

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.11.2019

PRONOUNCED ON : 27.11.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

A.S.No.458 of 2014

M.Malliga ...Appellant/Plaintiff

Vs.

1.Atra K.Sankaran

2.S.Selvam

3.S.Raja

... Respondents/Defendants

Prayer:- First Appeal has been filed under Section 96 CPC & r/w Order XLI, XLI A CPC against the judgment and decree dated 11.11.2013 passed in O.S.No.208 / 2008 on the file of the I Additional District court, Salem.

For Appellant : Mr.N.A.Nissar Ahamed

For Respondents : Mr.T.Karunakaran

JUDGMENT

Aggrieved over the Judgement and Decree dated 11.11.2013 passed in O.S.No.208 / 2008 on the file of the I Additional District Court, Salem, the first appeal has been preferred.

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 the first defendant and the defendants 2 & 3 are the sons of the first defendant. The suit properties belonged to the first defendant's father the deceased A.N.Krishna Chettiar and the family was engaged in weaving business and accordingly, the plaintiff was also engaged in weaving and earning money and handing over the part of her earnings to her father viz., the first defendant to meet the family expenses and saved the rest and put forth the case that A.N.Krishna Chettiar had two sons viz., the first defendant and another son by name Natesan and according to the plaintiff, Natesan had released his rights over the suit properties in favour of the first defendant on receipt of a sum of Rs.15,000/- by way of a registered released deed dated 25.06.1980 and it is only the plaintiff, who had provided her savings amount coupled

with the amount received by way of the sale of her jewels to the extent of Rs.10,000/- to the first defendant for the purpose of the abovesaid release deed and accordingly, the first defendant had assured the plaintiff that he would repay the value of the jewels given by the plaintiff or one of the houses of the suit properties and however, the first defendant had failed to abide by his assurance and subsequently, informed that he had chosen to provide the suit properties to his sons viz., the defendants 2 & 3 and when it is only the plaintiff, who had provided the amount to the first defendant for obtaining the release deed from Natesan and accordingly, it is the case of the plaintiff that she is entitled to 1/3 share in the suit properties and with a view to deprive the lawful share in the suit properties, the first defendant had created a settlement deed in favour of the defendants 2 & 3 dated 18.02.2008 and based upon the abovesaid settlement deed, the defendants are further attempting to encumber the suit properties and hence, according to the plaintiff, the suit had come to be laid by her for appropriate reliefs.

5.The defendants resisted the plaintiff's suit contending that the suit laid by the plaintiff is not maintainable either in law or on facts and the relationship between the parties has been admitted and denied the case of the plaintiff that she was engaged in weaving business and earning money and providing a part of the sum to the first defendant for meeting the family expenses and saving the rest of the amount and admitted that Natesan had relinquished his share in favour of the first defendant by way of the release deed dated 25.06.1980. However, dispute the case of the plaintiff that she had provided a sum of Rs.10,000/- to the first defendant by selling her jewels etc., as false and also dispute the case of the plaintiff that the first defendant had assured to provide her the value of the jewels or one of the houses of the suit properties and thereby, the plaintiff is entitled 1/3 share in the suit properties is false and according to the defendants, no amount was provided by her for the obtainment of the release deed from Natesan and according to the defendants, the suit properties are the self acquired properties of the first defendant and therefore, the plaintiff as a matter of right is not entitled to claim any share in the same and it is further put forth that the plaintiff had been provided with adequate seer at the time of marriage and accordingly, it is also stated that the first defendant as the absolute owner of the suit properties, settled the suit properties in favour of the defendants 2 & 3 on 18.02.2008 and the same cannot be questioned or challenged by the plaintiff and the first defendant has every right to deal with the properties as his desire and wish and therefore, contended that the plaintiff is not entitled to claim any share in the suit properties and the suit laid by the plaintiff is liable to be dismissed.

6. On the basis of the abovesaid pleas set out by the respective parties and the submissions made, the following issues were framed by the trial Court for consideration:

"(1). Whether the plaintiff is entitled as prayed for?

(2). What are the other reliefs the plaintiff is entitled for?

7. It is found that after filing the written statement, the defendants' counsel reported no instructions and the defendants being called and remaining absent, they had been set exparte. In support of the plaintiff's case, PW1 was examined and Exs.A1 to A6 were marked.

