

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2018

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.26 of 2016
and CMP Nos.707 and 19907 of 2016

Tulasidoss

.. Appellant/
Appellant/Defendant

Vs.

Karpagam

.. Respondent/
Respondent/Plaintiff

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgement and decree dated 16.11.2015 passed in A.S.No.7 of 2012 on the file of the Principal District Judge, Kanchipuram District, at chengalpattu confirming the judgement and decree dated 29.03.2012, in O.S.No.116 of 2010 on the file of the Additional Subordinate Judge at Chengalpattu.

For Appellant : Mr.A.Prabhakaran

For Respondent : Mr.K.Jayaraman

J U D G E M E N T

Aggrieved by the unanimous decisions of the Courts below, the defendant has preferred the above second appeal in a suit for partition.

2. The brief facts leading to the suit are that the plaintiff and the defendant are daughter and son of late Ramadoss Udayar respectively. The mother of the parties Lakshmi died on 06.05.2005. The case of the plaintiff is that there was a partition between her father Ramadoss and his brother Palani in the year 1971, as the properties were joint in nature. The suit properties admittedly stand in the name of the father Ramadoss. The plaintiff claimed that prior to her marriage as well as after her marriage, she had always contributed to the purchase of the suit properties by giving money to the father from her earning. She had also averred that the mother was also

earning and contributing to the purchase of the suit properties. During the year 2007, the father Ramadoss became sick and was affected with kidney problems. The plaintiff was taking care of the father keeping him in her custody. But the defendant had forcibly taken him in a car to his house, without his consent and willingness. The defendant also had got a settlement deed executed on 07.03.2007 by obtaining the thumb impression of the father and got the same registered. When the plaintiff attempted to meet her father, she was refused permission and with great difficulty, she could meet her father, who had handed over a letter dated 21.03.2007, in person explaining the mischievous deeds of the defendant and giving her equal right in the properties. In fact, the plaintiff had lodged a complaint before the police and issued a legal notice demanding her equal share in the suit properties and filed the suit.

3. The suit was resisted by the defendant denying all the averments made in the plaint. It is the definite case of the defendant that his father, in order to avoid complications, in a sound disposing state of mind, had executed a registered settlement deed dated 07.03.2007 in his favour. The defendant also claimed to have accepted and acted upon the settlement deed. As the properties have already been settled in the name of the defendant, the plaintiff cannot have any right over the same, and thus, sought for dismissal of the suit.

4. Before the Trial Court, the plaintiff, apart from examining herself as P.W.1, examined one Prakasham as P.W.2 and marked Exs.A.1 to A.10. On the side of the defendant, D.Ws.1 to 5 were examined and Exs.B.1 to B.15 were marked.

5. The Courts below have concurrently held that the plaintiff is entitled to half a share in the suit properties and passed preliminary decree in favour of the plaintiff.

6. Aggrieved by the same, the above second appeal is filed.

7. The following substantial questions of law were formulated for consideration by this Court at the time of admission :

"1. Whether the courts below were right in holding that Ex.B.6 Settlement Deed is not valid in view of the subsequent letter written by Ramadoss Udayar under Ex.A.3 on 21.03.2007?

2. Whether the lower appellate court was right in relying on Ex.A.3 when Ex.A.3 has not been proved in accordance with law ? and

3. Whether the suit properties are ancestral properties of Ramadoss Udayar or his self-acquired properties ?"

8. Heard the learned counsel for the appellant/defendant and the learned counsel for the respondent/plaintiff.

Question No.3 :

9. The relationship between the parties is admitted. The ownership of the properties in the name of the father is also admitted. The partition between Ramadoss Udayar and his brother Palani Udayar goes to prove that the properties were joint family in nature and there was a division between the brothers. The partition between Ramadoss and his brother Palani was on 19.07.1971 under Ex.A.9, on which date, both the plaintiff and the defendant were born, and they continued to constitute to joint family. As per Ex.A.9, Ramadoss Udayar was allotted 68 and 1/2 cents. Though, originally, the documents in the name of Ramadoss Udayar was not produced before the Court, in the appeal, the defendants have produced them and marked them as Ex.B.16 to B.21. Exs.B.16 and B.17 are the two sale deeds in the name of Ramadoss Udayar. The other documents are patta passbook and the UDR patta in favour of Ramadoss Udayar. The contention of the appellant was that the properties were self-acquired by the father Ramadoss Udayar and that he had every right to dispose of in the manner known to law, he wanted. The document Ex.B.16 would go to show that the properties were purchased in the year 1968 in the name of Ramadoss Udayar and the partition between himself and his brother was only in the year 1971. Ex.17, which is a sale deed dated 08.12.1995 executed by Ponnammal Vagaiyara, in favour of Ramadoss Udayar. The said fact would go to show that even though the properties were purchased in the name of Ramadoss Udayar, the intention of the parties were to treat them as joint family properties. Unless the defendant proves that the said properties were purchased to be kept separately, it has to be presumed that the properties are joint in nature. Thus, this Court has got no hesitation to hold that the properties are joint family properties of Ramadoss Udayar and question No.3 is answered accordingly.

