

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN  
and  
THE HONOURABLE MR.JUSTICE S.BASKARAN

A.S.No.622 of 2018  
and  
C.M.P.No.16829 of 2018

Geetha ... Appellant/Plaintiff  
.Vs.

1.D.Ramalingam

2.R.Subramaniam

3.V.Rajeswari

4.L.Amutha

5.The Sub-Registrar,  
Kodambakkam,  
Chennai-600 024.  
(R1 to R5 remained exparte  
before the lower court)

... Respondents/Defendants 1 to 5

PRAYER: Appeal against the Judgment and Decree dated 09.07.2018  
passed in O.S.No.4777 of 2014 on the file of the XVII Additional  
City Civil Court, Chennai.

For Appellant : Mr.S.William

JUDGMENT

(Judgment of the Court was delivered by N.KIRUBAKARAN, J.)

Even though the Civil Miscellaneous Petition has been posted  
before this Court, the Appeal Suit itself has been taken up for  
hearing.

2.Heard the learned Counsel appearing for the appellant.

3.The plaintiff is the appellant before this Court, who  
filed a suit for partition of 6 items of the suit schedule

property and for declaration that the settlement deed dated 29.07.2013 executed by the 1<sup>st</sup> respondent/1<sup>st</sup> defendant in favour of the 2<sup>nd</sup> respondent/2<sup>nd</sup> defendant, settling the 1<sup>st</sup> item of suit schedule property as null and void and for permanent injunction. The suit has been filed against the 1<sup>st</sup> respondent/father, 2<sup>nd</sup> respondent/brother and 3<sup>rd</sup> & 4<sup>th</sup> respondents/sisters. The 5<sup>th</sup> respondent is the Sub-Registrar, Kodambakkam, Chennai-04.

3.The case of the plaintiff/appellant is that all the properties are ancestral properties. As far as the 1<sup>st</sup> property is concerned, the property was acquired by the 1<sup>st</sup> respondent/father from the contribution made by the appellant's mother by doing business. Further, she would submit that the property was purchased in the name of the 1<sup>st</sup> respondent/father from the contribution made by the appellant's mother. The 1<sup>st</sup> respondent/father executed the settlement deed dated 29.07.2013 in favour the 2<sup>nd</sup> respondent/brother. Therefore, other properties are ancestral properties and 1/5<sup>th</sup> share has to be granted to her.

4.Eventhough respondents 1 to 4/defendants 1 to 4 filed written statements and denied the allegations made in the plaint, they remained exparte.

5.Based on the above pleadings, the trial Court raised the following issues :

"(i)Whether the plaintiff is entitled for preliminary decree of partition?

(ii)What is the share?

(iii)Whether the settlement deed dated 29.07.2013 in favour of D2 by D1 is illegal?

(iv)Whether the defendants trying to alienate the property illegally?

(v)Whether the plaintiff is entitled for declaration and injunction?

(vi)To what other reliefs?"

6.During trial, the plaintiff alone was examined as PW1 and no other witnesses were examined on her side and similarly though defendants 1 to 4 filed written statements, did not adduce any evidence. The trial Court based on PW1's evidence granted 1/5<sup>th</sup> share in all the properties except the 1<sup>st</sup> item, since it stands in the name of the 1<sup>st</sup> respondent/father. The 1<sup>st</sup> respondent/father categorically stated in the written statement that he purchased the property out of his own funds. Moreover, he stated that his wife Mrs.Jeya was a house wife and

did not have any source of income. Though the appellant claimed that the property was purchased in the name of the 1<sup>st</sup> respondent/father, from the contribution made by her mother Mrs.Jeya, there is no documentary proof adduced by the plaintiff/appellant.

7.Though the learned Counsel for the appellant would submit that there is no contra evidence available denying the allegations made by PW1, it is the appellant who has come before this Court. Therefore, her case has to fall or stand on her own evidence and she could not rely upon lack of evidence or no evidence on the part of respondents 1 to 4/defendants 1 to 4.

8.It is an admitted case that the 1<sup>st</sup> item of the suit schedule property stands in the name of the 1<sup>st</sup> respondent/father and now it has been settled in the favour of 2<sup>nd</sup> respondent/brother by virtue of Settlement Deed registered vide Document No.2774 of 2013 dated 29.07.2013 and therefore, the trial Court in the absence of any proof regarding the contention of the appellant that the property was purchased in the name of the 1<sup>st</sup> respondent/father from the contribution made by the mother, did not accept the case of the appellant.

