

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.07.2019
PRONOUNCED ON : 29.07.2019

CORAM
THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S.A.No.783 of 2019

K.Manoharan

...Appellant/Appellant/Plaintiff

Vs.

1. K. Rajendran
2. Kumaran
3. K. Nithyanandan
4. S. Lakshmi

...Respondents/Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, challenging the judgment and decree in A.S.No.285 of 2018 dated 19.12.2018 passed by the XVII Additional Judge, City Civil Court, Chennai, confirming the judgment and decree in O.S.No.4255 of 2015 dated 12.04.2018 passed by XIII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr. William Shakesphere

JUDGMENT

Challenge in this Second Appeal is made to the judgment and decree dated 19.12.2018 passed in A.S.No.285 of 2018 on the file of the XVII Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 12.04.2018 passed in O.S.No.4255 of 2015 on the file of XIII Assistant Judge, City Civil Court, Chennai.

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

3. Suit for declaration and permanent injunction.

4. The plaintiff has come forward with the suit impugning the settlement deeds executed by his mother Deivanai Ammal in favour of the defendants 1 and 2 and also impugning the consequential sale deeds executed by the defendants 1 and 2 in favour of the defendants 3 and 4 as null and void and also sought for the relief of permanent injunction.

5. The very basis for the plaintiff's claim of the abovesaid reliefs is the partition deed marked as Ex.A1. In

particular, the plaintiff relies upon clause 7 of the abovesaid partition deed for contending that he has been granted the right in respect of the suit property after the demise of his mother and therefore, inasmuch as his mother had been given only the life estate in respect of the suit property by way of the abovesaid partition deed, his mother is not entitled to settle the suit property in favour of the defendants 1 and 2 and accordingly contended that the settlement deeds effected by his mother in favour of the defendants 1 and 2 and the consequential sale deeds effected by the defendants 1 and 2 in favour of the defendants 3 and 4 are null and void.

6. Considering the clause 7 of the partition deed marked as Ex.A1, as rightly found and determined by the courts below, it is found that the mother had been allotted the property in question and clause 7 reads that after her life time, the proceeds of the property shall be utilised by the plaintiff for the expenses of obsequies of his mother and other religious commitments and further recites that the balance, if any, shall be distributed only among the descendents of the defendants 1 and 2. Therefore, when as per Ex.A1 partition deed, particularly clause 7, the property in question had been allotted to the mother, in such view of the matter, the claim of the plaintiff that his mother had been granted only the life estate and not absolute interest, cannot at all be accepted and in addition to that, the claim of the plaintiff that he has been given absolute right in respect of the suit property after the life time of his mother also cannot be accepted when as abovenoted, the same is only found to be ordered to be distributed amongst the descendents of her other children. In such view of the matter, the claim of the plaintiff that his mother had no entitlement to execute the settlement deeds cannot be accepted in any manner.

7. During the life time of the mother, she has executed the settlement deeds in favour of the defendants 1 and 2 and in the abovesaid settlement deeds, reference is also made about the partition deed Ex.A1. Therefore, as found by the courts below, knowing her entitlement to the suit property by way of the partition deed, accordingly, it is found that the mother had executed the settlement deeds in favour of the defendants 1 and 2 and when as above noted, the plaintiff has not been given any absolute interest over the suit property after the life time of the mother other than expending the proceeds thereof for performing obsequies of the mother and when there is no material on the part of the plaintiff to evidence that the impugned settlement deeds had been secured by exercising force, coercion or undue influence and when it is seen that the mother is entitled to dispose of the properties and in such view of the matter, the suit laid by the plaintiff impugning the settlement

deeds executed by his mother in favour of the defendants 1 and 2 and the consequential sale deeds executed by the defendants 1 and 2 in favour of the defendants 3 and 4 cannot at all be accepted in any manner.

8. In addition to that the courts below are found to have noted that the plaintiff has suppressed the settlement deed in favour of his mother and not come forward with the clean hands.

