

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.09.2019

PRONOUNCED ON : 16.10.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

A.S.No.127 of 2013

R.Sekar

...
Vs.

Appellant

1.S.Vasantha

2.Bhanumathi

3.Jaya

...

Respondents

Prayer :- First Appeal has been filed under Section 96 and Order 41 Rule 1 of the Civil Procedure Code against the Judgement and Decree dated 04.01.2012 passed in O.S.No.8673 of 2010 on the file of the Additional District Judge, Fast Track Court No.1, Chennai.

For Appellant : Mr.M.Balasubramanian

For Respondent : Mrs.V.Srimathi
No.1

Respondent Nos.2 & 3: No appearance
set exparte vide order
dt.25.09.2019

JUDGMENT

Aggrieved over the Judgement and Decree dated 04.01.2012 passed in O.S.No.8673 of 2010 on the file of the Additional District Judge, Fast Track Court No.1, Chennai, the first defendant has preferred the first appeal.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.Suit for Partition and Mesne Profits.

4.The case of the plaintiff in brief is that the suit property originally belonged to Veerammal, the maternal grandmother of the plaintiff and the defendants 1 to 3 and she had obtained the suit property by way of allotment by the then Tamil Nadu Slum Clearance Board vide its order No.6180/53 dated 29.02.1956 and Seetha and Kalyanasundaram are the children of Veerammal and Kalyanasundaram died as bachelor without issue on 15.07.1994 and the plaintiff and the defendants 1 to 3 are the children of Seetha and also put

forth the case that Veerammal had executed a Will dated 24.02.1977 bequeathing the suit property in favour of the plaintiff and the defendants, who are the children of her daughter viz., Seetha and the Will came into effect after the demise of Veerammal on 16.02.1993 and accordingly, claimed that the plaintiff is entitled to 1/4th share in the suit property and as the first defendant in particular refused to accede to the claim of partition put forth by the plaintiff, according to the plaintiff, she has been necessitated to lay the suit for appropriate reliefs.

5.The defendants 2 & 3, who are the plaintiff's sister did not contest the plaintiff's suit.

6.The first defendant alone resisted the plaintiff's suit contending that he had advanced money to Veerammal to rebuild the house and a loan was effected on 27.07.1987 and also put forth that Veerammal had revoked the Will by way of a document dated 15.04.1991 and further also put forth that Veerammal had conveyed the suit property in his favour by way of executing a bond on 16th April, 1990 and following the same, the Slum Clearance Board had also transferred all the documents relating to the suit property in favour of the first defendant and it is only the first defendant, who had been paying all the taxes in relation to the suit property and accordingly, he claimed absolute title to the suit property and prayed for the dismissal of the plaintiff's suit.

7.On the basis of the abovesaid pleas put forth by the respective parties, the following issues were framed by the trial Court for consideration.

"(a).Whether is Veerammal's will dated February 24, 1977 true and enforceable against the defendants?

(b).Is the plaintiff entitled to a preliminary decree declaring she's entitled to ¼ share? Is she also entitled to mesne profits as claimed?

(c).What's this court's decree on the suit? What are its terms?"

8.In support of the plaintiff's case, PW1 was examined and Exs.A1 to A10 were marked. On the side of the first defendant, DW1 was examined and Exs.B1 to B11 were marked.

9.On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to declare that the plaintiff is entitled to ¼ share in the suit property and directed the determination of the mesne profits by way of a separate proceeding under Order 20 Rule 12(c) CPC and accordingly,

granted the preliminary decree in favour of the plaintiff. Impugning the same, the first defendant has preferred the first appeal.

10.The following points arise for determination in this first appeal:

"(i).Whether the plaintiff is entitled to obtain partition and separate possession of $\frac{1}{4}$ share in the suit property as prayed for?

(ii).Whether the first defendant is entitled to absolute right and title over the suit property as put forth in the written statement?

(iii).To what relief the plaintiff is entitled to?

(iv).To what relief the first defendant/appellant is entitled to?"

11.Point Nos.i & ii

The parties are not in dispute that the suit property originally belonged to their grandmother Veerammal and also admitted that Veerammal had acquired the suit property by way of allotment from the Slum Clearance Board. It is also not in dispute that Veerammal had two children viz., Kalyanasundaram and Seetha and it is further admitted that Kalyanasundaram had died as a bachelor without any issue. It is also admitted that the plaintiff and the defendants 1 to 3 are the children of Seetha, the daughter of Veerammal. For claiming title to the suit property, the plaintiff had also projected a Will dated 24.02.1977 marked as Ex.A2 said to have been executed by Veerammal bequeathing the suit property in favour of her daughter Seetha and her children viz., the plaintiff and the defendants 1 to 3. As held by the trial Court, Ex.A2 Will not having been probated as per law and also attested by only one witness, in such view of the matter, rightly determined that based upon the abovesaid Will, the plaintiff cannot lay any claim of share or right in respect of the suit property. The abovesaid determination of the trial Court, in my considered opinion, do not warrant any interference.

12.Be that as it may, when admittedly the suit property belonged to Veerammal, the grandmother of the plaintiff and the defendants 1 to 3 and Veerammal's son Kalyanasundaram having died issueless and accordingly, Veerammal having been succeeded by her daughter Seetha and in turn Seetha having died leaving behind the plaintiff and the defendants 1 to 3 as her legal heirs, on that lines of succession, it is found that the plaintiff and the defendants would be entitled to claim share in the suit property as the descendants of Veerammal through her daughter Seetha, accordingly, it is found that on

that mode of succession, the trial Court has held that dehors the right of the plaintiff to claim share in the suit property based upon Ex.A2 Will, still as the one of the descendants of Veerammal as above pointed out, she would be entitled to claim $\frac{1}{4}$ share in the suit property.

