



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.04.2016

Pronounced on : 26.05.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

A.S.(MD)No.21 of 2011

WEB COPY

1.Theresammal (Died)

2.Gnana Prakasam

3.Xavier

4.Kennady : Appellants

[Appellants 2 to 4 and respondents 1 to 5 are recorded as LR's of the deceased first appellant made in memo USR No.2554 of 2013, dated 21.08.2013, vide order dated 22.08.2013].

Vs.

1.Regis

2.Belsi

3.Esabella

4.Helen

5.Gabriel : Respondents

PRAYER: Appeal Suit is filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree dated 30.06.2010 passed in O.S.No.182 of 2009, on the file of the District Judge, Kanyakumari at Nagercoil.

For Appellants

: Mr.P.Prabhakaran

For Respondents

: Mr.V.Meenakshisundaram

For Mr.D.Nallathambi

JUDGMENT

The appellants herein, who are the defendants in the suit, which was filed by the respondents herein for partition and separation possession, have come up with the present Appeal Suit questioning the validity of the Judgment and Decree dated 30.06.2010 made in O.S.No.182 of 2009, on the file of the District Court, Kanyakumari at Nagercoil.

2. The case of the plaintiffs, as culled out from the plaint, is as follows:-

The first defendant is the mother of the plaintiffs and the other defendants. The suit property originally belonged to late John Chettiar, who is the husband of the first defendant and the father of the plaintiffs and the defendants 2 to 4. He was in possession and enjoyment of the suit property till his death, viz., on 08.11.2003 and he left the plaintiffs and the defendants as his surviving legal heirs. While the said John Chettiar was alive, he had yet another property of 30 cents of land, which was allotted to the fifth plaintiff and the defendants. The suit property was purchased by the said John Chettiar on 11.11.1970 and there is a house, in which the plaintiffs 2, 4, 5 and the first defendant were residing. The plaintiffs 1, 3 and 4 were unmarried.



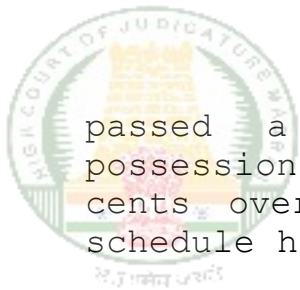
Since they have no other residence, the suit property was earmarked as their only residence.

2.1. It is further averred in the plaint that both the parties are Christians governed by the Indian Succession Act 1925. The first defendant is entitled to $1/3^{\text{rd}}$ share and the plaintiffs and the other defendants are entitled to equal share in the remaining $2/3^{\text{rd}}$ share of the suit property. The plaintiffs and the first defendant were in possession and enjoyment of the suit property jointly. The defendants were not agreeable for partition of the suit property. Under the above stated circumstances, the plaintiffs had to file the said suit.

3. A Written Statement was filed by the defendants 1 to 4 contending that the suit was not maintainable. The plaintiffs suppressed the material facts and they have not come forward with clean hands. The suit is also bad for partial partition. The said Late John Chettiar left one more property in Old Survey No.7022, Resurvey No.514/C to an extent of 6.658 cents and the plaintiffs suppressed the same. The plaintiffs 1, 3 and 4 are nuns and they renounced the world and they abandoned all their rights. Thus, according to the defendants, nuns cannot have any right whatsoever over the suit properties owned by the family and they have no right to give power of attorney to the fifth plaintiff.

4. It is further averred in the Written Statement that during his lifetime, the said John Chettiar conveyed 7.228 cents of lands out of 30 cents to the second defendant, by virtue of settlement deed dated 22.10.1999, vide document No.3146 of 1999 and 6.693 cents of lands to the third defendant by way of registered document No.3147/2009, dated 22.10.1999 and 5.400 cents of lands to the fourth defendant by a registered settlement deed dated 28.05.2001, vide document No.7073 of 2001. The remaining area was owned by him till his death and he died intestate. The first defendant is entitled to $1/3^{\text{rd}}$ share over the said property and the plaintiffs 2, 5 and the defendants 2 to 4 are entitled to remaining $2/3^{\text{rd}}$ share over the suit properties. However, the plaintiffs had purposely suppressed the same and thus, according to the defendants, the suit was not maintainable and it was liable to be dismissed.

5. Based on the above facts, the Trial Court framed appropriate issues. On the side of the plaintiffs, one witness was examined as PW-1 and as many as three documents were marked as EX-A1 to EX-A3. On the side of the defendants, no witness was examined and no documents were marked. Having considered all the above, the Trial Court, by Decree and Judgment dated 30.06.2010, held that the plaintiffs are entitled for partition and separate possession of the suit property as prayed for and further held that the right of residence of the plaintiffs 1, 3 and 4 also cannot be denied by the other parties in the suit and accordingly,



passed a preliminary decree for partition and separation possession of the plaintiffs 5/8th share in 2/3rd share, viz., 4.687 cents over the plaint schedule property, allotting the plaint schedule house to the plaintiffs.

