

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.11.2017

CORAM

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

Appeal Suit No.382 of 2017
and
C.M.P.No.14305 of 2017

1.Manimozhi
2.Amarjothy

... Appellants/Defendants

vs.

Elavarasi

... Respondent/Plaintiff

Appeal suit filed under Section 96 read with Order 41 Rule 1 of C.P.C. against the judgment and decree dated 16.12.2016, passed by the Principal District Court, Villupuram and made in O.S.No.13 of 2013.

For Appellants : Mr.M.V.Seshachari
For Respondents : Mr.N.Suresh

JUDGMENT

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

Challenge in this Appeal Suit is to the judgment and decree dated 16.12.2016, passed in O.S.No.13 of 2013 by the Principal District Court, Villupuram.

2.The respondent herein, as plaintiff, has instituted O.S.No.13 of 2013, on the file of the trial Court, praying to pass a preliminary decree of partition to an extent of half share in favour of the plaintiff, wherein, the present appellants have been arrayed as defendants.

3.The material averments made in the plaint are that the first defendant and his brother Arul are sons of one Veeramani. The said Arul has married the plaintiff. In the year 1968, a partition has been effected between the sons of Rangasamy, namely, Veeramani and Anichan, wherein, the suit items 3 to 6 have been allotted to the share of the said Veeramani and he passed away in the year 1995, leaving behind him, the husband of the plaintiff and first defendant as his legal heirs. The suit properties are joint family properties. The husband of the

plaintiff has passed away on 23.01.2012, leaving behind him the plaintiff alone as his legal heir. Despite of repeated demands made by the plaintiff, the first defendant has not conceded for having amicable partition. Under the said circumstances, the present suit has been instituted for getting the relief sought therein.

4. In the written statement filed on the side of the defendants it is averred that the relationship mentioned in the plaint is correct. It is false to say that with regard to suit properties, no partition has been effected. After the demise of husband of the plaintiff, the first defendant has given a sum of Rs.75,000/- in full quit to the plaintiff and thereby she released her right of partition over the suit properties and further in the suit 3rd item, the first defendant has been running a school 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 as prayed for in respect of suit items 2 to 6 and dismissed the suit in respect of suit first item. Against the judgment and decree passed by the trial Court, the present Appeal Suit has been preferred at the instance of the defendants 1 and 2 as appellants.

6. The learned counsel appearing for the appellants/defendants has sparingly contended to the effect that after the demise of husband of the plaintiff, the first defendant has given a sum of Rs.75,000/- in the year 2012 in full quit to the plaintiff and thereby she released all her partible interest over the suit properties and further, in the suit 3rd item, the first defendant has been running a school. Under the said circumstances, the present suit is not factually maintainable for getting the relief of partition and the trial Court, without considering the contention put forth on the side of the defendants, has erroneously decreed the suit in respect of suit items 2 to 6 and therefore, the judgment and decree passed by the trial Court are liable to be interfered with.

7. Per contra, the learned counsel appearing for the respondent/plaintiff has contended that by virtue of partition deed dated 17.11.1968, a partition has been effected between two brothers, namely, Anichan and Veeramani, wherein, the suit items 2 to 6 are allotted to the share of Veeramani. In the partition deed it has been clearly recited to the effect that all the properties mentioned therein are joint family properties and the said Veeramani has passed away in the year 1995 and the husband of the plaintiff has passed away on 23.1.2012. Under the said circumstances, the present suit has been instituted for getting

the relief sought therein and even though, a faint attempt has been made on the side of the defendants to the effect that in the year 2012, an amount of Rs.75,000/- has been given to the plaintiff in full quit and thereby she released her right of partition over the suit properties, the same has not been positively established and the trial Court has also rejected the same. Under the said circumstances, the judgment and decree passed by the trial Court are perfectly correct and the same do not require any interference.

8.For contemplating the rival submissions made on either side, the Court has to look into the following document.

9.The partition deed dated 17.11.1968, which has been marked as Ex.A1, wherein, it has been clearly stated that all the properties mentioned therein are joint family properties. Under Ex.A1, suit items 3 to 6 are allotted to the share of Veeramani, who is none other than the father of the first defendant and father-in-law of the plaintiff. During his life time, in respect of suit 3rd item and a portion of suit 4th item, he executed a settlement deed, wherein life estate has been given in favour of his wife and vested remainder should go to his male heirs.

10.It is an admitted fact that the mother of the first defendant and mother-in-law of the plaintiff has passed away.

11.Considering the fact that in Ex.A1 all the suit properties have been described as joint family properties, after partition under Ex.A1, the properties allotted to Veeramani are also joint family properties at the hands of Veeramani, husband of the plaintiff and first defendant.

12.It is also equally an admitted fact that the said Veeramani has passed away, leaving behind him his two sons, namely, Arul and first defendant. The husband of the plaintiff has passed away in the year 2012, leaving behind him the plaintiff as his legal heir.

13.Considering the fact that all the suit properties are the joint family properties, the plaintiff is having partible interest over the same.

14.The only defence taken on the side of the defendants 1 and 2 is that in the year 2012, in full quit, a sum of Rs.75,000/- has been given to the plaintiff and thereby, she released her partible interest over all the suit properties in favour of the first defendant.

15.For the purpose of establishing/proving the said factual aspect, no document has been filed and further, oral release in

respect of immovable properties is not permissible under law.

16.Considering the character of the suit properties and also considering that the defence taken on the side of the defendants 1 and 2 is not at all permissible under law, the contention taken on the side of the defendants cannot be accepted.

17.It is seen from the records that suit items 1 and 6 are one and the same. The trial Court has passed a preliminary decree in respect of suit items 2 to 6.

18.In the light of the discussion made earlier, the Court can easily come to a conclusion that suit items 2 to 6 are nothing but joint family properties, in which, the plaintiff is having half share by way of partition.

19.The trial Court, after considering the available evidence on record, has rightly decreed the suit as mentioned supra. In view of the discussion made earlier, this Court has not found any infirmity 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 without costs. The judgment and decree passed in O.S.No.13 of 2013 by the trial Court are confirmed. Connected miscellaneous petition is dismissed.

s/d-

Assistant Registrar (CS IV)

True Copy

Sub-Assistant Registrar

msk

To

The Principal District Court,
Villupuram

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The Section officer
VR Section, High Court, Madras (2 copies)

+1 Cc to Mr.M.V. Seshachari, advocate sr 85953.

+1 CC to Mr.N. Suresh, Advocate sr 85530.

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SP(28/12/2017)