9.When a plea of benami is taken, the onus or burden of proof is heavy on the person, who pleads benami. Further, the appellant filed a reply statement to the written statement filed by defendants 1 to 4, denying that the property is purchased by her mother. No proof has been filed by the appellant to prove that her mother contributed for the purchase of the property. The trial Court rightly weighed the evidence of PW1 and in the absence of any material evidence, especially any documents to prove the case, in respect of item No.1, rightly dismissed the suit as against the 1<sup>st</sup> item of the suit schedule property.

10. Further, the trial Court also took note of the fact that the 1<sup>st</sup> item of the suit schedule property, which stands in the name of the 1<sup>st</sup> respondent/1<sup>st</sup> defendant was settled in the name of the 2<sup>nd</sup> respondent/2<sup>nd</sup> defendant.

11.In these circumstances, the dismissal of the suit against the 1<sup>st</sup> item of the suit schedule property cannot be interfered with. As far as the other 5 items of the suit schedule property are concerned, the plaintiff was granted 1/5<sup>th</sup> share in all the properties equal to the other respondents and therefore, there cannot be any grievance in this regard.

12.Therefore, the Decree and Judgment passed by the trial Court, dismissing the suit in respect of 1<sup>st</sup> item of the suit schedule property in O.S.No.4777 of 2014 dated 09.07.2018 is

justified. The appeal fails and the same is dismissed. Consequently, connected Civil Miscellaneous Petition is also dismissed. No costs.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

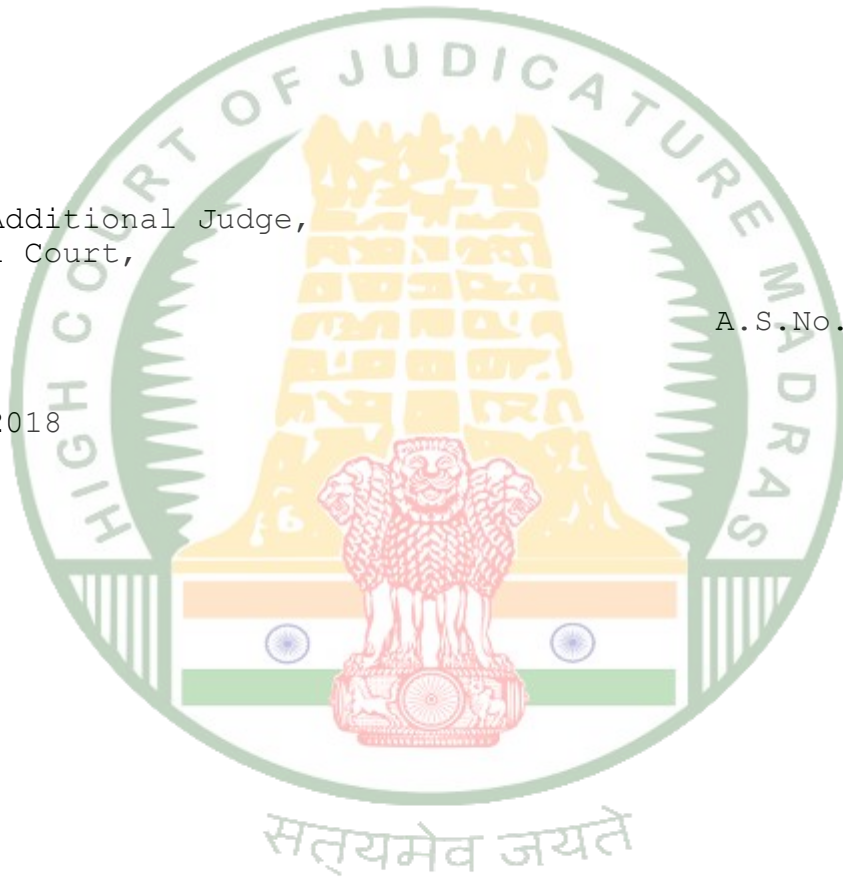
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TO:

The XVII Additional Judge,  
City Civil Court,  
Chennai.

A.S.No.622 of 2018

NRI (CO)  
NR 23/10/2018



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