



0IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 18.3.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

A.S.No.37 of 2015

and

M.P.Nos.1 & 2 of 2015

S.Senbagavalli

... Appellant/Plaintiff

vs.

1.Smt.G.Komalavalli

2.D.Varalakshmi

3.A.Dhandayuthapani

... Respondents/Defendants.

First Appeal filed under Section 96 of CPC preferred against the judgement and decree dated 11.10.2014 passed by the XIX Additional City Civil Judge, Chennai, in O.S.No.5669 of 2012.

For appellant

:: Mr.M.Muthappan

JUDGEMENT

The plaintiff in O.S.No.5669 of 2012 on the file of the XIX Additional Judge, City Civil Court, Chennai, has come up with this first appeal.

2. The said suit was filed by the plaintiff for partition and separate allotment of her 1/4th share in the suit properties. The defendants contested the suit. By decree and judgement dated 11.10.2014, the trial Court dismissed the suit. Therefore, the appellant is before this Court.

3. In this appeal I have heard the learned counsel for the appellant and also perused the records carefully.

4. The case of the plaintiff is that the suit properties are her ancestral properties. According to her, she and the defendants are the children of one Arumugam and Meenakshiammal. They died intestate, leaving behind the plaintiff and the defendants as the legal heirs. After the demise of the parents, the plaintiff and the defendants continued their joint possession and enjoyment of the suit properties. Therefore, according to the plaintiff, she is entitled for 1/4 share.



5. The defendants 1 to 3 filed their written statement, wherein they have stated that some of the properties are ancestral properties and some are not ancestral properties of the father and mother. It is further stated that Mrs.Meenakshiammal had executed a 'Will' dated 9.6.2004 and as per the Will, the beneficiaries are the third defendant, his wife Smt.Rupavathy, son A.D.Vishnuprathap and his minor daughter A.D.Banupriya. The Will has not been probated so far. It is further stated that the plaintiff had already executed two settlement deeds in favour of her younger son Mr.S.Janarthanan by way of registered settlement deeds dated 18.11.2010 and 8.2.2012. In both the deeds, it has been stated that what is conveyed under the deeds is 1/4 undivided share of the plaintiff. Therefore, according to the defendants, the plaintiff has got no right even to maintain the suit.

6. Based on the above pleadings, the lower Court framed the following issues:

1. Whether the suit is maintainable?
2. Whether the plaintiff has got cause of action to maintain the suit?
3. Whether the plaintiff is entitled for permanent injunction as prayed for in respect of 'B' and 'C' schedule properties?
4. Whether the plaintiff is entitled for 1/4 share in the suit properties?
5. Whether the suit properties are the ancestral properties of Mr.Arumugam and Meenakshiammal?
6. Whether the Will dated 9.6.2004 said to have been executed by Meenakshiammal is true and valid?
7. Whether the claim of the third defendant that he alone has got absolute title over the suit property is sustainable?.

7. Before the trial Court, on the side of the plaintiff, she was examined as P.W.1 and as many as 24 documents were exhibited and on the side of the defendants, the third respondent was examined as D.W.1 and as many as 5 documents were exhibited.

8. Having considered the said evidences available, the lower Court dismissed the suit. That is how the appellant/plaintiff is before this Court with this appeal.



9. In this appeal, the following point has arisen for consideration.

Whether the lower Court was right in dismissing the suit on the ground that having parted away with her 1/4 undivided share in the suit properties, whether the plaintiff can maintain the suit?

10. Exs.B3 and B4 are the settlement deeds, executed by the plaintiff in favour of her son. In those two documents, it has been very categorically stated that the plaintiff has conveyed her 1/4 undivided share in the suit properties to her son. But unfortunately, her son is not a party to the suit. Above all, the plaintiff does not claim anything more than 1/4 undivided share. Since her 1/4 undivided share has already been conveyed to her son, the plaintiff has got no right or interest over the suit properties. As rightly held by the lower Court, if at all there can be demand for partition for 1/4 share, it could be done only by the son of the plaintiff, based on Exs.B3 and B4. In such view of the matter, in my considered opinion, the lower Court is right in dismissing the suit.

11. In view of the above finding, I do not propose to deal with the other issues. The other issues are left open. Since there is no valid grounds, even without ordering notice as provided under Order 41 Rule 11(1) C.P.C., I am inclined to dismiss the first appeal.

12. In the result, the appeal fails and the same is dismissed. No costs. Connected miscellaneous petitions are dismissed.

MSK

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

The XIX Additional City Civil Judge,
Chennai

+ 1 cc to M/s.M.Muthappan, Advocate SR 15235

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