

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.2 of 2018

and

C.M.P.No.30 of 2018

1. Radhakrishnan

2. Miniammal ...Appellants/Appellants/ Defendants

versus

Kamalam ... Respondent/ Respondent/Plaintiff

Prayer: This second appeal is filed under Section 100 of C.P.C. against the Judgment and Decree dated 23.06.2017 made in A.S.No.104 of 2016, on the file of the Principal District Court, Erode confirming the Judgment and Decree dated 02.09.2016 made in O.S.No.88 of 2013 on the file of the learned Sub Court, Bhavani.

For Appellants : Mr.N.Manokaran

For Respondent : Mr.R.Kannan

for Mr.V.Regunathan

J U D G M E N T

The defendants, who had lost before both the Courts below have preferred this second appeal, challenging the judgment and decree passed in A.S.No.104 of 2016 dated 23.06.2017, on the file of the Principal District Court, Erode, confirming the Judgment and Decree dated 02.09.2016 in O.S.No.88 of 2013, on the file of the learned Sub Court, Bhavani.

2. The suit was filed by the respondent/plaintiff for partition and separate possession. The suit property and other properties originally belonged to Elaya Gounder, who had two sons, namely, Sellappa Gounder and Perumal Gounder. On 13.12.1991, there was a partition of the joint family properties between Elaya Gounder and his two sons, Sellappa Gounder and Perumal Gounder. As per the partition, 'A' schedule property was allotted to Elaya Gounder, 'B' schedule property was allotted to Sellappa Gounder and 'C' schedule property was allotted to

Perumal Gounder, respectively. Now, the properties allotted to Perumal Gounder is in dispute as the plaintiff is the daughter of the said Perumal Gounder and the defendants 1 and 2 are the sons and wife of the deceased Perumal Gounder. According to the plaintiff, she is entitled 1/3rd share in the property, after the division took place and hence, suit has been filed for partition and separate possession.

3. Resisting the suit, the defendants had filed a written statement, stating that as per the partition, 'A' schedule properties were allotted to Elaya Gounder, 'B' schedule properties were allotted to Sellappa Gounder and 'C' schedule properties were allotted to Perumal Gounder. The second defendant is the mother of the plaintiff and the first defendant and the plaintiff is entitled to 1/3rd share after the death of the father in the properties that was divided in 1991 by a partition deed. It is the further case of the defendants that during the life time of the father, he had executed a release deed in Doc. No.2159 of 2009, relinquishing his 50% share of the properties. According to the defendants, since 50% share of the suit properties was released in favour of the first defendant, by the father, the plaintiff cannot have any claim. After considering the oral and documentary evidence, the suit was decreed as prayed for and in the appeal filed by the defendants, the same was confirmed.

4. Heard the learned counsel for the appellants and the learned counsel for the respondent.

5. The relationship between the parties is admitted. Admittedly, there was a partition on 13.12.1991 between Elaya Gounder, Sellappa Gounder and Perumal Gounder. As per the said partition, 1/3rd share in the family properties fell to the share of the plaintiffs father, Perumal Gounder. It is also admitted that the release deed was executed on 28.08.2009 by the Perumal Gounder in favour of the first defendant under Ex.A2. According to Perumal Gounder, the suit properties were joint family properties. Hence, only the Perumal Gounder and the first defendant are entitled for the shares. Accordingly, he released 50% of share in the suit property in favour of the first defendant.

6. It is to be noted that the father of the first defendant had only 1/3rd share in the properties and he can only relinquish 1/3rd share in favour of his son and he cannot release 50% of the same. When there is no partition by metes and bounds on the death of the Perumal Gounder, the property had to be divided equally between the mother, daughter and son. Further, in this case, the father had released half share in the

suit properties based on which the defendant is contesting the claim of the plaintiff.

7. After the division in the year 1991, the property in the hands of Perumal Gounder becomes separate property and on his death, the legal heirs is entitled to equal share. Accordingly, the plaintiff, first defendant and second defendant are entitled to 1/3rd share each. The first defendant's father was said to have executed a release deed of the 50% share, over which the defendant's father does not have any right. It is open to the father of the first defendant to execute a release deed only with respect to his 1/3rd share and not 50% of the properties. If he had released in excess of what he himself is entitled to the same is not binding on the plaintiff. Thus, the Courts below have concurrently held that the plaintiff is entitled for decree for partition of her 1/3rd share and rejected the claim of the first defendant that he had acquired entire property. As the release deed was also held to be invalid, the plaintiff is entitled for partition of her father's property.

8. Both the Courts below had rightly decreed the suit. There is no infirmity in the findings of the Courts below or any question of law arising for consideration in the above facts.

9. In the result, the second appeal is dismissed, confirming the judgment and decree dated 23.06.2017 passed by the Lower Appellate Court in A.S.No.104 of 2016, on the file of the Principal District Court, Erode. No Costs. Consequently, connected miscellaneous petitions is closed.

Sd/-
Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

rsi

To

1. The Principal District Judge, Erode.
2. The Subordinate Judge, Bhavani.

+1cc to Mr.N.Manokaran, Advocate SR.No.1378
+1cc to Mr.V.Ragunathan, Advocate SR.No.1214

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and C.M.P.No.30 of 2018

GJII(CO)
GN(21/02/2018)