

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.11.2017

Delivered on : 27.11.2017

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.117 of 2017

and

C.M.P.No.5120 of 2017

G.Rangarajan @ Ravi ... Appellant/Plaintiff

vs.

K.N.S.Lakshmi Respondent/Defendant

Appeal suit filed under Section 96 read with Order 41 Rule 1 of Civil Procedure Code, 1908 against the judgment and decree dated 01.07.2016, passed by the XVI Additional Judge, City Civil Court, Chennai, in O.S.No.3810 of 2013.

For Appellant : Mr.A.S.Narasimhan

For Respondent : Mrs.R.Ramya for
Mr.C.Jagadeesh

JUDGMENT

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

This Appeal Suit has been directed against the judgment and decree dated 01.07.2016, passed in O.S.No.3810 of 2013, by the XVI Additional City Civil Court, Chennai.

2.The appellant herein, as plaintiff, has instituted Original Suit No.3810 of 2013, on the file of the trial Court, praying to pass a preliminary decree of partition as mentioned therein, wherein, the present respondent has been shown as sole defendant.

3.The material averments made in the plaint are that the defendant is one of the sisters of the plaintiff. The plaintiff has faced loss in his stationery business conducted at Puducherry. Hence, he decided to come and settle at Chennai so as to assist the similar business of the husband of the defendant. During that period, the mother of both the

plaintiff and defendant has received pension. The plaintiff has purchased the suit 'A' Schedule property by utilising separate funds for a sum of Rs.15,525/-. The suit 'B' Schedule property has been jointly purchased by the defendant and mother. The mother of the plaintiff and defendant has passed away leaving behind her, the plaintiff and two daughters and therefore, each is entitled to get 1/3 share in the suit properties. The other sister has relinquished her rights and title over the suit properties in favour of the defendant. Even though the other sister has relinquished her right, both the plaintiff and defendant are equally entitled to share the suit properties. Under the said circumstances, the present suit has been instituted for the reliefs sought therein.

4. In the written statement filed on the side of the defendant it is averred to the effect that the defendant and plaintiff are sister and brother and their mother, by name, Kamalam, has passed away leaving behind her the plaintiff, defendant and another sister by name Pushpa. The suit 'A' Schedule property is the absolute property of the said Kamalam. The suit 'B' Schedule property has been jointly purchased by the defendant and the said Kamalam. It is false to aver that the plaintiff has purchased the suit 'A' Schedule property by utilising separate funds, in the name of mother. In respect of the suit 'A' and 'B' Schedule properties, the other sister, by name, Pushpa has relinquished her rights in favour of the defendant 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 analysing both oral and documentary evidence, has found that the plaintiff is entitled to get 1/3 share in the suit 'A' Schedule property and 1/6 share in the suit 'B' Schedule property and further, he is entitled to get Rs.86,317/- towards past mesne profits and to that extent, judgment and decree has been passed and the same is being challenged in the present Appeal Suit.

6. Before contemplating the rival submissions made on either side, the Court has to narrate the following aspects.

7. It is an admitted fact that both the plaintiff and defendant are the son and daughter of one Kamalam and one Pushpa is her another daughter.

8. The consistent case of the plaintiff is that he has purchased the suit 'A' Schedule property in the name of mother by utilising separate funds.

9. The defence taken on the side of the defendant is that the suit 'A' schedule property is the absolute property of the said Kamalam. The suit 'B' Schedule property has been jointly purchased by both the defendant and the said Kamalam

and further, the other sister, by name, Pushpa, has relinquished all her rights and title over the suit properties in favour of the defendant and therefore, the quantum of shares claimed by the plaintiff is erroneous.

10.The trial Court, after accepting the contentions put forth on the side of the defendant, has passed a preliminary decree in respect of 1/3 share in the suit 'A' Schedule property and 1/6 share in the suit 'B' Schedule property in favour of the plaintiff.

11.The learned counsel appearing for the appellant/plaintiff has contended to the effect that the other sister by name Pushpa has relinquished her interest over the suit properties by virtue of release deed dated 29.09.2008 and the same is not a transfer; at the most, the same can be considered only for enlargement of rights. Under the said circumstances, the conclusion arrived at by the trial Court for granting a preliminary decree, as mentioned in the judgment, is erroneous and therefore, the judgment and decree passed by the trial Court are liable to be modified.

12.The learned counsel appearing for the appellant/plaintiff has relied upon the decision reported in AIR 1955 Mad 641-Board of Revenue and Another vs. V.M.Murugesu Mudaliar, wherein, the full Bench of this Court has held that a release in favour of a co-owner is nothing but enlargement of the share.

13.The learned counsel appearing for the respondent/defendant has laconically contended to the effect that the suit 'A' Schedule property is the absolute property of the mother of the plaintiff and defendant by name Kamalam and the suit 'B' Schedule property has been jointly purchased by the defendant and the said Kamalam. The other sister, by name, Pushpa, has relinquished her interest over the suit properties in favour of the defendant by virtue of release deed dated 29.09.2008 and therefore, the quantum of shares claimed by the plaintiff is erroneous and the trial Court, after considering the available evidence on record, has rightly passed a preliminary decree, as mentioned in the judgment and therefore, the judgment and decree passed by the trial Court are not liable to be interfered with.

14.The only legal point that involves in the present Appeal Suit is as to whether the release deed dated 29.09.2008 would also give benefit to the plaintiff.

