

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.08.2019

PRONOUNCED ON : 30.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.865 of 2019

Durairaj ... Appellant/Appellant/2nd Defendant

Vs.

1.Mery Agnesh Lisath ...1st Respondent/1st Respondent/Plaintiff

2.Alphonse Raj

3.Mery Gulory Victroria

4.Mery Chirsty ... 2 to 4 Respondents/2 to 4 Respondents/
2 to 4 Defendants

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 30.10.2018 passed in A.S.No.47 of 2014 on the file of the Subordinate Court, Mettur, confirming the Judgment and Decree dated 14.08.2014 passed in O.S.No.248 of 2011 on the file of the District Munsif Court, Mettur.

For Appellant : Mr.S.Doraisamy
for Mr.V.Elangovan

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 30.10.2018 passed in A.S.No.47 of 2014 on the file of the Subordinate Court, Mettur, confirming the Judgment and Decree dated 14.08.2014 passed in O.S.No.248 of 2011 on the file of the District Munsif Court, Mettur.

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

3.Suit for Partition and Permanent Injunction.

4.The defendants 1 & 2 are the brothers and 3 & 4 are the sisters of the plaintiff and it is found that the suit property belonged to the mother of the plaintiff and the defendants viz., Rosemary by way of a sale deed dated 01.09.1986. It is found that the settlement deed said to have been executed by Rosemary

in favour of the plaintiff and the defendants and the Will said to have been executed by Rosemery in favour of the second defendant having been declared as invalid in O.S.No.82 of 2005 on the file of the Subordinate Court, Mettru, which suit had been laid by the second defendant and accordingly, it is found that the children of Rosemery are found to be entitled to each obtain 1/5th share in the suit property. Though the appeals had been preferred challenging the judgment and decree passed in O.S.No.82 of 2005 by the second defendant and the third defendant separately, the abovesaid appeals projected by them had been dismissed confirming the judgment and decree of the trial Court, thereafter though the second defendant is found to have preferred the second appeal, he had not suppressed and proceeded with the second appeal and in such view of the matter, as rightly determined by the Courts below, the plaintiff and the defendants would be each entitled to obtain 1/5th share in the suit property.

5.The defence had been taken by the second defendant in particular that Rosemery having fixed deposit in the co-operative bank and also pledged jewells and in all was having 23 sovereigns of gold and the same had been stealthily obtained from her by the plaintiff and the first defendant and accordingly, put forth the defence that the abovesaid property should also been included in the present suit and therefore, the plaintiff's suit is bad for partial partition. However, in this connection, the secretary of the Co-operative Bank examined as DW2 did not lend support to the abovesaid defence version of the second defendant and accordingly, he has also been treated as a hostile witness by the second defendant and considering his evidence as adduced by him during the course of chief examination and cross examination, it is found that it is only Rosemery, who had obtained the maturity amount in the fixed deposit as well the pledged jewells and in such view of the matter, when at that point of time, Rosemery was found to be in a fit state of mind and thereafter, there is no material on record to safely hold that the plaintiff and the first defendant had stealthily obtained the amount and the jewells from Rosemery by committing fraud or by way of cheating, in such view of the matter, the Courts below are found to be justified in disbelieving the defence version that the plaintiff and the first defendant had taken away the fixed deposit amount and the jewells of Rosemery and in such view of the matter, the contention of the second defendant that the plaintiff's suit is bad for partial partition on account of the non inclusion of the same, as such, cannot be countenanced and rightly discarded by the Courts below. The Courts below had also considered the evidence of DW3 with reference to the alleged Panchayat said to have been made between the parties concerned and considering the evidence adduced in the matter held that the defendants have

failed to establish that the plaintiff and the first defendant had obtained the amount and jewells from Rosemary by committing fraud etc., and accordingly, proceeded to hold that the suit laid by the plaintiff is not bad for partial partition as sought to be made out by the second defendant.

6.As above pointed out, considering the position that the suit property is the property belonging to Rosemary and she died leaving behind the plaintiff and the defendants as her legal heirs, in all, it is found that the Courts below are found to be justified in determining that the plaintiff is entitled to obtain 1/5 share in the suit property and also granting the relief of permanent injunction as prayed for.

7.The reasonings and conclusions of the Courts below for upholding the plaintiff's case being based on the proper appreciation of the materials placed on record and not suffering from any infirmity or perversity, in all, the second appeal is found to be not entitled for acceptance.

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

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Court, सत्यमेव जयते
Mettur.

2.The District Munsif,
Mettur.

+1cc to Mr.V.Elangovan, Advocate Sr.75340

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srg 06/02/2020