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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-04-2026

CORAM

THE HON'BLE MRS.JUSTICE N. MALA

AS.No.645/2023 & CMP.No.22210/2023

B.Rajendran
s/o.Balaraman
Old No.13, New No.12
Parthasarathy St 5th Lane
Old Washermenpet
Chennai 600 021.

..Appellant(s) /
Defendant

Vs

Subramani
S/o.Balaraman
No.4/2, 6th Trust Cross Street
Mandaveli, Chennai 600 028.

..Respondent(s) /
Plaintiff

Appeal Suit filed under Section 96 of CPC, against the judgment and decree dated 06.02.2023, passed by the learned VI Additional Judge, City Civil Court, Chennai, in OS.No.3093/2020, decreeing the suit in favour of the respondent.

For Appellant(s): Mr.K.C.Karl Marx

For Respondent(s): Mr.M.A.Velmurugan

JUDGMENT

(1) The First Appeal is filed by the defendant against the judgment and decree dated 06.02.2023, made in OS.No.3093/2020, by the learned VI



Additional Judge, City Civil Court, Chennai.

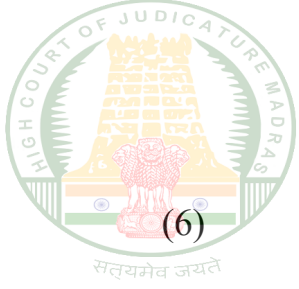
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(2) For the sake of convenience, the parties are referred to as per their ranking before the Trial Court.

(3) The facts in a nutshell, are as follows:

(4) The plaintiff is the co-owner of the property and the defendant is his elder brother. The plaintiff filed a suit in OS.No.3093/2020 for partition of his half share in the suit property and for permanent injunction, restraining the defendant from in any manner, effecting mutation in revenue records or alienating or encumbering the suit property.

(5) The plaintiff and the defendant are the sons of Late V.Balaraman. The plaintiff's father was the absolute owner of the suit property measuring an extent of 1200 sq.ft., comprised in RS.No.1965, Door No.13, New Door No.12, Parthasarathy Pillai Street, 5th Lane, Old Washermenpet, Chennai. The plaintiff's father purchased the property from one Kothandam Pillai, under a registered Sale Deed dated 05.06.1975 and ever since the sale in his favour, the plaintiff's father was in possession and enjoyment of the property. While so, the plaintiff's father executed a Settlement Deed in favour of his wife on 20.10.1983. Thereafter, the plaintiff's father, died on 15.08.1990, leaving behind the plaintiff's mother, himself and the defendant as his legal heirs.



(6) The plaintiff's case is that his father, during his life time, had purchased another property in Naidupet, Andhra Pradesh, which the defendant sold without his consent and appropriated the entire sale proceeds. When the plaintiff demanded his share of the sale proceeds, the defendant acted in a high handed manner. Thereafter, the plaintiff tried to mediate in the presence of the elders, but the same failed. The plaintiff therefore, issued a legal notice to the defendant on 04.03.2020, for partition of the family properties. However, the defendant neither replied nor came forward for partition. Since the plaintiff came to know that the defendant was trying to mutate the revenue records, without the consent of the plaintiff, left with no other option, the plaintiff filed the above suit for partition and for permanent injunction.

(7) The defendant, in his written statement, admitted the relationship. The defendant also admitted that his father had purchased the suit property and settled the same in favour of their mother. The defendant however stated that the plaintiff had suppressed several facts and approached the Court with unclean hands. The defendant further stated that his father was working in Zone-I, Chennai Corporation and died in harness. The defendant, being the eldest son, applied for compassionate appointment to the Corporation, but however, on the request of his mother to give up his claim to the job in favour of the plaintiff, he

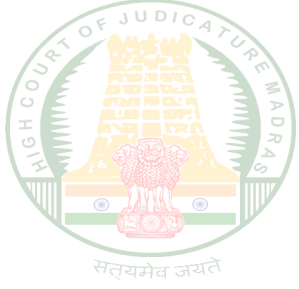


agreed to give up the job. The defendant, contended that since he agreed to his mother's request, his mother mediated a family arrangement regarding the suit property under which the plaintiff agreed to relinquish his right in the suit property in consideration of the defendant forfeiting his claim to the Government job. The defendant further stated that pursuant to the family arrangement, and post his marriage on 09.09.2022, he continued to reside in the suit property along with his mother, whereas the plaintiff, soon after his marriage on 06.06.1996, left the suit property and was living independently with his wife. With regard to the sale of the property in Naidupet, Andhra Pradesh, the defendant contended that it was the joint decision of the family members in order to settle the debts incurred for the plaintiff's marriage. The defendant also denied the allegation that the entire sale proceeds were appropriated by him. The defendant therefore, stated that the suit was vexatious and deserved to be dismissed.

