

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.11.2017
CORAM

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

Appeal Suit No.243 of 2017
and C.M.P.Nos.9651 to 9653 of 2017

1.K.Anbazhagan
2.K.Sampath

... Appellants/1st & 2nd
Defendants

Vs.

1.Sathish Kumar
2.Rubesh Kumar
3.Kumari
4.Jayapal
5.Manikandan
6.Suchitra
7.Pazhani
8.Murali
9.Lion Nagamuthu
10.Vijayarani
11.Sathiya

... Respondents 1 to 6/Plaintiffs

.. Respondents 7 to 11/
Defendants 4 to 8

Prayer:- Appeal suit filed under Section 96 of Code of Civil Procedure, 1908 read with Order 41 Rule 18 of CPC against the Judgment and decree made in O.S.No.254 of 2009 dated 23.03.2017 on the file of Principal District Judge, Kancheepuram at Chengalpattu.

For Appellants : Mr.A.C.Kumaragurubaran

For Respondents : Mr.S.Parthasarathy, Senior counsel
for Mr.N.Jayakumar for R1 to R6&10&11
No appearance for R7 to R9.

JUDGMENT

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

Challenge in this Appeal Suit is to the Judgment and decree dated 23.03.2017 passed in O.S.No.254 of 2009 by the Principal District Court, Kancheepuram at Chengalpattu.

2. The respondents 1 to 6 as Plaintiffs have instituted O.S.No.254 of 2009 on the file of the trial court, praying to pass a preliminary decree of Partition in respect of 10/20 shares in the suit 'A' schedule properties and 10/40 shares in the suit 'B' schedule properties, wherein, the present appellants and the remaining respondents have been arrayed as defendants.

3. The material averments made in the Plaint are that one Muthusamy Mudaliar has had two sons viz., Kanniappa Mudaliar and Chandrasekara Mudaliar. The said Kanniappa Mudaliar has passed away leaving behind him, his two sons viz., Anbazhagan and Sampath (defendants 1 and 2) and three daughters viz., Jayalakshmi, Kumari and Gowri. The said Kumari has been arrayed as 3rd Plaintiff and Jayalakshmi has passed away, leaving behind her, the Plaintiffs 1 and 2 and defendants 7 and 8. Likewise, the other daughter by name Gowri has also passed away, leaving behind her, the Plaintiffs 4 to 6 as her legal heirs. The other brother Chandrasekara Mudaliar has also passed away, leaving behind him defendants 3 to 5 as his legal heirs. The Suit 'A' schedule properties are the absolute properties of Kanniappa Mudaliar. The Suit 'B' schedule properties are joint properties of both Kanniappa Mudaliar and his brother Chandrasekara Mudaliar. Since both of them have passed away, the Plaintiffs are having 10/20 shares in the Suit 'A' schedule properties and 10/40 shares in the Suit 'B' schedule properties. Despite repeated demands, the defendants 1 and 2 have refused to effect partition by metes and bounds and in the said circumstances, a legal notice dated 06.06.2009 has been issued and the same has been received by the defendants 1 and 2 and others and even after receipt of the said notice, no amicable partition has taken place and therefore, present suit has been instituted for the reliefs sought therein.

4. In the Written Statement filed on the side of the defendants 1 and 2, it is averred that the Suit 'A' and 'B' schedule properties have been purchased in the names of Kanniappa Mudaliar and Chandrasekara Mudaliar by way of selling their ancestral properties during the life time of Kanniappa Mudaliar. In respect of his acquired properties, he executed a Registered will dated 05.06.1990, wherein, certain items of properties are bequeathed in favour of his three daughters and in the said circumstances, the daughters or their legal heirs are not entitled to get any share in the suit properties and therefore, the present suit 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 the oral and documentary evidence, 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 defendants 1 and 2.

6. The consistent case of the Plaintiffs is that the Suit 'A' schedule properties are the absolute properties of Kanniappa Mudaliar and Suit 'B' schedule properties are the joint properties of both Kanniappa Mudaliar and Chandrasekara Mudaliar and both of them have passed away. The Plaintiffs are none else but his daughter and also legal heirs of deceased daughters and since no partition has been effected, the present suit has been instituted for the reliefs sought therein.

7. The defence put forth on the side of the defendants 1 and 2 is that by way of selling ancestral properties, the brothers viz., Kanniappa Mudaliar and Chandrasekara Mudaliar have purchased the Suit 'A' and 'B' schedule properties and further the said Kanniappa Mudaliar, during his life time, has executed a Will dated 05.06.1990 in favour of his three daughters and therefore, neither his brothers, nor their legal heirs are entitled to claim any share in the suit properties and altogether, the present suit deserves to be dismissed.

8. The trial Court, after evaluating the available evidence on record, has decreed the suit as prayed for.

9. The learned counsel appearing for the appellants/defendants 1 and 2 has raised the following points:-

(1) The Suit 'A' and 'B' schedule properties have been purchased by way of selling ancestral properties of the two brothers viz., Kanniappa Mudaliar and Chandrasekara Mudaliar.

(2) During the life time of Kanniappa Mudaliar, in respect of his acquired properties, he executed a Registered Will dated 05.06.1990 in favour of his three daughters and therefore, neither his daughters nor their legal heirs are entitled to get any share in the suit properties.

10. As mentioned supra, the consistent case of the Plaintiffs is that the Suit 'A' schedule properties are the separate properties of deceased Kanniappa Mudaliar and the Suit 'B' schedule Properties are the joint properties of both Kanniappa Mudaliar and his brother Chandrasekara Mudaliar.

