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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.08.2018

PRONOUNCED ON : 25.09.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.151 of 2015

P.Saraswathi ..Appellant/Plaintiff

Vs.

1.K.Kamaatchi ammal
2.V.P.K.Jayaraman
3.V.P.K.Balaji
4.A.K.Shanthi
5.A.K.Shankari

..Respondents/Defendant

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 25.11.2014 passed in A.S.No.4 of 2014 on the file of the Principal District Judge, Vellore, confirming the Judgment and Decree dated 01.07.2013 passed in O.S.No.53 of 2011 on the file of the Sub-Court Vellore, Vellore District.

For Appellant : Mr.M.P.Jayaprakash

For Respondents : Ms.K.Janani

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 25.11.2014 passed in A.S.No.4 of 2014 on the file of the Principal District Court, Vellore, confirming the Judgment and Decree dated 01.07.2013 passed in O.S.No.53 of 2011 on the file of the Sub-Court, Vellore, Vellore District.

2.The plaintiff has laid the suit for partition and it is stated by the plaintiff that the suit properties originally belonged to Krishnamoorthy, the husband of the first defendant and the father of the defendants 2 to 5 and the plaintiff and according to the plaintiff, Krishnamoorthy died on 01.04.2006 leaving behind the defendants and the plaintiff as his legal heirs and accordingly, the parties had effected partition after his demise only in respect of liquid cash available with the family left behind by Krishnamoorthy. However, no partition had been effected as regards the suit properties left behind by Krishnamoorthy and accordingly, the plaintiff requested the defendants to allot her share in the suit properties, which had been refused by the defendants and



accordingly, left with no other alternative, according to the plaintiff, she has been necessitated to lay the suit for partition.

3.The defendants have taken the plea that the plaintiff got married and settled at her husband's village and it is also stated that Krishnamoorthy had effected a settlement deed dated 22.10.2001 in favour of the plaintiff in respect of a vacant site and accordingly, after the demise of Krishnamoorthy, the plaintiff and the defendants duly partitioned the immovable properties and cash properties of the joint family by way of the registered partition deed dated 30.10.2006 and accordingly, the properties of Krishnamoorthy had been duly partitioned amongst all his legal heirs as recited in the abovesaid partition deed and there had been no misrepresentation to the plaintiff that only the cash is being divided and therefore, the plaintiff knowing fully well about the details of the partition effected under the partition deed dated 30.10.2006 cannot be allowed to claim share in respect of the suit properties as if the same had not been partitioned earlier and therefore, it is contended that the plaintiff has no cause of action to seek partition of the suit properties once again and therefore, the suit is liable to be dismissed.

4.On the basis of the materials placed on record by the respective parties, both oral and documentary, the Courts below were pleased to determine that the plaintiff is not entitled to seek the partition as prayed for.

5.It is not in dispute that the suit properties originally belonged to Krishnamoorthy and that the plaintiff and the defendants are the legal heirs of the deceased Krishnamoorthy. Now, claiming partition in respect of the suit properties and allotting her share, the plaintiff has laid the suit and the defendants have raised their defence that the properties of Krishnamoorthy had been already partitioned amongst the legal heirs by way of the partition deed dated 30.10.2006 and accordingly, the parties had been allotted their respective shares and the plaintiff being the signatory to the same cannot be allowed to reopen the partition and seek the partition once again and hence, sought for the dismissal of the plaintiff's suit.

6.As rightly found by the Courts below, the plaintiff examined as PW1 during the course of cross examination has clearly admitted that she has signed the partition deed dated 30.10.2006 marked as Ex.A3 and she knew very well about the details of the partition at the time of effecting the partition deed and accordingly, also admitted that she had signed in the registrar office admitting the factum of partition and also further, admitted that all the legal heirs had signed in the partition deed dated 30.10.2006 and also further admitted that even her sons had also attested the said document. In such view of the matter, when it is found that



the plaintiff has clearly admitted the factum of partition made between her and the defendants as regards the properties left behind by Krishnamoorthy and when it is further seen that Krishnamoorthy during his life time had settled the property in favour of the plaintiff, which document has come to be marked as Ex.B3 and furthermore, the plaintiff has also been given cash by way of the partition deed dated 30.10.2006 and the factum of partition had been clearly spelt out by the witnesses examined on behalf of the defendants as also been admitted by the plaintiff herself during the course of evidence as seen above, in the light of the above position, when the properties left behind by Krishnamoorthy, both cash as well as the immovable properties had come to be divided by way of Ex.A3 partition deed amongst all the legal heirs including the plaintiff, it has been rightly held by the Courts below that the plaintiff cannot be allowed to reopen the partition by contending that the earlier partition had been effected only in respect of the cash and not in respect of the immovable properties left behind by Krishnamoorthy.

7.The Courts below had accordingly rightly held that when the plaintiff being a signatory to Ex.A3 partition deed and also having admitted the contents thereof and signed in the same, the plaintiff without seeking the declaration that the abovesaid partition deed is invalid for one reason or the other, it is found that the plaintiff's suit for partition would not lie. On the other hand, inasmuch as the partition deed dated 30.10.2006 has attained finality and accordingly, the plaintiff had not chosen to impugn the same by seeking a declaratory relief that the abovesaid partition deed had been brought about fraudulently by cheating her, on the other hand, when it is seen that the plaintiff had been a willing member and subscribed to the factum of partition effected by way of the abovesaid partition deed, the Courts below are justified in negating the relief of partition sought for by the plaintiff. No valid ground is made out to interfere with the judgment and decree of the Courts below.

In the light of the above reasons, no substantial question of law is found to be involved in the second appeal. Resultantly, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar



To

1.The Principal District Judge, Vellore.

2.The Sub-Court Vellore, Vellore District.

3.The Record Keeper, Vr Section, High Court, Madras.

+ 1 cc to M/s. M. Srividhya, Advocate Sr.66209/18

S.A.No.151 of 2015

AK(CO)
EU(20/11/2018)