Questions Nos.1 and 2 :

10. Ex.B.6 is the settlement deed alleged to have been executed by Ramadoss Udayar in favour of the defendant. The learned counsel for the appellant/defendant contended that the settlement deed was executed on 07.03.2007 and thereafter, Ramadoss Udayar lived till 27.09.2007, being the date of death, and he had not objected to or expressed anything contra to the execution of the settlement deed. Therefore, it is contended that the settlement deed is valid and it was acted upon.

11. Per contra, learned counsel for the respondent pointed out that Ex.A.3 is a letter written by Ramadoss Udayar to the respondent/ plaintiff dated 21.03.2007, which is immediately

after the execution of Ex.B.6. At that point of time, Ramadoss Udayar was in the forcible custody of the defendant and the plaintiff was not allowed even to visit him. In the said letter, Ramadoss Udayar had expressed the illegal and high-handed behaviour of the defendant and the same was hand-delivered to the plaintiff. It is also stated in the said letter that the said Ramadoss Udayar had given all powers to the plaintiff to claim her half share in the schedule properties by taking appropriate action against the defendant. The said letter has been considered and dealt with by the Courts below. The plaintiff also claims to have given a police complaint pursuant to that on 09.04.2007 and 11.04.2007, though there is no document filed by her to substantiate the same. Ex.A.3 has been considered by the Appellate Court and given a specific finding that both Ex.B.6 and Ex.A.3 are self-serving documents and they cannot be given much importance. The defendant had examined D.Ws.3 and 4 in the process of proving Ex.B.6, but their evidence have been discredited by the learned Appellate Court Judge on the ground that they are interested witnesses.

12. Yet another reason to disbelieve the settlement deed is that all the properties are settled in favour of the son leaving the plaintiff without anything. Thus, by considering the behaviour and attitude of the parties and considering Exs.A.3 and B.6, it is clear that the defendant has played a mischief to deprive the plaintiff, who is his sister, of her legitimate share. Even in the absence of Exs.A.3 and B.6, once, the properties are held to be joint family properties, the plaintiff as a daughter, is entitled to her half share, as the succession opened on the death of Ramadoss Udayar on 27.09.2007, which is after the amendment to Section 6 of the Hindu Succession Act. When Ex.B.6 is not proved in the manner known to law and also that not even a single property has been allotted to the share of the daughter. The Courts below have rightly rejected Ex.B.6.

13. In the light of the above discussion, the questions of law are answered against the appellant and the decree granted by the Courts below are confirmed.

14. In the result, in the second appeal is dismissed confirming the judgement and decree of the Courts below. There shall be no order as to costs. Consequently, connected miscellaneous petition shall stand closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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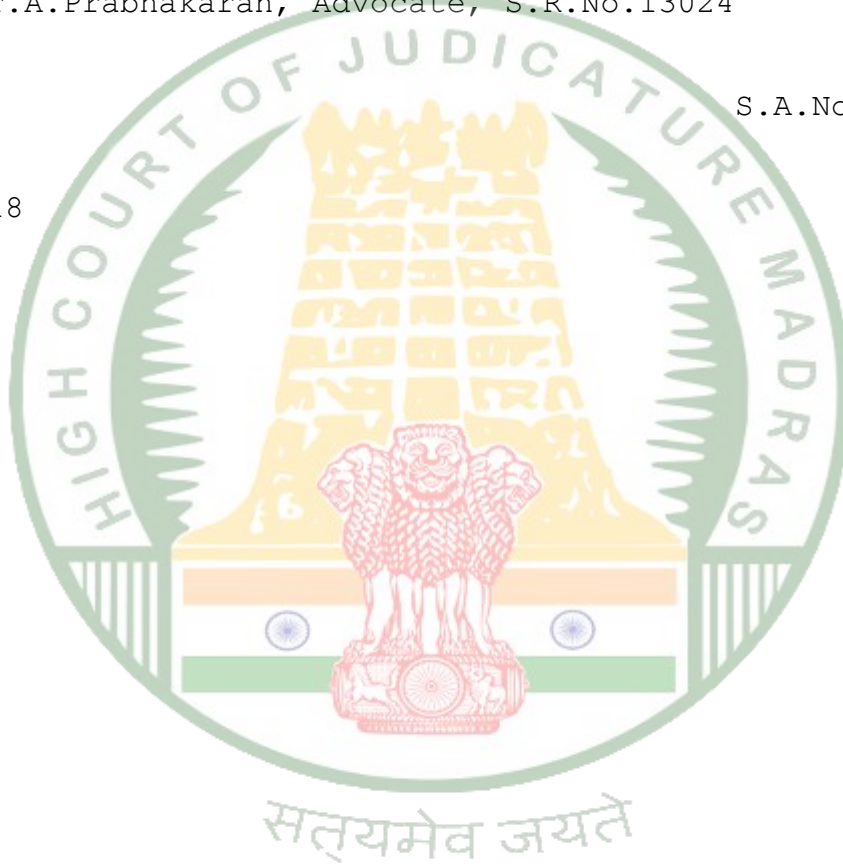
To

1. The Principal District Judge,
Kanchipuram District at Chengalpattu.
2. The Additional Subordinate Judge,
Chengalpattu.
3. The Section Officer,
VR Section, High Court,
Madras-104. (2 Copies)

+1cc to Mr.A.Prabhakaran, Advocate, S.R.No.13024

S.A.No.26 of 2016

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