

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.09.2019

PRONOUNCED ON : 30.09.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.106 of 2012

and

M.P.No.1 of 2012

1. Shamsath Begum
2. Fathima Beevi
3. Hadeeja BeeviAppellants/Plaintiff

Vs.

Abdul HaiRespondent

Prayer: First Appeal filed under Order Order 41 Rule 1 & 2 and Section 96 of CPC against the judgment and decree dated 09.09.2009 made in O.S.No.32 of 2006, on the file of the District Judge, Nagapattinam District.

For Appellants : Mr. V. Jeevagiridharan

For Respondent : Mr. S. Sounthar

JUDGMENT

Aggrieved over the judgment and decree dated 09.09.2009, passed in O.S.No.32 of 2006, on the file of the District Court, Nagapattinam, the plaintiffs have preferred this 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 past and future mesne profits.

4.The case of the plaintiffs, in brief, is that the defendant and the deceased Abdul Jaleel are brothers and the first plaintiff is the wife and the plaintiffs 2 and 3 are the daughters of the deceased Abdul Jaleel and the items 1 and 2 of the plaint schedule properties had been acquired by the deceased Abdul Jaleel out of his own funds and put up the house

construction thereon and the deceased Abdul Jaleel and the defendant had been in the occupation of the items 1 and 2 of the plaint schedule properties and also enjoying the items 3 and 4 of the plaint schedule properties by way of the partition deed dated 22.04.1965. The deceased Abdul Jaleel and the defendant were allotted the items 1 to 3 of the plaint schedule properties excepting the terraced structure and the suit properties had been enjoyed as the family properties of the deceased Abdul Jaleel and the defendant's mother Ameena Beevi had died intestate and after her demise, the suit properties had been enjoyed jointly by the deceased Abdul Jaleel and the defendant without effecting any partition and inasmuch as the defendant resisted the enjoyment of the plaintiffs qua the plaint schedule properties, the parties had decided to effect partition of the suit properties in the presence of panchayatars on 25.01.2004 and accepting the same the defendant also signed in the panchayat muchulika, however, the defendant had refused to act upon the same and on the other hand, attempted to interfere with the plaintiffs' joint possession and enjoyment of the suit properties and also refused to give the income due to the plaintiffs out of the plaint schedule properties and accordingly claiming half share in the suit properties, the suit has come to be laid by the plaintiffs against the defendant.

5. The defendant resisted the plaintiffs' suit contending that it is false to state that the items 1 to 3 of the plaint schedule properties had been allotted to the deceased Abdul Jaleel and the defendant as per the partition deed dated 22.04.1965. No doubt, items 1 to 3 of the plaint schedule properties had been described as "A" schedule properties under the abovesaid partition deed. Item 3 of the plaint schedule properties belonged to Amina Beevi, the mother of the deceased Abdul Jaleel and the defendant and she is not the party to the abovesaid partition deed and the item 4 of the plaint schedule properties was not the subject matter of the abovesaid partition deed and the same belongs to the defendant independently. It is false to state that the terraced structure had been put in the first item by the deceased Abdul Jaleel out of his own funds and efforts and the suit properties had not been properly valued. Even during the life time of the deceased Abdul Jaleel, Abdul Jaleel was residing in the western portion of the items 1 and 2 and the defendant was residing in the eastern portion of the items 1 and 2 of the plaint schedule properties and the third item was in the cultivation of one Ibrahim and after his demise, it has remained barren and uncultivated and similarly item 4 of the plaint schedule properties also remained barren and no income had been received from the items 3 and 4 of the plaint schedule properties and the defendant had prescribed his title to the items 3 and 4 of the plaint schedule properties by way of adverse possession and even assuming for the sake of arguments

that Abdul Jaleel had share in the suit properties, the first plaintiff being his wife, would be entitled to claim 1/8 share and the plaintiffs 2 and 3, being his daughters, are entitled to claim 2/3 share and the residuaries would be available to the defendant as per the Mohammedan law and the defendant has sent a suitable reply to the notice issued by the plaintiffs and disputed the claim of the plaintiffs that the defendant has admitted the partition deed said to have been effected in the presence of panchayatars by signing the muchulika and according to the defendant, the same is not true and not acted upon and hence prayed for the dismissal of the plaintiffs' suit.