(8) Before the Trial Court, the plaintiff examined himself as PW1 and marked Exs.A1 to A10. On the side of the defendant, two witnesses were examined and 3 documents were marked as Exs.B1 to B3.

(9) The Trial Court, framed the following issues:-

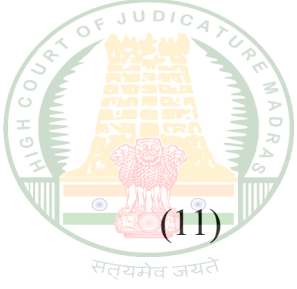
- i. *Whether the plaintiff has given up his right over the suit property as per the oral family*



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- arrangement in lieu of his compassionate appointment?*
- ii. *Whether the plaintiff is entitled for partition and separate possession of the suit property as prayed?*
- iii. *Whether the plaintiff is entitled for permanent injunction as prayed?*
- iv. *To what other relief the plaintiff is entitled?*

(10) On issues 1 and 2, the Trial Court found, on the basis of the evidence on record that, the defendant had failed to prove the alleged oral family arrangement. The Trial Court also found that the plaintiff did not relinquish his right over the suit property pursuant to the alleged family arrangement and that, his employment on compassionate grounds, in no way affected his right to claim partition of the suit property. The Trial Court therefore declared the plaintiff's $\frac{1}{2}$ share in the suit property. On issue No.3, the Trial Court on the basis of its finding that the plaintiff was entitled to half share in the suit property, restrained the defendant from encumbering or alienating the suit property. On issue No.4, the Trial Court directed the parties to bear their own cost. On such findings, the Trial Court passed a preliminary decree for partition of the plaintiff's half share in the suit property and for a decree for permanent injunction restraining the defendant from encumbering or alienating the suit property. Aggrieved by the said judgment and decree of the Trial Court, the defendant has filed the above First Appeal.



(11)

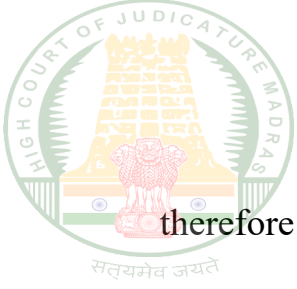
The learned counsel for the defendant submitted that the Trial Court failed to appreciate in proper perspective, the evidence on record, particularly the evidence of DW2. The learned counsel submitted that following events, establish that the family arrangement was acted upon even though the revenue records were not mutated:-

(a) The defendant gave no objection enabling the plaintiff to get compassionate appointment.

(b) Pursuant to the family arrangement, the plaintiff got the Government job and never returned to the suit property.

(c) All along the defendant was in the suit property and the plaintiff was never in the suit property would show that the family arrangement was acted upon.

(12) The learned counsel further submitted that it is settled legal position that the family arrangement can be entered into orally. The learned counsel relying on the judgment of the Hon'ble Supreme Court reported in **2006 [4] SCC 658 [Hari Shankar Singhania and Others Vs. Gaur Hari Singhania and Others]** and **1976 [3] SCC 119 [Kale and Others Vs. The Deputy Director of Consolidation and Others]**, submitted that the family arrangement should be given full effect and that technical considerations should make way to peace and harmony in the enforcement of the family arrangement. The learned counsel



therefore prayed for setting aside the judgment and decree of the Trial Court.

(13) The learned counsel for the plaintiff on the other hand, submitted that the Trial Court appreciated the entire evidence in proper perspective and returned factual findings. The learned counsel submitted that in the absence of any perversity, this Court should not interfere with the said factual findings just to substitute its own views with that of the Trial Court. The learned counsel therefore submitted that the Appeal deserved no merit and hence, was liable to be dismissed.

(14) Heard both sides and perused the materials placed on record.

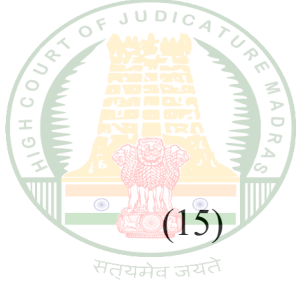
Points for Consideration:-

(a) Whether the oral family arrangement pleaded by the appellant / defendant stands proved?

(b) Whether the plaintiff is entitled for the relief of partition, separate possession of the suit property and for permanent injunction?

