

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.01.2018

CORAM

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

Appeal Suit No.520 of 2017
and
C.M.P.No.16942 of 2017

1.Venkatesan
2.Susila
3.Santhi

... Appellants/Defendants

vs.

Kalaiselvi

... Respondent/Plaintiff

Appeal suit filed under Section 96 of Civil Procedure Code, 1908 against the judgment and decree dated 29.06.2017, passed by the Principal District and Sessions Judge, Ariyalur, in O.S.No.7 of 2012.

For Appellants : Mr.E.Karthik Raja for
Mr.G.Karthikeyan

For Respondents : Mr.P.V.Selvarajan for
Mr.R.Aranganathan

JUDGMENT

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

Challenge in this Appeal Suit is to the judgment and decree dated 29.06.2017 passed in O.S.No.7 of 2012, by the Principal District and Sessions Court, Ariyalur.

2.The respondent herein, as plaintiff, has instituted O.S.No.7 of 2012, on the file of the trial Court, praying to pass a preliminary decree of partition, wherein, the present appellants have been arrayed as defendants.

3.The material averments made in the plaint are that the first and second defendants are the father-in-law and mother-in-law of the plaintiff. The 3rd defendant is her sister-in-law. The husband of the plaintiff, by name, Senthilkumar, has doused kerosene and set him ablaze and thereby sustained 65% burn injuries and despite of best efforts taken to save his life, he passed away, leaving behind him his wife (plaintiff)

and second defendant (mother) as his legal heirs. The suit 'A' Schedule properties, except 3rd item of 'A' Schedule, are settled in favour of the deceased Senthilkumar by his paternal grandfather. The 3rd item of suit 'A' Schedule property has been purchased by virtue of sale deed dated 09.05.1983 by the said Senthilkumar. The suit 'B' Schedule properties have been purchased by virtue of sale deed dated 25.07.1991 by the said deceased Senthilkumar and thus, all the suit properties are his separate properties. Since the deceased Senthilkumar has passed away intestate, leaving behind him, the plaintiff and second defendant, as his legal heirs, the plaintiff is having half share in the suit properties and under the said circumstances, the present suit has been instituted for getting the relief sought therein.

4. In the written statement filed by the first and second defendants, it is averred to the effect that the suit properties are the separate properties of deceased Senthilkumar. But there is a family arrangement, which culminated in the Will dated 15.1.2012, executed by the deceased. Under the said circumstances, the plaintiff is not having any partible interest over the suit properties and therefore, the present suit deserves to be dismissed.

5. In the written statement filed on the side of the 3rd defendant it is averred that the suit properties are ancestral properties. Only by utilising joint family income, some items of suit properties have been purchased in the name of Senthilkumar. The 'Will' introduced on the side of the defendants 1 and 2 is not binding upon the 3rd defendant. There is no merit in the suit and the same deserves to be dismissed.

6. 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. 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.

7. The sum and substance of the case of the plaintiff is that both the suit 'A' and 'B' Schedule properties are the absolute properties of the husband of the plaintiff by name Senthilkumar. On 09.01.2012, he doused kerosene and set him ablaze and thereby sustained 65% burn injuries and despite of best efforts taken to save his life, he passed away, leaving behind him, the plaintiff and second defendant as his legal heirs. Since all the suit properties are the separate properties of the deceased Senthilkumar, the plaintiff is having half share in the suit properties. Under such circumstances, the present suit has been instituted for the relief sought therein.

8.The defence put forth on the side of the defendants 1 and 2 is that the suit properties are the separate properties of the deceased Senthilkumar and there was a family arrangement, which culminated in the 'Will' dated 15.1.2012. Under the said circumstances, the plaintiff is not entitled to get the relief sought in the suit.

9.The defence put forth on the side of the 3rd defendant is that the Will relied upon by the defendants 1 and 2 is not binding upon the third defendant and therefore, the present suit deserves to be dismissed.

10.As mentioned earlier, the trial Court, after considering the rival evidence available on record, has decreed the suit as prayed for.

11.The learned counsel appearing for the appellants/defendants has contended to the effect that prior to demise of Senthilkumar, he voluntarily executed a 'Will' dated 15.01.2012 and thereby settled the entire suit properties in favour of the defendants 1 and 2 and since the 'Will' dated 15.1.2012 has come into effect, the plaintiff is not having any partible interest and the trial Court, even without considering the 'Will' dated 15.1.2012, has erroneously decreed the suit and therefore, the judgment and decree passed by the trial Court are liable to be interfered with.

12.Per contra, the learned counsel appearing for the respondent/plaintiff has succinctly contended to the effect that the suit properties are the separate properties of deceased Senthilkumar, who is none other than the husband of the plaintiff and he passed away intestate and even though the 'Will' dated 15.1.2012 has been introduced on the side of the defendants 1 and 2, the same has not been proved as contemplated under law and the trial Court has rightly rejected the same and therefore, the judgment and decree passed by the trial Court are perfectly correct and the same do not require any interference.

13.The consistent case put forth on the side of the plaintiff is that by virtue of two registered settlement deeds, the deceased Senthilkumar has got title in respect of some items of 'A' Schedule properties.

