

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.02.2018

CORAM

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

A.S.No.585 of 2017
and C.M.P.No.19683 of 2017

K.Renuka ... Appellant/2nd Defendant

Vs

1.Anuradha ... 1st Respondent/Plaintiff
2.K.Gopalakrishnan
3.Srinivasan ... Respondents 2 & 3/
defendants 1 & 3

Appeal Suit preferred under Section 96 of the Code of Civil Procedure, 1908, against the judgment and decree dated 29.04.2017 made in O.S.No.1271 of 2013 by the XVI Additional City Civil Court, Chennai.

For Appellant : Mr.A.Siddique Ali

For Respondents : Mr.V.Raghavachari
for Mr.S.Shankar

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 29.04.2017 passed in Original Suit No.1271 of 2013 by the XVI Additional City Civil Court, Chennai.

2.The first respondent herein as plaintiff, has instituted Original Suit No.1271 of 2013, on the file of trial Court, praying to pass a preliminary decree of partition, wherein, the present appellant has been arrayed as second defendant and the remaining respondents have been arrayed as defendants 1 and 3.

3.The material averments made in the plaint are that one Krishnasamy has married the mother of the plaintiff and her name is Chandra. The suit properties are the separate properties of Krishnasamy. The said Krishnasamy has married one Sulochana as his second wife. The plaintiff is the only daughter born through first wife by name, Chandra. The second wife by name, Sulochana has begotten the defendants. The said Krishnasamy has passed away, leaving behind him, the present plaintiff and defendants as his legal heirs. The plaintiff and the defendants are each having 1/4th share in the suit properties. Since the defendants are not amenable for partition, the present suit has been instituted for the relief sought therein.

4.In the written statement filed on the side of the defendants, it is averred to the effect that the father of the defendants by name, Krishnasamy has married their mother by name, Sulochana and the said Sulochana is the legally wedded wife. Both Krishnasamy and Sulochana are blessed with the present defendants. It is false to aver that the said Krishnasamy has married the mother of the plaintiff by name, Chandra as his first wife. The plaintiff is not the legal heir of deceased Krishnasamy. The plaintiff is not having any partible interest in the suit property 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.

6.The second defendant herein, as plaintiff, has instituted Original Suit No.4668 of 2011 on the file of the trial Court, wherein, her mother by name, Sulochana has been shown as first defendant and her brothers namely, Gopalakrishnan, Srinivasan are arrayed as defendants 2 and 3. The plaintiff in Original Suit No.1271 of 2013 by name, Anuradha has been arrayed as fourth defendant. Original Suit No.4668 of 2011 has been filed for an identical relief of partition.

7.The trial Court, has framed necessary issues in Original Suit No.4668 of 2011, on the basis of rival pleadings raised on either side and clubbed both the suits for trial. The evidence taken in Original Suit No.1271 of 2013 has also been treated as evidence in Original Suit No.4668 of 2011.

8.The trial Court, after analysing the evidence on record, has passed a common judgment, whereby, decreed Original Suit No.4668 of 2011 and thereby, passed a preliminary decree of partition to an extent of 1/4th share of the plaintiff. Likewise, the trial Court, has decreed Original Suit No.1271 of 2013 and passed a preliminary decree to an extent of 1/4th share to the plaintiff herein. The judgment and decree of partition

passed in Original Suit No.1271 of 2013 is alone being challenged in the present Appeal Suit.

9.The sum and substance of the case of the plaintiff in Original Suit No.1271 of 2013 is that one Krishnasamy has married one Chandra as his first wife and both of them are blessed with one female child, who is none other than the plaintiff in Original Suit No.1271 of 2013. The very same Krishnasamy has married one Sulochana as his second wife and she has begotten the defendants 1 to 3 in Original Suit No.1271 of 2013. Therefore, the plaintiff in Original Suit No.1271 of 2013 and the defendants 1 to 3 therein are each entitled to get 1/4th share in the suit properties.

10.The defence put forth on the side of the defendants in Original Suit No.1271 of 2013 is that the father of the defendants by name Krishnasamy has only married their mother Sulochana and he never married the mother of the plaintiff by name, Chandra and therefore, the plaintiff in Original Suit No.1271 of 2013 is not having any partible interest in the suit properties.

11.The learned counsel appearing for the appellant/defendant in Original Suit No.1271 of 2013 has repeatedly contended to the effect that the entire case of the plaintiff in Original Suit No.1271 of 2013 hinges upon the alleged Legal Heir Certificate marked as Ex.A4 and the same has been fraudulently obtained, by way of including the plaintiff in Original Suit No.1271 of 2013, as one of the legal heirs of Krishnasamy and no credence could be given to Ex.A4 and the trial Court, without considering the same properly, has erroneously decreed Original Suit No.1271 of 2013 and further, the mother of the appellant/defendants alone is the legally wedded wife of Krishnasamy and under the said circumstances, the entire suit filed in Original Suit No.1271 of 2013 is liable to be dismissed and Original Suit No.4668 of 2011 is alone liable to be decreed.

