents. These 72 cents were partitioned amongst the three sons of Avinashigounder namely, Arunachalam, Ramasamy and Palaniyappan. The fourth son Arumugam had died issueless and his share was equally shared by the three brothers. Thus, each brother became entitled to 24 cents. Palaniyappan, father of defendant no.1 had 24 cents in this property, out of which 12 cents fell to the share of defendant no.1, out of which, she sold 11 cents to the second defendant. Plaintiffs had set up a case without any basis only in order to deprive the defendants of their property. It was also pleaded that there were other co-owners in survey number in question who had not been impleaded as defendants, as such the suit was bad in law for non-joinder of necessary parties.

4. The Trial Court framed the following six issues on the basis of the pleadings of the parties:

(i). Whether the plaintiff is entitled for decree of declaration as prayed for?

- (ii). Whether the plaintiff is entitled for decree of permanent injunction as prayed for?
 - (iii). Whether the husband of the 1st plaintiff executed a will on 16.07.2003?
 - (iv). Whether the 2nd plaintiff is the legal heir of the deceased Arunachalam?
 - (v). Whether the suit is bad for non-joinder of necessary parties?
 - (vi). To what other relief?
5. The parties led oral and documentary evidence. Both the plaintiffs examined themselves as PW 1 and PW 2 and one Mathiyalagan was examined as PW 3 and they proved six papers Exh.A1 to A6. On behalf of the defendants one Balarajendra was examined as DW1 and he proved six papers Exh.B1 to B6. Both the defendants did not enter the witness box.
6. The Trial Court discussed the evidence threadbare and recorded the following findings:
- (i). Both the plaintiffs had pleaded that Arunachalam had executed a will on 16.07.2003 but they failed to prove the said will deed in accordance to the statutory provisions contained in Section 68 of the Indian Evidence Act, 1872 and also under Section 63 of the Indian Succession Act, 1956. Thus, their claim on the basis of the will was not found to be substantiated;
 - (ii). The suit was bad for non-joinder of necessary parties as the co-owners/co-sharers were not impleaded as defendants;
 - (iii). The plaintiffs were not the owners of the property in suit, they had not been able to prove the oral partition and as such were found to be not entitled to any relief.
7. Accordingly, it dismissed the suit, vide judgment dated 08.09.2015.
8. The plaintiffs preferred an appeal which was registered as Appeal Suit No.55/2016. The Subordinate Court, Tiruchengodu, vide judgment dated 27.11.2020, after considering the evidence on record, approved the findings recorded by the Trial Court and, accordingly, dismissed the appeal. Once again specific findings were recorded that the oral partition had not been proved by the plaintiffs. For the said purpose, both the Courts below had relied upon the evidence led by the parties, both oral and documentary.
9. The First Appellate Court also approved the finding regarding non-joinder of necessary parties.
10. Aggrieved by the same, the plaintiffs preferred Second Appeal before the High Court, registered as Second Appeal No.351/2021. The High Court proceeded on the premise that the only dispute was with respect to the oral

partition, as to whether oral partition had taken place or not and if yes, whether it was duly proved? The High Court relied upon Ex.A-3, A-4 and Ex.B-3 to hold that there had been an oral partition. Ex.A-3 is the Mortgage Deed dated 13.10.2009. Ex.A-4 is the Sale Deed dated 15.07.1981. Ex.B-3 is the Sale Deed dated 02.05.2008. All these three documents were relied upon only for the reason that they mentioned boundaries. Based only on the finding that oral partition was proved, the High Court allowed the second appeal and after setting aside the judgments of the Courts below decreed the suit.

11. Heard counsel for the appellants. Despite service of notice, no one appeared on behalf of the respondents.
12. The two sale deeds relate to different properties and not to survey number in question. Whether any partition with respect to the survey number in question had taken place or not, is not borne out from the record. The suit property was never recorded in the name of the plaintiffs or for that matter, husband of plaintiff no.1, at any time. The will which was the basis of the claim of the plaintiff, had not been found to be proved in accordance to law. The Trial Court and the First Appellate Court had dealt with the documents Exh.A-4 and B-3, the two sale deeds, and found that these were not sufficient to prove the oral partition or in any manner establish the oral partition with respect to the survey number in question.
13. Interestingly although the plaintiffs set up a case that the land in suit was coming from Avinashi Gounder but on record, two *pattas* were filed which establish that the survey number in question had been allotted in the name of plaintiff no.1 and eight others jointly with respect to which there was no partition. This fact had been admitted by the plaintiffs in their deposition. All these aspects had been considered by the Trial Court and the First Appellate Court but the High Court failed to consider the oral as also the documentary evidence. Only on the basis of the two sale deeds and one mortgage deed, which relate to different piece and parcels of land, the High Court recorded a perverse finding that oral partition had taken place. It also did not deal with the other findings recorded by the Courts below.
14. In view of the above discussion and on the findings recorded above, the impugned judgment cannot be sustained as it not only does not conform to the scope of Section 100 of the Code of Civil Procedure, 1908 but also as it was perverse on appreciated evidence, and also ignoring material evidence.

15. The appeal is, accordingly, allowed. The impugned judgment and order of the High Court is set aside and that of the Trial Court and the First Appellate Court is confirmed. The suit of the respondent-plaintiff stands dismissed.
16. There shall be no order as to costs.

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