

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.11.2017

CORAM

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

Appeal Suit No.355 of 2017
and
C.M.P.No.13495 of 2017

D.Sathish Babu Appellant/Plaintiff

vs.

1.N.Devaji Rao
2.Chandra Mouli Respondents/Defendants

Appeal suit filed under Section 96 read with Order 41 Rule 1 of C.P.C. against the judgment and decree in O.S.No.70 of 2014 dated 25.04.2017, passed by the III Additional District and Sessions Court, Poonamalli.

For Appellant : Mr.R.Gunasekaran

For Respondents : Mr.C.K.M.Appaji for R1
R2-Set exparte

JUDGMENT

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

This Appeal Suit has been directed against the judgment and decree dated 25.04.2017, passed in Original Suit No.70 of 2014, by the III Additional District Court, Thiruvallur, at Poonamallee.

2.The appellant herein, as plaintiff, has instituted Original Suit No.70 of 2014 on the file of the trial Court, praying to pass a preliminary decree of partition, wherein, the present respondents have been shown as defendants.

3.In the plaint it is averred that the first defendant is the father of the plaintiff born through second wife and the second defendant is the son of the first defendant born through

first wife. The suit first item has been purchased in the name of the first defendant as a vacant site, by virtue of Sale Deed dated 24.3.1988 and by utilising the amount given by mother of the plaintiff, a house has been constructed. The suit second item has been purchased jointly in the names of the first defendant and mother of the plaintiff by virtue of sale deed dated 06.04.2000. The suit 3rd item has been purchased in the name of the first defendant by virtue of sale deed dated 15.12.2000 by utilising joint family funds. Under the said circumstances, the plaintiff is having partible interest in all the suit properties. Despite of repeated demands made by the plaintiff for having amicable partition, the defendants have refused to concede the demand made by the plaintiff. Under the said circumstances, the present suit has been instituted for the relief sought therein.

4. In the written statement filed on the side of the defendants it is averred that it is false to say that the house, which situates in the suit first item, was constructed by utilising the funds of the mother of the plaintiff. The suit first item has been purchased by the first defendant by virtue of sale deed dated 24.3.1988 and by utilising his money, he put up construction. The suit second item has been purchased in the name of the first defendant and mother of the plaintiff by utilising separate funds of the first defendant. The suit 3rd item has been purchased in the names of the first defendant and one Rani, who is none other than the wife of friend of the first defendant. Therefore, in all the suit properties, the plaintiff is not having any partible interest and there is no merit in the suit and the same deserves to be dismissed.

5. On the basis of 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 in part only in respect of suit second item and dismissed the suit in respect of suit items 1 and 3. In respect of disallowed portion, the present appeal suit has been preferred at the instance of the plaintiff, as appellant.

6. The learned counsel appearing for the appellant/plaintiff has contended to the effect that the first defendant is the father of the plaintiff and second defendant. The plaintiff is the son of second wife of the first defendant, whereas, the second defendant is the son of first wife of the first defendant. The suit first item has been purchased as a vacant site in the name of the first defendant and by utilising the funds of the mother of the plaintiff, a house has been constructed therein and further, the suit second item has been jointly purchased in the names of the first defendant and mother of the plaintiff and further, the suit 3rd item has been

purchased in the name of the first defendant by utilising joint family funds. Under the said circumstances, in all the suit properties, the plaintiff is having half share and under the said circumstances, the present suit has been instituted, but the trial Court, without considering the abundant evidence, both oral and documentary, adduced on the side of the plaintiff, has erroneously dismissed the suit in respect of the suit first and third items and therefore, the judgment and decree passed by the trial Court are liable to be interfered with.

7.The learned counsel appearing for the respondents/defendants has also equally contended to the effect that the suit first item has been purchased by virtue of sale deed dated 24.03.1988 by utilising separate funds of the first defendant and therefore, it is his absolute property and likewise, the suit 3rd item has been independently purchased by the first defendant and one Rani. Under the said circumstances, the suit 3rd item is also his separate property. The suit 2nd item has been jointly purchased in the names of the first defendant and mother of the plaintiff, by utilising separate funds of the first defendant. Under the said circumstances, all the suit properties are the separate properties of the first defendant, wherein, the plaintiff is not having any partible interest and the trial Court has rightly dismissed the suit in respect of suit items 1 and 3 and therefore, the judgment and decree passed by the trial Court are not liable to be interfered with.

8.Basing upon the divergent submissions made on either side, the Court has to analyse as to whether the plaintiff is having any partible interest over the suit items 1 and 3.

9.For considering the rival submissions made on either side, the Court has to look into Exs.A1 to A3. Ex.A1 is a registration copy of sale deed dated 24.3.1988.

