

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.02.2018

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM
and
THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

A.S.No.558 of 2017
and C.M.P.No.18695 of 2017

Bhuvaneswari ... Appellant/2nd Defendant

Vs

1.D.Niramala Devi ...1st Respondent/Plaintiff
2.D.Sivakumari ... 2nd Respondents/1st
Defendant

First Appeal preferred under Section 96 read with Order 41 Rule 1 of the Code of Civil Procedure, 1908, against the judgment and decree dated 21.04.2017 made in O.S.No.4783 of 2015 passed by the XVI Additional Judge, City Civil Court, Chennai.

For Appellant : Dr.S.R.Sundaram
for Mr.D.Murthy
For Respondents : Mr.V.Vishwanth
for Mr.S.Udayakumar for R1
: No appearance for R2

J U D G M E N T

[Judgment of the Court was delivered by A.SELVAM, J.]

This Appeal Suit has been directed against the judgment and decree dated 21.04.2017, passed in O.S.No.4783 of 2015, by the XVI Additional City Civil Court, Chennai.

2.The first respondent herein, as plaintiff, has instituted O.S.No.4783 of 2015 on the file of the trial Court, praying to pass a preliminary decree of partition, wherein, the present appellant and second respondent has been arrayed as defendants.

3.It is averred in the plaint that the suit first item is the absolute property of the father of the plaintiff and

defendants viz. R.K.Duraiswamy and he passed away, leaving behind him, the plaintiff and defendants as his legal heirs. The suit second item is the absolute property of the mother of the plaintiff and defendants viz. Selvi and she passed away in the year 2012, leaving behind her, the present plaintiff and defendants as her legal heirs. Since the suit first item is the absolute property of the father of the plaintiff and defendants and likewise, since the suit second item is the absolute property of the mother of the plaintiff and defendants, the plaintiff and defendants are each entitled to get 1/3rd share in the suit properties. The plaintiff has requested the defendants to effect an amicable partition. Since the defendants have failed to concede the demand made by the plaintiff, the present suit has been instituted for getting the relief sought therein.

4. In the written statement filed on the side of the second defendant, it is averred that the suit second item is the absolute property of mother of the plaintiff and defendants and she voluntarily executed a Settlement Deed dated 31.05.2010 in favour of the second defendant and since then, the second defendant is in possession and enjoyment of the same. Under such circumstances, the plaintiff is not having any partible interest in respect of suit second item. Further, it is averred in the written statement that the Settlement Deed dated 31.05.2010 cannot be cancelled and there is no merit in the suit and the same 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. The judgment and decree passed by the trial Court are being challenged in the present Appeal Suit.

6. Before contemplating the rival submissions made on either side, it has become sunless to narrate the following admitted facts.

7. It is an admitted fact that the suit first item is the absolute property of one Duraiswamy, who is none other than the father of the plaintiff and defendants and he passed away on 08.05.1993, leaving behind the present plaintiff and defendants as his legal heirs.

8. Likewise, the suit second item is the absolute property of one Selvi, who is none other than the mother of the plaintiff and defendants and she passed away in the year 2012.

9. Further, it is an admitted fact that in respect of the suit second item, the original owner of the same viz. Selvi has executed a Settlement Deed dated 31.05.2010 in favour of the second defendant and subsequently, cancelled the same on

22.02.2012.

10.The learned counsel appearing for the appellant/second defendant has laconically contended to the effect that the suit first item is the absolute property of the father of the plaintiff and defendants, in which, each of them is having 1/3rd share, whereas, in respect of suit second item, the original owner of the same viz. Selvi, mother of the plaintiff and defendants has voluntarily executed a Settlement Deed dated 31.05.2010 in favour of the second defendant and since then, the second defendant is in possession and enjoyment of the same. Since the original owner of the suit second item has already executed a Settlement Deed dated 31.05.2010 in favour of the second defendant, neither the plaintiff nor the first defendant has had any right of partition and the trial Court, without considering the legal issue involved in the present case in respect of suit second item, has erroneously decreed the suit in toto. Therefore, the judgment and decree passed by the trial Court are liable to be modified.

11.The learned counsel appearing for the first respondent/ plaintiff has advanced his arguments to the effect that the suit second item is the absolute property of the mother of the plaintiff and defendants and she executed a Settlement Deed dated 31.05.2010 in favour of the second defendant and after sometime, from the date of execution, so as to avoid future litigation amongst the plaintiff and defendants, she cancelled the Settlement Deed by way of executing Cancellation Deed dated 22.02.2012 and the trial Court, after considering the Cancellation Deed dated 22.02.2012, has rightly decreed the suit as prayed for in respect of both items of suit properties and therefore, the judgment and decree passed by the trial Court do not require any interference.

12.As mentioned supra, the suit first item is the absolute property of the father of the plaintiff and defendants and he passed away on 08.05.1993 intestate. Since he passed away intestate, both the plaintiff and defendants are having equal shares in the suit first item.

13.The bone of contention in the present suit is nothing, but the suit second item.

14.It is an admitted fact that in respect of suit second item, the mother of the plaintiff and defendants viz. Selvi has executed a registered Settlement Deed dated 31.05.2010 and the same has been marked as Ex.A4. It is also equally an admitted fact that the said Selvi on 22.02.2012, has cancelled the Settlement Deed dated 31.05.2010 and the same has been marked as Ex.A5.

15.The only legal question that arises for consideration in the Appeal Suit is as to whether by virtue of Ex.A4, the second defendant has derived absolute right and interest over the suit second item.

16.In fact, this Court has perused the entire recitals made in Ex.A4, wherein, it has been clinchingly stated to the effect that on the date of execution, absolute right and interest have been created in favour of the settlee viz. the second defendant herein. Since by virtue of Ex.A4, absolute interest has been created in respect of suit second item in favour of the second defendant, the second defendant has become absolute owner of the same from 31.05.2010. Since the second defendant has become absolute owner of the suit second item from the date of execution of Ex.A4, the settlor has had no legal right to cancel the Settlement Deed dated 31.05.2010, by virtue of Cancellation Deed dated 22.02.2012.

17.The trial Court, without considering the real legal aspects emerged on the basis of Ex.A4, has erroneously given effect to Ex.A5. Since the settlor has had no right to cancel the Settlement Deed dated 31.05.2010, it is needless to say that the second defendant is the absolute owner of the suit second item, wherein, neither the plaintiff nor the first defendant has had any right of partible interest.

18.The main grievance expresses on the side of the appellant/second defendant is that after execution of Ex.A4, both the plaintiff and first defendant are not having any partible interest over the suit second item.

19.But as already been discussed in detail that on the date of execution of Ex.A4, the second defendant has derived absolute right, title and interest over the suit second item and further in Ex.A4, it has been clearly stated to the effect that on the date of execution of Ex.A4, possession of the suit second item has already been given to the second defendant. Therefore, viewing from any angle, the judgment and decree passed by the trial court are totally erroneous and the same are liable to be set aside.

In fine, this appeal is allowed without costs. The judgment and decree passed in respect of the suit second item by the trial Court are set aside and to that effect, the suit filed in O.S.No.4783 of 2015 is dismissed without costs. The judgment and decree passed in respect of suit first item by the trial Court are confirmed.

Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gya

To

The XVI Additional Judge,
City Civil Court,
Chennai.

copy to
The section officer
VR Section
High Court, Madras (+2 copies)

+1 cc to Mr.S.V.Udhaya kumar Advocate sr 8233
+2 ccs to Mr.G.Sudhakar Advocate sr 7525

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and
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