

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 16.11.2017
CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM
and
THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

Appeal Suit No.332 of 2017
and
C.M.P.No.12615 of 2017

P.Venkatachalam Appellant/3rd defendant

Vs

1.A.Kannambal Ist Respondent/Plaintiff
2.P.Palanisamy
3.P.Tamil Selvi
4.M.Saroja R2 to 4th Respondents/
2, 4 & 5 defendants

First Appeal preferred under Section 96 of CPC against the judgment and decree dated 22.04.2015, made in O.S.No.139 of 2009, on the file of the I Additional District Judge, Salem.

For Appellant : Mr.P.Jagadeesan

For Respondents : Mr.M.Devaraj for R1 & R4
Mr.V.Balamurugane for R3

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 22.04.2015, passed in Original Suit No.139 of 2009, by the I Additional District Court, Salem.

2.The first respondent herein, as plaintiff, has instituted Original Suit No.139 of 2009 on the file of the trial Court, praying to pass a preliminary decree of partition and also for passing a decree of perpetual injunction, in respect of suit properties, wherein, the present appellant and the remaining respondents have been arrayed as defendants.

3.The material averments made in the plaint are that the plaintiff and defendants 2 to 5 are the sons and daughters of

the first defendant and Perumal Gounder. The suit properties are separate properties of the said Perumal Gounder and he passed away leaving behind him, the present plaintiff and defendants as his legal heirs. In the suit properties, the plaintiff is having 1/6th share, whereas, the defendants 1 to 5 are each entitled to get 1/6th share. Since the defendants are not amenable for having amicable partition, the present suit has been instituted for getting the reliefs sought therein.

4. In the written statement filed on the side of the defendants 1 to 3, it is averred to the effect that with regard to division of joint family properties, in the presence of some panchayatars, an agreement has come into existence on 31.05.2009, wherein, the plaintiff has also put her signature. But, the same has not been averred in the plaint and since for effective partition, already an agreement has come into existence on 31.05.2009. The plaintiff is not entitled to get the reliefs sought in the plaint and therefore, it deserves to be dismissed.

5. In the written statement filed on the side of the fourth defendant, it is averred that the first defendant has executed a Settlement Deed in respect of her share in the suit properties, in favour of fourth defendant on 28.01.2010 and therefore, the share mentioned in the plaint is erroneous. Further, it is averred that since the fourth defendant has spent his money in a suit for specific performance, a charge has to be created and under the said circumstances, the present suit deserves to be dismissed.

6. 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 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 third defendant, as appellant.

7. Before contemplating the rival submissions made on either side, the Court has to narrate the following admitted facts:

It is an admitted fact that the plaintiffs and defendants 2 to 5 are the sons and daughters of the first defendant and one Perumal Gounder. The said Perumal Gounder has passed away leaving behind him, the plaintiff and defendants 1 to 5. During pendency of the suit, the first defendant has passed away.

8. The consistent case of both the plaintiff and defendants is that the suit properties are nothing, but joint family properties.

9. The specific averments made in the plaint are that so far as suit properties are concerned, no division has taken place and therefore, the present suit has been instituted.

10.The defence put forth on the side of the fourth defendant is that the first defendant has executed a Settlement Deed in his favour on 28.01.2010 and therefore, the fourth defendant is entitled to get 2/6th share in the suit properties and further, the fourth defendant has spent money in a suit for specific performance and under the said circumstances, the charge has to be created in respect of remaining shares.

11.The trial Court has decreed a suit as prayed for and also rejected the relief of charge claimed on the side of the fourth defendant.

12.The learned counsel appearing for the appellant/third defendant has contended to the effect that for the purpose of effective division among the sharers, an agreement has come in to existence on 31.05.2009 in the presence of some panchayatars, wherein, the plaintiff has also put her signature. But, in the plaint, no averment is found place, with regard to such agreement and therefore, the plaintiff is not entitled to get reliefs sought in the plaint.

13.The learned counsel appearing for the first respondent/plaintiff has also contended to the effect that even though such agreement has come into existence, no partition by metes and bounds has taken place amongst sharers and under the said circumstances, the present suit is legally maintainable and the trial Court, after considering available evidence on record, has rightly decreed a suit as prayed for and therefore, the judgment and decree passed by the trial Court does not need any interference.

14.The learned counsel appearing for the third respondent/fourth defendant has also equally contended to the effect that in a suit for specific performance, the fourth defendant has spent his money and to that effect, he claim a charge over the remaining shares. But, the trial Court has failed to grant the same and further on 28.01.2010, the first defendant has executed a Settlement Deed in favour of the fourth defendant in respect of her share and under the said circumstances, the fourth defendant is entitled to get 2/6th share.

15.As adverted to earlier, the suit properties are joint family properties. It is an admitted fact that the plaintiff and defendants 2 to 5 are the sons and daughters of Perumal Gounder and first defendant therein.

16.The main defence taken on the side of the contesting defendants is that on 31.05.2009, an agreement has come into existence for dividing the suit properties by metes and bounds. But, the plaintiff has not at all averred the same in the plaint.

17.The alleged agreements dated 31.05.2009 are marked as Exs.B1 and B2. In fact, this Court has perused the entire recitals found in Exs.B1 and B2, wherein, it has been clinchingly stated to the effect that the parties have agreed to divide their joint family properties by metes and bounds. Except the said recitals, nothing is found place in Exs.B1 and B2. Considering the fact that in Exs.B1 and B2, it is clearly stated that the sharers have agreed to divide the properties by metes and bounds, there is no interdiction nor embargo on the part of the plaintiff to institute the present suit for getting relief of partition. Therefore, the main defence taken on the side of the contesting defendants goes without merit.

18.The main contention put forth on the side of the fourth defendant is that the first defendant has voluntarily executed a Settlement Deed in favour of fourth defendant on 28.01.2010, in respect of her share.

19.Even the trial Court has accepted the same and ultimately found that the fourth defendant is entitled to get 2/6th share in the suit properties.

20.The other contentions put forth on the side of the fourth defendant is that in a suit for specific performance, he spent his own money and therefore, a charge has to be created over the remaining shares.

21.For the purpose of proving the said aspect, no document has been filed. Under the said circumstances, the trial Court itself has rejected the claim of the fourth respondent and therefore, the fourth respondent is not entitled to get the relief of charge claimed in his written statement.

22.It has been already pointed out that Exs.B1 and B2 have not created any interdiction in filing the present suit for getting the reliefs sought therein.

23.It is an admitted fact that the suit properties are joint family properties. Further, it is an admitted fact that the defendants 2 to 5 are the sons and daughters of the first defendant and Perumal Gounder and both of them have passed away. Under the said circumstances, the plaintiff is entitled to get 1/6th share, the fourth defendant is entitled to get 4/6th share and the remaining respondents are entitled to get 1/6th share.

24.The trial Court, after considering the available evidence on record, has rightly decreed a suit as set out in the judgment. In view of the discussion made earlier, this Court has not find any acceptable force on the contention put forth on the side of the appellant and altogether, the present Appeal

Suit deserves to be dismissed.

In fine, this Appeal Suit is dismissed without costs. The judgment and decree dated 22.04.2015, passed in Original Suit No.139 of 2009, by the I Additional District Court, Salem are confirmed. Connected Miscellaneous Petition is dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

The I Additional District Court,
Salem.

+1 cc to Mr.P.Jagadeesan Advocate sr 81441
+1 cc to Mr.V.Balamurugan Advocate sr 81350

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