6. Based on the abovesaid pleas set out by the respective parties, the following issues were framed by the trial court for consideration.

- 1) Whether the plaintiffs are entitled to obtain the half share in the suit properties as claimed in the plaint?
- 2) Whether it is true that items 3 and 4 of the plaint schedule properties belong to the defendant exclusively?
- 3) Whether the defendant has prescribed his title to the items 3 and 4 of the plaint schedule properties by way of adverse possession?
- 4) Whether the suit properties had been properly valued?
- 5) Whether the plaintiffs are entitled to claim past and future mesne profits?
- 6) To what relief?

7. In support of the plaintiffs' case P.Ws.1 to 4 were examined and Exs.A1 to A10 were marked. On the side of the defendant, D.W.1 was examined and no document has been marked.

8. 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 plaintiffs are entitled to 34/96 share in the plaint schedule properties and accordingly granted the preliminary decree in favour of the plaintiffs and directed the plaintiffs to take separate proceedings as regards the other reliefs prayed for by them. Impugning the judgment and decree of the trial court, the plaintiffs have preferred the present first appeal.

9. The following points arise for determination in this first appeal.

1. Whether the plaintiffs are entitled to 34/96 share in the plaint schedule properties as determined by the trial court?

2. To what relief, the plaintiffs/appellants are entitled to?

3. To what relief the defendant is entitled to?

Point No.1

10. It is not in dispute that the deceased Abdul Jaleel and the defendant are brothers and the first plaintiff is the wife and the plaintiffs 2 and 3 are the daughters of the deceased Abdul Jaleel. From the materials placed on record, it is found that items 1 to 3 of the plaint schedule properties had been the subject matter of the partition deed dated 22.04.1965 and the same had been allotted to the deceased Abdul Jaleel and the defendant. Furthermore, it is also found that item 4 of the plaint schedule properties belonged to Ameena Beevi, the mother of the deceased Abdul Jaleel and the defendant. Ameena Beevi is found to have died intestate leaving behind the deceased Abdul Jaleel and the defendant as her legal heirs.

11. According to the plaintiffs, as the legal heirs of the deceased Abdul Jaleel, they are entitled to claim their share in the plaint schedule properties and inasmuch as the defendant had refused to accede to their claim of partition and separate possession of their share in the plaint schedule properties and on the other hand, asserted title to the suit properties as belonging to him exclusively, hence according to the plaintiffs, they had been necessitated to institute the suit against the defendant for appropriate reliefs.

12. The defendant would assert independent claim of title to the items 3 and 4 of the plaint schedule properties. Furthermore, the defendant would also claim adverse title in respect of the items 3 and 4 of the plaint schedule properties. However, there is no material worth acceptance on the part of the defendant for sustaining his claim of independent title to the items 3 and 4 of the plaint schedule properties and also no material has been placed by the defendant for sustaining his claim of adverse title to the abovesaid items of the suit properties.

13. From the materials available on record, it is found that the items 1 to 3 of the plaint schedule properties had been allotted to the deceased Abdul Jaleel and the defendant towards their share under the partition deed dated 22.04.1965, the copy of which has been marked as Ex.A1 and the same has not been controverted by the defendant. The item 4 of the plaint schedule properties is found to be belonging to Ameena Beevi, the mother of the deceased Abdul Jaleel and the defendant. Ameena Beevi having died intestate, naturally, both the deceased Abdul Jaleel and the defendant would be entitled to succeed to the abovesaid item. Accordingly, it is found that the plaint schedule properties belong to the deceased Abdul Jaleel and the

defendant jointly.

