

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2016

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.396 of 2016
& CMP Nos.8980 and 8981 of 2016

1. Saroja Ammal
2. Vijaya
3. Suguna
4. Sivagami

... Appellants

Vs.

1. Sundaravadhanam
2. Sekar
3. Thangadurai

... Respondents

Prayer:- Appeal suit filed under Section 96 of CPC r/w Order 41 Rule 1 of CPC against the judgment and decree, dated 4.3.2016, in O.S.No.104 of 2013 on the file of Principal District Judge, Villupuram.

For Appellants : Mr.N.Suresh

For Respondents : Mrs.Hema Sampath,
Senior counsel for
Ms.R.Meenal for R1 & R2
No appearance for R3

JUDGMENT

(Judgment of the Court was delivered by **A.SELVAM,J.**)

The judgment and decree dated 4.3.2016 passed in Original Suit No.104 of 2013, by the Principal District Court, Villupuram are being challenged in the present appeal suit.

2. The appellants herein, as plaintiffs, have instituted Original Suit No.104 of 2013, on the file of the trial Court, praying to pass a preliminary decree of partition, wherein the present respondents have been shown as defendants.

3. In the plaint, it is averred that the suit properties are the absolute properties of one Palanimalai Chettiar, who is none other than the husband of the first plaintiff and father of the remaining plaintiffs and defendants and he passed away, leaving behind him the present plaintiffs and defendants. Since the defendants are not amenable for partition, the present suit has been instituted for the relief sought therein.

4. On the side of the first defendant, a detailed written statement has been filed, wherein it is averred that in the suit survey

numbers, several sale deeds have been made by Palanimalai Chettiar and the extent conveyed by him to third parties has not been excluded in the present suit and further the purchasers have not at all been impleaded as defendants for better adjudication and therefore, the present suit deserves to be dismissed.

5. On the basis of the rival pleadings raised on either side, the trial court has framed necessary issues and after analyzing both oral and documentary evidence, has dismissed the suit mainly on the ground that the extent of the property, which has already been sold, is also included in the property description. Against the judgement and decree passed by the trial court, the present appeal suit has been preferred at the instance of the plaintiffs, as appellants.

6. The learned counsel appearing for the appellants/plaintiffs has reiterated the averments made in the plaint and also the evidence available on the side of the plaintiffs.

7. The learned counsel appearing for the contesting defendants has befittingly contended that the second plaintiff by name Vijaya has been examined as P.W.1 and she candidly admitted that

even during life time of her father, by name Palanimalai Chettiar, he created various sale deeds in favour of third parties and the extent of the property conveyed through the said sale deeds has also been included in the suit property and the trial court, after considering the fact that the purchasers have not been impleaded as party respondents and also after considering the fact that the extent of the property, which has already been sold, is also included in the suit property, has rightly dismissed the suit and therefore, the judgment and decree passed by the trial court do not warrant interference.

8. It is an admitted fact that the suit survey numbers are originally belonged to Palanimalai Chettiar, who is none other than husband of the first plaintiff and father of the remaining plaintiffs and defendants. It is also equally an admitted fact that he passed away, leaving behind the present plaintiffs and defendants, as his legal heirs.

9. On the basis of the argument put forth on the side of the contesting respondents, this Court has perused the entire cross-examination put forth to P.W.1 (2nd plaintiff) and ultimately found that she has candidly admitted to the effect that her father during his life time has effected various sale deeds in favour of third parties.

10. Even as per Ex.B.16 and Ex.B.17, this Court is of the view that some portion of the properties in Survey No.69/4 has already been sold by Palanimalai Chettiar, but as rightly contended on the side of the contesting respondents, without excluding the extent already sold by Palanimalai Chettiar, the entire extent has been shown as suit property and therefore, it is very difficulty to pass a decree in the present case.

11. The trial court, after considering the fact mentioned supra, has dismissed the suit.

12. It has already been pointed out that the suit survey numbers are originally belonged to Palanimalai Chettiar, who is none other than the husband of the first plaintiff, father of the remaining plaintiffs and defendants. It is also equally an admitted fact that after effecting various sale deeds by the said Palanimalai Chettiar, some portions of the properties are remaining in the said survey numbers and in which, both the plaintiffs and defendants are having their shares.

13. The trial court has mainly dismissed the suit on the ground that the extent already sold has also been shown as suit property.

14. Considering the defect pointed out by the trial court and also considering the fact that both the plaintiffs and defendants are having shares in respect of the remaining portions, this Court is of the view to set aside the judgment and decree passed by the trial court and remit the Original Suit No.104 of 2013 to the file of the trial court.

In fine, this **appeal suit is allowed without cost**. The judgment and decree dated 4.3.2016 passed in Original Suit No.104 of 2013 by the trial court are set aside and O.S.No.104 of 2013 is remitted to the file of the trial court. In the trial court, the plaintiffs are directed to take proper steps to exclude the portion of properties already sold and also to amend the suit schedule by way of giving proper four boundaries. The trial court is directed to dispose of O.S.No.104 of 2013 before the end of **December, 2016** and report the same to the Registry, without fail. The Court fee paid by the appellants/plaintiffs is ordered to be refunded to the appellants/plaintiffs forthwith. Both parties are at liberty to adduce

additional evidence if any. Consequently, the connected Miscellaneous Petitions are closed.

(A.S.J.,) (P.K.J.)
15.09.2016

Index:Yes/no
ajr
To

1. Principal District Court, Villupuram.

A.SELVAM,J.
and
P.KALAIYARASAN,J.
ajr

Appeal Suit No.396 of 2016

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