

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Appeal Suit No.429 of 2011

K.Selvaraj

... Appellant/Ist Defendant

-Versus-

1.Minor Selvashalini

2.Minor Sangitha

[Minor respondents 1 and 2 are represented by Mother and Guardian Mrs.Chitra]

3.Minor Priyanka

[3rd minor respondent is represented by Mother and Guardian Mrs.Tamilselvi]

... Respondents/Plaintiffs /2nd Defendant

This appeal is filed under Section 96 of C.P.C against the judgment and decree dated 15.02.2011 passed in O.S.No.21 of 2006 by the learned Additional District Judge, Fast Track Court, Namakkal.

For Appellant : M/s.D.Shivakumar
For Respondents : Mr.N.Manokaran

JUDGMENT

The 1st defendant in O.S.No.21 of 2006 on the file of the learned Additional District Judge, Fast Track Court, Namakkal, is the appellant herein. The respondents 1 and 2 are the plaintiffs in the said suit and the 3rd respondent is the 2nd defendant in the suit. The plaintiffs filed the said suit for partition and separate possession of their 2/3rd shares in the suit properties. The trial court, by decree and judgement dated 15.02.2011, passed a preliminary decree as prayed for. Challenging the same, the 1st defendant is now before this court with this appeal.

2. I have heard the learned counsel for the appellant and the learned counsel for the respondents 1 and 2. No notice was ordered to

the 3rd respondent. I have also perused the records carefully. By consent, this appeal itself is taken up for disposal.

3. This is a suit for partition. The plaintiffs are the daughters of the 1st defendant Mr.Selvaraj. The 2nd defendant is the illegitimate child of the 1st defendant through one Mrs.Tamilselvi. The suit properties are the ancestral properties and therefore, according to the plaintiffs they are entitled for 1/3rd share each.

4. The 1st defendant contested the suit wherein he has not denied the right of the plaintiffs to have shares in the suit properties. What all that he was contesting was that he had no intention to dispose of the entire properties and that there was no demand made by the plaintiffs for partition. The 2nd defendant filed a memo giving up her right to have a share in the suit properties.

5. In this appeal, the following points for consideration has arisen:-

Whether the suit properties are the self acquired properties and, whether the plaintiffs are not entitled for any share?

6. A perusal of Ex.A.4 and Ex.A.5 would go to show that the suit properties are only ancestral properties and, therefore, the plaintiffs are entitled for 1/3rd share each. The learned counsel for the appellant would, however, submit that there is no evidence to prove that the suit properties are the ancestral properties of the 1st defendant.

7. In such view of the matter, in this appeal, the appellant/1st defendant has no ground to urge so as to convince this court to interfere with the preliminary decree passed by the trial court.

8. So far as the 2nd respondent is concerned, she is a minor, but, still her right to share has been given up without getting permission from the court. At any rate, that will not affect the preliminary decree passed because as per Section 16 of The Hindu Marriage Act, the 2nd defendant will take a share only from the share allotted to the 1st defendant.

9. In view of the above, I do not find any merit at all in this appeal and the appeal deserves only to be dismissed.

10. In the result, this appeal is dismissed. No costs.
Consequently, connected MP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Additional District Judge, Fast Track Court, Namakkal.

1 cc to Mr. N.Manokaran,Advocate, SR.No.5973

1 cc to Mr. D.Shivakumaran,Advocate, SR.No.5951

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