

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.02.2018

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.590 of 2011

and

M.P.No.1 of 2011

M.Chidambaram

... Appellant/Defendant

vs.

R.Sakunthala

... Respondent/Plaintiff

Appeal suit filed under Section 96 read with Order XLI Rule 1 of C.P.C. against the judgment and decree dated 28.02.2011 in O.S.No.666 of 2008, passed by the Additional District and Sessions Judge(Fast Track Court-V), Tiruppur.

For Appellant :Mr.K.Govi Ganesan

For Respondent : Ms.M.Meenatchi for
Mr.P.Anbarasan

JUDGMENT

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

This Appeal Suit has been directed against the judgment and decree dated 28.02.2011, passed in Original Suit No.666 of 2008, by the Additional District and Sessions Court (Fast Track Court No.V), Tiruppur.

2.The respondent herein, as plaintiff, has instituted O.S.No.666 of 2008, on the file of the trial Court, praying to pass a preliminary decree of partition in respect of her 2/3 share in the suit property; wherein, the present appellant has been shown as sole defendant.

3.In the plaint it is averred that the suit property is the absolute property of one Mani, who is none other than the father of the plaintiff and defendant and his wife's name is Lakshmi. The said Mani has passed away in the year 1998, leaving behind him the plaintiff, defendant and their mother. The mother of the plaintiff has executed a Settlement Deed dated 13.10.2005 in favour of the plaintiff and further, the defendant has voluntarily obtained a release deed from the plaintiff in respect of her 1/3 share, by virtue of a Release Deed, dated

13.09.2000. Under the said circumstances, the plaintiff is having 2/3 share in the suit property. Since the defendant is 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 defendant it is averred that the suit property is the absolute property of Many, who is none other than the father of the plaintiff and defendant and he passed away in the year 1998, leaving behind him, both the plaintiff and defendant and their mother, by name, Lakshmi. The plaintiff has voluntarily executed a Release Deed in respect of her 1/3 share in the suit property in favour of the defendant, by virtue of release deed, dated 13.09.2000. It is false to aver that the mother of both the plaintiff and defendant, by name, Lakshmi, has voluntarily executed a Settlement Deed, dated 13.10.2005, in favour of the plaintiff. The quantum of share claimed by the plaintiff is erroneous and therefore, the present suit deserves to be dismissed.

5. 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 partly decreed the suit in favour of the plaintiff to an extent of 1/3 share in the suit property, by way of passing the impugned judgment and the same is being challenged in the present Appeal Suit.

6. The learned counsel appearing for the appellant/defendant has contended to the effect that the plaintiff has voluntarily executed a release deed in favour of the defendant by virtue of release deed dated 13.09.2000 and the plaintiff has falsely obtained a Settlement Deed dated 13.10.2005 from the mother and the same has not come into effect and under the said circumstances, the quantum of share claimed by the plaintiff is erroneous and the trial Court, without considering the contentions put forth on the side of the appellant/defendant, has erroneously decreed the suit in respect of 1/3 share and therefore, the judgment and decree passed by the trial Court are liable to be interfered with.

7. Per contra, the learned counsel appearing for the respondent/plaintiff has contended that the release deed dated 13.09.2000 has been falsely obtained by the defendant and on 13.10.2005, the mother of both the plaintiff and defendant has voluntarily executed a Settlement Deed in favour of the plaintiff and for the purpose of proving the same, the mother herself has given evidence and the trial Court, after considering the evidence available on record, has rightly decreed the suit in favour of the plaintiff in respect of 1/3 share in the suit property and therefore, the judgment and decree passed by the trial Court do not require any interference.

8.The Release Deed, dated 13.09.2000 has been marked as Ex.A3 and Settlement Deed dated 13.10.2005 has been marked as Ex.A4.

9.The consistent case of the plaintiff is that Ex.A3 is a fraudulent document. For the purpose of proving Ex.A3, on the side of the defendant, voluminous evidence is available. Under such circumstances, the trial Court has rightly decided that Ex.A3 is a valid document. Therefore, under Ex.A3, the plaintiff has released her 1/3 share in favour of the defendant.