11. Since a defence has been taken on the side of the defendants 1 and 2 to the effect that both 'A' and 'B' schedule properties have been purchased by way of selling ancestral properties of two brothers, the entire burden lies upon them.

12. Even though such a defence has been taken on the side of the defendants 1 and 2, no document has been filed on their side. If really, by way of selling ancestral properties, the

said two brothers have purchased both 'A' and 'B' schedule properties, definitely some document would have emerged. But as pointed out earlier, no document has been filed. Under the said circumstances, the court cannot automatically come to a conclusion that both 'A' and 'B' schedule properties are joint family properties.

13. It is seen from the records that during the life time of Kanniappa Mudaliar, on 05.06.1990, he executed a Will in favour of his three daughters and the same has been marked as Ex.B.3, wherein, it has been clinchingly recited to the effect that in respect of his acquired properties, such a Will has come into existence. Simply because Ex.B.3 has been executed by the said Kanniappa Mudaliar in favour of his three daughters, the same does not mean that his daughters who are the legal heirs are not having right, title or interest over the 'A' and 'B' schedule properties. Therefore, the contention put forth on the side of the appellants/defendants 1 and 2 are of no use.

14. As mentioned supra, the consistent case of the Plaintiffs is that the suit 'A' schedule properties are the separate properties of Kanniappa Mudaliar, whereas, the suit 'B' schedule properties are the joint properties of both Kanniappa Mudaliar and Chandrasekara Mudaliar.

15. Considering the fact that the defence put forth on the side of defendants 1 and 2 has not been proved to the satisfaction of the court and also considering the stand taken on the side of the plaintiffs, in respect of characters of both 'A' and 'B' schedule properties, this court is of the view that the Plaintiffs are having right, title and interest over the suit properties.

16. The Plaintiffs have claimed 10/20 shares in the suit 'A' schedule properties since the same are the separate properties of Kanniappa Mudaliar and they have also claimed 10/40 shares in respect of the suit 'B' schedule properties, since the said properties are the joint properties of both Kanniappa Mudaliar and Chandrasekara Mudaliar. The quantum of shares claimed by the Plaintiffs is absolutely correct.

17. The trial Court, after evaluating the available evidence on record, has rightly decreed the suit. In view of the discussion made earlier, this Court has not found any acceptable force in the contention put forth on the side of the appellants/defendants 1 and 2 and altogether 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.254 of 2009, by the trial

Court, are confirmed. Connected miscellaneous petitions are dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Principal District Court,
Kancheepuram at Chengalpattu.

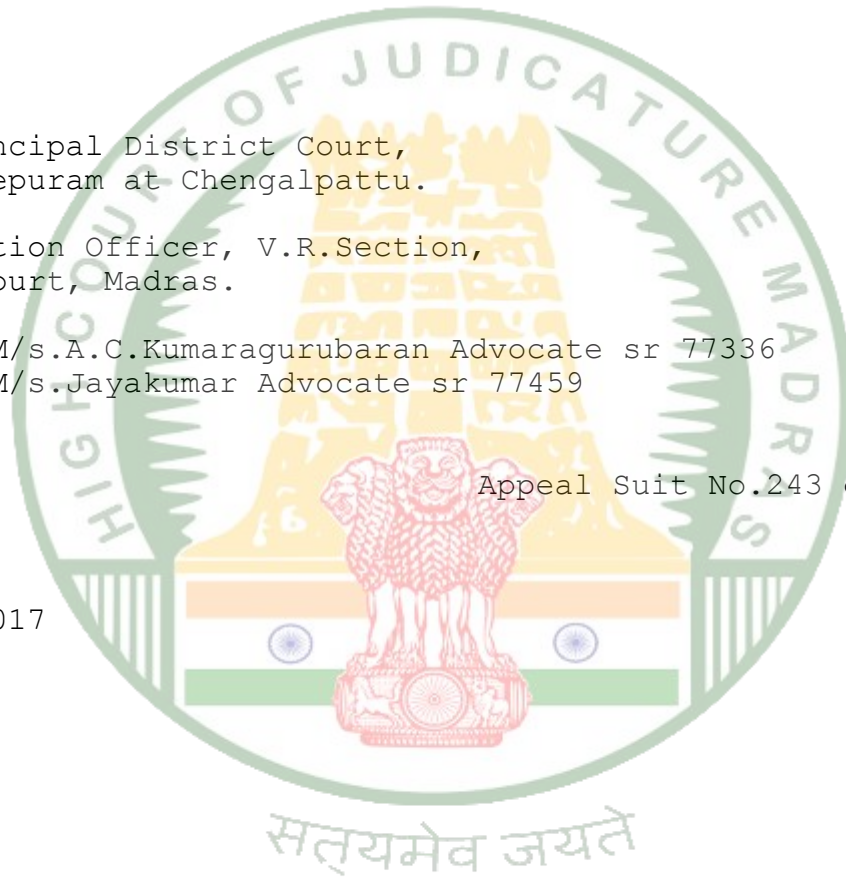
2.The Section Officer, V.R.Section,
High Court, Madras.

+1 cc to M/s.A.C.Kumaragurubaran Advocate sr 77336

+1 cc to M/s.Jayakumar Advocate sr 77459

Appeal Suit No.243 of 2017

aa15/11/2017



WEB COPY