

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Judgment	Date of Pronouncing the Judgment
28.11.2019	06.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

A.S.No.396 of 2014

P.Vaishnavi ... Appellant / Plaintiff

-vs-

1.S.Radha

2.P.Ramanujam

3.Dr.S.Gayathri

4.Vaijayanthikala Respondents / Defendants

PRAYER: Appeal is filed under Section 96 of the Code of Civil Procedure to set aside the Judgment and Decree, dated 20.03.2014, made in O.S.No.10 of 2012, on the file of the II Additional District and Sessions Judge, Vellore at Ranipet.

For Appellant : Mr.J.Ramakrishnan

For Respondents : No appearance -Ex parte

J U D G M E N T

Aggrieved over the Judgment and Decree, dated 20.03.2014, passed in O.S.No.10 of 2012, on the file of the II Additional District and Sessions Court, Vellore at Ranipet, the first appeal has been preferred by the plaintiff.

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 case of the plaintiff in brief is that she is the daughter of Dr.H.Purushothuman and the fourth defendant and the first defendant is the first wife of Dr.H.Purushothuman and

the defendants 2 and 3 are the son and daughter of the first defendant. The marriage of the plaintiff's father with the fourth defendant was performed on 10.11.1989 at Thiruchanoor, Andhra Pradesh, as per Hindu rites and customs and out of the said wedlock, the plaintiff was born on 02.06.1992.

5. The plaint A and B Schedule properties are the ancestral properties of Dr.H.Purushothuman and purchased by the plaintiff's grandfather Dr.B.Haridoss and grandmother Rajammal and they died intestate several years ago leaving behind Dr.H.Purushothuman as their only legal heir to succeed their estate and the plaint schedule properties are the Hindu undivided joint family properties belonging to the plaintiff and the defendants and Dr.H.Purushothuman died on 22.11.2008 in a road traffic accident leaving behind the plaintiff and the defendants as his legal heirs to succeed his estate.

6. After the demise of Dr.H.Purushothuman, the plaintiff and the defendants had been enjoying the plaint schedule properties. However, the defendants 1 and 2 are now claiming that the plaint schedule properties are their separate properties and directed the plaintiff not to visit the same and on questioning about the same, the defendants 1 and 2 projected registered gift deeds dated 24.01.2005 executed by Dr.H.Purushothuman in their favour. The plaintiff's father was having love and affection towards the plaintiff and the fourth defendant and therefore, the gift deeds, dated 24.01.2005, cannot be accepted and the same had been created by the defendants 1 and 2 illegally and hence, not binding upon the plaintiff. The plaintiff's father has no right to execute the abovesaid gift deeds in favour of the defendants 1 and 2 in respect of the ancestral properties. The plaintiff has equal 1/4th share in the plaint schedule properties along with the defendants 1 to 3 and the plaintiff demanded partition of her lawful share, however, the defendants 1 to 3 are evading to comply with her demand and on the other hand, attempting to create encumbrance over the plaint schedule properties without any entitlement and hence, according to the plaintiff, she has been necessitated to lay the suit for appropriate reliefs.

7. The defendants 1 to 3 resisted the suit contending that the plaintiff's suit is not maintainable either in law or on facts and putforth the case that the first defendant is the lawfully wedded wife of the deceased H.Purushothuman and the defendants 2 and 3 are born to the deceased H.Purushothuman and the first defendant and disputed the case of the plaintiff that the fourth defendant is the legally wedded wife of the deceased H.Purushothuman and the plaintiff was born out of the said wedlock and further, disputed the claim of the plaintiff that