10.Now, the Court has to look into Ex.A4. The consistent case of the plaintiff is that with regard to 1/3 share of mother, she voluntarily executed Ex.A4 in favour of the plaintiff. But the said aspect has been denied by the defendant. For the purpose of proving the genuineness of Ex.A4, the Settlor herself has been examined on the side of the plaintiff as P.W.3. Basing upon her evidence, the Court can very well come to a conclusion that Ex.A4 is a valid document. Since Ex.A4 is a valid document, by virtue of the same, the plaintiff is having only 1/3 share in the suit property.

11.The trial Court, after considering the overall evidence available on record, has rightly passed preliminary decree to an extent of 1/3 share of the plaintiff in the suit property and in view of the discussion made earlier, this Court has not found any force in the contention put forth on the side of the appellant and altogether, this Appeal Suit deserves to be dismissed.

In fine, this Appeal Suit is dismissed without costs. The judgment and decree passed in O.S.No.666 of 2008, by the trial Court are confirmed. Connected miscellaneous petition is dismissed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

msk

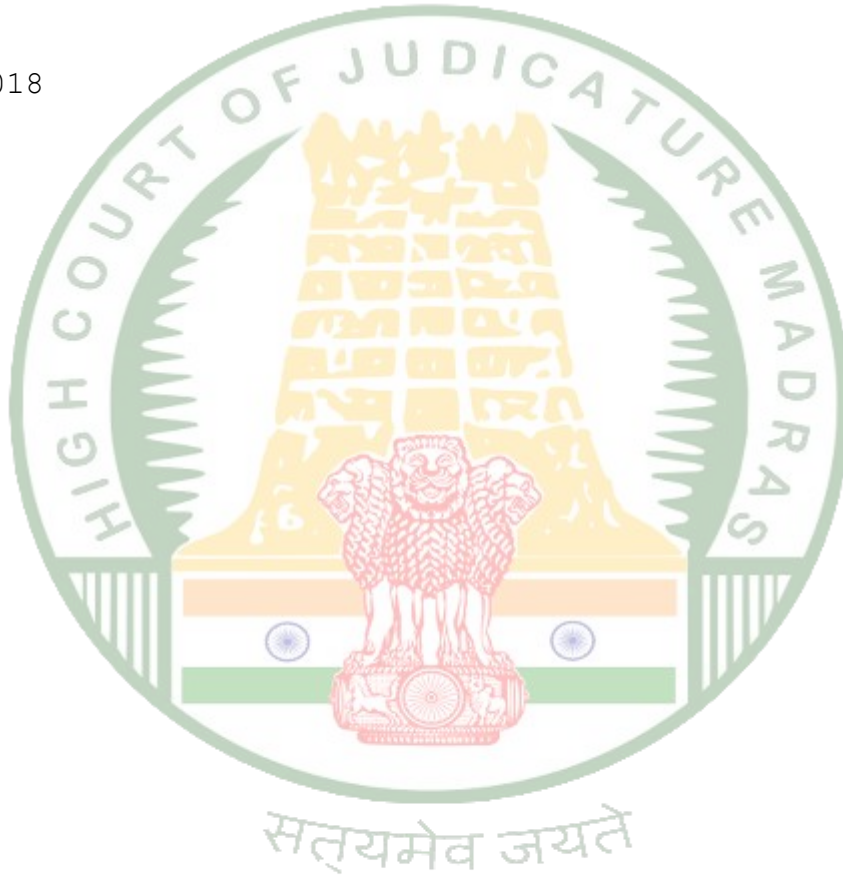
To

The Additional District and Sessions Judge
(Fast Track Court-V), Tiruppur.

+1 cc to Mr.K.Goviganesan Advocate sr 9654

Appeal Suit No.590 of 2011

gj (co)
aa28/02/2018



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