

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:06.02.2018

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.275 of 2016

and

C.M.P.Nos.20487 of 2016

C.M.P.No.4770 of 2016

V.Raghukumar

... Appellant/Plaintiff

vs.

K.Vijayalakshmi (died)

D.Padmaja

... Respondent/Defendant

Appeal suit filed under Section 96 read with Order 41 Rule 1 of Civil Procedure Code, 1908 against the judgment and decree dated 26.11.2015, passed by the III Additional District Court, Thiruvallur at Poonamallee, in O.S.No.12 of 2012.

For Appellant : Mr.V.K.Rajagopalan

For Respondent : Mr.Adithya Reddy

JUDGMENT

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

This Appeal Suit has been directed against the judgment and decree dated 26.11.2015, passed in O.S.No.12 of 2012, by the III Additional District, Court, Tiruvallur, at Poonamallee.

2.The appellant herein, as plaintiff, has instituted O.S.No.12 of 2012, on the file of the trial Court, praying to pass a preliminary decree of partition, declaration and perpetual injunction, wherein, the present respondent has been shown as second defendant.

3.It is averred in the plaint that the plaintiff is the son of one Krishna Reddy and Vijayalakshmi, who has been arrayed as the first defendant. The said Krishna Reddy has passed away on 21.08.2007. The suit properties are the joint family properties. The first defendant is a mentally retarded person. By utilising mental illness of the first defendant, on 25.08.2011, the second defendant, who is none other than the sister of the plaintiff, has obtained a settlement deed in her favour and the same is not valid in law. Since all the suit properties are joint family properties, the plaintiff is having half share. Since the second defendant is not amenable for partition and since she has made arrangement to make

interference with the peaceful possession and enjoyment of the plaintiff, the present suit has been instituted for the reliefs sought therein.

4. After filing written statement, the first defendant-mother of the plaintiff and second defendant, has passed away. In the written statement and also in the additional written statement filed on the side of the second defendant, it is averred to the effect that some of the suit properties are the self-acquired properties of father, viz., Krishna Reddy and he passed away on 21.08.2007 and subsequently, on 25.08.2011, the first defendant has voluntarily executed a Settlement Deed in favour of the second defendant and further as per Tamil Nadu (Amendment) Act 1989, the second defendant is having equal share in all the suit properties 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 perpending both oral and documentary evidence, has granted preliminary partition in favour of the plaintiff to an extent of 1/3 share and in respect of other reliefs, the trial Court has dismissed the suit. Against the judgment and decree passed by the trial Court, the present Appeal Suit has been preferred, at the instance of the plaintiff, as appellant.

6. The learned counsel appearing for the appellant/plaintiff has raised the following points:

(1) The first defendant is a mentally retarded person and by utilising her mental condition, the second defendant has maneuvered to obtain settlement deed dated 25.08.2011. The first defendant has put her signature in the settlement deed even without knowing the contents of the same and the same is nothing but a void document. Under the said circumstances, a declaratory relief has been sought in the plaint, but the trial Court, even though has framed a specific issue, has not given any specific finding and under the said circumstances, the judgment and decree passed by the trial Court are liable to be set aside and the matter is liable to be remitted to the file of the trial Court.

(2) In the plaint it has been specifically averred and also replete evidence is adduced on the side of the appellant/plaintiff to the effect that all the suit properties are joint family properties, but the trial Court, without properly appreciating the available evidence on the side of the plaintiff, has erroneously passed a preliminary decree in favour of the plaintiff to an extent of 1/3 share. On the ground alone, the judgment and decree passed by the trial Court are liable to be modified.

7. To dispel the contentions put forth on the side of the appellant/plaintiff, the learned counsel appearing for the

respondent/second defendant has sparingly contended to the effect that one of the sons of Krishna Reddy, namely, Chandramohan, has passed away even prior to the demise of the said Krishna Reddy and even though in the written statement and additional written statement it has been specifically averred to the effect that some items of suit properties are the separate properties of the said Krishna Reddy, now the stand taken on the side of the respondent/second defendant is that all the suit properties are the joint family properties and under the said circumstances, Krishna Reddy and his two sons and also daughter, namely, the second defendant are each having 1/4 share; since one of the sons of Krishna Reddy has passed away, his 1/4 share should go to the first defendant and the first defendant, in a sound disposing state of mind, has executed a settlement deed dated 25.08.2011 in favour of the second defendant and in aggregation, the second defendant is having 2/3 share; whereas, the plaintiff is having only 1/3 share in all the suit properties and the trial Court, after considering the overall circumstances available on record, coupled with the evidence, has rightly passed a preliminary decree in favour of the plaintiff to an extent of 1/3 share and further, the trial Court, after considering the evidence available on record, has given a specific finding to the effect that Ex.A8-Settlement Deed is valid in law and therefore, the judgment and decree passed by the trial Court do not warrant interference.