H.Purushothuman married the fourth defendant on 10.11.1989 at Thiruchanoor, Andhra Pradesh as per Hindu rites and customs and put forth the case that the fourth defendant was working at Chennai as Senior Stenographer and her mother was affected by cancer and other diseases at Arakkonam and the deceased H.Purushothuman regularly went to the fourth defendant's house and gave treatment to her mother and in such circumstances, the fourth defendant had voluntarily developed illicit intimacy with him and out of the abovesaid relationship, the plaintiff was born and even the deceased H.Purushothuman had been taking the abovesaid stand in all the civil and criminal proceedings initiated by the fourth defendant and in the suit laid by the fourth defendant in O.S.No.9 of 2006, on the file of the Fast Track Court / Additional District Court, Ranipet, the fourth defendant for herself and on behalf of the plaintiff settled the matter and entered full satisfaction by receiving a huge sum and the matter had been compromised between the parties and in the abovesaid proceedings also, the fourth defendant had not been acknowledged as the legally wedded wife of the deceased H.Purushothuman and hence, the findings in the abovesaid suit, operate as res judicata to the present suit and the claim of the plaintiff that the plaintiff schedule properties are jointly enjoyed by her and the defendants is false. Only on the demise of H.Purushothuman, in a road traffic accident, the defendants 1 to 3 came to know about his illicit relationship with the fourth respondent and the birth of the plaintiff out of the same and the plaintiff is not in the joint possession and enjoyment of the suit properties along with the defendants 1 to 3. The deceased H.Purushothuman had executed gift deeds dated 24.01.2005 in favour of the defendants 1 and 2 and the same are not liable to be challenged by the plaintiff and the plaintiff is not entitled to claim any share in the suit properties and therefore, there is no question of the defendants 1 to 3 evading the claim of partition put forth by the plaintiff. The gift deeds executed by the deceased H.Purushothuman in favour of the defendants 1 and 2 are valid and binding upon the plaintiff and there is no cause of action for the suit and the suit is liable to be dismissed.

8. On the basis of the above pleadings, the following issues were framed by the Trial Court for consideration:

- i. Whether the 'A' and 'B' Schedule properties are the joint family properties of plaintiff and the defendants?
- ii. Whether the plaintiff is entitled to 1/4th share in the suit schedule mentioned properties?

- iii. Whether the plaintiff is entitled to permanent injunction as prayed for?
- iv. To what other relief?

9. In support of the plaintiff's case, P.W.1 was examined and Exs.A1 to A7 were marked. On the side of the defendants, D.W.1 was examined and Exs.B1 to B14 were marked.

10. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Trial Court was pleased to dismiss the plaintiff's suit. Impugning the same, the first appeal has been preferred by the plaintiff.

11. The following points arise for determination in this first appeal:

- i. Whether the plaintiff is entitled to claim partition and separate possession of 1/4th share in the plaint schedule properties as claimed by her?
- ii. Whether the plaintiff is entitled to obtain the relief of permanent injunction as prayed for?
- iii. To what relief the plaintiff / appellant is entitled to?
- iv. To what relief the defendants 1 to 3 are entitled to?

Point Nos.1 & 2:

12. The suit has been laid by the plaintiff on the premise that her mother, namely, the fourth defendant had married H.Purushothuman, since deceased, on 10.11.1989, at Thiruchanoor, Andhra Pradesh, as per Hindu rites and customs and out of the said wedlock, the plaintiff had been born to them on 02.06.1992 and thereby, putforth the case that inasmuch as the plaint schedule properties are the undivided joint family properties of H.Purushothuman, as his daughter, she is entitled to a share in the suit properties as putforth in the plaint and would state that the first defendant, who is the legally wedded wife of H.Purushothuman and the defendants 2 and 3 born to the first defendant and H.Purushothuman are resisting her claim of share in the suit properties by claiming that the suit properties are their absolute properties by virtue of the gift deeds, dated 24.01.2005, said to have been executed in favour of the defendants 1 and 2 by H.Purushothuman and attempting to alienate the suit properties with a view to deprive the plaintiff's share in the suit properties, accordingly, the

plaintiff has been necessitated to lay the suit for appropriate relief.

13. The abovesaid case of the plaintiff has been seriously challenged by the defendants 1 to 3 contending that it is only the first defendant, who is the legally wedded wife of H.Purushothuman and that the defendants 2 and 3 are born to the first defendant and H.Purushothuman and putforth the case that the fourth defendant is not the wedded wife of H.Purushothuman and no marriage took place between her and H.Purushothuman on 10.11.1989 at Thiruchanoor, Andhra Pradesh, as claimed by the plaintiff and according to them, there has been illicit relationship between H.Purushothuman and the fourth defendant and out of the abovesaid illicit relationship, the plaintiff had been born and therefore, contended that the plaintiff is not entitled to claim any share in the suit properties on the footing that she is the daughter of H.Purushothuman, particularly with reference to the ancestral properties left behind by H.Purushothuman and further putforth the case that H.Purushothuman, during his lifetime, had settled the suit properties in favour of the defendants 1 and 2 by way of gift deeds dated 24.01.2005 and in all, contended that the plaintiff is not entitled to seek any share in the suit properties and prayed for the dismissal of the plaintiff's suit.

