

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.08.2019
CORAM
THE HONOURABLE Ms. JUSTICE P.T. ASHA
S.A.No.216 of 2014
&
M.P.No.1 of 2014

1.Shanthi

2.Sukumaran

3.Jeeva

4.Shankar

5.Selvaraj

6.Dilli Rajan

1.7.Mrs.Saraswathi Appellants/defenants

Vs

1.Velankanni

2.Arokiya Mary

3.Dasay

4.Arunkumar

5.Shyamala Respondents/Plaintiffs

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree passed by the II Additional City Civil Judge, Chennai in A.S.No.99 of 2013 dated 11.10.2013 confirming the Judgement and Decree of the XIV Assistant City Civil Court, Chennai in O.S.No.8797 of 2011 dated 03.12.2012.

For Appellants : Mr.C.Ajith Kumar
For Respondents : Mr.K.P.Chandrasekar

J U D G E M E N T

The unsuccessful defendants in both the Courts below are the appellants before this Court. The parties are referred to in the same litigative status as in the suit.

2. The suit O.S.No.8797 of 2011 has been instituted by the plaintiffs on the file of the XIV Assistant City Civil Judge,

Chennai for the following reliefs:

i. For a Decree and Judgement against the defendants to pass preliminary decree for partition by metes and bounds into 1/3rd shares jointly to the plaintiffs 1 to 4 and 1/3rd shares to the 5th plaintiff.

ii. To declare the settlement deed executed by the Gopal father of the all the Defendants is null and void, Doc.No.5175 of 2006 at Purasawalkam Registrar Office.

iii. To grant permanent injunction restraining the defendants from altering schedule mentioned property or digging the drainage line for connecting any drainage pipe line."

The suit is instituted with reference to the properties bearing Door No.2/3 Krishnadoss Road, 1st street, Purasawalkam, Chennai, measuring an extent of 1477 Sq.ft.

Plaintiff's Case:

3. It is the case of the plaintiffs that the suit property belonged to one Kaliappan. The said Kaliappan died on 30.10.1951, leaving behind him surviving his wife Seethammal, the father of the plaintiffs 1 to 4 one Bakthavatchalam, the father of the 5th plaintiff one Meganathan and one Gopal the father of defendants 1 to 6 and husband of the 7th defendant.

4. It is the case of the plaintiffs that the said Bakthavatchalam died on 29.08.1992 leaving behind him surviving plaintiffs 1 to 4 and Meganathan died on 15.02.2004 leaving behind him surviving the 5th plaintiff. The plaintiffs would contend that the suit property was an Hindu Undivided property and the said Kaliappan and his other two sons Bakthavatchalam and Meganathan had died intestate and therefore the property devolved upon the plaintiffs 1 to 4, the 5th plaintiff and the defendants herein each being entitled to a 1/3rd share. While so, the plaintiffs came to know that the deceased Gopal, the father of defendants 1 to 6 had executed a settlement deed in favour of the defendants without there being a partition by metes and bounds the settlement deed dated 07.12.2006 is null and void and not binding on the plaintiffs. Since it was not possible to continue to be joint the plaintiffs have come forward with the above suit for partition.

Defendant's case:

5. The written statement has been filed by the 7th defendant. He would contend that the said Kaliappan had only one son, namely, Gopal and another daughter who had died earlier. Apart from that there were no other children born to Kalliappan and Seethammal. The defendant would further not admit the relationship of Meganathan and Bakthavatchalam but would only state that the afore mentioned people were only brought up by Seethammal since their childhood. The 7th defendant would further submit that even her husband had

permitted them to continue to live in the suit premises. Since they had threatened to claim a right over the suit property, her husband was forced to pay them a sum of Rs.3,500/- that too after mortgaging the suit property. The defendant would contend that the plaintiffs have no right, title or interest over the suit property since their respective fathers were not the children of the said Kaliappan. Therefore they sought for the dismissal of the suit.

Trial Court:

6. The learned XIV Assistant City Civil Judge, Chennai had framed the following issues:

"1. Are the plaintiffs 1 to 4 jointly entitled for partition of a 1/3rd share and the 5th plaintiff individually entitled for a 1/3 share out of the suit property?

2. Whether the plaintiffs are entitled for declaration as prayed for?

3. Whether the plaintiffs are entitled for permanent injunction as prayed for?

4. To what relief, if any, is the plaintiff entitled to?"

7. The 5th plaintiff had examined herself as P.W.1 and Ex.A.1 to Ex.A.7 were examined on the side of the plaintiffs. The 7th defendant had examined herself as D.W.1 and marked Ex.B.1 to Ex.B.10.