14.It is an admitted fact that the said Senthilkumar has purchased 3rd item of suit 'A' Schedule property by virtue of sale deed dated 9.05.1983. Further it is an admitted fact that by virtue of sale deed dated 25.07.1991, he purchased the suit 'B' Schedule properties. The settlement deeds are marked as Exs.A5 and A6 and sale deeds are marked as Exs.A7 and A8.

15.Even though a faint attempt has been made on the side of the 3rd defendant that all the suit properties are joint

family properties, no acceptable/trust worthy evidence is available so as to prove the said aspect.

16.Considering the fact that some items of suit 'A' Schedule properties have been settled by the paternal grandfather of the deceased Senthilkumar by virtue of Ex.A5 and Ex.A6 and also considering that the said Senthilkumar has purchased the properties mentioned in Exs.A7 and A8, this Court can easily discern that all the suit properties are the separate properties of the deceased Senthilkumar.

17.The only defence put forth on the side of the defendants 1 and 2 is that on 09.01.2012, the deceased Senthilkumarr has doused kerosene and set him ablaze and thereby sustained 65% burn injuries and for the purpose of saving his life, he has been admitted in a hospital, wherein, he voluntarily executed the 'Will' dated 15.01.2012 in favour of the defendants 1 and 2 and the same has been marked as Ex.B1. Since Ex.B1 is a 'Will', as per Section 68 of the Indian Evidence Act, 1872, the entire burden lies upon the defendants 1 and 2 to prove the same.

18.As rightly pointed out on the side of the respondent/plaintiff, no attempt has been made on the side of the defendants 1 and 2 to prove that at the time of execution of Ex.B1, the Executant has had possessed of sound mind.

19.One of the attestors, by name, Jawahar, has been examined as D.W.2. But his specific evidence is that the signature found in Ex.B1 is not his signature. Therefore, it is quite clear that as contemplated under Section 68 of the Indian Evidence Act, even the due execution and also attestation of Ex.B1 have not been proved on the side of the defendants 1 and 2. Since the above both legal and factual aspects have not at all been proved on the side of the defendants 1 and 2, the Court can easily come to a conclusion that Ex.B1 is nothing but a waste and the same does not create any interest in favour of anybody.

20.It has already been discussed and decided that all the suit properties are the separate properties of the deceased Senthilkumar. The plaintiff is his wife and the second defendant is his mother. Since the deceased Senthilkumar has passed away intestate, leaving behind him the plaintiff and second defendant as his legal heirs, both of them are each entitled to get half share in the suit properties.

21.The trial Court, after considering the available evidence on record, has rightly decreed the suit and in view of the discussion made earlier, this Court has not found any acceptable force in the contention 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.7 of 2012, by the trial Court, are confirmed. Connected miscellaneous petition is dismissed.

msk

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

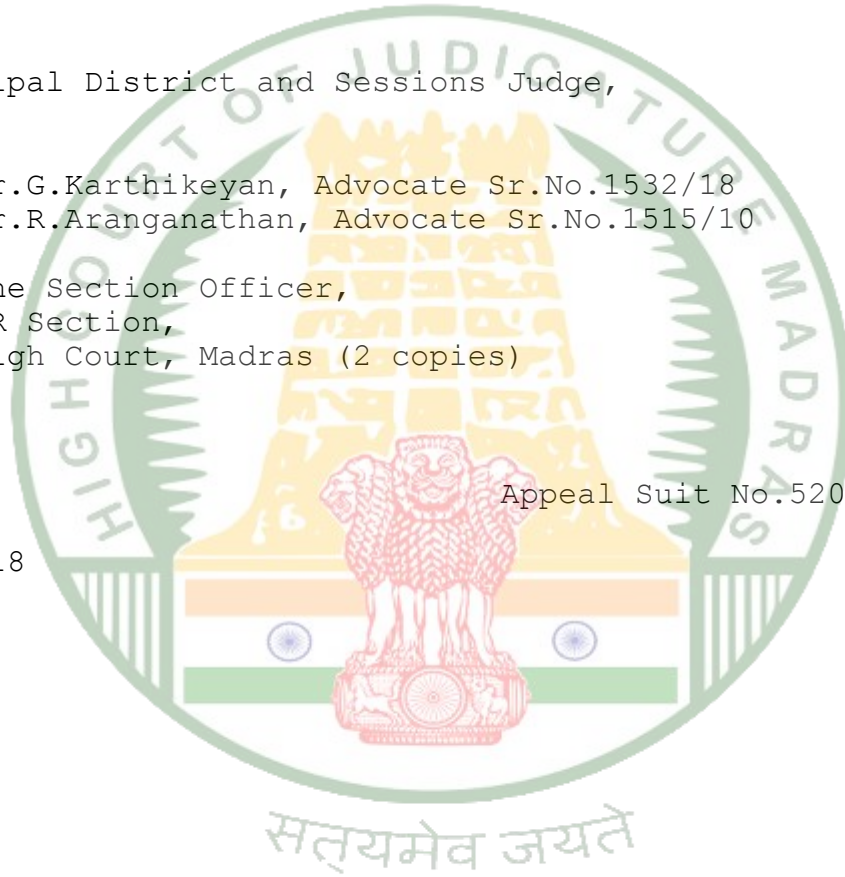
To
The Principal District and Sessions Judge,
Ariyalur

+1cc to Mr.G.Karthikeyan, Advocate Sr.No.1532/18
+2cc to Mr.R.Aranganathan, Advocate Sr.No.1515/10

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VR Section,
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