14. In the light of the abovesaid rival claims put forth by the respective parties, the plaintiff claiming to be the daughter of H.Purushothuman as put forth by her and particularly, she having born to H.Purushothuman and the fourth defendant out of their lawful wedlock and when the abovesaid case of the plaintiff has been vehemently resisted by the defendants 1 to 3, the plaintiff should, at the foremost, establish that as claimed by her, the marriage had taken place between H.Purushothuman and the fourth respondent on 10.11.1989, at Thiruchanoort, Andhra Pradesh and out of the said wedlock, she had been born to them. However, with reference to the abovesaid claim, there is absolutely no acceptable and reliable material forthcoming on the part of the plaintiff.

15. To sustain the abovesaid case, the plaintiff has not examined any independent persons and more so, she has not even endeavoured to examine her mother, namely, the fourth defendant. The fourth defendant is found to have remained ex parte in the suit. During the course of cross-examination, the plaintiff examined as P.W.1 has admitted that she does not know as to whether the marriage of her mother was performed on 10.11.1989 at Thiruchanoor, Andhra Pradesh as per the Hindu rites and customs and also stated that she is not aware of the family members of H.Purushothuman. The above being the evidence of the plaintiff and when she has completely pleaded ignorance

about the alleged marriage between H.Purushothuman and the fourth defendant as put forth in the plaint and when she had not endeavoured to examine any person associated with the marriage or who had participated in the said marriage and not even endeavoured to examine her mother, in all, it is seen that the claim of the plaintiff that her mother contracted a marriage with H.Purushothman on 10.11.1989 at Thiruchanoor, Andhra Pradesh as such cannot be believed and accepted. Thus, it is seen that the abovesaid case of the plaintiff had been rightly disbelieved by the Trial Court.

16. In the light of the abovesaid position, the resultant position would be that as contended by the defendants 1 to 3, no marriage had been performed between H.Purushothuman and the fourth defendant and on the other hand, it is found that some illicit relationship had been developed between H.Purushothuman and the fourth defendant and out of the said relationship, the plaintiff had been born. In this connection, it is also noted that some criminal and civil proceedings had been initiated by the fourth defendant against H.Purushothuman and in the civil proceedings i.e., in O.S.No.9 of 2006, on the file of the Additional District Court / Fast Track Court, Ranipet, some compromise had been arrived at between the fourth defendant for herself and on behalf of the plaintiff with H.Purushothuman and a compromise decree had been passed in the abovesaid proceedings, whereunder, H.Purushothuman had agreed to provide certain properties and support to the fourth defendant and the plaintiff. However, as rightly contended by the defendants 1 to 3, in all the abovesaid proceedings, including the criminal proceedings, H.Purushothuman had not admitted the status of the fourth defendant as his wedded wife and therefore, the abovesaid proceedings by themselves would not lead to the conclusion that any marriage had been performed between H.Purushothuman and the fourth defendant as claimed by the plaintiff and that out of the said marriage, the plaintiff had been born. The plaintiff having failed to establish the factum of the marriage between the fourth defendant and H.Purushothuman, in such view of the matter, as rightly determined by the Trial Court, the plaintiff would not be entitled to claim any share in the suit properties being the undivided joint family properties of H.Purushothuman.

17. The plaint schedule properties admittedly being the ancestral properties of H.Purushothuman, in such view of the matter, the plaintiff having failed to establish her entitlement to succeed to the same on the demise of H.Purushothuman as his daughter, particularly, the plaintiff having failed to establish that any marriage had been performed between H.Purushothuman and her mother, namely, the fourth defendant, in such view of the matter, as held by the Trial Court, the plaintiff would not be

entitled to claim any share in the ancestral properties of H.Purushothuman and therefore, the determination of the Trial Court that the plaintiff's suit is misconceived and without any cause of action does not warrant any interference.

