

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.02.2018

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.682 of 2014

and

M.P.No.1 of 2014

1.P.Yuvaraj
2.A.Madhanraj
3.S.P.Sakthivel ... Appellants

vs.

1.A.Sakthivel
2.A.Kumaresh ... Respondents

Appeal suit filed under Order 41 Rule 1 read with Section 96 of C.P.C. against the judgment and decree dated 28.03.2014, passed in OS.36/11 by the Additional District Court (Full Additional Charge), Namakkal.

For Appellants :Ms.J.Star for
Mr.N.Manokaran

For Respondents : Mr.S.Hemanand for
Mr.K.Raja for R1
R2 No appearance

JUDGMENT

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

The judgment and decree dated 28.3.2014, passed in O.S.No.36 of 2011, by the Additional District Court, Namakkal, are being challenged in the present Appeal Suit.

2.The first respondent herein, as plaintiff, has instituted O.S.No.36 of 2011, on the file of the trial Court,

praying to pass a preliminary decree of partition in respect of his half share in the suit property, wherein, the second respondent and the present appellants have been arrayed as defendants.

3.The material averments made in the plaint are that the suit property is the absolute property of one Papathiammal, who is none other than the mother of the plaintiff and first defendant and she purchased the same by virtue of sale deed dated 02.09.2002 and since then she resided in the same. On 20.11.2006, she voluntarily executed a Settlement Deed in favour of the plaintiff and first defendant and thereby settled the suit property in their favour. Since the first defendant has executed sale deeds in favour of the defendants 2 to 4 and since he 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 first defendant it is averred to the effect that the suit property is the absolute property of Papathiammal and she purchased the same by virtue of Sale deed dated 02.09.2002 and during her life time, an oral partition has been effected between the plaintiff and first defendant and in order to confirm the oral partition, a partition chit has come into existence on 25.11.2003. Since in respect of suit property, already partition has been effected, the present suit is not legally maintainable and therefore, the present suit deserves to be dismissed.

5.In the written statement filed on the side of the defendants 2 to 4 it is averred to the effect that the first defendant has sold his share in the suit property in favour of the defendants 2 to 4 and they are bona fide purchasers for value and there is no merit in the suit and the same deserves to be dismissed.

6.On the basis of the rival pleadings raised on either side, the trial Court has framed necessary issues and after analysing both the oral and documentary evidence, has decreed the suit as prayed for. Against the judgment and decree passed by the trial Court, the present Appeal Suit has been preferred at the instance of the defendants 2 to 4, as appellants.

7.The consistent case put forth on the side of the plaintiff is that the suit property is the absolute property of Papathiammal, who is none other than the mother of the plaintiff and first defendant and she purchased the same by virtue of sale deed dated 02.09.2002 and during her life time, she voluntarily executed a registered settlement deed dated 20.11.2006 in favour of the plaintiff and first defendant and thereby, settled the entire suit property in their favour. Since the first defendant

is not amenable for having amicable partition and also sold a portion of the suit property in favour of the defendants 2 to 4, the present suit has been instituted.

8.The defence taken on the side of the first defendant is that during life time of Papathiammal, an oral partition has been effected between the plaintiff and first defendant and in order to confirm the same, a partition chit has come into existence on 25.11.2003 and since an oral partition has already been effected between the plaintiff and first defendant, the present suit for partition is not legally maintainable and therefore, the same deserves to be dismissed.

9.As mentioned supra, the trial Court, after analysing the available evidence on record, has decreed the suit as prayed for.

10.The only point which has to be decided in the present appeal suit is as to whether the alleged oral partition pleaded on the side of the first defendant can be accepted.

11.It is an admitted fact that the suit property is the absolute property of Papathiammal and she purchased the same by virtue of sale deed dated 02.09.2002. It is also equally an admitted fact that the said Papathiammal has executed a Registered Settlement Deed dated 20.11.2006. The sale deed dated 02.09.2002 has been marked as Ex.A1 and Settlement Deed dated 20.11.2006 has been marked as Ex.A2.

12.The only defence put forth on the side of the first defendant is that an oral partition has been effected between the plaintiff and first defendant during life time of Papathiammal and in order to confirm the same, partition chit has come into existence on 25.11.2003 and therefore, the present suit for partition is not legally maintainable. The alleged partition chit, dated 25.11.2003 has been marked as Ex.B2.

13.Even though on the side of the plaintiff and defendants so many documents have been filed, for the purpose of deciding the real issue that exists between the parties, Ex.A1, Ex.A2 and Ex.B2 are relevant documents.

14.It is an admitted fact that the suit property is the absolute property of Papathiammal by virtue of purchase and it is also equally an admitted fact that she settled the suit property in favour of both the plaintiff and first defendant by virtue of Ex.A2.

15.The learned counsel appearing for the appellants/defendants 2 to 4 has vehemently contended to the effect that even during life time of Papathiammal, an oral partition has been effected between the plaintiff and first defendant, wherein, the front portion of the suit property has been allotted to the first defendant and in order to confirm the same, Ex.B2 has come into existence and the trial Court, without considering the oral partition pleaded on the side of the first defendant and also recitals found in Ex.B2, has erroneously decreed the suit and therefore, the judgment and decree passed by the trial Court are liable to be set aside.

16.Per contra, the learned counsel appearing for the first respondent/plaintiff has contended to the effect that oral partition pleaded on the side of the first defendant is erroneous and further, the alleged signature of Papathiammal found in Ex.B2 is not her signature and the trial Court, after considering the overall evidence available on record, has rightly decreed the suit and therefore, the judgment and decree passed by the trial Court are not liable to be set aside.

17.As set out earlier, the admitted fact is that the real owner of the suit property, viz., Papathiammal, has voluntarily executed Settlement Deed dated 20.11.2006, wherein, her signatures are found place. As mentioned supra, the only defence taken on the side of the first defendant is that an oral partition has been effected and in order to confirm the same, Ex.B2 has come into existence on 25.11.2003.

18.In fact, this Court has compared the alleged signatures of Papathiammal found in Ex.B2 with her admitted signatures found in Ex.A2 and ultimately found that the signatures found in Ex.B2 are not her signatures. Further, if really Ex.B2 has come into existence, definitely the very same Papathiammal would not have executed Ex.A2-Settlement Deed, on 20.11.2006. Since the said Papathiammal would not have executed Ex.A2, if Ex.B2 has come into existence on 25.11.2003, the defence put forth on the side of the first defendant is nothing but apologue and the same cannot be accepted.

19.It is an admitted fact that the suit property is the absolute property of Papathiammal and she passed away leaving behind her the plaintiff and first defendant as her legal heirs. Since the suit property is the absolute property of Papathiammal and she passed away intestate, leaving behind her the plaintiff and first defendant, both the plaintiff and first defendant are each having half share in the suit property.

20.The trial Court, after considering the overwhelming evidence available on the side of the plaintiff, has rightly decreed the suit and in view of the foregoing enunciation of factual aspects, this Court has not found any acceptable force in the contention put forth on the side of the appellants/defendants 2 to 4 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.36 of 2011, by the trial Court are confirmed. Connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar(CS-vii)

//True Copy//

Sub Assistant Registrar

msk
To

1. The Additional District Court
(Full Additional Charge), Namakkal.

2. The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.N.MANOKARAN, Advocate, S.R.No.

+1cc to Mr.K.RAJA, Advocate, S.R.No. 12427 & 12215

+1cc to Mr.K.RAJA, Advocate, S.R.No. 12427 & 12215

(15/03/2018)

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KS(CO)
TR(09/03/2018)

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