

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2017

CORAM

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

Appeal Suit No.297 of 2011
and
M.P.No.1 of 2011

1.D.Palanisamy
2.D.Thangavel
3.D.Sivakumar ... Appellants/Defendants 1 to 3

vs.

1.Kokila
2.Kanchana
3.Jaya ... Respondents 1 to 3/Plaintiffs
4.The Branch Manager,
Corporation Bank,
Singalanthapuram Branch,
Rasipuram Taluk,
Namakkal District ... 4th Respondent/4th Respondent

Prayer:- Appeal suit filed under Section 96 of C.P.C.
against the judgment and decree dated 30.11.2010, passed by the
Additional District Court, Namakkal, in O.S.No.27 of 2005.

For Appellant :Mr.T.Dhanyakumar
For Respondents :Mr.C.Jagadish for R1 to R3
No appearance for R4

JUDGMENT

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

Challenge in this Appeal Suit is to the judgment and
decree, dated 30.11.2010, passed in Original Suit No.27 of
2005, by the Additional District Court, Namakkal.

2.The respondents 1 to 3 herein, as plaintiffs, have
instituted Original Suit No.27 of 2005, on the file of the trial
Court, praying to pass a preliminary decree of partition,
wherein, the present appellants have been arrayed as defendants
1 to 3.

3.The material averments made in the plaint are that
one Palani Chettiyar has given birth to two sons, namely,

Subbaraya Chettiar and Krishna Chettiar. The said Palani Chettiar has passed away leaving behind him his two sons and subsequently Subbaraya Chettiar has passed away, without leaving any issues. During the life time of Krishna Chettiar, he executed a Will in respect of his share in the joint family properties, wherein, a life interest has been given in favour of his only son by name, Dharmalingam and vested remainder should go to his grandsons, namely, the defendants 1 to 3. The said Dharmalingam has passed away intestate in respect of his half share in the suit properties. The plaintiffs and defendants 1 to 3 are the daughters and sons of the said Dharmalingam. Under the said circumstances, the plaintiffs are also having partible interest in the suit properties. Since the defendants 1 to 3 are not amenable for having amicable partition, the present suit has been laid for getting the relief sought therein.

4. In the written statement filed on the side of the defendants 1 to 3, it is averred to the effect that the suit properties are the self-acquired properties of Dharmalingam. Since the suit properties are self-acquired properties of Dharmalingam, the plaintiffs are not having any semblance of right over the same. The quantum of share claimed by the plaintiffs is also erroneous and therefore, the present suit deserves to be dismissed.

5. On the basis of divergent pleadings raised on either side, the trial Court has framed necessary issues and after analysing both oral and documentary evidence, has passed a preliminary decree for partition in respect of three shares of the plaintiffs out of 160 shares. Against the judgment and decree passed by the trial Court, the present Appeal Suit has been preferred, at the instance of the defendants 1 to 3, as appellants.

6. The consistent case of the plaintiffs is that in respect of half share of Krishna Chettiar, he voluntarily executed a Will dated 13.09.1978, wherein a life estate has been given to his only son by name, Dharmalingam and vested remainder should go to his grandsons, namely, defendants 1 to 3 and in respect of half share of the said Dharmalingam, no document has come into existence. Under the said circumstances, the plaintiffs, being the daughters of the said Dharmalingam, are having partible interest in the suit properties.

7. The main defence taken on the side of the defendants 1 to 3 is that the suit properties are the self-acquired properties of the said Dharmalingam and therefore, the plaintiffs are not having any tangible interest over the same and therefore, the present suit deserves to be dismissed.

8. The trial Court, after considering the rival evidence

available on record, has rejected the defence put forth on the side of the defendants 1 to 3 and ultimately passed a preliminary decree, as noted down earlier.

9.The learned counsel appearing for the appellants/defendants 1 to 3 has sparingly contended to the effect that the suit properties are the self-acquired properties of Dharmalingam and since the suit properties are self-acquired properties of Dharmalingam, the plaintiffs are not having any partible interest. But the trial Court, without considering the Will, alleged to have been executed by Krishna Chettiar, son of Palani Chettiar, has erroneously passed a preliminary decree for partition and therefore, the judgment and decree passed by the trial Court are liable to be set aside.

10.In order to controvert the contention put forth on the side of the appellants/defendants 1 to 3, the learned counsel appearing for the respondents 1 to 3/plaintiffs has succinctly contended to the effect that the Will dated 13.09.1978 has been marked as Ex.A2, wherein, a life interest has been given to Dharmalingam and vested remainder should go to the defendants 1 to 3. Since absolute interest has not been created in favour of the said Dharmalingam and since he passed away intestate in respect of his half share in the joint family property, the plaintiffs, being his daughters, are having partible interest. Under the said circumstances, the suit has been instituted and the trial Court, after considering both oral and documentary evidence, has rightly passed the preliminary decree for partition and therefore, the judgment and decree passed by the trial Court do not require any interest.

11.It is an admitted fact that one Palani Chettiar and his two sons, namely, Subbaraya Chettiar and Krishna Chettiar have constituted an undivided Hindu joint family. It is also equally an admitted fact that the said Palani Chettiar has passed away leaving behind him his two sons and one of his sons, viz., Subbaraya Chettiar has passed away without any issues. Now the question is only with regard to the half share of Krishna Chettiar in the joint family properties.

12.It is an admitted fact that the said Krishna Chettiar has voluntarily executed a Will dated 13.09.1978 (Ex.A2), wherein it has been clinchingly recited to the effect that his only son Dharmalingam has to enjoy the properties mentioned therein till his life time and after his life time, the said properties must go to his grandsons, viz., the defendants 1 to 3 herein. Further, absolutely there is no record with regard to the half share of Dharmalingam in the joint family properties. Therefore, it is quite clear that the said Dharmalingam has passed away intestate in respect of his

half share in the joint family properties.

13.It is an admitted fact that both the plaintiffs and defendants 1 to 3 are the daughters and sons of the said Dharmalingam and further, absolutely there is no evidence on the side of the defendants 1 to 3 that the suit properties are the self-acquired properties of the said Dharmalingam.

14.It is an admitted fact that both Dharmalingam and his father Krishna Chettiar have constituted an undivided Hindu family. Since the suit properties are the joint family properties and since the said Dharmalingam has passed away intestate, it is needless to state that in the suit properties, the plaintiffs are having three shares.

15.The trial Court, after considering the available evidence on record, has rightly passed a preliminary decree to the extent as mentioned supra. Therefore, viewing from any angle, the argument put forth on the side of the appellants/defendants 1 to 3 are of no use; whereas, the argument put forth on the side of the respondents 1 to 3/plaintiffs is really having subsisting force.

In fine, this Appeal Suit is dismissed without cost. The judgment and decree passed in O.S.No.27 of 2005, by the trial Court, are confirmed. Connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District Judge,
Namakkal

2.The Section Officer,
VR Section, High Court.

+1cc to Mr.T.Dhanya Kumar, Advocate, S.R.No.68543
+1cc to Mr.C.Jagadish, Advocate, S.R.No.68305

A.S.No.297 of 2011

CNR (CO)
GN(28/10/2017)