9. As regards the relief of enjoyment is concerned, absolutely there is no material on the part of the plaintiff to show that he has been in the possession and enjoyment of the suit property and equally there is no material on the part of the plaintiff to evidence or hold that the defendants 1 and 2 are in the possession of the suit property on the alleged permission said to have been granted by him. Therefore, the courts below are found to have rightly not extended the relief of permanent injunction in favour of the plaintiff.

10. For the reasons aforesaid, considering the nature of the right derived by the mother Deivanai Ammal by way of Ex.A1 partition deed and her entitlement to dispose of the suit property and considering the fact that the plaintiff has not been given any absolute right in respect of the suit property after the demise of Deivanai Ammal and when the settlement deeds effected by Deivanai Ammal are not shown to be tainted with any illegality as such or had been obtained unlawfully by the plaintiff by placing reliable materials and when the plaintiff has also miserably failed to establish his claim of possession and enjoyment of the suit property in any manner, on the whole, it is found that the reasonings and conclusions of the courts below for rejecting the plaintiff's case do not warrant any interference, particularly, when the same are not shown to be vitiated by any perversity or irrationality and in such view of the matter, the second appeal is found to be devoid of merits.

11. For the reasons aforesaid, no substantial question of law is found to be involved in this second appeal and resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar(CS VI)

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Sub-Assistant Registrar

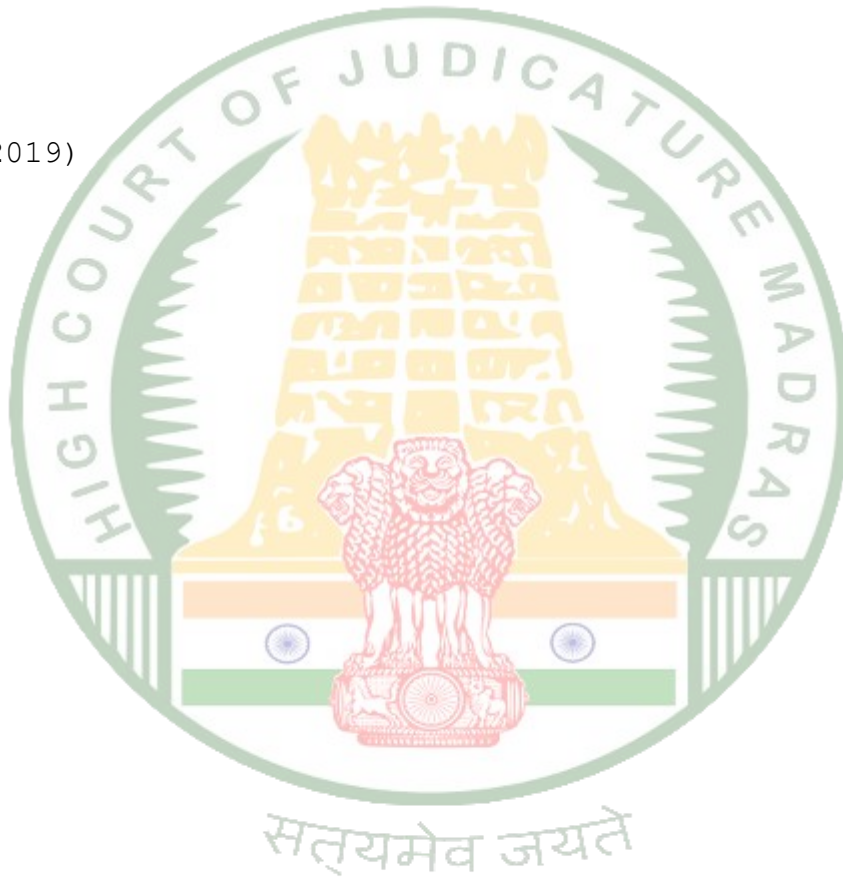
To

1.The XVII Additional Judge
City Civil Court, Chennai

2.The XIII Assistant Judge
City Civil Court,
Chennai

S.A.No.783 of 2019

SPD(CO)
SP(29/11/2019)



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