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A.S.No.5 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 05.02.2024	Delivered on .2024
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CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

A.S.No.5 of 2021
and
C.M.P.No.172 of 2021

Durga

...Appellant

Vs.

1.Jeyalakshmi

Thirupura Sundari (deceased)

2.Vijayalakshmi

G.Loganathan (deceased)

3.Kamakshi

4.Deepavathi

Pushpa (deceased)

5.S.Balasubramani

6.S.Munuswamy

7.S.Kotteswaran

8.R.Kamatchi

9.L.Usha

...Respondents



Prayer: First Appeal filed under Section 96 of C.P.C., against the judgment and decree dated 25.07.2019 in O.S.No.7229 of 2014 passed by the III-Additional City Civil Court, Chennai.

For Appellant : Mr.A.Swaminathan

For Respondents : Mr.G.Thangavel

for R3, R4, R8 & R9

R1 - No Appearance

R2, R5 to R7 - Exparte

J U D G M E N T

The unsuccessful plaintiff is the appellant herein. The parties are referred to as per their status before the Trial Court.

2.The basic averments that are required for determination of the appeal is as under:-

The plaintiff filed a suit, claiming 1/5th share in 'A' & 'B' schedule properties and she also sought for declaration to declare the settlement deeds executed in favour of D1 to D3 and D5 to D7 as null and void namely, Ex.A11/settlement deed executed in favour of D1 dated 09.02.2000, Ex.A12 / settlement deed executed in favour of D2 dated 26.02.2001,

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Ex.A13 / settlement deed executed in favour of D3 dated 28.02.2001,

Ex.A14 / settlement deed in favour of D5 to D7 (grand daughters) dated

06.09.2001 and Ex.A15 / settlement deed executed by D4 in favour of D5 to

D7.

3.It is admitted by both the parties that 'A' schedule property was purchased by the plaintiff's father late P.Govindarajulu under Ex.A1 / sale deed dated 03.05.1982 registered as Document No.673/1982 and on the very same day, 'B' schedule property was purchased by the said P.Govindarajulu in the name of his wife, G.Kamalammal under a sale deed dated 03.05.1982 which was marked as Ex.A3. Ex.A2 is the parent document for Exs.A1 & A3. As per Exs.A6 & A7, the father P.Govindarajulu died on 31.08.1998, leaving behind his wife, defendants 1 to 4 and the plaintiff as legal heirs. The mother, G.Kamalammal died on 04.01.2014 as could be seen from the Ex.A8 / death certificate. The plaintiff claims 1/5 share stating that she is the youngest daughter, who got married on 17.04.1983 as per Ex.A4.



4.The defendants filed a written statement denying the share of the plaintiff *inter alia* contended that 'A' schedule property was purchased by the father, P.Govindarajulu and 'B' schedule property was also purchased by the father in the name of his wife, Kamalammal and after death of Govindarajulu, mother had executed settlement deeds namely, Exs.A11 to A15 in favour of her daughters, son and grand daughters and therefore, the plaintiff is not entitled to any share. The plaintiff examined herself as P.W.1 and Exs.A1 to A18 were marked. On the side of the defendants, D.W.1 & D.W.2 were examined and Exs.B1 to B6 were marked.

5.It is the case of the defendants that since the father / Govindarajulu has purchased the property in the name of the plaintiff in which he had also attested as attestor witness under Ex.A16, the plaintiff has got married in the year 1983, within four years in lieu of her share in 'A' schedule property her father has purchased the property under Ex.A13 in favour of the daughters and he had also attested the said document. The Trial Court believed the case of the defendants and dismissed the suit. Hence, the appeal.

6.The following question arise for consideration of this appeal:-



i) *Whether the order of the Trial Court is sustainable in law.*

ii) *Whether the plaintiff is entitled for 1/5th share in 'A' & 'B'*

schedule properties.

iii) *Whether the plaintiff is entitled for relief of declaration to declare Exs.A11 to A15 as null and void.*

iv) *Whether the plaintiff is entitled for relief of preliminary decree as prayed for ?*

7.Heard Mr.A.Swaminathan, learned counsel appearing for the appellant and Mr.G.Thangavel, learned counsel appearing for the respondents R3, R4, R8 & R9.

8.The defendants 1 to 3 are elder sisters of the plaintiff while the 4th defendant is the brother. The brother / 4th defendant was married to the daughter of the 1st defendant. The defendants 5, 6 & 7 are the beneficiary in the various settlement deeds executed in the year 2000 and 2001. The defendants 5 to 7 are the daughters of the 4th defendant and the defendants 8 to 11 are the legal heirs of the deceased 2nd defendant (one of the sisters). P.Govindarajulu and Kamalammal are the parents of the plaintiff and the



defendants 1 to 4. There is no dispute regarding the date of death of the father and the mother. Mother, Kamalammal died on 04.01.2014. The said Kamalammal had executed various settlement deeds in favour of her daughters namely, defendants 1 to 3 and also settled some properties in favour of the grand daughters through the son / 4th defendant. The plaintiff contends that the settlement deeds are sham and nominal.

