

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.96 of 2006

1.Mohana @ Mohanasundarai
2.Kasthuribai
3.Kumudha

... Appellants

Vs

1.Mr.K.Janakiraman (Deceased)
2.T.Sivagami
3.Lakshmi
4.Saravanan
5.Bhoopathi

... Respondents

RR 2 to 5 brought on record as LR
of the deceased sole respondent vide
order of Court dt. 18.10.2016
in CMP.No.627 of 2012 in AS.No.96/2006

This appeal is filed under Section 96 of C.P.C. against the decree and judgement dated 12.09.2005 passed in O.S.No.636 of 2004 by the VI Addl. City Civil Court, Chennai.

For Appellants : Mr.M.Kamalanathan
For Respondents : Mr.N.C.Ashok Kumar

J U D G E M E N T

The plaintiffs in O.S.No.636/2004 on the file of the VI Addl. City Civil Court, Chennai are the appellants. The suit was filed by them seeking partition and separate possession of half share in the suit properties. According to the

plaintiffs, the mother of the 1st plaintiff one Chinna Kannammal became a tenant of an extent of 2366 sq.ft of land in Old Door No.80, New Door No.64, Present Door No.163, Solaiappan Street, Old Washermanpet, Chennai-21. The tenancy said to have been entered into in 1934.

2. It is the case of the plaintiffs that the said Chinna Kannammal had put up a superstructure and she was residing there till 13.03.1987. Krishnasamy Naicker, the husband the said Chinna Kannammal and the father of the first plaintiff and defendant, is stated to have died in the year 1973. The said Krishnasamy Naicker and Chinnkannammal had two daughters and one son. The 1st plaintiff is one of the daughters and defendant is the son. The other daughter Baby, is said to have died subsequently as a spinster. The plaintiffs 2 and 3 are daughters of the 1st plaintiff.

3. The plaintiff would contend that the property belonging to the family of Chinnakannammal at Valasaravakkam was sold on 12.05.1975 and Rs.7,250/- was paid to Chinnakannammal towards her share. The said sum of Rs.7,250/- remained with her, till her death on 13.03.1987. The plaintiffs would further claim that the defendant, who is the son of Chinnakannamal had purchased the land of an extent of 2366 sq.ft. under two sale deeds, Exs.B1 and B2 dated 08.05.1989 and 05.07.1989 respectively. According to the plaintiffs, the sale consideration for the purchase of the said property was paid out of money given to Chinnakannammal by the sale of ancestral property in the year 1975. On

the above contentions, the plaintiffs sought half share in the suit properties as they are heirs of the deceased Chinnakannammal.

4. The defendant resisted the suit contending as follows:

The tenancy in favour of Chinnakannammal was admitted and the fact that the tiled superstructure was put up in the land in 1934 was also admitted. The defendant would submit that in the year 1975, the superstructure put up by Chinnakannammal had fallen down and he had erected a new superstructure at his own cost. The Tax assessment for the superstructure stood in the name of his mother, who was the lessee of the land in question. The defendant would also contend that he purchased the said property out of his own income from his employment as well as from borrowed funds. He also mortgaged the property with Muthialpet Benefit Fund on 02.11.1989 under Ex.B7.

5. The defendant would also contend that the assessment of Corporation Tax, Sewerage and Water charges, Electricity consumption charges etc. for the said property, were transferred in his name. The defendant would further submit that since the 1st plaintiff's husband retired from service with B & C Mills in the year 1976, the 1st plaintiff and her family were allowed to occupy a portion of the suit property. In the year 2003, the defendant requested them to vacate the property so as to put up new construction. Hence the plaintiffs have come forward with the above suit so as to prevent the expected dispossession.

6. On the above pleadings, the learned VI Addl. City Civil Judge, Chennai framed the following issues:

- 1) Whether the suit property is the exclusive property of the defendant?
- 2) Whether the plaintiff is entitled to partition as prayed for?
- 3) Whether the plaintiffs are entitled to mesne profits as claimed by them?
- 4) To what other reliefs the plaintiff are entitled to?

7. The 3rd plaintiff was examined as PW1 and Exs.A1 to A7 were marked on the side of the plaintiffs. The defendant examined himself as DW1 and produced Exs.B1 to B18.

8. Upon a consideration of both oral and documentary evidence placed before him, the learned VI Addl. Judge, City Civil Court, Chennai came to the conclusion that the plaintiffs have not established their plea that the consideration for the sale deeds dated 08.05.1989 and 05.07.1989 under Exhibits B1 and B2, was paid out of the sale proceeds received by Chinna Kannammal in the year 1975. The learned Trial Judge accepted the claim of the defendant that he had purchased the property from and out of his income and upheld the claim of the defendant that he is the owner of the land. In so far as the superstructure is concerned, the learned VI Addl. City Civil Court, Chennai found that the plaintiffs have not established that the superstructure said to have been erected by the Chinnkannammal in 1934 continued to exist. The learned Trial Judge

accepted the version of the defendant that the superstructure put up in the year 1934 had fallen down in 1975 and he had put up the present superstructure.

9. Upon the above findings, the learned VI Addl. City Civil Court, Chennai, non-suited the plaintiffs and dismissed the suit for partition.

10. Aggrieved by the judgement and decree, the plaintiff have preferred the above appeal.

11. I have heard Mr.M.Kamalanathan, learned counsel appearing for the appellants and Mr.N.C.Ashok Kumar, learned counsel appearing for the respondents.

