

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2017
CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE M.SUNDAR

O.S.A.No.9 of 2017

1. Malathy Rangarajan
2. M.Srinath
3. M.Sricharan ... Appellants/Defendent

Vs.

Ambujam T.M. ... Respondent/Plaintiff

PRAYER: Appeal under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent against the order dated 9.1.2017 made in Application No.6368 of 2016 in C.S.No.551 of 2003.

For Appellants : Mr.P.H.Arvind Pandian
Senior Counsel
for M/s.Harishankar Mani

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

We have heard learned counsel for parties.

2. We find the appeal completely misconceived as the impugned order dated 9.1.2017 only permits recording of evidence on commission of a 96 years old lady, who is the mother-in-law of the first appellant and the grandmother of the other two appellants.

3. It is certainly not in doubt that she is a Class-I heir of her son. Unfortunately, the suit has not even proceeded to trial for 13 long years and now finally the evidence of the plaintiff/respondent has to be recorded.

4. The learned Senior Counsel for the appellants draws our attention to paragraph (13) of the impugned order to contend

that the observations therein seek to suggest as if the original plaintiff/ respondent is entitled to share in all the properties as claimed in the plaint, even though the defence of the appellants is that in respect of many properties she would not have a share as those properties have either been settled by an oral partition or by Will of the grandfather of the second and third appellants.

5. In our view such an apprehension is misplaced as the application does not decide the suit, but is only on the question whether the evidence should be recorded on commission. It is in that context that it is mentioned that the respondent is a Class-I heir and as to in which of the properties the share will arise would depend on the result of the trial.

6. We, thus, find no merit in the appeal, which is accordingly dismissed. No costs. Consequently, C.M.P.No.803 of 2017 is closed.

7. At this stage, the learned Senior Counsel for the appellants states that though the earlier mediation process failed, another effort is being made to resolve the family dispute and some date may be given for reporting on the family settlement.

8. List for reporting on family settlement on 27.1.2017. It is however made clear that the trial of the suit will proceed as scheduled and will not be disturbed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1.The Sub Assistant Registrar
Orginal Side,
High Court Madras.

2.The Section Officer,
Judicial Department,
High Court Madras.

Copy to
The Section Office,
Mediation & Conciliation Centre,
High Court, Madras.

O.S.A.No.9 of 2017

RSY(CO)
GN(23/01/2017)



सत्यमेव जयते

WEB COPY