

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.966 of 2012

J.Subramani

..Appellant/1st Defendant

Vs.

1.J.Sampathkumar

2.J.Mathisekar

3.J.Parasuraman

..2nd & 3rd Respondents/
1st Respondent/Plaintiff/2nd and 3rd Defendants

Prayer : First Appeal filed against the Judgment & Decree dated 04.07.2012 passed in O.S.No.10602 of 2010 on the file of the 15th Additional judge, City Civil Court, Chennai. (19th Additional Judge, Incharge, City Civil Court, Chennai).

For Petitioner : Mr.S.Ilamparithi

For Respondent : Mr.V.Chokalingam for R1.

Mr.B.Sekar for R2

Mr.V.Kasiviswanathan for R3.

O R D E R

The appeal suit is filed against the judgment and decree dated 04.07.2012 passed in O.S.No.10602 of 2010.

2. The first defendant is also before this Court. The first respondent is the plaintiff, who instituted the suit for partition. The relationship between the parties are not disputed. The plaintiff is the eldest son of Mr.Jadadeesan and Mr.Krishnaveni Ammal. The contention of the plaintiff was that the mother of the plaintiff and the defendants, were the owner of the property situated at Door No.37/70, P.V.Kovil first street, Pudupettai, Royapettah, Chennai-14. It was contended that a Will was executed by the mother of the plaintiff and the defendants on 08.04.1987. As per the Will, the father of the plaintiff and the defendants are permitted to enjoy the property, during his life time. Thereafter, the plaintiff and the defendants can equally share the property. The plaintiff was appointed as Executor of the Will, and thereafter, the owner of the property Mrs.Krishnaveni died on 01.01.1988. The father of the plaintiff and the defendants were enjoying the suit schedule property and the plaintiff's father died on 08.08.2003. After the death of the father, the plaintiff as well as the defendants are equally entitled for share in the

suit schedule property. The plaintiff filed a petition for Probate before the High Court in Application No.33 of 1998, and later, the letter of administration was granted on 20.12.2001. Accordingly, the plaintiff was maintaining and paying the property tax and electricity charges and water tax, and the name in the documents were changed by the plaintiff. The defendants 1 to 3 were also residing in separate portions and other portions are rented out. The plaintiff was residing at Anna Nagar. Under those circumstances, the plaintiff contended that the defendants 1 and 2 have recovered the rent from the tenants and not accounted the same. In view of the fact that dispute arose between the brothers, the plaintiff was constrained to institute the suit.

3. The defendants denied the contentions raised in the plaint by stating that they were spending some amount and they spoke about certain disputes between the plaintiff and the defendants. The medical expenses met out for their father as well as ceremonious charges and further construction charges are also accounted for by the defendants. Setting out of all these facts, the suit was defended by the respondents/defendants.

4. The Trial Court framed the issues as to whether the plaintiff is entitled for $\frac{1}{4}$ share of the suit schedule property? Whether the plaintiff is entitled for rental income from December 2003 to August 2004? and whether the defendants 1 and 2 had proved that the plaintiff had released his right in respect of vacant plot purchased by the father at Anagaputhur? The Trial Court considered the documents as well the evidences produced by the parties to the lis on hand. It was established before the Trial Court that the Will was executed by the mother of the plaintiff and the defendants. As per the Will, the father is entitled to enjoy the property, during his life time and after the death of the father, the property should be equally shared between the plaintiff and the defendants. When the contents in the Will are unambiguously established by the plaintiff, the Trial Court arrived at a conclusion that the plaintiff is entitled for $\frac{1}{4}$ share in respect of suit property and in respect of property at Anagapathur, it was found that the plaintiff has not released his right in favour of the defendants 1 and 2, in view of the fact that the rights of the plaintiff to get $\frac{1}{4}$ share in the suit schedule property, and further, the Trial Court categorically found that the plaintiff had not released his right in respect of the property at Anagapathur, in favour of the defendants 1 and 2. The Trial Court came to a conclusion that the plaintiff is entitled for his share, as per the Will executed by the mother of the plaintiff and the defendant.

5. This Court is of the opinion that when the Will is unable to be disputed by the parties to the lis, the plaintiff is able to establish the contents in the Will and the testator

of the Will also unambiguously held that after her life time, the father of the plaintiff and the defendants have got a right of enjoyment till his death and after the death of the father, the property is to be shared equally between the plaintiff and the defendants. There is no ambiguity in respect of the contention and the said intention and wishes of the testator had been established before the Trial Court by the plaintiff. Therefore, this Court do not find any perversity or infirmity in respect of execution of the Will, and the Will in its terms was executed. As far as the father of the plaintiff and the defendants are concerned, after his death, the dispute arose on account of the fact that defendants 1 to 3 were residing in suit schedule property and the plaintiff was residing at Anna Nagar separately, and in view of certain difference of opinions in furnishing the accounts, the dispute arouse between the plaintiff and the defendants, who are all none other than the blood brothers. Under these circumstances, the Trial Court arrived at a conclusion that in respect of collection of rental accounts, the same are to be submitted properly, and accordingly, the plaintiff is entitled for his share with reference to rent collected from the suit schedule property.

6. This being the factum, this Court do not find any infirmity or perversity in respect of considering the documents and evidences placed by the parties before the Trial Court. Accordingly, the Judgment and Decree dated 04.07.2012 passed in O.S.No.10602 of 2010 by the trial Court stands confirmed and the first appeal stands dismissed. No costs.

Sd/-
Assistant Registrar (CO MDU)

//True copy//

Sub Assistant Registrar

ssb

To

The learned 19th Additional Judge,
City Civil Court, Chennai.

Copy To
The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.V.Chokalingam, Advocate SR.No.105727

A.S.No.966 of 2012

GJ(CO)
GMY(21/08/2020)