8. On a consideration of the oral and documentary evidence adduced on the part of the plaintiff 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.

9. The following points arise for determination in the first appeal:

"1. Whether the plaintiff is entitled to obtain partition and separate possession of 1/3 share in the suit properties as claimed in the plaint?

2. Whether the plaintiff is entitled to obtain the relief of permanent injunction as prayed for?

3. To what relief the plaintiff/appellant is entitled to?

4. To what relief the defendants are entitled to?"

10. Point Nos.1 & 2

Considering the materials placed on record, it is seen that by virtue of the sale deed dated 05.08.1977, the copy of which has been marked as Ex.A1, executed by the father of A.N.Krishna Chettiar, it is seen that as per the terms set out in the abovesaid sale deed Manickam Ammal is to enjoy the suit properties during her life time and after her demise, the first defendant and his brother Natesan would acquire absolute right over the same. It is further seen that after the demise of Manickammal, Natesan had chosen to release his share in respect of the suit properties by way of the release deed dated 25.06.1980 and the abovesaid facts are not in dispute. Now, according to the plaintiff, it was she, who provided a part of the consideration for the obtainment of the release deed dated 25.06.1980 marked as Ex.A2 in a sum of Rs.10,000/- to her father viz., the first defendant and on that basis,

according to her, the first defendant had been assuring to provide one of the houses of the suit properties to her and however, subsequently, failed to keep up his promise and hence, it is put forth by the plaintiff that she is entitled to 1/3 share in the suit properties.

11.The abovesaid claim of the plaintiff is seriously challenged by the defendants. According to the defendants, the suit properties are the self acquired properties of the first defendant and he had settled the same in favour of the defendants 2 & 3 by way of the settlement deed dated 18.02.2008 and the plaintiff is not entitled to claim any share in the same and also disputed the case of the plaintiff that she had provided a sum of Rs.10,000/- to the first defendant for the obtainment of the release deed marked as Ex.A2.

12.Considering the title of the first defendant to the suit properties by way of Ex.A1 Will and Ex.A2 release deed, as rightly determined by the trial Court, the suit properties are the absolute and separate properties of the first defendant and not his ancestral properties as sought to be projected by the plaintiff. In the light of the abovesaid position, when the suit properties are the absolute properties of the first defendant, he is entitled to dispose of the same as his desire and wish and accordingly, it is found that the first defendant had chosen to settle the same in favour of the defendants 2 & 3 by way of the settlement deed dated 18.02.2008, the copy of which deed, has been marked as Ex.A4.

13.In the light of the abovesaid factors, the plaintiff has failed to establish her lawful claim of share in the suit properties, particularly, when it is seen that the suit properties are the separate properties of the first defendant and the first defendant having chosen to settle the same in favour of the defendants 2 & 3 and even assuming for the sake of arguments that the plaintiff had provided any amount to the first defendant for the obtainment of the release deed Ex.A2, as rightly determined by the trial Court, at the most, the plaintiff would be entitled to claim the return of the amount from the first defendant as per law and on the other hand, on that basis, the plaintiff would not be entitled to claim any lawful share in respect of the suit properties and the abovesaid facts had been rightly determined by the trial Court and in such view of the matter, the determination of the trial Court that the plaintiff is not entitled to claim any share in the suit properties as well as the other reliefs prayed for do not warrant any interference.

14.In the light of the abovesaid discussions, I hold that the plaintiff is not entitled to obtain partition and separate possession of 1/3 share in the suit properties. I further

hold that the plaintiff is not entitled to obtain the relief of permanent injunction as prayed for. Accordingly, the Point Nos.1 & 2 are answered against the plaintiff.

14.Point Nos.3 & 4

For the reasons aforesaid, the judgment and decree dated 11.11.2013 passed in O.S.No.208 / 2008 on the file of the I Additional District Court, Salem, are confirmed and resultantly, the first appeal is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

sms

To
I Additional District Judge, Salem.

Copy to

The Section Officer, V.R.Section, High Court, Madras.

+1cc to Mr.N.A.Nissar Ahamed, Advocate SR.No.99529

+2cc to Mr.T.Karunakaran, Advocate SR.No.99107

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A.S.No.458 of 2014

KK (CO)
GMY (26/08/2020)

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