12. The following points emerge for consideration in the above appeal:

1)Whether the plaintiffs have established their claim that the suit property was purchased by the first plaintiff out of sale proceeds of the ancestral property?

2)Whether the plaintiffs have established the existence of superstructure put up by Chinnakannammal in the year 1934?

3)Whether the plaintiffs are entitled for partition and separate possession of half share as claimed by them?

4)To what other reliefs the plaintiffs are entitled to?

13. I have gone through the oral and documentary evidence. It should be pointed out that the 1st plaintiff, who could alone claim a share and who could alone depose about the nature of acquisition etc., had not chosen to enter into the box. The 3rd plaintiff, who is the daughter of first plaintiff had deposed as PW1 and no acceptable reason has been given for non-examination of the first plaintiff, who is the most competent of the witnesses. The very claim of the plaintiffs according to me is unacceptable. The plaintiffs would claim that Chinnakannammal sold a property on 12.05.1975. Out of the sale proceeds received by her (a sum of Rs.7250/-) the suit property was purchased on 08.05.1989 and 05.07.1989. Such a plea by itself raises doubts in the mind of the Court. The 3rd plaintiff, who is aged about 48 years in the year 2004 deposed as PW1. According to me, she is not competent witness to speak about the transaction. Even the documents produced by the plaintiffs would at best show that Chinnakannammal was a tenant and the property tax assessment etc. were at one point of time, in her name. None of the documents produced by the plaintiffs are useful for the purpose of establishing the vital link between the sale in 1975 and the purchase in 1989.

14. After the death of Chinnakannamma in the year 1977 and after the execution of Ex.B1 and Ex.B2, all the revenue records have been mutated in the name of the sole defendant and from Ex.B7, it could be seen that the defendant had mortgaged the property, exercising his right as owner. The 1st and 3rd

plaintiffs, who claim to be residents of a portion of the same house, cannot claim ignorance of these happenings.

Points 1.

15. Mr.M.Kamalanathan, learned counsel for the appellants would strenuously contend that the fact that mother of the 1st plaintiff was a tenant and the 1st defendant himself had purchased the property, would enable the 1st plaintiff to claim her share in the property. I am unable to persuade myself to agree with the said contention of the learned counsel. Admittedly the sale deeds stand in the name of the defendant. It is for the plaintiff to prove the source of consideration. It is not the case of the plaintiffs that there was a joint family or that the family was possessed of property yielding income and the defendant was a manager or Kartha of the family, therefore, the sale deeds were taken in his name. It is the specific case of the plaintiffs that the property was purchased out of the sum of Rs.7250/- received by Chinnakannammal on 12.05.1975. Considering the gap of 14 years between the sale and the purchase, I have to necessarily agree with the Trial Court, where it concluded that the plaintiffs have not established their claim regarding source of consideration for the purchase under the sale deeds dated 08.05.1989 and 05.07.1989.

Point No.2

16. Mr.Kamalanahan, learned counsel appearing for the appellants realizing the difficulty in claiming a share in the entire land and building would

attempt to persuade me to atleast accept the claim with reference to the building. The learned counsel would submit that admittedly, Chinnakannammal had taken vacant land on lease and had put up superstructure in the year 1934 and according to him, as daughter of Chinnakannammal, the 1st plaintiff would be entitled to atleast a share in the superstructure. Mr.N.C.Ashokkumar, learned counsel appearing for the respondent would point out that there was no evidence to show that the superstructure was put up by Chinnakannammal in the year 1934. He would also point out that there was also lack of evidence regarding existence of superstructure put up by Chinnakannammal.

17. The 1st plaintiff has not chosen to enter into box. The evidence of 3rd plainiff as PW1 is not convincing and cogent so as to draw interference with the superstructure put up by Chinnakannammal in the year 1934 is still in existence. The oral testimony of the defendant coupled with the documentary evidence on the side of the defendant is cogent and convincing.

18. In my considered opinion, I am unable to find any circumstance so as to enable me to interfere with the findings of the learned Trial Judge on the ownership of the superstructure also. I must point out that the prayer in the plaint is contradictory in the sense that the claim made in the plaint is to the effect that Chinnakannammal being a tenant of the property, having put up the superstructure, the 1st plaintiff alone with the defendanat would be entitled to a

share. It is not known how plaintiffs 2 and 3 would be entitled to share even during life time of the 1st plaintiff. The prayer-A of the plaint runs as follows:

“ a preliminary decree for partition of the House, Ground and Premises bearing (Old door No.80), new door No.64, present new No.163, Solaiappan Street, Old Washermanpet, Chennai-21, morefully described in the plaint schedule hereunder, by metes and bounds and for separate possession of the ½ share of the plaintiffs.”

19. In my considered view the plaintiffs should be non-suited on this ground also. In the result, point Nos.1 and 2 answered against the plaintiffs. In view of the findings rendered above Point Nos.3 and 4 are also answered against the plaintiffs. The plaintiffs are not entitled to any relief in the suit and the appeal is liable to be dismissed. In fine, the appeal is dismissed confirming the judgement and decree of the Trial Court. However, there will be no order in the circumstances of the case.

10.11.2016

Index : Yes/No
Internet: Yes/No
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To
The VI Addl. City Civil Court, Chennai.

R.SUBRAMANIAN,J

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