

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.10.2017

CORAM

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

Appeal Suit No.19 of 2017
and C.M.P.No.743 of 2017

1.N.Aravamudhan
2.A.Sathyabama

... Appellants

Vs

1.N.Rukmani
2.N.Kesavan
Y.K.S.Kamala [died on 24.08.2014]

3.N.Sundaravalli
4.N.Vasanthi
5.R.Lakshminarayanan
6.A.Sowmiya
7.Y.K.S.Narayan

... Respondents

Appeal suit filed under Section 96 of CPC against the judgment and decree, dated 20.09.2016, passed in O.S.No.198 of 2015, by the Principal District Judge, Kancheepuram at Chengalpattu.

For Appellants : Mr.V.Subramanian

For Respondents : Mr.N.Mariappan

J U D G M E N T

[Judgment of the Court was delivered by A.SELVAM,J.]

This Appeal Suit has been directed against the judgment and decree, dated 20.09.2016, passed in Original Suit No.360 of 2008, by the Principal District Judge, Kancheepuram at Chengalpattu.

2.The respondents herein, as appellants, have instituted Original Suit No.360 of 2008 on the file of the trial Court, praying to pass a preliminary decree of partition in respect of the suit property, wherein, the present appellants have been arrayed as defendants.

3.In the plaint, it is averred that the suit property is originally belong to one Vedhavalli, who is none other than the mother of the plaintiffs No.1 to 5 and first defendant. Apart from the plaintiffs 1 to 5 and first defendant, the said Vedhavalli has had another daughter by name, Vijayalakshmi and she passed away in the year 1977, leaving behind the sixth plaintiff as her legal heir. During pendency of the suit, the third plaintiff has passed away leaving behind the seventh and eighth plaintiffs as her legal heirs. The plaintiffs No.1 to 6, first defendant are each entitled to 1/7th share in the suit property. The first defendant has made a false

claim over the suit property. Under the said circumstances, the present suit has been instituted for the relief sought therein.

4. In the written statement filed by the first defendant and adopted by the second defendant, it is averred to the effect that the suit property is not the absolute property of Vedhavalli. The suit property is nothing, but an ancestral property of the father of the plaintiffs No.1 to 5 and first defendant. Even prior to passing of Hindu Succession Act [Tamil Nadu Amendment] Act, 1989, all the daughters have got married. The first defendant has performed marriages of all sisters. The suit property is nothing, but self-acquired property of the first defendant. It is false to aver that the plaintiffs are having joint possession over the suit property. The first defendant has executed a Settlement Deed in favour of the second defendant and there is no merit in the suit and the same deserves to be dismissed.

5. In the additional written statement filed by the first defendant, it is averred to the effect that the plaintiffs have concocted so many documents. The first defendant has encroached the suit property and even prior to encroachment, the Punjab National Bank purchased the suit property through court auction sale and for getting possession, Execution Petition No.4 of 1984 has

been filed and the same is pending. The claim of Punjab National Bank has been resisted by the members of Society of Kudisai Vazhvor Nala Sangam of Pallavaram Gramam. The plaintiffs are not having any partible interest and therefore, the present suit deserves to be dismissed.

6. On the basis of claims and counter claims made on either side, the trial Court, has framed necessary issues and after analysing 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 defendants, as appellants.

7. The sum and substance of the case of the plaintiffs is that the suit property is originally belong to one Vedhavalli, who is none other than the mother of the plaintiffs No.1 to 5, first defendant and one Vijayalakshmi and she passed away and therefore, the plaintiffs No.1 to 5, first defendant and the said Vijayalakshmi are having equal right. Since the first defendant has acted against the interest of the plaintiffs, the present suit has been instituted for the relief sought therein.

8.The defence taken on the side of the defendants is that the suit property is the absolute property of the first defendant and he has been enjoying the same for a long time and subsequently, he executed a Settlement Deed in favour of his wife, who has been arrayed as second defendant. The further defence of the first defendant is that one Punjab National Bank has purchased the suit property through court auction and for taking possession, Execution Petition No.4 of 1984 has been filed and therefore, the plaintiffs are not having any partible interest and under the said circumstances, the present suit deserves to be dismissed.

9.The trial Court, after considering the rival evidence available on record, has decreed the suit as prayed for.

10.The learned counsel appearing for the appellants/defendants has repeatedly contended to the effect that the specific case of the plaintiffs is that the suit property is the absolute property of Vedhavalli, who is none other than the mother of the plaintiffs No.1 to 5, first defendant and one Vijayalakshmi, no document of title has been filed for the purpose of proving the same and under the said circumstances, the plaintiffs are not having any partible interest. However, on the side of the defendants, voluminous documents have been filed for the purpose of proving

that the suit property is the absolute property of the first defendant and he subsequently, settled the same in favour of his wife second defendant, by virtue of Settlement Deed, dated 20.03.2008 and further, the suit property has been purchased through Court auction by one Punjab National Bank and therefore, the relief of partition cannot be granted. But, the trial Court, without considering the voluminous documents filed on the side of the defendants, has erroneously decreed the suit and therefore, the judgment and decree passed by the trial Court are liable to be interfered with.

11. Per contra, the learned counsel appearing for the appellants/plaintiffs has laconically contended to the effect that on the side of the plaintiffs, various documents have been filed, for the purpose of proving that the suit property is the absolute property of Vedhavalli and even in the Settlement Deed, dated 20.03.2008, alleged to have been executed by first defendant in favour of second defendant, it has been clinchingly admitted to the effect that the suit property is the absolute property of Vedhavalli and the trial Court, after considering the overwhelming evidence available on the side of the plaintiffs, has rightly decreed the suit and therefore, the judgment and decree passed by the trial Court need not to be interfered with.