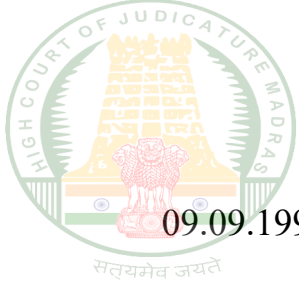
(c) To what other reliefs is the plaintiff entitled to?

Issue No.[a]:Whether the family arrangement pleaded by the appellant / defendant is proved?



(15)

The admitted facts of the case are that the plaintiff and the defendant are brothers, that their father late Mr.V.Balaraman, purchased the suit property under a registered Sale Deed dated 05.06.1975, and he was in possession and enjoyment of the same till his death, that their father settled the suit property in favour of their mother, late V.Radha Bai, under a registered Settlement Deed dated 20.10.1983 and that their father died on 15.08.1990 and mother died intestate on 05.01.2016. The plaintiff's case is that dispute arose between him and the defendant when the defendant sold a family property in Naidupet, Andhra Pradesh, and appropriated the sale proceeds to himself. According to the plaintiff when he demanded the partition of the suit property the defendant refused and since mediation by well-wishers failed, the plaintiff filed the suit. The defendant, on the other hand, contends that their father was employed in Chennai Corporation, and that he died while in service. The defendant contends that he applied for compassionate appointment, but later on his mother's request he relinquished his claim in favour of the plaintiff. According to the defendant their mother mediated a family arrangement, under which, in consideration of the defendant's relinquishment of the Government job, the plaintiff agreed to relinquish his right to the suit property. The defendant contends that pursuant to the oral family arrangement, post his marriage on



09.09.1992, he continued to live in the suit property along with his mother by taking care of her during her life time. The defendant further contends that the property in Naidupet was sold by a joint family decision of the plaintiff, their mother and the defendant in order to clear the debts incurred for the plaintiff's marriage.

(16) From the aforesaid facts, the first issue that arises for consideration is whether the oral family arrangement pleaded by the defendant is proved.

(17) The plaintiff marked Ex.A1, registered sale Deed dated 05.06.1975, to prove the original ownership of their father of the suit property. The plaintiff also filed Ex.A3, registered Settlement Deed dated 20.10.1983, to prove that the property purchased under Ex.A1 was settled in favour of their mother, late, V.Radha Bai by their father. The plaintiff filed Ex.A8, the Property Tax Receipt, standing in the name of their mother. The defendant filed only two documents, Ex.B1 and Ex.B2 and both documents show that the revenue records stood in the name of their mother. From the aforesaid evidence on record, it is clear that the plaintiff's and the defendant's mother was the exclusive and absolute owner of the suit property, by virtue of Ex.A3. Admittedly, the parties mother, late, V.Radha Bai died intestate. Therefore under Section 15 of the Hindu Succession Act, 1956, the property devolves

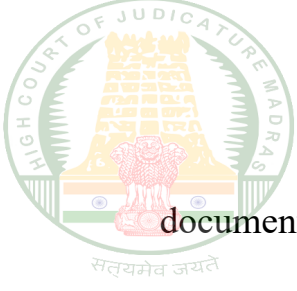


equally on the plaintiff and defendant as legal heirs of the deceased V.Radha

Bai. However, the defendant pleads an oral family arrangement mediated by their mother, in which arrangement, the plaintiff in consideration of the defendant's relinquishment of the Government Job, relinquished his right to the suit property. The defendant having set up a plea of oral family arrangement, the burden is on the defendant to establish the same. The plaintiff on his part has denied the oral family arrangement and further contended that there was no question of the defendant relinquishing his claim to the Government Job, since he was conducting private business. The defendant has not filed any documentary evidence in support of his plea of oral family arrangement. The defendant examined one Ibrahim as D.W2, to prove the oral family arrangement.

(18) Before advertng to the evidence of D.W2, the defendant's testimony in cross-examination as D.W1 is extracted: "1993ல் என் அம்மா தாவா சொத்தைப் பொறுத்து ஒரு குடும்ப ஏற்பாடு செய்து வைத்தார் என்று, நான் சொல்வதற்கு ஆவணங்கள் ஏதும் உண்டா என்றால் இல்லை. 1993லிருந்து இதுநாள் வரை தாவா சொத்தை என் பெயரில் மாற்றுவதற்கு நான் எந்த நடவடிக்கையும் எடுக்கவில்லை..."

