

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.08.2018

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.934 of 1998
and C.M.P.No.9189 of 1998

Rajalakshmi

... Appellant/1st Defendant

Vs.

1.D.K.Lakshmi Narasimhan
2.D.K.Venkatasubban
3.D.K.Rajagopalan
4.P.Swarnambal

(case against R1 to R3 dismissed as
abated vide order dated 30.07.2018)

.... Respondents/Plaintiffs

Prayer: Second Appeal is filed under Section 100 of C.P.C., against the decree and Judgment dated 29.09.1997 passed by the 3rd Additional District Judge Salem in A.S.No.98 of 1996 on appeal from the decree and Judgment dated 29.01.1996 passed by the Additional District Munsif, Salem in O.S.No.482 of 1990.

For Appellant : Mr.S.Jayaraman
For Respondent-4 : No appearance

JUDGMENT

The appellant is the first defendant in O.S.No.482 of 1990 on the file of the Additional District Munsif, Salem. The first respondent (since deceased) filed a suit for partition O.S.No.482/1990 before the Additional District Munsif, Salem for partition of the suit property situate in T.S.No.130 of Asthampatti Village, Salem town measuring 664 square feet into four equal shares and to allot one such share to him.

2 The case of the first respondent/plaintiff in O.S.No.482/1990 on the file of the Additional District Munsif, Salem is briefly as follows:

The respondents 1 to 4 are brothers born to one Mr.Balakrishna Iyer. The suit property was purchased by Balakrishna Iyer through a registered sale deed dated 06.03.1930 (Ex.D.1). Balakrishna Iyer died intestate during the year 1970 and according to the first respondent/plaintiff, he is entitled to 5/16 shares in the suit property and that the respondents 2 to 4 alienated the suit property without his consent to the appellant/first defendant through a registered sale deed dated 01.02.1984 (Ex.A.1) .

3 The present appellant, who is the first defendant in O.S.No.482 of 1990 filed a written statement and contested the suit. After full trial, the learned Additional District Munsif, Salem though concluded that the first respondent/plaintiff is entitled to 1/4th share in the suit property directed the appellant/first defendant to pay the value of 1/4th share to the first respondent/plaintiff.

4 Aggrieved over the said judgment and decree dated 29.01.1996 passed by the learned Additional District Munsif, Salem the plaintiff/first respondent filed appeal in A.S.No.98 of 1996 before the III Additional District Judge, Salem. The III Additional District Judge, Salem after analysing the entire evidence on record concluded that since the first respondent/plaintiff is entitled the 1/4th share in the suit property, the lower appellate Court cannot direct the appellant herein to pay the value of 1/4th share to the plaintiff/first respondent and that the same can be decided only at the time of passing of final decree.

5 Mr.S.Jayaraman, learned counsel appearing for the appellant would contend that the present appellant has already constructed a house in the suit property and that, after a lapse of nearly 35 years, he cannot be directed to partition the property. He would further contend that the learned District Munsif was right in holding that the first respondent/plaintiff is entitled to get only the value of his share from the present appellant.

6 It is seen from the records that the respondents 1 to 3 died and the Second Appeal was dismissed against these respondents as abated on 13.07.2018. The fourth respondent did not appear before this court.

7 The following substantial question of law is raised in this appeal

"Whether, in view of the fact that the first respondent was fully aware of the construction of the House on the suit property by the appellant and did not object to the same and kept quiet and instituted the

suit after 6 years in 1990, he is not entitled to Recovery of Possession of his $\frac{1}{4}$ share in the suit property but entitled only to compensation?"

8 A perusal of the record shows that the suit property originally belonged to one Mr. Balakrishna Iyer, who was the father of respondents 1 to 3 and the husband of the 4th respondent. The respondents 2 to 4 executed a sale deed dated 01.02.1984 in favour of the appellant herein in respect of the suit property. The first respondent/plaintiff, who is one of the sharers of the suit property, has not signed the sale deed. Therefore, the first respondent/plaintiff filed the suit in O.S.No.482 of 1990 before the Additional District Munsif, Salem. Though, initially he contended that the suit property is the ancestral property of Mr. Balakrishna Iyer, later on admitted that it is the self acquired property of his father and therefore he is entitled to $\frac{1}{4}$ th share in the suit property.

9 Mr. S. Jayaraman, learned counsel appearing for the appellant did not dispute that the plaintiff is entitled to $\frac{1}{4}$ th share in the suit property and both the Courts below have concurred on this aspect. It is also not disputed that the property originally belonged to Mr. Balakrishna Iyer when died intestate and therefore all the respondents (1 to 4) are equally entitled to the suit property. Since the respondents 2 to 4 alone have executed the sale deed in favour of the present appellant, the sale deed, which includes the share of the first respondent/plaintiff would not bind him. Therefore, the decree and judgment passed by the Additional District Judge, Salem is well founded. He had also observed that only at the time of passing final decree, the appellant herein can ask the first respondent to receive the value of $\frac{1}{4}$ th share of the suit property. This observation of the learned Additional District Judge cannot be faulted with.

10 Therefore, the facts and circumstances of the present case, the appeal is dismissed. The judgment and decree dated 29.09.1997 passed by the III Additional District Judge is upheld. Consequently, connected Miscellaneous Petition is also closed. No costs.

Sd/-

Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

rst/rpl

To

1.The III Additional
District Judge,
Salem.

2.Additional District Munsiff Judge,
Salem.

+lcc to Mr.S.Jayaraman, Advocate, S.R.No.56383

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KGK (CO)
GSP (02/11/2018)



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