12. Basing upon the divergent submissions made on either side, the Court has to meticulously analyse as to whether the plaintiffs are entitled to get preliminary decree of partition as sought for in the plaint.

13. The consistent case of the plaintiffs is that the suit property is the absolute property of Vedhavalli, who is none other than the mother of the plaintiffs No.1 to 5, first defendant and one Vijayalakshmi.

14. For the purpose of proving the said aspect, on the side of the plaintiffs, certain property tax receipts have been exhibited. In the plaint, it has been specifically stated that the plot number of the suit property is 23. In fact, this Court has analysed all the property tax receipts filed on the side of the plaintiffs, wherein, it has been specifically mentioned that plot number 23 belongs to the said Vedhavalli.

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15. At this juncture, it would be apposite to look into Ex.A12 Settlement Deed, alleged to have been executed by the first defendant in favour of his wife second defendant, wherein, it has been clearly stated to the effect that the property mentioned in Ex.A12 is the absolute property of Vedhavalli. Therefore, from

conjoint reading of property tax receipts and also the recitals found in Ex.A12, the Court can easily come to a conclusion that the suit property is the absolute property of Vedhavalli, who is none other than the mother of the plaintiffs No.1 to 5, first defendant and one Vijayalakshmi.

16.Now, the Court has to look into the inconsistent defence taken on the side of the defendants. In the original written statement, it is averred to the effect that the first defendant is the absolute owner of the suit property. But, in the additional written statement, it is averred that one Punjab National Bank has purchased the suit property along with other properties through court auction and for getting possession, Execution Petition No.4 of 1984 has been filed and the same is pending.

17.On the side of the defendants, so many documents have been filed. Ex.B60 is a plaint filed in O.S.No.40 of 1965, wherein, certain items of properties are found place. In the said items, the suit property does not find place and further, for the purpose of proving that the Punjab National Bank has purchased the suit property through court auction, no Sale Certificate has been marked on the side of the defendants. Therefore, it is needless to say that the defendants have taken inconsistent defence in the present case.

18. Even at the risk of repetition, the Court would like to say that in Ex.A12, it has been clearly mentioned that the suit property is the absolute property of Vedhavalli. Since the suit property is the absolute property of Vedhavalli, it is needless to say that the inconsistent defence taken on the side of the defendants cannot be looked into.

19. The consistent case of the plaintiffs is that the suit property is the absolute property of Vedhavalli, who is none other than the mother of the plaintiffs No.1 to 5, first defendant and one Vijayalakshmi. It is an admitted fact that the said Vedhavalli has passed intestate and further, on the side of the plaintiffs, a replete documentary evidence is available for the purpose of proving that the suit property is the absolute property of Vedhavalli. Under the said circumstances, the plaintiffs are having partible interest over the suit property.

20. The trial Court, after considering the divergent contentions raised on either side, has rightly decreed the suit. In view of the discussion made earlier, this Court has not found any acceptable force in the contentions put forth on the side of the appellants/defendants 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 Original Suit No.360 of 2008, by the Principal District Judge, Kancheepuram at Chengalpattu are confirmed. Consequently, connected miscellaneous petition is dismissed.

[A.S.,J.] [P.K.,J.]

25.10.2017

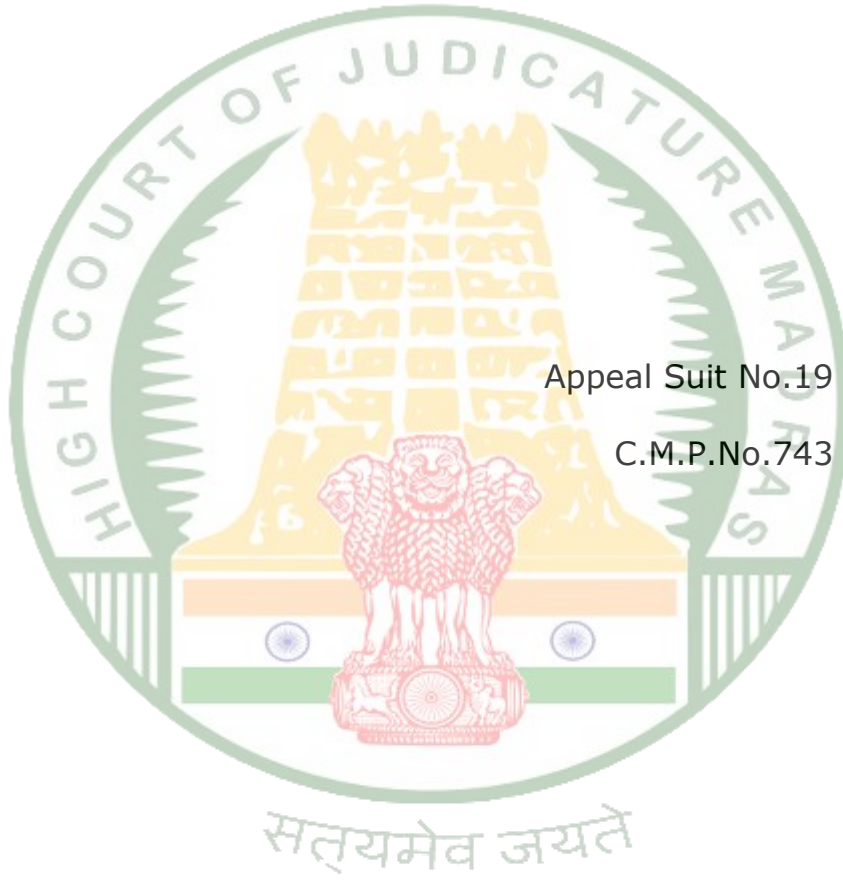
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To
The Principal District Judge,
Kancheepuram at Chengalpattu.



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and
P.KALAIYARASAN,J.
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