



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.46 of 2015 and
M.P.No.1 of 2015

V.Gowri

.. Appellant/ Plaintiff

-Vs-

1.G.Rajasekaran

2.S.Saroja

3.G.Vedachalam

4.S.Duraisani

5.G.Jothi

.. Respondents/ Defendants

Prayer:- This second appeal has been filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 17.07.2014 made in A.S.No.6 of 2011 on the file of the learned Additional District Judge, Chengalpattu setting aside the judgement and decree dated 08.10.2010 made in O.S.No.196 of 2006 on the file of the learned Subordinate Judge, Chengalpattu.

For Appellant

: Mr.R.Karunakaran

J U D G M E N T

The plaintiff in O.S.No.196 of 2006 on the file of the learned Subordinate Judge, Chengalpattu is the appellant herein. The respondents are the defendants in the suit. It is a suit for partition claiming 1/6th share in the suit properties. The trial Court by decree and judgement dated 08.10.2010 decreed the suit as prayed for. As against the same, the first defendant filed an appeal in A.S.No.6 of 2011 on the file of the learned Additional District Judge, Chengalpattu. By decree and judgement dated 17.07.2014, the First Appellate Court has allowed the appeal thereby setting aside the decree and judgement passed by the trial Court. Challenging the same, the appellant/plaintiff is before this Court with this second appeal.

2.This second appeal has come up today for admission. I have heard the learned counsel for the appellant and I have also perused the records carefully.



3.The case of the plaintiff is that, the suit properties were originally owned by Mr.Gopal Mudaliar, namely, the father of the plaintiff. Mr.Gopal Mudaliar had two wives by name Mrs.Sivakami Ammal and Mrs.Baby Ammal. Through the first wife Mrs.Sivakami Ammal, Mr.Gopal Mudaliar had five children. The plaintiff is one of the daughters of Mr.Gopal Mudaliar through his first wife. Through the second wife, Mrs.Baby Ammal, Mr.Gopal Mudaliar had three children by name Mr.Mahalingam, Mr.Mohan and Mrs.Alamelu.

4.Earlier, Mrs.Alamelu who is the daughter of Mr.Gopal Mudaliar through his second wife has filed a suit in O.S.No.81 of 1978 before the learned Subordinate Judge, Chengalpattu, wherein, she had claimed a share in the suit properties left behind by her father Mr.Gopal Mudaliar, who died intestate. In that suit, the plaintiff and the defendants in the present suit as well as Mr.Mahalingam, Mr.Mohan and Mrs.Alamelu who are the children of second wife of Mr.Gopal Mudaliar were all parties. That suit was decreed. The plaintiff and the defendants herein were allotted 6/10 share. That preliminary decree has become final. The Children of the second wife filed a final decree application and got their shares separately. The plaintiff in the present suit who remained exparte in O.S.No.81 of 1978 has come up with the present suit for partition again.

5.The first defendant contested the suit alleging that the present suit is not at all maintainable in view of the decree passed in O.S.No.81 of 1978. It was also contended that the plaintiff is not entitled for partition as she has been ousted from the suit properties.

6.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, she was examined as P.W.1 and nine documents were exhibited. On the side of the defendants, two witnesses were examined and six documents were exhibited.

7.Having considered the above, the trial Court decreed the suit however, which was reversed by the First Appellate Court. That is how the appellant is before this Court with this second appeal.

8.It is not in dispute before this Court that under Ex.A.3 dated 30.04.1980, a preliminary decree for partition was passed. In I.A.No.794 of 1980 in O.S.No.81 of 1978, final decree was also passed in respect of the shares of the children of the second wife of Mr.Gopal Mudaliar. It is evident from the said decree itself that the share of the plaintiff herein has been declared as 1/6 share. The First Appellate Court has held that in view of the said decree obtained in O.S.No.81 of 1978, the present suit is not



maintainable. I am in full agreement with the said finding of the First Appellate Court.

9. But, the learned counsel for the appellant would submit that at this length of time, it is doubtful as to whether it is possible for the appellant to file a final decree application in O.S.No.81 of 1978. Regarding this, I do not want to express any opinion and it is for the appropriate Court to decide whether such final decree application is maintainable at this length of time or not. Regarding the plea of ouster of the plaintiff from the suit properties also, I cannot express any opinion and it is also again for the appropriate Court to decide, if, any final decree application is filed.

10. I wish to reiterate that if any final decree application is filed by the appellant herein in O.S.No.81 of 1978, it is for the trial Court to decide all the issues that may crop up for consideration. I only say that the view taken by the First Appellate Court is correct and therefore, this second appeal cannot be entertained. I also further add that the present suit shall not operate as res judicata for the plaintiff to file a final decree application in O.S.No.81 of 1978. Thus, I do not find any substantial question of law involved at all in this matter so as to admit this second appeal.

11. In the result, the second appeal fails and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar (Judicial)

/true copy/

Sub Asst. Registrar

jbm

To

1. The Additional District Judge,
Chengalpattu.

2. The Subordinate Judge,
Chengalpattu.

1 cc to Mr. R. karunakaran, Advocate, sr. 10503

S.A.No.46 of 2015

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