

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :05.01.2017

PRONOUNCED ON: 12.01.2017

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.576 of 2011

S.Kumar

... Plaintiff

vs.

1. Mrs. Rakkammal
2. S.Manivasagam
3. S.Asokan
4. Lakshmi
5. S.Pandian @ sekar Pandian
6. Shanmugam
7. Sugumar
8. Vinod Kumar

... Defendants

Civil Suit filed under Order IV Rule 1 of Original Side Rules 1956 read with Order VII Rule 1 CPC praying for the following judgment and decree against the defendants.

(i) for a preliminary decree for partition for all the items of the schedule mentioned joint family properties, into 9 equal shares and allot and put the plaintiff in possession of one such share, by metes and bound and with reference to the value thereof;

(ii) for appointing an Advocate Commissioner to divide

the plaint schedule properties and allot the plaintiff's share and put him in possession thereof in accordance with the preliminary decree;

(iii) for a declaration declaring the three purported settlement deeds executed by the plaintiff's late father, C.Subbiah, all dated 13.9.2002 in favour of defendants 3, 2 & 6 herein vide Document Nos.1999/2002, 2000/2002 and 2001/2002 S.R.O., Adayar, in respect of Item No.2 of the suit properties hereunder, as sham and nominal and not binding on the plaintiff's in the interest over the same;

(iv) for mesne profits; and

(v) for costs of the above suit.

For Plaintiff : Mr.Balasubramanian

For D8 : Mr. P.Chandrasekar

J U D G M E N T

सत्यमेव जयते

The suit is filed for partition dividing the suit property into 9 equal shares and also for declaration declaring the Settlement Deed executed by the plaintiff's father as sham and nominal and not binding on the plaintiff and also for mesne profits also.

2.The brief facts of the case of the plaintiff are as follows:

The first defendant is the wife of the deceased C.Subbiah, and the defendants 2 to 5 are the sons and daughters of the first defendant and the plaintiff's father Subbiah. The defendants 6 and 7 are also sons of the said Subbiah born through his second wife. The eighth defendant is the grand son of the deceased Subbiah, S/o. Late Manoharan. The suit properties were not acquired by the father of the plaintiff, out of his own earnings but also substantial moneys contributed by the plaintiff. The plaintiff all along been involved in undertaking contract for interior decorations, special carpentry work, Aluminium and grill fabrications, PVC doors and Hardware etc., Though the properties were purchased in the father's name and all along treated as joint family properties, other sons and daughters were not contributed any amount for the purchase of the suit properties. The fifth defendant, the younger son of the family, created confusion in the joint family and tried to sell the suit properties though there were oral agreement for an amicable partition. The defendants 1, 5, and 7 by using undue influence, brought out three Settlement Deeds in respect of the

property comprised in S.No.225/3B. The above Settlement Deeds have not been acted upon and the same are sham and nominal. Hence the suit.

3. Though notice was served on the defendants 1 to 7, they have not chosen either to appear in person or through counsel and they remain *ex parte*.

4. The defendant No.8 has filed written statement denying the allegations of the plaintiff. Though the plaintiff has contributed substantial moneys for his late father in acquiring the properties, it is the contention of the defendant that his grand father died intestate without leaving any testamentary or any other thing. The Settlement Deeds executed in favour of the defendant Nos.1,5 and 7 are the result of fraud and coercion. Hence he prayed for 1/9 th share.

5. On the above pleadings, originally, this Court, on 15.10.2014, has framed the following issues:

1. Whether the settlement deeds executed by the plaintiff's father are sham and nominal?

2. Whether the plaintiff is entitled to claim share in the suit properties?

3. Whether the plaintiff is entitled to 1/9 share in the properties as prayed for?

4. To what other reliefs, the parties are entitled to?

6. On the side of the plaintiff, the plaintiff himself was examined as P.W.1, and Exs.P1 to P10 were marked. No oral evidence adduced on the side of the 8th defendant. The details of the documents are hereunder:

Exhibits produced on the side of the plaintiff:

S. No	Exhibits	Date	Description of documents
1.	P-1	39.09.1988	Certified copy of the sale deed (Doc.No.3631/1988)
2.	P-2	02.07.1999	Photocopy of the allotment order issued by the Tamil Nadu Slum Clearance Board
3.	P-3	05.09.2000	Certified copy of the order in O.A.No.720/1999 in C.S.No.829/1999, High Court, Madras.
4.	P-4	13.09.2002	Certified copy of the settlement deed (Doc.No.1999/2002) executed by C.Subbiah in favour of the 2nd defendant

<i>S. No</i>	<i>Exhib its</i>	<i>Date</i>	<i>Description of documents</i>
5.	P-5	13.09.2002	Certified copy of the settlement deed (Doc.No.2000/2002) executed by C.Subbiah in favour of the 6th defendant
6.	P-6	13.09.2002	Certified copy of the settlement deed (Doc.No.2001/2002) executed by C.Subbiah in favour of the 3rd defendant
7.	P-7	02.03.2004	Photocopy of the general Power of Attorney executed by the 1st defendant and 2 others in favour of K.Elumalai and another
8	P-8	-	Photocopy of the affidavit signed by the plaintiff and the 1st defendant and others
9	P-9	-	Certified copy of the Order passed in C.S.No.829/1999, High Court, Madras
10	P-10	18.08.2003	Photocopy of the death certificate of my father C.Subbiah, who died on 25.07.2003

Witnesses marked on the side of the plaintiff :

P.W.1 - S.KUmar

7. Heard the learned counsel for the plaintiff and perused the records.

8. The learned counsel for the plaintiff submitted that the suit properties are the joint family properties stand in the name of the father of the plaintiff and the alleged Settlement Deeds executed in respect of the second item of the property was obtained by the defendant Nos. 1,

5, and 7 by playing fraud, coercion and undue influence and hence, the same is not binding on the plaintiff. It is submitted by the learned counsel for the plaintiff that the defendant No.8 has not denied the entire allegations made in the plaint. Therefore, the learned counsel for the plaintiff submitted that the plaintiff is, certainly, entitled for judgment and decree.

