

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.623 of 2015

and

M.P.No.1 of 2015

1. Usha

2. Kalaivani

.... Appellants

Vs.

1. Thangarasu

2. Kannan

3. Kaliamurthy

4. Chitra

5. Rajesh

6. Pradeep Raja

7. Minor Prakash Raja

(Minor 7th respondent represented by
his father guardian Kannan)

(Respondents 3,4 and 6 are not
necessary parties to the appeal)

... Respondents

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 20.04.2015 made in A.S.No.17 of 2012 on the file of the III Additional Subordinate Judge, Cuddalore, confirming the judgment and decree dated 28.11.2011 made in O.S.No.455 of 2006 on the file of the Principal District Munsif, Cuddalore.

For Appellants : Mr.D.Baskar

J U D G M E N T

The unsuccessful plaintiffs, before the trial Court in a suit for partition of the suit schedule properties, are the appellants.

2. The suit properties originally belonged to one Amirthammal, who is the grand mother of the plaintiffs, having purchased the same, on 19.02.1968. There are two schedules of properties in the plaint and the 'A' schedule property is landed property and 'B' schedule property is lease hold property. After the death of Amirthammal, the properties devolved equally on the defendants 1, 2 and 3. The plaintiffs, are the children of the third defendant, who have now filed suit for partition, contending that the release deed executed by their father, viz, third defendant in favour of the first and second defendants is not binding on them and the third defendant had no absolute right to execute the release deed and the plaintiffs are entitled to a share in the same.

3. Both the Courts below had concurrently held that the properties being self acquired properties of the grand mother which had devolved on her sons equally. The plaintiffs cannot have a right by birth unless the father gives them a portion from his share. Admittedly in this case, the father had executed a settlement deed in favour of his brothers. Though, the plaintiffs have contended that their father was a drunkard and was living a wayward life which was taken advantage by the first and second defendants, the said fact was not proved by the plaintiffs. On the other hand, the defendants 1 and 2 have proved that the release deed was executed in the manner known to law. When the plaintiffs had alleged that the release deed was obtained from the third defendant by virtue of undue influence and misrepresentation, the burden is on them to establish the same. Though the plaintiffs had examined P.W.4, who is their maternal uncle, to prove the fact that the father was a drunkard, it was not believed by the trial Court which had witnessed the demeanor of the parties. When the plaintiffs do not have any right in the suit properties as their father had already released his share in the same, the suit has to be dismissed. Hence the Courts below had rightly held that the plaintiffs are not entitled to any relief in the suit properties. So far as the 'B' schedule property is concerned, only lease hold right was claimed and the lower appellate Court has held that the plaintiffs had not advanced any argument in support of the same. Hence, in the lease hold property, the plaintiffs are not entitled to any share.

4. In view of the above discussion, the Second Appeal is dismissed, as no question of law arises for consideration. Consequently, connected Miscellaneous Petition is closed. No costs.

srn

Sd/-

Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To

1. The III Additional Subordinate Judge,
Cuddalore
2. The Principal District Munsif,
Cuddalore

+1 C.C. To MR.R.GURURAJ, Advocate in SR.NO.41374

S.A.No.623 of 2015
and
M.P.No.1 of 2015

SVI (CO)

Sd/- 07/10/2015

<https://hcservices.ecourts.gov.in/hcservices/>