8. The learned Judge returned a finding that the respective fathers of the plaintiffs were sons of Kalliappan and the said Gopal himself had admitted that they were his siblings and in the light of the overwhelming evidence the contentions of the defendants was absolutely peurile and could not be countenanced. Therefore the suit was decreed with reference to the relief of partition.

9. As regards the 3rd issue, namely, whether the plaintiffs entitled for permanent injunction as prayed for, the learned Judge has observed that as the settlement deed was not before the Court and not filed either by the plaintiffs or by the defendants, the plaintiffs were not entitled to the declaration since the defendants were co-owners along with the plaintiffs. The Trial Court had held that the plaintiffs were not entitled to a decree for permanent injunction.

Appellate Court:

10. The plaintiffs have not challenged the disallowed portion, however, the defendants had filed A.S.No.99 of 2013 on the file of the II Additional City Civil Judge, Chennai, challenging the Judgement and Decree of the Court below. In so far as it related to the decree for partition the Appellate Court has also confirmed the findings of the Trial Court and had dismissed the appeal. Challenging the same the present Second

Appeal has been filed.

Second Appeal:

11. While admitting the Second Appeal this Court had framed the following Substantial Question of law:

"Whether the Courts below have erred in law in decreeing the suit for partition having dismissed the suit in respect of the relief for declaration seeking to declare the settlement deed executed by one gopal, father of the defendants as null and void more particularly, when the subject matter of the settlement deed and the partition relief is one and the same?"

12. Heard Mr.C.Ajith Kumar for the appellants and Mr.K.P.Chandrasekar for the respondents. The plaintiffs have come forward with a case that the property belonged to one Kaliappan and that he had died intestate leaving behind him surviving three sons and his wife and after the demise of his wife each of the sons were entitled to a 1/3rd share which now devolved upon the plaintiffs and the defendants.

13. The defendants have come forward with a categorical case that the respective fathers of the plaintiffs are not the sons of Kaliappan. However, no documents whatsoever either in the form of the documents or by examining the third parties have been filed on the side of the defendants to prove their contention. On the other hand the plaintiffs have marked Ex.A.1 and Ex.A.2 which are the death certificates dated 20.02.2004 and 17.09.1992 of Meganathan and Bakthavachalam respectively, in which the name of the father is shown as Kalliappan the address given in the two documents are also the suit property. Ex.A.5 is a legal notice which the said Gopal has issued on 16.12.2006 to the 5th plaintiff and her husband one Selvaraj. In the said notice which has been issued, the said Gopal has clearly stated as follows:

"3. The said Kaliappan had three sons through his wife Seethammal namely (1) Bakthan @ Tape Bakthan, (2) Meganathan and (3) Gopal, and he died intestate. In that site, there was a thatched house and the said three sons with their mother lived in the house as joint family."

14. In the notice the said Gopal would also submit that there was an oral partition amongst the three brothers and that each of them constructed houses in the portions allotted to them and was living there. Though, the legal notice has been issued on 16.12.2006 it does not contain any mention about the settlement deed registered in favour of the defendants. On the contrary, in the said notice the husband of the 7th defendant had contended that the 5th plaintiff and her husband had created a forged Will from Seethammal his mother and that the said document is fraudulent one. Considering the fact that the said

Gopal has issued a legal notice accepting that the said Meganathan and Bakthavatchalam were his brothers it does not lie in the mouth of the defendants to now contend that the two of them are not children of the said Kalliappan.

15. The defendants have not let in evidence to prove their case and both the Courts below have rightly held that the property is a Joint family property in which each of the brothers were entitled to a 1/3rd share and had consequently decreed the suit for partition. The settlement deed which has been pleaded in the plaint will not cloth the defendants with any right to the entirety of the suit property and at best the defendants will have a right to a 1/3rd share. The plaintiff has sought to declare the settlement deed as null and void but the defendants have not made any mention about the settlement deed in their written statement.

I do not find any infirmity in the Judgement and Decree of the Courts below. The Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The XIV Assistant City Civil Judge,
Chennai.

2.The II Additional City Civil Judge,
Chennai.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.S.M.Muralidharan , Advocate SR.No. 69509

+2ccs to Mr.D.Chandrasekaran , Advocate SR.No. 70428

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&

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A.SK(19/02/2020)