15.Even though a faint attempt has been made on the side of the appellant/plaintiff to the effect that the suit 'A' Schedule property is his separate property, sufficient evidence has not been forthcoming. It is an admitted fact that the suit 'A' Schedule property stands in the name of mother, viz., Kamalam. Since the suit 'A' Schedule property stands in the name of the said Kamalam and since she passed

away, the plaintiff, defendant and other sister are each entitled to get 1/3 share.

16.Further, it is an admitted fact that the suit 'B' Schedule property has been jointly purchased by the defendant and the said Kamalam. Therefore, by way of purchase, the defendant is entitled to get half share and mother is entitled to get the remaining half share.

17.As pointed out earlier, the legal point involves in the present Appeal Suit is as to whether the said release deed would give benefit to the plaintiff.

18.Even in the judgment referred to earlier, it is made clear that if a release deed is executed in favour of a co-owner, definitely it would enlarge his share.

19.The release deed dated 29.09.2008 has been marked as Ex.A2 and the same has been executed by the other sister in favour of the defendant, whereby, she relinquished all her interest and title over the suit properties.

20.Considering the dictum given by the Full Bench of this Court and also considering the fact that under Ex.A2, the share of the defendant would be enlarged, it is needless to say that the contentions put forth on the side of the appellant/plaintiff is sans merit.

21.It has already been pointed out that the suit 'A' Schedule property is the absolute property of the mother, viz., Kamalam and since she passed away, the plaintiff, defendant and other sister are each entitled to get 1/3 share. Since Ex.A2 has been executed in favour of the defendant, the defendant in aggregation is entitled to get 2/3 share, whereas, the plaintiff is entitled to get 1/3 share.

22.The suit 'B' Schedule property has been purchased jointly in the names of the defendant and mother. Therefore, the defendant is entitled to get half share and the remaining half share belongs to mother. Since, mother has passed away, the remaining half share should be divided into three and further, Ex.A2 has come into existence. Under the said circumstances, in aggregation, the defendant is entitled to get 5/6 share, whereas, the plaintiff is entitled to get 1/6 share.

23.The trial Court, after considering the available evidence on record, has rightly passed a preliminary decree, as mentioned in the judgment. In view of the discussion made earlier, this Court has not found any error nor illegality in the judgment and decree passed by the trial Court and altogether, the present Appeal Suit deserves to be dismissed.

In fine, this Appeal Suit is dismissed with cost. The judgment and decree passed in O.S.No.3810 of 2013, by the trial Court, are confirmed. Connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

msk

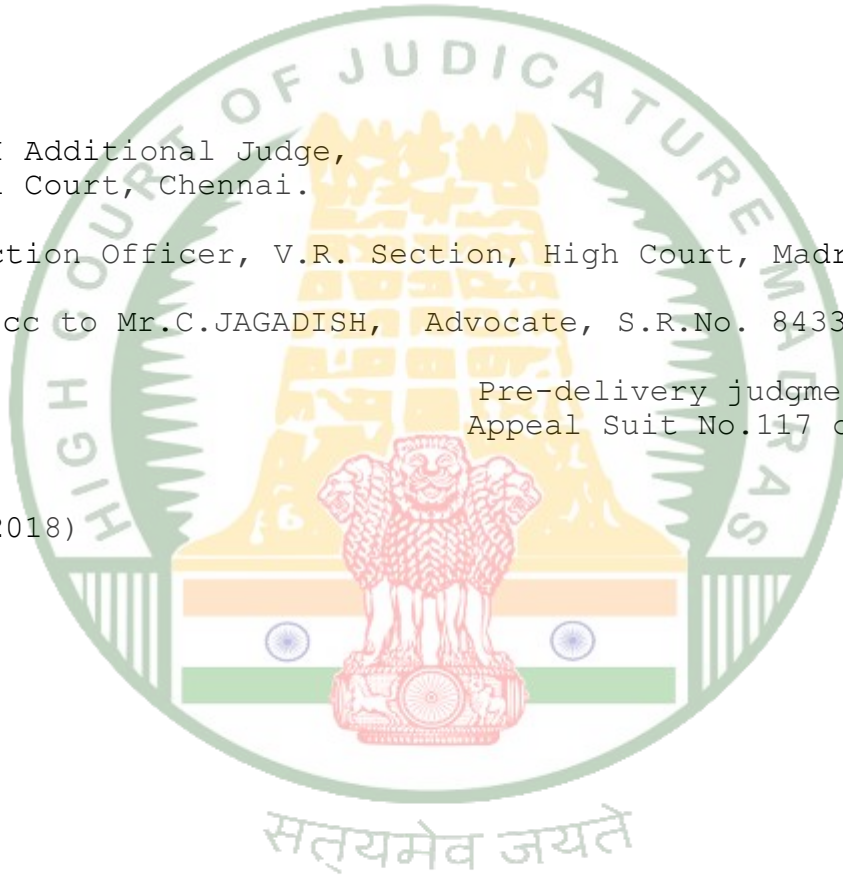
To

1. The XVI Additional Judge,
City Civil Court, Chennai.
2. The Section Officer, V.R. Section, High Court, Madras.

+lcc to Mr.C.JAGADISH, Advocate, S.R.No. 84339

Pre-delivery judgment in
Appeal Suit No.117 of 2017

KJI (CO)
TR(22/01/2018)



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