10.It is an admitted fact that Ex.A1 stands in the name of the first defendant. A faint attempt has been made on the side of the plaintiff by way of saying that only by utilising the funds generated from the mother of the plaintiff, building has been constructed in the suit first item and therefore, the plaintiff is having partible interest over the same.

11.Even though such averments are found place in the plaint, no document has been filed for the purpose of proving the said aspect. Since no documents have been filed for the purpose of proving that the mother of the plaintiff has given money for construction of a building in the suit first item, the contention put forth on the side of the plaintiff over the suit

first item cannot be accepted. Further, as mentioned supra, Ex.A1 stands in the name of the first defendant. Since Ex.A1 stands in the name of the first defendant, the Court can very well come to a conclusion that the suit first item is the absolute property of the first defendant.

12.Now the Court has to look into the suit 3rd item. The registration copy of the sale deed dated 15.12.2000 has been marked as Ex.A3. It is an admitted fact that Ex.A3 stands in the names of the first defendant and one Rani. Since Ex.A3 stands in the names of the first defendant and Rani, it is their separate property and the plaintiff is not having any partible interest over the same.

13.It has already been pointed out that the trial Court has passed a preliminary decree only in respect of the suit second item. It is an admitted fact that Ex.A2, a registration copy of sale deed dated 6.4.2000, stands in the names of the first defendant and mother of the plaintiff. Considering the fact that Ex.A2 jointly stands in their names, both the first defendant and mother of the plaintiff are having equal shares.

14.It is an admitted fact that mother of the plaintiff has passed away. Since the mother of the plaintiff has passed away, both the plaintiff and first defendant are her legal heirs. Under the said circumstances, the trial Court has granted preliminary decree in respect of suit second item to an extent of 1/4th share in favour of the plaintiff. Considering the aforesaid factual circumstances, the judgment and decree passed by the trial Court are perfectly correct and the same does not require any interference and altogether, the present Appeal Suit deserves to be dismissed.

In fine, this Appeal Suit is dismissed without costs. The judgment and decree passed in O.S.No.70 of 2014 by the trial Court are confirmed. Connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar(CO)

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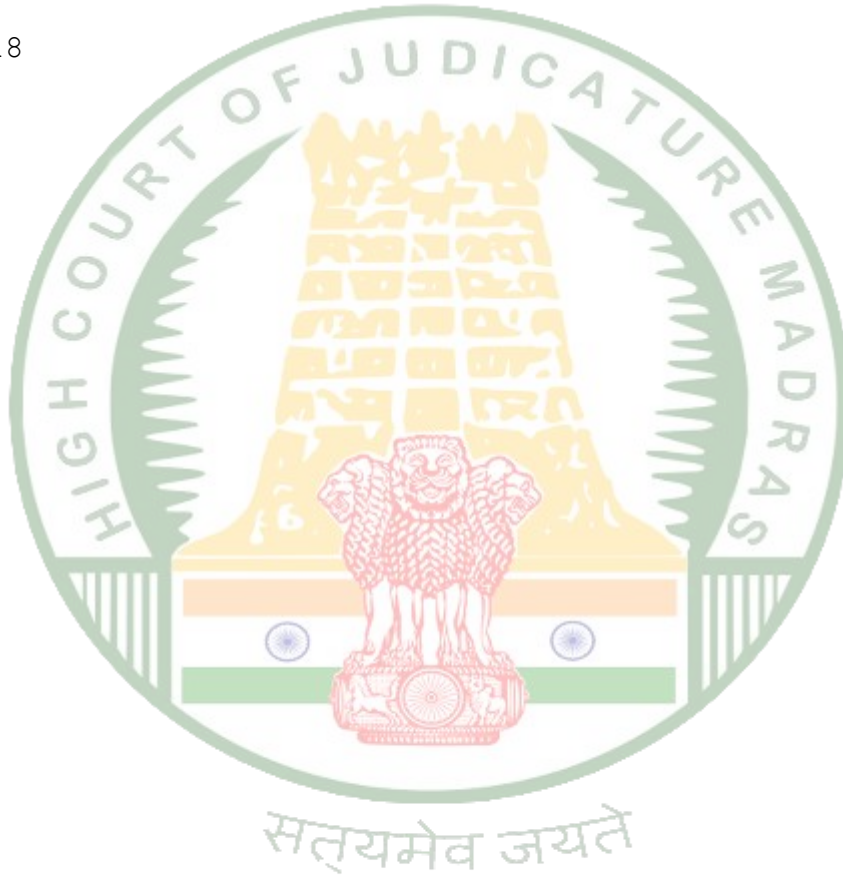
The III Additional District and Sessions Court,
Poonamalli

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+1cc to Mr.C.K.M.Appaji, Advocate, S.R.No.83080
+1cc to Mr.K.Vaithialingam, Advocate, S.R.No.83006

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