9.Per contra, it is the specific case of the defendants that the 'A' schedule property is very small property where defendants 1 to 3 / daughters of the said couple Govindarajulu & Kamalammal were residing. At the instance of the plaintiff, four years after the marriage namely, 17.04.1983, father had purchased the property in the name of the plaintiff and also attested the document namely, Ex.A16 / sale deed and therefore, she has relinquished the right over the property and the remaining property. With regard to 'B' schedule property, settlement deeds have been executed by Kamalammal in favour of her daughters and the grand daughters born through the son. Settlement deeds are of the year 2000 & 2001. The suit has been filed in 2014 namely, 13 years after the alleged settlement deeds and as a consequential relief, she has sought for relief of partition assumes



significance.

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10. With regard to execution of the settlement deeds and the subsequent development in the property covered under the impugned settlement deeds, the admission made by the plaintiff in the witness box as P.W.1 in cross-examination regarding the settlement deeds, Exs.A11 to A15 assumes significance. Though she initially evaded to answer, the question with regard to her father as attestation witness in Ex.A16 / sale deed, by which the property purchased by the father in her name, she evaded to answer. Subsequently, she admitted the same and further denied execution of Ex.A16. It remains to be stated the as per Ex.A16, sale deed stands in the name of the plaintiff. Father has attested in the sale deed and the fact that after purchase of the property in the name of the plaintiff at Nerkundram at Chennai as covered under Ex.A16, she had orally relinquished her right in 'A' schedule property and other persons have obtained settlement deeds from the mother where both the properties are adjacent to each other and they are also made developments which is 20 to 30 years before the institution of the suit assumes significance.

11. P.W.1 has specifically confronted with the suggestion that when



the defendants 1 to 3 had constructed the house 25 to 35 years before itself, she has not raised any objection at that time. It is a specific evidence which read as follows:-

"25, 30 வருடங்களுக்கு முன்பே 1 முதல் 3 பிரதிவாதிகள் அவர்களுடைய வீடுகளை கட்டிமுடித்து விட்டனர் என்றால் சரி. 1 முதல் 3 பிரதிவாதிகளுக்கு ஒதுக்கப்பட்ட இடத்தில் அவர்கள் வீடு கட்டிக்கொண்டதால் நான் வீடு கட்டும்போது எந்த வித ஆட்சேபனையும் செய்யாமல் இருந்தேன் என்றால் எனக்கு சொத்து கொடுப்பதாக சொல்லியதால் நான் ஆட்சேபனை செய்யவில்லை."

12. In other words, the plaintiff had admitted in the cross-examination that even 25 / 30 years before the institution of the suit, the construction of houses by the defendants in the portion allotted to them were completed and she has not demanded any share or property after death of her father or during the life of her mother. The mother, Kamalammal had executed a settlement deed settling the 'B' schedule property and her share in the 'A' schedule property after the life time of Govindarajulu therefore, the defendants D1 to D4 has put up small construction which is admittedly 25 to 30 years before the institution of the suit which was admitted by P.W.1 / plaintiff in the cross-examination assumes significance.



13. Based upon the settlement deed executed by Kamalammal, the defendants D1 to D4 have put up the construction 25 to 30 years before institution of the suit. Further more, the alleged settlements are more than 25 years on the date of filing of the suit assumes significance. Though P.W.1 had whispered in the chief-examination that she had no knowledge, however, in the cross-examination, she had categorically admitted the construction put up by the defendants in the property. This creates doubt as to the version of P.W.1 in the witness box. Further more, it remains to be stated that of the settlement deeds Exs.A11 to A15, the mother of Kamalammal had referred to Ex.A16 that father during his life time had purchased the property at Nerkundran, Chennai in favour of the plaintiff so she had relinquished her right and therefore, defendants D1 to D4 are entitled for the share in the property of the father namely, 'A' schedule property and in respect of Kamalammal's property, she had executed the settlement deeds in favour of the D1 to D4.

14. In respect of the 'A' schedule property. the recital in the settlement deed is as follows:-

"என்னுடைய நான்காவது மகளுக்கு என் கணவனால்



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முன்பே வீடு ஒன்று நெற்குன்றம் செந்தமிழ் நகர் அகத்தியர்
நகர் 15 அம்மையப்பன் தெருவில் வீடு வாங்கி
கொடுக்கப்பட்டுவிட்டதாலும் இந்த செட்டில்மெண்ட் சாசனத்தில்
அவர்களுக்குரிய சொத்து விவரம் இதில் காட்டப்படவில்லை."

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The above contents goes to show that the mother has taken care to make the distribution equally among the four daughters and the son. There is a specific recital even in the year 2010 namely, 14 years before the institution of the suit assumes significance and thus, I find that by virtue of recital in Exs.A11 to A15 by the mother, Kamalammal and in view of the admission of P.W.1 in the cross-examination regarding Ex.A16, oral relinquishment pleaded by the defendants stand proved. Consequently, the plaintiff is not entitled for any share in 'A' schedule property / father's property. In respect of 'B' schedule property, Kamalammal is the owner of the property as such she has every right and title over the 'B' schedule property. On such capacity, she had executed Exs.A11 to A15, settlement deed in favour of her three daughters and son therefore, the plaintiff is not entitled to any share in the 'B' schedule property.

15. Hence, finding of the Trial Court that the plaintiff is not entitled to



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any share in the 'A' & 'B' schedule properties for the different reason as extracted supra is hereby confirmed. I find no merit in this case, accordingly, this Appeal Suit is dismissed. No costs. Consequently, connected miscellaneous petitions, if any, are closed.

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Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order

Nuetral Citation :Yes/No

To:-

The III-Additional City Civil Court,
Chennai.

RMT.TEEKAA RAMAN, J.

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