12.The learned counsel appearing for the first respondent/ plaintiff has laconically contended to the effect that in the year 1967, during the lifetime of Krishnasamy and his two wives, a mortgage has come into existence, wherein, the mother of the plaintiff has been shown as his first wife and the mother of the defendants has been shown as second wife and further, it is averred in the Mortgage Deed that the same has been executed for conducting marriage of the present plaintiff and the present plaintiff has been shown as daughter of the said Krishnasamy and the trial Court, after considering the recitals found in Ex.A7, has rightly decreed both the suits and therefore, the judgment and decree passed in Original Suit No.1271 of 2013 are not liable to be interfered with.

13.The only point that has now winched to the fore in the present appeal is as to whether the plaintiff in Original Suit No.1271 of 2013 is also one of the legal heirs of deceased Krishnasamy.

14.The consistent case of the plaintiff in Original Suit No.1271 of 2013 is that the mother of the plaintiff is the first wife of Krishnasamy.

15.The said fact has been totally denied on the side of the defendants.

16.The entire arguments put forth on the side of the appellant is based upon Ex.A4-Legal Heir Certificate alleged to have been issued by the concerned Tahsildar. Barring Ex.A4, the Court has to look into Ex.A7-certified copy of Mortgage Deed dated 07.09.1967. In Ex.A7, Krishnasamy and his two wives and also sons have been shown as mortgagors, wherein, it has been clinchingly recited to the effect that the mother of the plaintiff has been described as first wife of Krishnasamy and further, in Ex.A7, it has been clearly recited to the effect that the debt mentioned in therein, has been obtained for conducting marriage of Anuradha and she has been described as daughter of Krishnasamy.

17.Basing upon the recitals found in Ex.A7, there is no incertitude in coming to the conclusion that the plaintiff in Original Suit No.1271 of 2013 is also one of the daughters of the deceased Krishnasamy. Since in Ex.A7, Krishnasamy and his two wives are also mortgagors, the Court, cannot belittle the recitals found in Ex.A7.

18.The trial Court, has believed the recitals found in Ex.A7. Even at the risk of repetition, the Court would like to point out that the recitals in Ex.A7 is nothing, but a befitting answer to the defence put forth on the side of the appellant/defendants. Since the recitals found in Ex.A7 is a befitting answer to the defence put forth on the side of the appellant/defendants, this Court is of the considered view that the entire argument put forth on the side of the appellant/defendants sans merit, whereas, the arguments put forth on the side of the first respondent/plaintiff is having subsisting force and altogether, the present Appeal Suit deserves to be dismissed.

In fine, this Appeal Suit is dismissed without costs. The judgment and decree passed by the trial Court in Original Suit No.1271 of 2013 are confirmed. Connected Miscellaneous Petitions also dismissed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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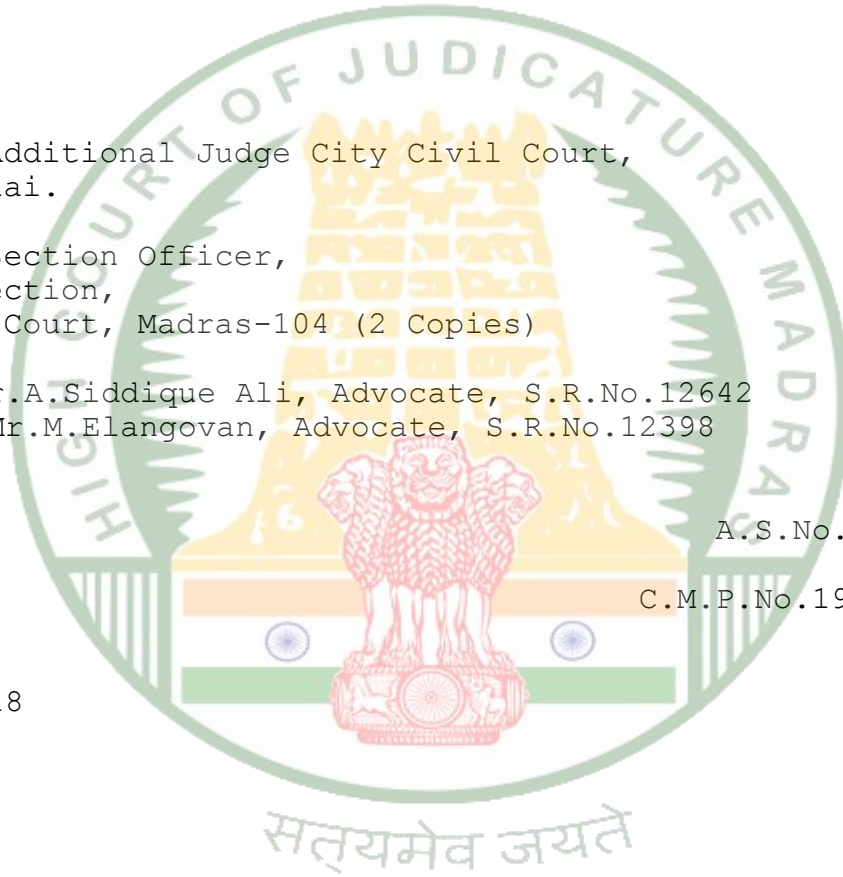
1. XVI Additional Judge City Civil Court,
Chennai.
2. The Section Officer,
VR Section,
High Court, Madras-104 (2 Copies)

+1cc to Mr.A.Siddique Ali, Advocate, S.R.No.12642

+3ccs to Mr.M.Elangovan, Advocate, S.R.No.12398

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and
C.M.P.No.19683 of 2017

GJII(CO)
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