

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.01.2018

CORAM

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

Appeal Suit No.376 of 2017
and
C.M.P.No.14234 of 2017

1.Rajamani @ Mani
2.Suguna
3.Samrat

.... Appellants

vs.

1.Malliga
2.Thavamani

... Respondents

Appeal suit filed under Section 96 read with Order 41 Rule 1 of C.P.C. against the judgment and decree dated 23.11.2016, passed by the III Additional District Judge, Salem in O.S.NO.218/2010.

For Appellants : Mr.R.Murali
For Respondents : Mr.N.Manokaran

JUDGMENT

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

Challenge in this Appeal Suit is to the judgment and decree dated 23.11.2016, passed in O.S.No.218 of 2010 by the III Additional District Court, Salem.

2.The respondents herein, as plaintiffs, have instituted O.S.No.218 of 2010, on the file of the trial Court, praying to pass a preliminary decree of partition in respect of 2/5 shares in the suit properties, wherein, the present appellants have been arrayed as defendants.

3.The material averments made in the plaint are that the plaintiffs are the daughters of Kandasamy and one Thangammal. The mother of the plaintiffs has passed away in the year 1985. After the demise of the said Thangammal, the father of the plaintiffs, viz., Kandasamy has married the first defendant as his second wife. The defendants 2 and 3 are the children born through the first defendant. The suit properties are the separate properties of Kandasamy and he passed away on 01.05.1988, leaving behind him the present plaintiffs and

defendants as his legal heirs. Since the defendants are not amenable for partition, the present suit has been instituted for getting the relief sought therein.

4. In the written statement filed on the side of the defendants it is averred that the suit first item has been purchased by utilising joint family funds of the erstwhile Hindu joint family consisted of Pachamuthu and his three sons, namely, Poomaalai, Manickam and Kandasamy by virtue of Sale deed dated 04.01.1942. On 11.02.1958, a release deed has been executed in favour of Kandasamy by the remaining joint family members. Under the said circumstances, the suit first item is a joint family property and the share claimed in respect of suit first item by the plaintiffs is erroneous and there is no merit in the suit and the same deserves to be dismissed.

5. On the basis of the divergent 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 and against the judgment and decree passed by the trial Court, the present Appeal Suit has been preferred at the instance of the defendants, as appellants.

6. Before perpending the rival submissions made on either side, the Court has to narrate the relationship between the parties.

7. It is an admitted fact that the plaintiffs are the daughters of Kandasamy and Thangammal. It is also equally an admitted fact that the said Thangammal has passed away in the year 1985. After her demise, the said Kandasamy/father of the plaintiffs, has married the first defendant as his second wife. Both the said Kandasamy and first defendant have been blessed with the defendants 2 and 3. The said Kandasamy has passed away on 01.05.1988, leaving behind him the present plaintiffs and defendants as his legal heirs.

8. The sum and substance of the case of the plaintiffs is that all the suit properties are the separate properties of Kandasamy and since he passed away on 01.05.1988 intestate, the plaintiffs and defendants are having equal shares and under the said circumstances, the present suit has been instituted for getting the relief sought therein.

9. The main defence taken on the side of the defendants is that the suit first item has been purchased on 04.01.1942 by utilising joint family funds of the erstwhile Hindu Joint family consisted of Pachamuthy, Poomaalai, Manickam and Kandasamy and subsequently, on 11.02.1958, the remaining joint family members have released their interest in the suit first item in favour of the said Kandasamy and as such, the suit first item is nothing but an ancestral property and therefore, the quantum of shares claimed by the plaintiffs is erroneous.

10.The learned counsel appearing for the appellants/defendants has advanced his argument only on the basis of the main defence taken on the side of the defendants.

11.The learned counsel appearing for the respondents/plaintiffs has befittingly contended to the effect that there is no specific plea with regard to character of the suit first item and even assuming without conceding that there is a specific plea to that effect, no acceptable/trustworthy evidence has been forthcoming on the side of the defendants for the purpose of proving that the suit first item has been purchased by joint family nucleus and therefore, the contention put forth on the side of the appellants/defendants is sans merit.

12.As adverted to earlier, the only defence taken on the side of the appellants/defendants is that the suit first item is nothing but an ancestral property.

13.It is an admitted fact that the suit first item has been purchased by one Pachamuthu and his three sons, namely, Poomaalai, Manickam and Kandasamy jointly by virtue of sale deed dated 04.01.1942 and a registered copy of the same has been marked as Ex.A1. It is also equally an admitted fact that the remaining purchasers have released their interest in the suit first item in favour of the said Kandasamy by virtue of release deed dated 11.02.1958 and a registered copy of the same has been marked as Ex.A2.

14.Even though a specific argument has been put forth on the side of the appellants/defendants to the effect that the suit first item is an ancestral property, for the purpose of proving the same, absolutely there is no evidence. Further, there is no evidence for the purpose of showing that the erstwhile Hindu Joint family consisted of Pachamuthu and his three sons has had sufficient nucleus so as to purchase the property mentioned in Ex.A1 for the benefit of joint family. Since no such evidence is available on the side of the appellants/defendants, the main defence taken on their side cannot be accepted.

15.It is an admitted fact that the father of the plaintiffs, defendants 2 and 3 and husband of the first defendant, viz., Kandasamy, has passed away on 01.05.1988 intestate, leaving behind him the present plaintiffs and defendants as his legal heirs. Since on the side of the appellants/defendants, it has not been positively established to the effect that the suit first item is nothing but an ancestral property and since the remaining items of suit properties have been purchased by virtue of sale deeds, which have been marked as Exs.A3 to A5, this Court is of the considered view that in all the suit properties, the plaintiffs are jointly entitled to get 2/5 shares.

16.The trial Court, after considering the evidence available on record, has rightly decreed the suit as prayed for. In view of the discussion made earlier, this Court has not found any acceptable force in the contentions put forth on the side of the appellants/defendants and altogether the present appeal suit deserves to be dismissed.

In fine, this Appeal Suit is dismissed without costs. The judgment and decree passed in O.S.No.218 of 2010 by the trial Court are confirmed. Connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

msk

To

The III Additional District Judge, Salem.

Copy to: The Section Officer,
Vr Section, High Court, Madras.

+ 1 cc to MR. R. Murali, Advocate SR.129

+ 1 cc to Mr. M. Manokaran, Advocate Sr.145

Appeal Suit No.376 of 2017

KS (CO)

EU(08/02/2018)

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