(19) Therefore the defendant has clearly admitted that he has no



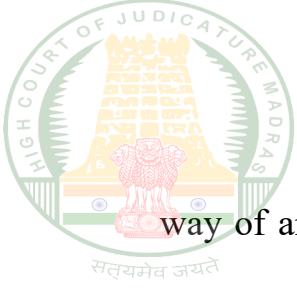
documentary proof to establish the oral family arrangement. D.W2 in his cross-

examination stated as follows: "....வாதி பிரதிவாதி குடும்பத்திற்குள் நடந்ததாக சொல்லும் குடும்ப ஏற்பாடு என்பது என் முன்னிலையில் ஏதும் ஏற்படவில்லை. குடும்ப ஏற்பாடு என்பது இராதாபாய் சொல்லிதான் எனக்குத் தெரியும்..."

(20) It is not known how the evidence of D.W2 supports the defendant's case. According to the defendant, the oral family arrangement took place in 1993. If in fact, the family arrangement had taken place in 1993, the defendant should have taken effective steps to mutate the revenue records in his name.

(21) From the above extract of the defendant's evidence in cross-examination, it is clear that the defendant admittedly did not take any steps from 1993 to mutate the revenue records in his name. In the absence of any convincing evidence in support of the oral family arrangement, this Court finds absolutely no infirmity in the finding of the trial Court, that the oral family arrangement pleaded by the defendant was not proved. The defendant further contends that in the oral family arrangement, the plaintiff orally relinquished his share in the suit property in consideration of the defendant forfeiting his claim to the Government job.

(22) It is trite that relinquishment of any immovable property cannot be by



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way of an oral agreement – it has to be by way of registered document. I am fortified in my view by the judgment of this Court in the case of ***Prema Suryanarayanan vs. S.Venkataraman*** dated **21.03.2018**. The learned Judge of this Court while dealing with a similar issue of relinquishment of right to property in an oral arrangement, held as follows: *“The claim of the 1st defendant is that the sisters had agreed to give up their shares in the suit property. Such giving up would amount to a release of right in immovable property which has to be by way of a registered instrument. A partition can be oral and it can be unequal also but when a release is claimed it has to be by way of registered instrument. No such registered instrument has been produced and it is not the case of the 1st defendant that the sisters had in fact executed a registered instrument relinquishing their rights over the properties”*.

(23) In the instant case also, it is not the defendant's case that the plaintiff had executed a registered instrument relinquishing his right over the properties. Therefore even the plea of oral relinquishment by the plaintiff of his right in the suit property in the oral family arrangement cannot be sustained.

(24) The judgments relied on by the learned counsel for the defendant, on the facts of the case, are inapplicable, since in the present case, the oral family arrangement itself has not been proved. Only when the oral family arrangement

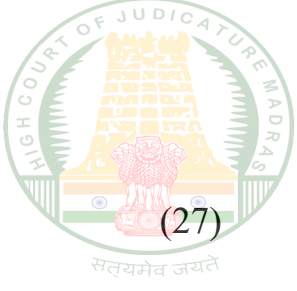


is proved, that the question of giving effect to it, in the interest of family peace would arise.

(25) In the absence of any supporting evidence in proof of the oral family arrangement, this Court finds absolutely no infirmity or illegality in the findings of the Trial Court. ***Hence, issue No.[a] is answered against the appellant.***

Issue No.[b]:-Whether the plaintiff is entitled for the relief of partition, separate possession of the suit property and for permanent injunction?

(26) As already pointed out, the property was the absolute property of the parties mother, she having obtained the same under a registered Settlement Deed dated 20.10.1983, under Ex.A3. Indisputably, the parties mother died intestate and therefore as per Section 15 of the Hindu Succession Act, the property would devolve on both the plaintiff and the defendant as legal heirs. This Court therefore finds that plaintiff is entitled to ½ share in the suit property. Since this Court has found that the plaintiff is entitled to ½ share in the suit properties, the defendant cannot alienate or encumber the suit property by taking advantage of his possession. Therefore, the plaintiff is entitled to a decree for permanent injunction restraining the defendant from alienating the suit property till the plaintiff's share is divided by metes and bounds in final decree proceedings. ***Hence, issue No.[b] is answered in favour of the plaintiff and against the defendant.***



AS.No.645/2023

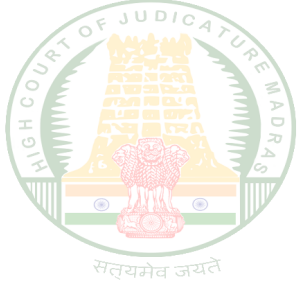
(27)

In the result, this Court finds no merit in the First Appeal and accordingly, the same is **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

20-04-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
Index: Yes
AP/dsn

To
The VI Additional Judge, City Civil Court,
Chennai.



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AS.No.645/2023

N.MALA, J.

AP/dsn

AS.No.645/2023

20-04-2026