

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 20.08.2019

CORAM: The Hon'ble Mr.Justice N.Seshasayee

S.A.No.20 of 2008

1.Kumar
2.Iyappan
3.Selvaraj
4.Dakshayani Ammal ...Appellants/Appellants/Plaintiffs

Vs.

1.M.R.Ganesan
2.Arasu
3.Balaji ...Respondents/Respondents/Defendants

Prayer:- Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree as made in A.S.No.42 of 2004 dated 19.12.2006 on the file of the Principal District Judge, Chengalpattu confirming the judgment and decree as made in O.S.No.63 of 1985 dated 15.9.2003 on the file of the Principal Subordinate Judge, Chengalpattu Town and District.

For Appellants : Mr.S.Vediappan
for Mr.R.Bharanidharan

For Respondents : No appearance

JUDGMENT

The plaintiffs who have lost their suit for declaration that a certain release deed executed by the first defendant in favour of the second defendant is sham and nominal and also for partition, successively before the Courts below have come forward with the present appeal. The parties would be referred to by their ranks before the trial court.

2.The suit property is a house property. The admitted case on either side is that the suit property originally belong to one Rudrakoti Naicker. He has two sons, who are arrayed in this suit as defendants 1 and 2. The fifth plaintiff is the wife of the first defendant and plaintiffs 1 to 4 are their children.

3.The moot point in the case is that the first defendant Vide Ext.A.3 dated 07.01.1981 had released his half share in the suit property in favour of his elder brother, the second

defendant. Alleging that the first defendant is an alcoholic and that he was duped into signing Ext.A.3, sale deed when he was in an inebriated state, the plaintiffs seek a declaration that this document is sham and nominal. To support their prayer, they would further contend that the suit property is an ancestral property, in which plaintiffs 1 to 4 have subsisting right. They also seek partition of first defendant's half share in the suit property.

4.The first defendant did not contest the suit. In his written statement, the second defendant has inter alia contended that other than the suit property herein, there are other ancestral landed properties which defendants 1 and 2 possessed, that they entered into a family arrangement which was reduced to writing, wherein, the first defendant obtained half share in the suit property. Secondly, he would contend that on the very date on which Ext.A.3 was executed by the first defendant, the second defendant himself had executed a sale deed under Ext.B.11 in favour of first defendant's father-in-law Ekambara Naicker. This Ekambara Naicker was also examined as P.W.4. In Ext.A.3, this Ekambara Naicker is an attesting witness. Thirdly, between 1981 to 1987, the first defendant had executed 9 sale deeds with regard to several properties which are marked as Ext.B.1 to B.7 and B.12 to B.14. None of these sale deeds were challenged.

5.The dispute went to trial and the trial Court has chiefly relied on the attestation of Ext.A.3, release deed by Ekambara Naicker as a prominent fact to disbelieve the case of the plaintiffs that Ext.A.3 was executed when the first defendant was in a state of inebriation. This was confirmed by the first Appellate Court. Challenging the same, the plaintiffs are before this Court.

6.This appeal is not admitted.

7.The learned counsel for the appellants would argue that certain Koorchit which the defendants have filed, was filed in another suit preferred by the same plaintiffs in O.S.No.142 of 1997. In that suit, the xerox copy of the memorandum of family arrangement (Koorchit) was marked and the present defendants have obtained a certified copy of a photostat copy of the said Koorchit and marked here. Both the Courts below did not accept this document. He also made a false statement that the Koorchit came to be disbelieved even in second appeal No.216 of 2004, which arose from O.S.No.142 of 1997 referred to above.

8.So far as the present suit is concerned, the defendants have relied on the Koorchit only for the limited purpose that the first defendant has half share in the suit property. However, with or without that Koorchit, the first defendant will

still have half share in the suit property. Therefore, this Court need not venture into the other aspect regarding Koorchit. That appears to be the subject matter of S.A.No.216 of 2004. Dehose the Koorchit, the fact to be investigated is if the findings of the Courts below is so irrational, that they drew wrong inferences which no reasonable man could do. On this aspect this Court finds very little material to dis-allege the findings of the Courts below.

9.In other words, this Court does not find any perversity in the findings of the Courts below. In conclusion, nothing survives in this appeal. There is no substantial question of law involved in this appeal. The appeal is dismissed and the Judgment and Decree passed in A.S.No.42 of 2004, dated 19.12.2006 on the file of the Principal District Judge, Chengalpattu confirming the judgment and decree passed in O.S.No.63 of 1985, dated 15.9.2003, on the file of the Principal Subordinate Judge, Chengalpattu is upheld. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/
Sub Asst. Registrar

tsg

To:

- 1.The Principal District Judge,
Chengalpattu.
- 2.The Principal Subordinate Judge,
Chengalpattu.
- 3.The Section Officer
VR Section, High Court, Madras.

+1 cc to Mr.R.Karthikeyan Advocate sr71028

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