

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SUNDAR

S.A.No.1561 of 2001
and
C.M.P.No.11123 of 2004

Kasthuri ... Appellant/Appellant/Defendant

vs.

Komalavalli ... Respondent/Respondent/Plaintiff

Prayer : Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree made in A.S.No.87 of 1997 on the file of the Principal District Court, Vellore dated 18.06.2001 by confirming the judgment and decree passed in O.S.No.444 of 1996 on the file of the Additional District Munsif Court, Vellore dated 29.08.1997.

For Appellant : Mr.T.Dhanyakumar
For Respondents : Mr.R.Rajesh for

Mr.P.Sankaranarayanan

JUDGMENT

Mr.T.Dhanyakumar, learned counsel is present on behalf of the sole appellant.

2.Mr.P.Sankaranarayanan, learned counsel is present on behalf of the sole respondent.

3. Appellant and respondent are the blood sisters.

4. Suit in the trial court was filed by the respondent (Komalavalli) for partition of nine items of the suit properties, claiming half share. The lone appellant before this court Kasthuri, being her blood sister, was the lone defendant before the Trial Court.

5. With regard to the stand of the lone defendant before the trial court, the shares were not disputed, but it was her case that she had spent money on one of the items of suit properties (item No.8) and made improvements of the same. She claimed this money along some other expenditure under various heads, all

pertaining to management of the family. Defendant claimed that she is entitled to such monies and pleaded that plaintiff should discharge debts incurred in this regard to be entitled to partition. The trial court found that the plea / claim of spending of money, had not been proved and therefore, negatived the claim of the defendant. First Appeal in A.S.No.87/1997 was preferred on the file of the Principal District Court, Vellore.

6. To be noted, the judgment and decree of the trial court in O.S.No.444/1996 on the file of Additional District Munsif Court, Vellore, was confirmed by the First Appellate court.

7. Aggrieved, the lone defendant before the trial court, who was the appellant in the First Appellate Court, is before this Court as appellant assailing the two concurrent judgements.

8. It is not in dispute that the share of the two blood sisters is admitted as between the parties. It is also not in dispute that they are entitled to a half share each in the suit properties (nine items). The only issue is with regard to the claim of the appellant before this Court that she has spent money towards improvement of the suit properties and the claim that she is entitled to the money which she has spent under some other heads and discharge of debts incurred in this regard.

9. Both the Courts below viz., trial Court as well as the First Appellate Court, on facts, have examined / appreciated the deposition and exhibits, and have come to the factual conclusion that there is no evidence to establish the defendant's case regarding the money spent on the suit properties for its improvement. Both courts have concurrently returned a factual finding in this regard.

10. Under the above said circumstances, this second appeal was admitted by this Court on 12.10.2001 on the following substantial questions of law:

1. Whether the plaintiff is liable to share the debts due by the family to the creditors?

2. Whether the power of attorney under Ex.B2 authorise the agent to borrow money on behalf of the principal?

3. Whether the revocation of Ex.B2 under Ex.A3 operates from the date of revocation or from the time of knowledge of revocation under Section 3 of Power of Attorney Act?

11. With regard to question No.1 as to whether the plaintiff was due to the creditors as stated supra. As both

the Courts below have returned a finding on facts that the appellant before this court has not established that she has spent money for improvement of suit properties and under other heads as set out above, the question of borrowing such money does not arise / survive for consideration any more. I say so as no perversity of any kind whatsoever has been pointed out in this Court in appreciation of evidence (oral and documentary) by the Courts below in returning such a factual finding.

12. Therefore, there is no difficulty in answering the first question of law against the appellant herein.

13. With regard to substantial questions of law Nos.2 and 3, both pertain to a power of attorney document, being Ex.B2.

14. As the shares are not disputed and the factual finding that borrowing and spending of money, have not been established by the lone defendant, who is the appellant before this Court, the question of examining the power of attorney does not arise herein, particularly when no perversity in appreciation of evidence in this regard has been pointed out as set out supra. This therefore becomes a partition suit simplicitor in the light of the facts above and the shares are not disputed. There is no dispute between both the parties before this Court that the two blood sisters are entitled to half share each. Therefore, there is no difficulty in answering the two questions of law, i.e., questions of law 2 and 3 also against the appellant, and in favour of the lone respondent.

15. Under the above circumstances, based on the submissions made by both the learned counsel before this court and on perusal of the records, all the three questions of law, on which the second appeal was admitted, are answered against the appellant, and in favour of the respondent.

16. The second appeal is dismissed.

17. In the light of nature of the matter (appellant and respondent being blood sisters), the respective parties are left to bear their respective costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

kkd/vvk

To

1. The Additional District Munsif,
Vellore.
2. The Principal District Judge,
Vellore.

+1cc to M/S. P. Sankaranarayanan, Advocate Sr. 19119

S.A.No.1561 of 2001

RSK(CO)
VR(3/5/2017)



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