

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.706 of 2018
&
C.M.P.No.20864 of 2018

G.Prabhuram

... Appellant

Vs

1.G.Saraswathi

2.Prabha

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree passed in A.S.No.79 of 2015 on the file of the learned Principal District Judge, Coimbatore dated 26.04.2018 confirming the Judgment and Decree made in O.S.No.154 of 2011 on the file of the learned III Additional Subordinate Judge, Coimbatore dated 02.04.2013.

For Appellant : Mr.K.Vignesh Karthick

For Respondent 2 : Mr.S.Saravanan

O R D E R

The above Second Appeal is filed by the 1st defendant in the suit O.S.No.154 of 2011. The suit O.S.No.154 of 2011 has been filed by the first respondent herein for partition and separate possession of her 1/3rd share in the suit property and for a declaration that the release deed dated 15.09.1995 registered as D.No.3909/1995 on the file of the S.R.O II, Coimbatore fraudulently from the plaintiff is not binding on the plaintiff. Plaintiff is the mother of the defendants. The parties are referred to in the same array as in the suit.

2.The case of the plaintiff is that the suit property was jointly purchased by the plaintiff and the defendants on 18.10.1978. Thereafter, the first defendant had fraudulently obtained a release deed from the plaintiff on 15.09.1995 and after getting the release deed the first defendant had driven out the plaintiff from the suit property. The plaintiff, thereafter, was living on the mercy of various relatives and it was only on 26.11.2010 when she applied for encumbrance certificate in respect of the suit property she came to know

that the documents executed by her was release deed. The plaintiff would submit that the release deed had been obtained fraudulently and is therefore not binding upon her. The plaintiff therefore instituted the suit in question.

3.The defense to the above suit by the 1st defendant was that the plaintiff had voluntarily executed the release deed in favour of the 1st defendant and that the 1st defendant had paid the plaintiff a sum of Rs.50,000/-. It was also his case that the suit was instituted only at the insistence of the 2nd defendant and her husband. Infact, the 2nd defendant had issued a notice dated 24.03.1997 stating that the plaintiff had sold her share to the 1st defendant. The plaintiff and the 1st defendant had jointly sent a reply notice dated 06.05.1997 informing the 2nd defendant that the plaintiff had executed a release deed in favour of the 1st defendant in respect of her 1/3rd share. They, therefore, sought for dismissal of the suit.

4.The 2nd defendant in turn filed a written statement stating that she is entitled to a 1/3rd share which had to be given to her.

5.After a detailed enquiry the learned III Additional Subordinate Judge, Coimbatore, dismissed the suit in respect of the relief claimed by the plaintiff for partition and declaration and decreed the suit in respect of the claim by the 2nd defendant and a preliminary decree was passed that the 2nd defendant is entitled to the 1/3rd share in the suit property. This Judgment and Decree was taken on appeal by the 1st defendant herein to the I Additional District Judge, Principal District Judge (FAC), Coimbatore, in A.S.No.79 of 2015. The learned District Judge concurred with the finding of the Trial Court and dismissed the appeal. Challenging the same the appellant is before this Court.

6.Heard, Mr.K.Vignesh Karthick, learned counsel for the appellant.

7.A perusal of the written statement of the 1st defendant would show that the 1st defendant has not denied the 2nd defendant's right to the 1/3rd share in the suit property. Infact the finding with reference to the recasted issue No.4 of the III Additional Subordinate Judge, Coimbatore clearly indicates that the 1st defendant has not denied the 1/3rd share of the 2nd defendant but on the contrary tried to cross examine the 2nd defendant with the question that the 2nd defendant had received the amount for releasing her 1/3rd share in respect of the suit property. This was denied by the 2nd defendant during her cross examination and the 1st defendant was not able to establish the fact that he had paid up the 2nd defendant and obtained her 1/3rd share. It was for this reasons the Trial

Court had granted the partition in respect of the 2nd defendant's 1/3rd share. Similarly, the Appellate Court has stated that a perusal of EX.B.2 would clearly show that the 1st defendant has neither refused nor denied the share of the 2nd respondent in the suit property.

8.I find no infirmity in the Judgment and Decree passed by the Courts below and the appellant has not made out any question of law much less a Substantial Question of law warranting interference by this Court. In the result, the Second Appeal stands dismissed. Consequently, connected Civil Miscellaneous Petition is also closed. However, there shall be no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The learned Principal District Judge,
Coimbatore.

2.The learned III Additional Subordinate Judge,
Coimbatore.

+1 CC to Mr.S.Saravanan, Advocate sr 82673.

+1 CC to Mr.K.Vignesh Karthick, Advocate sr 82753

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