

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2016

CORAM

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

Appeal Suit No.872 of 2008

Prabhakaran ... Appellant/2nd Defendant

Vs

1.Sivasankari 1st Respondent/Plaintiff

2.K.Ramalingam(deceased)

3.Vijaya

4.Solai

5.Rajkumari

6.Suseela ... Respondents 2 to 6/Defendants 1, 3 & 4

R5 brought on record as LRs
of deceased R2 vide order
of court dated 2.3.2011 made
in M.P.No.1 of 2009 in
A.S.No.872 of 2008

R6 impleaded as party respondent
vide order of Court dated 8.2.2011
made in M.P.No.1 of 2010 in
A.S.No.872 of 2008

Prayer:- Appeal suit filed under Section 96 of the Code
of Civil Procedure against the judgment and decree, dated
21.02.2007, passed by the District Court, Nagapattinam, in
O.S.No.48 of 2004.

For Appellant : Mr.C.Jagadeesh

For Respondents : Mr.R.Gopalakrishnan for R1
No appearance for R3 to R6

JUDGMENT

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

Challenge in this appeal suit is to the judgment and
decree dated 21.02.2007, passed in Original Suit No.48 of
2004, by the District Court, Nagapattinam.

2. The first respondent herein, as plaintiff, has
instituted O.S.No.48 of 2004, on the file of the trial Court,
praying to pass a preliminary decree of partition in respect

of her 1/4th share, wherein, the present appellant and the remaining respondents have been arrayed as defendants.

3. The material averments made in the plaint are that the present suit properties and some other properties are joint family properties of Kandasamy Pillai and his two sons, namely, Natarajan and Ramalingam. Amongst them a registered partition has taken place on 29.03.1975, wherein, 'A' schedule properties have been allotted to the share of Kandasamy Pillai, 'B' schedule properties have been allotted to the share of Natarajan and 'C' schedule properties have been allotted to the share of Ramalingam, who is none other than the father of the plaintiff. The second defendant is the brother of the plaintiff and third defendant is her sister. Since the suit properties are joint family properties of the plaintiff and defendants 1 to 3, the plaintiff is having 1/4th share. The plaintiff has endeavoured to get her share in the properties, but her attempts have not been considered by the defendants 1 to 3 and under the said circumstances, the present suit has been instituted for the relief sought therein.

4. In the written statement filed on the side of the first defendant, adopted by the defendants 2 and 3, it is averred that all the suit properties are the separate properties of Kandasamy Pillai and since the suit properties and some other properties are partitioned by virtue of partition deed, dated 29.03.1975, now the suit properties are the separate properties of the first defendant and during his life time, the plaintiff is not having any partible interest and there is no merit in the suit and the same 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 pondering both oral and documentary evidence, has decreed the suit as prayed for. Against the judgment and decree passed by the trial Court, the present Appeal Suit has been preferred, at the instance of the second defendant, as appellant.

6. The consistent case put forth on the side of the plaintiff is that the suit properties and some other properties are the joint family properties of Kandasamy Pillai and his two sons, namely, Natarajan and Ramalingam and amongst them, a registered partition has taken place on 29.3.1975, wherein, 'A' schedule properties have been allotted to the share of Kandasamy Pillai, 'B' schedule properties have been allotted to the share of Natarajan and 'C' schedule properties are allotted to the share of Ramalingam and since the suit properties are the joint family properties, by birth, being the daughter of the first defendant, the plaintiff is having 1/4th share. Under the said circumstances, the present suit has been instituted for the relief sought therein

7. The only defence put forth on the side of the defendants 1 to 3 is that all the suit properties are the separate properties of the first defendant and therefore, during his life time the plaintiff is not having any semblance of right of partition and therefore, the present suit deserves to be dismissed.

8. The trial Court, as pointed out earlier, has decreed the suit as prayed for.

9. The only point that comes up for consideration in the present appeal suit is as to whether the suit properties are the separate properties of the first defendant, by name, Ramalingam.

10. The learned counsel appearing for the appellant/second defendant has contended with great vehemence to the effect the even though the suit properties have been allotted to the share of the first defendant, by virtue of partition deed dated 29.03.1975, all the suit properties are his separate properties and therefore, the plaintiff is not having any right of partition and the trial Court, without considering the nature of defence taken on the side of the defendants 1 to 3, has erroneously decreed the suit as prayed for and therefore, the judgment and decree passed by the trial Court are liable to be set aside.

11. The learned counsel appearing for the first respondent/plaintiff has also equally contended that in the instant case, on the side of the plaintiff, replete documentary evidence is available for the purpose of proving the character of the suit properties and the trial Court, after considering the overwhelming evidence available on record, on the side of the plaintiff, has rightly decreed the suit and therefore, the judgment and decree passed by the trial Court are not liable to be set aside.

12. As pointed out earlier, the only point that has to be decided in the present Appeal Suit is as to whether all the suit properties are the separate properties of the first defendant?

13. It is an admitted fact that Kandasamy Pillai and his two sons, namely, Natarajan and Ramalingam have constituted a Hindu joint family. It is also equally an admitted fact that on 29.3.1975, a registered partition has come into effect amongst them and a copy of the same has been marked as Ex.A3. In Ex.A3, it has been clearly and explicitly stated to the effect that the properties mentioned therein are the joint family properties of Kandasamy Pillai and his two sons. Since the properties mentioned in Ex.A3 are the joint family properties of Kandasamy Pillai and his two sons and since the present suit properties have been allotted to the share of Ramalingam, it is needless to say that at the hands of the

first defendant, all the suit properties are nothing but joint family properties.

14. It is an admitted fact that the plaintiff is the daughter of the first defendant, the second defendant is his son and the third defendant is his another daughter.

15. Considering the fact that the plaintiff is also one of the daughters of the first defendant, she can be treated as one of the members of Hindu joint family, consisting of the defendants 1 to 3 and plaintiff and only by virtue of the said right, the plaintiff has instituted the present suit.

16. The trial Court, after considering the status of the plaintiff and also character of the suit properties, has rightly decreed the suit as prayed for.

17. On the side of the appellant/second defendant an abortive attempt has been made to the effect that the suit items 2 and 3 have already been sold to a third party. Under the said circumstances, the sale effected in favour of the third party, is binding upon the plaintiff. For proving the said factual aspect, no document has been filed on the side of the defendants 1 to 3. Under the said circumstances, the residual attempt made on the side of the appellant also goes out without merits.

18. It has already been pointed out that the trial Court has rightly decreed the suit and therefore, the present appeal suit deserves to be dismissed.

In fine this appeal suit is dismissed without cost. The judgment and decree passed in O.S.No.48 of 2004 by the trial Court are confirmed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

msk

To

The District Judge,
Nagapattinam.

+1cc to Mr.C.Jagadish, Advocate, S.R.No.69782

+1cc to Mr.R.Gopala Krishnan, Advocate, S.R.No.69836

Appeal Suit No.872 of 2008

KJI (CO)

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

CA(03/01/2017)