

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.01.2018

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.347 of 2017
and
C.M.P.No.13119 of 2017

A.Venkatesan ... Appellant/4th Defendant

vs.

1.C.Kuppayee

2.S.Ramayee

3.Murugesan

4.N.Palaniammal

5.P.Rasammal

6.M.Marayee

7.M.Patchiyammal

8.V.Santha

9.Srirangayee

... Respondents 1 to 6/Plaintiff 1 to 6

... Respondents/Defendants 1 to 3

Appeal suit filed under Order XLI Rule 1 and Section 96 of C.P.C. against the judgment and decree dated 06.07.2016 passed in O.S.No.157 of 2013, on the file of the II Additional District and Sessions Judge, Salem.

For Appellant : Mr.K.R.Arun Shabari

For Respondents : Mr.A.Ganapatheeswaran
for R1 to R8
No appearance for R9

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

This Appeal Suit has been directed against the judgment and decree dated 06.07.2016, passed in O.S.No.157 of 2013, by the II Additional District and Sessions Court, Salem.

2.The respondents 1 to 6 herein, as plaintiffs, have instituted O.S.No.157 of 2013, on the file of the trial Court, praying to pass a preliminary decree of partition in respect of

their 6/8 shares, wherein, the present appellant has been arrayed as 4th defendant.

3.The material averments made in the plaint are that the suit property is originally belonged to one Pachamuthu and he passed away, leaving behind him, the plaintiffs 1 and 2, 4 to 6 and defendants 1 and 2. The mother of the 3rd plaintiff is also one of the daughters of Pachamuthu and she passed away, leaving behind her, the third plaintiff, as her legal heir. The said Pachamuthu, without considering the partible interest of the plaintiffs and defendants 1 and 2, has sold the entire suit property in favour of the 3rd defendant by virtue of sale deed dated 28.2.1974. Since the plaintiffs and defendants 1 and 2 are co-parceners of the erstwhile Hindu joint family, consisted of Pachamuthu, plaintiffs and defendants 1 and 2, the plaintiffs, in aggregation, are entitled to get 6/8 shares in the suit property. The sale deed executed by Pachamuthu in favour of the 3rd defendant on 28.2.1974 is not binding upon the plaintiffs and defendants 1 and 2. Under such circumstances, the present suit has been instituted for the reliefs sought therein.

4.In the written statement filed on the side of the 4th defendant, adopted by 3rd defendant, it is averred to the effect that the suit property is the absolute property of Pachamuthu and he derived title to the same through partition between him and his brother by name Angamuthu and on 28.02.1974, he sold the same in favour of the 3rd defendant. The 3rd defendant has settled the suit property by virtue of settlement deed dated 14.12.1999 in favour of the 4th defendant. Therefore, the 4th defendant has become absolute owner of the suit property, in which, the plaintiffs and defendants 1 and 2 are not having any partible interest and therefore, the present suit deserves to be dismissed.

5.On the basis of the rival pleadings raised on either side, the trial Court has framed necessary issues and after analysing both oral and documentary evidence, has decreed the suit as prayed for. Against the judgment and decree passed by the trial Court, the present Appeal Suit has been preferred at the instance of the 4th defendant, as appellant.

6.The sum and substance of the case of the plaintiffs is that the suit property and some other properties are originally belonged to two brothers, namely, Angamuthu and Pachamuthu and between them, an oral partition has taken place, wherein, the suit property has been allowed to the share of Pachamuthu. The said Pachamuthu is none other than the father of the plaintiffs 1 and 2, 4 to 6 and defendants 1 and 2 and also brother of the 3rd plaintiff. The mother of 3rd plaintiff has passed away. Further, the said Pachamuthu has passed away leaving behind him

the plaintiffs and defendants 1 and 2 as his legal heirs. Since the plaintiffs and defendants 1 and 2 are members of erstwhile Hindu joint family consisted of Pachamuthu, plaintiffs 1 and 2, 4 to 6 and defendants 1 and 2 and mother of the 3rd plaintiff, in aggregation, they are having 6/8 shares in the suit property and since the defendants 1 and 2 are not amenable for having amicable partition, the present suit has been instituted for the relief sought therein.

7.The defence put forth on the side of the defendants 3 and 4 is that the suit property is the absolute property of Pachamuthu and he sold the same in favour of 3rd defendant by virtue of sale deed dated 28.2.2974. The 3rd defendant, in turn, has settled the same in favour of the 4th defendant by virtue of settlement deed dated 14.12.1999 and thus, the 4th defendant has become absolute owner of the suit property and the plaintiffs and also defendants 1 and 2 are not having any partible interest.

8.As adverted to earlier, the trial Court, after considering the available evidence on record, has decreed the suit as prayed for.

9.The learned counsel appearing for the appellant/4th defendant has meticulously drawn the attention of this Court to Section 6 of the Hindu Succession Act, 1956 and the same reads as follows:-

"6.Devolution of interest in coparcenary property-(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall.-

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener;

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004."