Issue Nos: 1 to 4:

9. The plaintiff, who was examined as P.W.1, in his evidence has stated that though the properties were purchased in the name of the father, he has also contributed some moneys and the properties were also treated as a joint family property. Since the plaintiff married against the wishes of his father, his father has filed Eviction Petition against him. The Settlement Deeds executed in respect of the property situate in Kanagam Village, Taramani were brought by the defendants 1 to 7 by using undue influence and fraud. The defendants are also aware of the fact that the above Settlement Deeds executed were sham and nominal and they never acted upon. The defendants 1 to 7 also signed affidavit by giving up the rights derived in the Settlement Deed. The evidence of P.W.1 has not been challenged at all. In fact, 8th

defendant was sailing with the plaintiff and he has also sought 1/9 equal share in the suit property. P.W.1's evidence with regard to the undue influence played over the plaintiff's father, while obtaining the alleged Deeds and the defendants' signing in the affidavit giving up their rights in the Settlement Deed are also not disputed.

10. The plaintiff has also filed a title deed, which is exhibited as Ex.P1. Ex.P4 settlement Deed dated 13.9.2002 executed in favour of the third defendant herein. Similarly, on the same day, he has executed another Settlement Deed in favour of the second defendant. Ex.P6 Settlement Deed dated 13.09.2002 is executed in favour of the sixth defendant. Ex.P8, is the affidavit signed by the plaintiff, first defendant, second defendant and sixth defendant. Though xerox copy has been exhibited, the plaintiff in his evidence has given explanation about the original. According to the plaintiff, the original is with the first defendant and the first defendant having received the summon has not chosen to appear and remain *ex parte*. The other parties signed in the affidavit also remain *ex parte*. The reasons stated in the affidavit clearly show that they agreed to treat the properties as

joint family properties.

11. Having regard to the evidence of the plaintiff and the fact that the defendants remain *ex parte*, clearly established the fact that the Settlement Deeds said to have been executed by the father of the plaintiff in favour of the defendants 2,3 and 6 have not been acted upon and not intended for pure transfer. Accordingly, this Court hold that the said Settlement Deeds are not a bar for claiming share in the property. Further the facts spoken by the plaintiff that the suit properties are joint family properties and that the plaintiff has also contributed some moneys, are not denied or traversed by way of cross examination. Hence, the above facts deemed to be admitted by the defendants. Therefore, this Court hold that the plaintiff proved his case. Accordingly, the plaintiff is entitled for a preliminary decree for partition of the suit property into 9 equal shares and for allotment of one such share to the plaintiff. The defendants 1 to 8 are also equally entitled to 1/9 share. These issues are answered accordingly.

12. In the result, the preliminary decree is passed

for dividing the suit property into 9 equal shares and allot one such share to the plaintiff. Considering the nexus between the parties, there shall be no order as to costs.

Sd/. N.S.K.J

12.01.2017

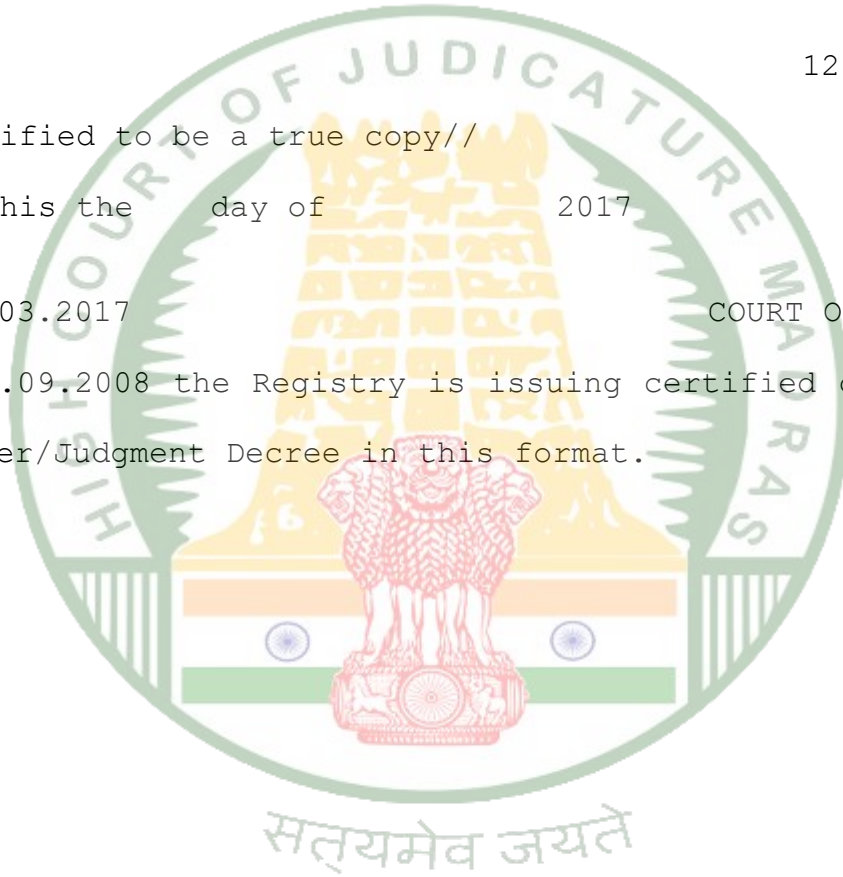
//Certified to be a true copy//

Dated this the day of 2017

R.s/23.03.2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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