13.The first defendant resisted the plaintiff's suit contending that he had obtained right and title over the suit property on the basis of certain documents said to have been executed by Veerammal in his favour. In this connection, he relied upon the alleged sale transaction said to have been executed in his favour by Veerammal on 16.04.1991 marked as Ex.B3. Admittedly, Ex.B3 is not a registered instrument and it is written like a bond instrument conveying title in favour of the first respondent. However, when the transfer of title by way of conveyance of the suit property in favour of the first defendant requires lawful registration and stamping and Ex.B3 not having satisfied the abovesaid legal requirements, in such view of the matter, the first defendant cannot be allowed to place any claim of exclusive right over the suit property based on Ex.B3 deed.

14.The first defendant would also put forth that he had advanced certain loan to Veerammal for rebuilding the house in the suit property and in this connection, placed reliance upon Ex.B1. However, Ex.B1 being in the nature of a loan agreement and when there is no other material placed on the part of the first defendant that he had indeed availed loan and paid the same to Veerammal and based on the abovesaid inputs, Veerammal had put up the construction, in such view of the matter, Ex.B1 would not in any manner advance the case of the first defendant and accordingly, the same would not enable the first defendant to claim title to the suit property as such.

15.The first defendant would also put forth the case that the Will said to have been executed by Veerammal had been cancelled by her by a deed dated 15.04.1991 marked as Ex.B2. However, as above noted, when Ex.A2 Will had not been probated and the plaintiff is also found to be not entitled to claim share in the suit property based on the abovesaid Will and further when it is seen that she would be entitled to claim share in the suit property as the descendant of Veerammal, in such view of the matter, the revocation of the alleged Will said to have been executed by Veerammal would not in any manner tilt this case in favour of the first defendant for claiming title to the suit property.

16.The first defendant would also project a consent agreement said to have been executed by Kalyanasundaram and Seetha in his favour for conveying title to the suit property. However, when the abovesaid document is found to be not having any legal sanction and also the abovesaid document being in the nature of relinquishment and requires registration and

stamping as per law, therefore, it is found that the consent agreement projected by the first defendant would not enure to his benefit for claiming exclusive title to the suit property.

17. In the light of the abovesaid position, when the first defendant had not obtained any legal conveyance of the suit property from the lawful owners as stipulated by law, in such view of the matter, the documents projected by him marked as Exs.B1 to B4 would not convey any legal authority for conferring title on the first defendant qua the suit property. As above pointed out, Veerammal had acquired title to the suit property based on the allotment made by the Slum Clearance Board. Therefore, on her demise, all her legal heirs would be entitled to succeed to the suit property. In such view of the matter, the claim of the first defendant that the Slum Clearance Board had allotted the suit property in his favour, as such, cannot be believed and accepted.

18. To sustain his claim, the first defendant has not examined any official of the Slum Clearance Board as to the authority and validity of the so-called allotment order marked as Ex.B5. Further, on a perusal of Ex.B5, it does not purport to be an allotment order and would only call upon the first defendant to pay certain charges in respect of the suit property. However, when Veerammal had been succeeded by the plaintiff and the defendants, her grandchildren, it does not stand to reason as to how come the first defendant had alone been directed by the Slum Clearance Board to pay the charges/amount in respect of the suit property. Therefore, merely on the production of the letter issued by the Slum Clearance Board on 04.05.1994 to the first defendant marked as Ex.B5 and the subsequent payments said to have been made by the first respondent and the charges said to have been paid by him in respect of the suit property towards property tax, water tax, electricity charges, etc., on that basis alone, we cannot hold that the first defendant has acquired a valid title to the suit property by excluding the title of the plaintiff and the defendants 2 & 3. When the first defendant has failed to establish that he has validly acquired the transfer of the suit property in his favour from Veerammal or from the legal heirs of Veerammal viz., Kalyanasundaram and Seetha, in such view of the matter, the plaintiff and the defendants 1 to 3 being the descendants of Veerammal, resultantly, it is found that the plaintiff and the defendants 1 to 3 would be entitled to obtain equal share in the suit property through their mother Seetha as determined by the trial Court and therefore, the claim of exclusive title over the suit property by the first defendant based on the documents projected by him had been rightly disbelieved and discountenanced by the trial Court and in my considered opinion, no valid reason has been made out to interfere with the abovesaid determination of the trial Court.

19.In the light of the abovesaid discussions, the plaintiff is found to be entitled to obtain partition and separate possession of $\frac{1}{4}$ share in the suit property as prayed for and as determined by the trial Court and it is further found that the first defendant is not entitled to claim any exclusive title to the suit property based on the documents projected by him as put forth by the plaintiff and as determined by the trial Court. Accordingly, the point Nos.1 & 2 are answered against the first defendant and in favour of the plaintiff.

20.Point Nos.iii & iv

In the light of the abovesaid discussions, the Judgement and Decree dated 04.01.2012 passed in O.S.No.8673 of 2010 on the file of the Additional District Judge, Fast Track Court No.1, Chennai, are confirmed and resultantly, the first appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sms

To

The Additional District Judge, Fast Track Court No.1, Chennai.

Copy to

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

+1cc to Mr.V.Ragavachari , Advocate SR.No. 86228

+1cc to Mr.M.Balasubramanian , Advocate SR.No. 86404

A.S.No.127 of 2013

A.SK(03/03/2020)

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