14. Though the plaintiffs would claim that the defendant had acceded to the partition arrangement said to have been effected in the presence of panchayatars on 25.01.2004, when the same had been challenged by the defendant in toto and when there is no material worth acceptance on the part of the plaintiffs that a valid muchulika had been executed, the so called panchayat muchulika cannot be the basis for the plaintiffs claiming partition and separate possession of their alleged share in the plaint schedule properties. The abovesaid aspects had been rightly considered by the trial court and I do not find any valid reason to interfere with the same.

15. The materials placed on record go to show that the plaint schedule properties jointly belong to the deceased Abdul Jaleel and the defendant. The plaintiffs being the legal heirs of the deceased Abdul Jaleel, accordingly, it is found that they would be entitled to succeed to their lawful share in the plaint schedule properties following the demise of Abdul Jaleel. The parties are governed by Mohammedan law. Accordingly, it is found that the first plaintiff, being the wife of the deceased Abdul Jaleel, would be entitled to claim $1/8$ share, and the plaintiffs 2 and 3, being his daughters, would be entitled to claim $2/3$ share as per Mohammedan law and the residuaries would go to the brother, namely, the defendant. The abovesaid aspects had also been taken into consideration by the trial court and accordingly, the trial court had also proceeded to declare that the plaintiffs would be entitled to obtain the partition and separate possession of $34/96$ share in the plaint schedule properties and accordingly granted the preliminary decree in favour of the plaintiffs.

16. In this appeal, the plaintiffs' counsel would contend that he is only questioning the quantum of share as determined by the trial court in favour of the plaintiffs qua the plaint schedule properties and according to him, the calculation of the trial court in fixing the quantum of shares is wrong and it is put forth that the first plaintiff, being entitled to $1/8$ share and the plaintiffs 2 and 3, being entitled to get $2/3$ share in the plaint schedule properties as per Mohammedan law, according to him, in all, the plaintiffs would be entitled to obtain $38/96$ share in the plaint schedule properties and not $34/96$ share as determined by the trial court. The defendant's counsel also fairly conceded that the calculation of the trial court in fixing the quantum of share to which the plaintiffs are entitled to is wrong and put forth that as per the Mohammedan law governing the parties, the plaintiffs, in toto, would be entitled to obtain $38/96$ share and not $34/96$ share in the plaint schedule properties as held by the trial court .

17. Considering the applicability of the Mohammedan law to

which the parties are governed by and considering the relationship between the plaintiffs and the deceased Abdul Jaleel and also the relationship between the deceased Abdul Jaleel and the defendant, in all, it is found that the first plaintiff would be entitled to 1/8 share and the plaintiffs 2 and 3 would be entitled to 2/3 share and so calculated, it is found that, as put forth by the plaintiff's counsel, the plaintiffs in toto, would be entitled to obtain 38/96 in the plaint schedule properties and not 34/96 share as determined by the trial court. Therefore, it is found that the quantum of share determined by the trial court requires to be modified and the plaintiffs should be held to be entitled to obtain the partition and separate possession of 38/96 share in the plaint schedule properties. Other than the abovesaid contention, no other ground has been put forth by the plaintiffs' counsel for disturbing the judgment and decree of the trial court.

18. In the light of the abovesaid factors, the judgment and decree of the trial court is modified to the extent that the plaintiffs, in toto, are entitled to obtain 38/96 share in the plaint schedule properties and the defendant would be entitled to receive the remaining share and accordingly, the Point No.1 is answered.

Points No. 2 and 3

19. In the light of the abovesaid discussions, the judgment and decree dated 09.09.2009 passed in O.S.No.32 of 2006, on the file of the District Court, Nagapattinam, are modified to the extent that the plaintiffs are entitled to obtain 38/96 share in the plaint schedule properties and in other aspects, they are confirmed and accordingly, the first appeal is disposed of and there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

bga

Copy to

1.The District Judge,
Nagapattinam.

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

+1cc to Mr.S.Sounther, Advocate, S.R.No. 84168

+1cc to Mr.V.Jevagiridharan, Advocate, S.R.No. 83248

A.S.No.106 of 2012

KK (CO)
GN (25/08/2020)



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