Even from a cursory look of the provision of the said Section, it is discernible that Amendment Act, 2005, has come into effect only from 20.12.2004.

10.The present case has been filed only on the basis of Amendment Act, 2005. Therefore, it is quite clear that only from 20th day of December 2004, the plaintiffs and defendants 1 and 2 have become coparceners of erstwhile Hindu joint family.

11.At this juncture, it is pertinent to note the proviso clause, wherein, it has been clinchingly stated to the effect that if any alienation is made prior to 20th day of December 2004, the same would not be affected by the Hindu Succession (Amendment) Act, 2005.

12.In the instant case, as mentioned supra, the said Pachamuthu has sold the suit property in favour of 3rd defendant by virtue of sale deed dated 28.02.1974. The 3rd defendant has settled the suit property in favour of the 4th defendant by virtue of settlement deed dated 14.12.1999. Therefore, it is quite clear that even prior to Hindu Succession (Amendment) Act, 2005, such sale has come into effect in favour of the 3rd defendant and the same would not be affected by such amendment.

13.On the side of the defendants 3 and 4, the sale deed dated 28.2.1974 has been marked as Ex.B4 and settlement deed dated 14.12.1999 has been marked as Ex.B5.

14.Considering the aforesaid legal aspects, this Court is of the view that by virtue of Ex.B4, the 3rd defendant has become absolute owner of the suit property and since the 3rd defendant has executed Ex.B5 in favour of the 4th defendant, now the 4th defendant is the owner of the suit property, in which the plaintiffs and defendants 1 and 2 are not having any partible interest.

15.The trial Court, without considering the proviso clause of Section 6 of the said Act, has erroneously come to a conclusion that the plaintiffs are having partible interest in the suit property.

16.In view of the discussion made earlier, this Court has found considerable force in the contention put forth on the side of the appellant/4th defendant and altogether, the present appeal suit deserves to be allowed.

In fine, this Appeal Suit is allowed without costs. The judgment and decree passed in O.S.No.157 of 2013, by the trial Court are set aside and O.S.No.157 of 2013 is dismissed without costs. Connected miscellaneous petition is dismissed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

1.The II Additional District and Sessions Judge,
Salem.

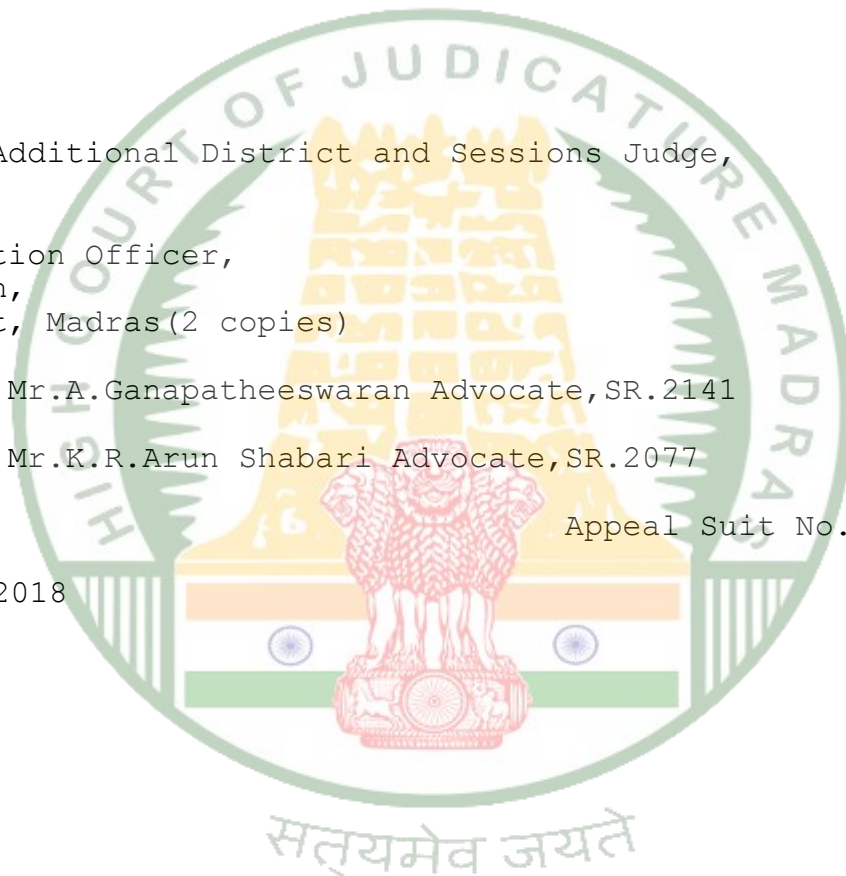
2.The Section Officer,
VR Section,
High Court, Madras (2 copies)

+ 1 cc to Mr.A.Ganapatheeswaran Advocate, SR.2141

+ 1 cc to Mr.K.R.Arun Shabari Advocate, SR.2077

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