18. The defendants 1 to 3 being the legal heirs of the deceased H.Purushothuman and accordingly when it is noted that H.Purushothuman had settled the suit properties in favour of the defendants 1 and 2 by virtue of the gift deeds dated 24.01.2005 and though the plaintiff would claim that the abovesaid gift deeds are not valid and binding upon her, however, as above discussed, when the plaintiff having failed to establish her entitlement to succeed to the ancestral properties left behind by H.Purushothuman in any manner, accordingly, as rightly held by the Trial Court, the plaintiff is found to be not entitled to challenge the gift deeds executed by H.Purushothuman in favour of the defendants 1 and 2.

19. In the light of the abovesaid discussions, the Trial Court is correct in holding that the suit properties are not the joint family properties of the plaintiff and the defendants and that the plaintiff is not entitled to obtain 1/4th share in the suit properties. Therefore, I hold that the plaintiff is not entitled to obtain partition and separate possession of 1/4th share in the suit properties. I further hold that the plaintiff is not entitled to obtain permanent injunction as prayed for. Accordingly, the Point Nos.1 and 2 are answered.

Point Nos.3 and 4:

20. For the reasons aforesaid, the Judgment and Decree, dated 20.03.2014, passed in O.S.No.10 of 2012, on the file of the II Additional District and Sessions Court, Vellore at Ranipet, are confirmed and resultantly, the first appeal is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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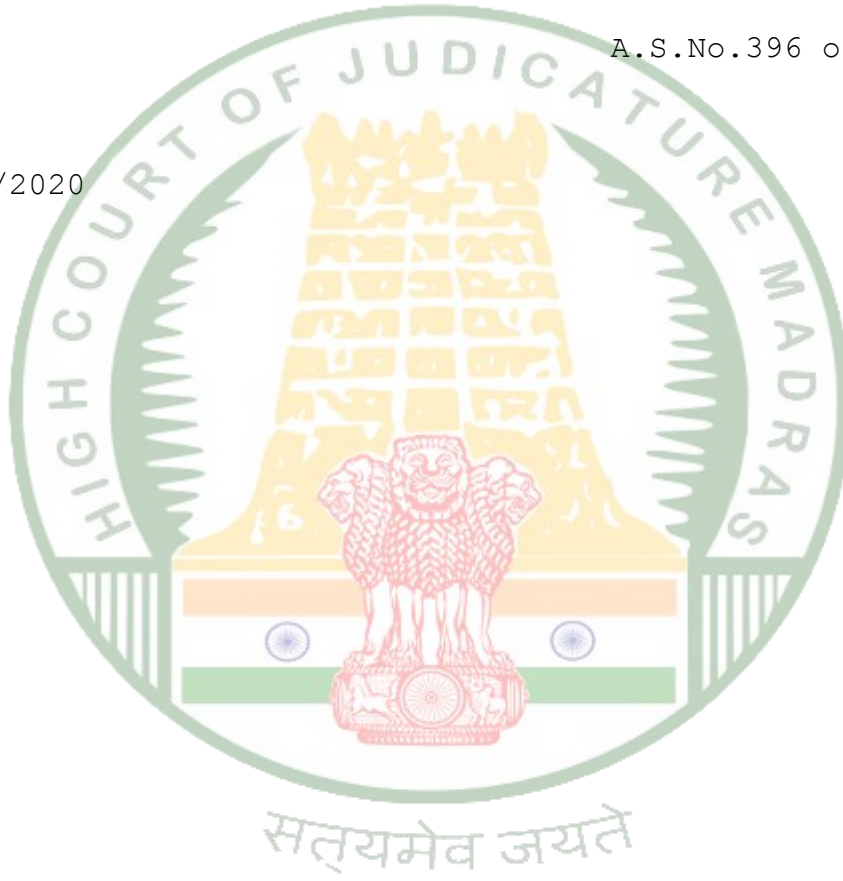
To:

The II Additional District Judge,
Vellore at Ranipet.

+lcc to Mr.J.Ramakrishnan, Advocate Sr.102189

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