8. Before contemplating the rival submissions made on either side, the Court has to narrate the following admitted facts:

It is an admitted fact that father's name of the plaintiff and second defendant is Krishna Reddy. It is also equally an admitted fact that the said Krishna Reddy and his wife/first defendant have begotten two sons. The plaintiff is one of the sons. The other son, by name, Chandramohan has passed away.

9. The consistent case of the plaintiff is that all the suit properties are the joint family properties. Even though a faint attempt has been made on the side of the respondent/second defendant to the effect that some items of suit properties are self-acquired properties of father, no acceptable evidence has been forthcoming on her side. Under the said circumstances, the Court can unflinchingly come to a conclusion that all the suit properties are the joint family properties.

10. It has already been pointed out that one of the sons of Krishna Reddy, by name, Chandramohan, has passed away. Since all the suit properties are the joint family properties, as per existing law, Krishna Reddy is having 1/4 share; the plaintiff is having 1/4 share; second defendant is having 1/4 share and deceased Chandramohan is having 1/4 share in all the suit properties.

11.The said Chandramohan has passed away leaving behind him, the first defendant/his mother, as his only legal heir. Therefore, 1/4 share of Chandramohan should go to the first defendant, by way of succession.

12.It is also equally an admitted fact that on 21.08.2007, the said Krishna Reddy has passed away and therefore, his only 1/4 share should be divided into three shares. The plaintiff is having one such share. Likewise, the first defendant and second defendant are having separate 1/3 shares. Therefore, the first defendant/wife of Krishna Reddy is having 1/4 share plus 1/12 share.

13.The consistent case of the appellant/plaintiff is that the first defendant has suffered from mental illness. Since the first defendant has had unsoundness of mind, the Settlement Deed dated 25.08.2011, executed by her in favour of the second defendant is null and void and she put her signature even without knowing its contents. Therefore, the same is non-est in law.

14.The main argument put forth on the side of the appellant/plaintiff is that even though a specific averment is found place in the plaint with regard to settlement deed, dated 25.08.2011, and a specific issue has also been framed by the trial Court, no specific finding has been given.

15.On the basis of argument put forth on the side of the appellant/plaintiff, this Court has closely perused the judgment passed by the trial Court, wherein, a specific issue has been framed to the effect as to whether the Settlement Deed, dated 25.08.2011, is null and void. Further, the trial Court has discussed the said issue and given a finding to the effect that the Settlement Deed dated 25.08.2011 (Ex.A8) is a valid document.

16.As mentioned supra, the consistent case of the plaintiff is that the first defendant is a person of unsound mind. But even in the short cause title, nobody has represented her. If really the first defendant has had mental illness, as pointed out in the plaint, definitely, the first defendant should be represented by her guardian. Since even in the short cause title, such particulars are not found place, the plea taken on the side of the plaintiff with regard to mental condition of the first defendant is totally erroneous.

17.The definite case of the appellant/plaintiff is that all the suit properties are the joint family properties. Even though on the side of the respondent/second defendant, a fatuous exercise has been made to the effect that some of the suit properties are the self-acquired properties of father (Krishna Reddy), no worthwhile evidence has been forthcoming. Further, this Court has already decided that all the suit

properties are the joint family properties. Under the said circumstances, right by birth, the plaintiff is having 1/4 share and since father of the plaintiff and second defendant has passed away on 21.08.2007, his 1/4 share should be divided into three and in that way, the plaintiff, in aggregation, is having 1/4 plus 1/12 share.

18.It has already been decided that after the demise of Chandramohan/brother of the plaintiff, his 1/4 share should go to first defendant by way of succession and further, the first defendant has had another 1/12 share. The first defendant has executed a Settlement Deed dated 25.08.2011 in favour of the second defendant and the same is valid to an extent mentioned supra. Further, the second defendant, by birth, is having 1/4 share; that after the demise of father, she is having 1/12 share and by virtue of Ex.A8, she is having another 1/4 plus 1/12 share. Therefore, in aggregation, the plaintiff is having 1/3 share; whereas, the respondent/defendant is having 2/3 share.

19.The trial Court, after considering the available evidence on record, has rightly decreed the suit and further there is no inkling nor vantage for remanding the suit to the trial Court 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.12 of 2012, by the trial Court, are confirmed. Connected miscellaneous petitions are dismissed.

msk

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To
The III Additional District Judge,
Thiruvallur at Poonamallee.

+2cc to Mr.V.K.Rajagopalan, Advocate Sr.No.8909
+1cc to Mr.Adithya Reddy, Advocate Sr.No.9175

Copy to:The Section Officer,
VR Section, High Court, Madras(2 copies)

VD(CO)
sm:13.3.2018

Appeal Suit No.275 of 2016