



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

A.S.No.55 of 2006

R. Suresh

.... Appellant/Plaintiff

vs

1. R. Dhanapal
2. R. Umashankar
3. Smt.Kripambigai
4. R. Meenakshi

...Respondents/Defendant

First Appeal filed under Order 41 Rule (1) r/w Sec.96 of Civil Procedure Code against the judgment and decree dated 19.4.2005 passed in O.S.No.6229 of 2003 by III Additional Judge, City Civil Court, Chennai.

For Appellant : M/s Sarvabhauman Associates
For respondents : Mr.Subbareddy

JUDGMENT

The above appeal arises against the judgment and decree passed in O.S.No.6229 of 2003 on the file of III Additional Judge, City Civil Court, Chennai.

2. The plaintiff is the appellant and the respondents are the defendants in the suit. The defendants 1 and 2 are the brothers of the plaintiff and the third defendant is the mother of the plaintiff and the fourth defendant is the sister of the plaintiff. The plaintiff and the defendants 1,2 and 4 are the children of one late Dr.T. Ramaraj, who died on 6.6.1999.

3. It is the case of the plaintiff that his father, during his life time, as Kartha of the joint family, purchased the suit property on 02.03.1990 for the joint family. Further, in the plaint, the plaintiff has stated that he contributed his money for the joint family and he claimed 6/20th share in the suit property.

4. The third defendant filed her written statement disputing the averments stated in the plaint and stating that it was the first defendant, who had contributed for the construction put up in the suit property. Further, she has stated that the defendants 2 to 4 relinquished their right in favour of the first defendant by Release Deed dated 23.12.2002.



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5. Before the trial Court, on the side of the plaintiff, P.W.1 was examined and 14 documents Exs.A.1 to A.14 were marked. On the side of the defendants, D.W.1 was examined and eight documents Exs.B.1 to B.8 were marked.

6. The trial Court, after taking into consideration of the oral and documentary evidence, let in by the parties, passed a preliminary decree, finding that the plaintiff is entitled to 1/5th share in the suit property. Aggrieved over the preliminary decree, passed by the trial Court, the plaintiff has filed the above appeal.

7. The following point arises for consideration in this appeal:

Whether the plaintiff is entitled to 6/20th share in the suit property after the death of his father on 6.6.1999?

8. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the suit property originally belonged to the father of the plaintiff and the defendants 1,2 and 4, under a registered Sale Deed dated 2.3.1990, marked as Ex.A.1. The third defendant is the mother of the plaintiff and the defendants 1,2 and 4.

9. Admittedly, the father of the plaintiff and the defendants 1,2 and 4 viz., Dr.T. Ramaraj died on 6.6.1999 leaving behind the plaintiff and the defendants as his surviving legal representatives. Though the plaintiff contended that he contributed money for the construction of the building in the suit property, no independent evidence was let in by the plaintiff to establish his contention.

10. The trial Court, taking into consideration of the evidence of P.W.1 and D.W.1, came to the conclusion that the suit property is the separate property of the father of the plaintiff and the defendants 1,2 and 4 and therefore, the plaintiff and the defendants are entitled to 1/5th share each in the suit property.

11. The plaintiff and the defendants are the legal heirs of the deceased Dr.T. Ramaraj under Hindu Succession Act. As per the provisions of the Hindu Succession Act, the plaintiff and the defendants are entitled to 1/5th share each in the suit property. In the absence of any acceptable evidence, let in by the plaintiff, to establish his contention that he contributed money for the construction of the building in the suit property, the trial Court has rightly negated the said contention.



12. The trial Court also accepted the case of the defendants stating that the suit property is a separate property of Dr.T. Ramaraj and passed a preliminary decree, finding that the plaintiff is entitled to 1/5th share. The finding of the trial Court is just and proper.

13. With regard to the Release made by the defendants 2 to 4 in favour of the first defendant is concerned, the trial Court has rightly found that the said issue can be decided at the time of passing of final decree.

14. Under these circumstances, I do not find any ground to interfere with the judgment and decree passed by the trial Court. The appeal is liable to be dismissed. Accordingly, the same is dismissed. No costs.

sr

-s/d-

Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

To

The III Additional City Civil Court, Chennai.

+ 1 cc to M/s.Sarvabhauman Associates, Advocate SR 61708

+ 1 cc to Mr.P.Subba Reddy, Advocate SR 61246

Copy to :

The Section Officer,
V.R.Section, High Court,
Madras.

jsv(co)
prk4/1

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