

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2017

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal No.611 of 2016

and

C.M.P.No.11470 of 2016

1.Nallappa Gounder

2.N.Venkatesan

3.Gomathi

...Appellants/Defendants 2to4

Vs

1.S.Duraisamy

2.K.S.Gopalakrishnan

3.Kannammal

4.Saraswathi

5.T.Senthilkumar

6.C.S.Palanisamy

...Respondents 1to3/Plaintiff

...Respondents 4to6/
Defendants 5to7

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 13.04.2016 made in A.S.No.67 of 2010 on the file of the Principal District Judge, Erode, reversing the judgment and decree passed in O.S.No.391 of 2004 dated 12.04.2010 by the Principal Subordinate Judge, Erode.

For Appellants

.. Ms.P.T.Asha

for M/s.Sarvabhauman Associates

For Respondents

.. Mr.N.Manokaran

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JUDGMENT

Being aggrieved against the decree granted by the lower appellate Court for $\frac{1}{4}$ share in the suit properties in favour of the plaintiffs, this second appeal has been preferred by defendants 2 to 4, by raising the following substantial questions of law:

(i)Whether the lower appellate Court is right in law in not directing respondents 1 to 3/plaintiffs to value the suit under Section 37(1) after rendering a finding that they are not in possession of the property?

(ii)Whether the lower appellate Court is correct in law in rejecting the plea of the oral relinquishment by the appellants especially in the light of Ex.B9 to Ex.B22 and the fact that even during his life time Pongianna Gounder had not made any provision for respondents 1 to 4 herein in the suit property?

2.The relationship between the parties is not in dispute. The suit properties are the joint family properties of the parties to this appeal. The suit properties were originally in the hands of one Pongianna Gounder, who had a wife by name Nachayammal, who has been arrayed as the first defendant (since deceased). They had a son and a daughter viz., Nallappa Gounder and Valliammal respectively. Valliammal predeceased her father. Nallappa Gounder is the first appellant/second defendant. Appellants 2 and 3 are his son and daughter. The plaintiffs are the sons and daughter of the deceased Valliammal and they have filed the suit for partition and separate possession. The trial Court dismissed the suit on the ground that there is no material to hold that the plaintiffs are in possession and enjoyment of the suit properties and there was a prior partition and relinquishment by the co-sharers in favour of the defendants.

3.The lower appellate Court reversed the judgment and decree of the trial Court by holding that after the demise of Pongianna Gounder and his daughter, the suit properties will have to be divided among the legal heirs. Since there is no dispute about the relationship and the nature of the suit properties coupled with the fact that the first defendant died during the pendency of the suit, the plaintiffs and the fifth defendant put together are entitled for $\frac{1}{4}$ share. Incidentally, the defence sought to be put up by the appellants was rejected in the absence of any material in support of the same.

4.Learned counsel appearing for the appellants made only one submission. She submits that the first defendant died during the pendency of the suit. There was a partition deed between herself and other defendants. As per the partition deed, she has expressed her intention to relinquish her right in favour of the other defendants and therefore, her share after her demise, will have to be included to the share of the appellants. In support of her contention, learned counsel made reliance upon the

evidence culled out from P.W.1. In his evidence, P.W.1 has stated that he is aware of the partition deed but deposes that it would not bind him.

5.Learned counsel appearing for the respondents submits that even as per the written statement, the first defendant did not have any right over the suit properties. She was merely added as proforma party and given a sum of Rs.25,000/- out of the joint family income. Therefore, the same cannot be equated to hold that she has relinquished her share of the suit properties in favour of the other defendants/appellants.

6.This Court does not find any merit in this appeal. In the written statement, a specific stand has been taken that the first defendant had no right in the family properties and she has been added only as formal party in the registered partition deed dated 02.07.2004. A sum of Rs.25,000/- has been given to her for maintenance. A perusal of the partition deed also would show that the said sum has been given to her out of the joint family income, by taking into consideration her age and for the purpose of maintenance which is inclusive of medical expenses. Therefore, the partition deed signed by her cannot be termed as a deed of relinquishment. How she would have acted after the decree is passed, had she been alive, is the matter for conjecture. Thus this Court does not find any substantial question of law, warranting interference. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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To

1.The Principal District Judge, Erode.

2.The Principal Subordinate Judge,Erode.

+1cc to Mr.N. Manokaran, Advocate, S.R.No.4989

+1cc to M/s. Sarvabhauman Associates, Advocate, S.R.No.4776

SV(CO)

EU 27.2.17

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