6. Assailing the validity and correctness of the Decree and Judgment passed by the Trial Court, the present Appeal Suit has been filed by the appellants/defendants.

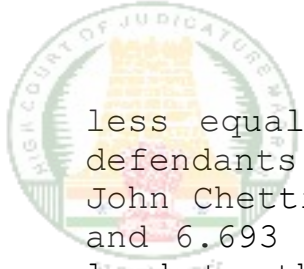
7. I have heard the learned counsel appearing for the appellants, the learned counsel appearing for the respondents and I have also gone through the materials available on record carefully, including the Judgment rendered by the Court below.

8. The learned counsel appearing for the appellants/defendants submits that the Trial Court, without any basis, came to the conclusion that the respondents/plaintiffs are entitled to 5/8th share in 2/3rd share. It is further submitted that PW-1, in his chief-examination, has categorically admitted that yet another property belonged to his father has not been included in the suit schedule, over which four persons have got share. The above vital aspect, according to the learned counsel for the appellants/defendants, was not taken into consideration by the Trial Court, while passing the preliminary decree and thus, the suit filed by the respondents/defendants was bad for piecemeal partition. Therefore, the learned counsel prays that the Judgment and Decree passed by the Trial Court is liable to be set aside.

9. On the other hand, the learned counsel appearing for the respondents/plaintiffs submits that the relationship between the parties are not in dispute. It is also not in dispute that the suit property was purchased and owned by the father of the plaintiffs and the defendants 2 to 4. Insofar as the other properties are concerned, during the lifetime of the said John Chettiar, he settled the same in favour of the defendants 2 to 4 and the fifth plaintiff and thus, the suit filed by the respondents/plaintiffs for partition and separate possession was maintainable and the Appeal suit filed by the appellants/defendants is liable to be dismissed, affirming the Judgment and Decree passed by the Court below.

10. I have considered the above submissions.

11. The fifth plaintiff, who was examined as PW-1, has stated in his proof affidavit that another property of 30 cents, which is situated at or about 100 feet away from the suit property, was allotted for him and the defendants 2 to 4, by their father and at the time of the execution of the settlement deed, since he was out of station, the deed was not executed in his favour by his father and he is in possession of the area allotted to him. In his cross-examination, PW-1 has admitted that the said property was not included in the present suit. In the plaint also, the sketch of the above said 30 cents has been shown and it is seen that the defendants 2 to 4 and the fifth plaintiff were allotted more or



less equal share of the property. In the Written Statement, the defendants admitted that out of 30 cents of land, the deceased John Chettiar conveyed 7.228 cents of land to the second defendant and 6.693 cents of land to the third defendant and 5.400 cents of land to the fourth defendant by way of various registered sale deeds. Though, in the written statement, it is stated that the remaining area, out of 30 cents, was owned by late John Chettiar and they were entitled for a share in the left over property of 30 cents, the appellants/defendants have not chosen to come into witness box to depose evidence. It is the specific case of the respondents/plaintiffs that PW-1 was in possession and enjoyment of the left out share of the property of 30 cents of land and that the settlement deed was not executed in his favour, since he was out of station. To disprove such a claim of the respondents/plaintiffs, the appellants/defendants have not produced any evidence and have not prepared to adduce any oral evidence. Moreover, the appellants/defendants have not taken any step to include the left over property also in the suit, when they admitted that the suit property was purchased by the husband of the first defendant and the father of the other parties.

12. As I have already narrated above, the relationship between the parties and that they are governed by the Indian Succession Act, 1925 and the suit property was purchased by the late John Chettiar on 11-11-1970 are not at all disputed by the appellants/defendants. It is the case of the appellants/defendants that the plaintiffs 1, 3 and 4 are nuns and they have renounced the world and they abandoned their rights over the property. However, the appellants/defendants have not adduced any evidence to prove that the plaintiffs 1, 3 and 4 are nuns and they abandoned their rights over the property. It is not disputed by the appellants/defendants that the respondents/plaintiffs and the defendants 2 to 4 are not the children of late John Chettiar. Under such circumstances, this Court is of the view that the Trial Court was right in granting the relief of partition and separate possession, which does not require any interference at the hands of this Court, as the reasons given by the Trial Court are cogent, convincing and acceptable.

13. In the result, the Appeal Suit is dismissed. No costs.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

The District Judge, Kanyakumari at Nagercoil.

+One cc to Mr.D.Nallathambi, Advocate, SR.No.27244

+One cc to Mr.P.Prabhakaran, Advocate, SR.No.27351

NB