

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 6 of 2014

Gowramma

..Appellant

Vs.

1. R.Narayana Reddy

2. R.Oblireddy

..Respondents

Prayer: Memorandum of Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree of the learned Principal District Judge of Krishnagiri, dated 06.04.2013 in A.S.No. 7 of 2011 reversing the judgment and decree of the learned Subordinate Judge of Hosur, dated 26.11.2010 in O.S.No. 146 of 2008.

For Appellant : Mr. A.Hariharan
for Mr.V.Nicholas

For Respondents: Mr. V.Ragavachari for R1
Mr.S.P. Yuvan Kumar for R2

O R D E R

The suit for partition filed by the plaintiff in O.S.No. 146 of 2008. Though it was decreed by the Trial Court, the said judgment and decree were reversed on appeal in A.S.No. 7 of 2011. Hence, the plaintiff is before this Court in the way of this second appeal.

2. The case of the plaintiff is that the suit properties were allotted to her father Reddiappa in a partition that took place between him and his two sons, who are the defendants in the suit namely, R. Obli Reddy and R.Narayana Reddy on 21.07.1986. According to the plaintiff, after the death of Reddiappa, as a daughter, she was entitled to 1/3rd share in the suit properties.

3. The suit was resisted by the second defendant contending that Reddiappa did not died intestate, as claimed by the plaintiff. According to the second defendant, Reddiappa had executed a registered Will dated 07.01.1987 in favour of his grandson, Manjunath and therefore, neither the plaintiff nor the

defendants would get any right over the properties that were allotted to Reddiappa by partition dated 21.07.1986. The defendants also raised a plea that non-joinder of Manjunath, who is the legatee under the Will is fatal to the suit. The Trial Court framed an issue regarding non-joinder of necessary parties. The learned Trial Judge however, held that since the father of Manjunath was a party to the suit, non-pleading of Manjunath will not effect the suit. The Trial Court also concluded that the second defendant had not proved the Will, as required under law. On the above findings, the learned Trial Judge granted a decree for partition as prayed for.

4. Aggrieved, the second defendant filed an appeal in A.S.No. 7 of 2011. The learned Appellate Judge framed an issue regarding non-joinder of Manjunath, who is a necessary party to the suit. While answering the issue, the learned Appellate Judge held that being a legatee under the Will, he has not been made as a necessary party to the suit and hence, no decree will be passed in the absence of said Manjunath. The learned Appellate Judge also found that the second defendant has proved the Will as required under law. On the said findings, the learned Appellate Judge had allowed the appeal and dismissed the suit.

5. Aggrieved, the plaintiff has come forward with this second appeal. The following questions of law were framed at the time of admission of the appeal :-

"1) When all the co-sharers in the suit property are made as parties in the suit and the son of the second defendant who is claiming under a Will could be considered as a co-sharer, whether the lower Appellate Court is correct in holding that the suit is bad for non-joinder of the said son which is contrary to law of partition ?

2. When the disputed Will has not been proved in accordance with Section 63 of the Indian Succession Act and Section 68 of Indian Evidence Act, whether the lower Appellate Court is correct in upholding the execution of the said Will, which is not sustainable in law ?"

6. I have heard Mr. A.Hariharan, learned counsel appearing for the appellant and Mr.V.Ragavachari, learned counsel appearing for the respondent.

7. Mr.A.Hariharan, learned counsel appearing for the appellant while elaborating the question of law No. 1 would submit since the father of the legatee namely, the second

defendant was made as a party to the suit and all the sharers, who would be entitled to share in the absence of the Will having been made as parties to the suit, the suit does suffer for want of impleading of a necessary party.

8. Contending contra, Mr.V.Ragavachari, learned counsel appearing for the first respondent would submit that under proviso Order 1 Rule 9 of the Code of Civil Procedure, if it is found that a necessary party has not been impleaded, the suit is failed. Order 1 Rule 9 which provides that no suit shall be defeated for non-impleading of a necessary party or proper party is executed in its application where the non-impleading of a necessary party by the proviso. Therefore, according to Mr.V.Ragavachari, Manjunath being a legatee under the Will is entitled to set up his independent title and therefore the suit for partition in his absence definitely suffer for non-impleading of necessary party.

9. No doubt true, the second defendant had contested the suit by examining witnesses. It is seen from the written statement by the second defendant that he has taken a specific plea that Manjunath being a legatee under the Will is a necessary party to the suit. Despite such pleading and issue having been framed in the suit itself, the plaintiff had not taken any steps to implead Manjunath as a party in the suit. The impleading of the second defendant, who is the sharer alone may not cure that effect. Without a defence is set up in a suit for partition to the effect that the predecessor in interest not executed a Will in favour of the third party or grandson as a necessary party. Since no findings could be arrived regarding the validity of the Will in the absence of the legatee without apply, the findings arrived at a same would not apply. Therefore, it is a legatee under the Will is a necessary party to the suit for partition. Hence, I am of the opinion that the first question of law has to be answered against the plaintiff / appellant.

10. In view of the answer to the first question of law, I do not think, second question of law need to be addressed. Since the suit suffers on defect as to non-impleading of necessary party, the suit has to necessarily failed and the appeal is therefore dismissed. No costs.

s/d-

Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

To

1.The Principal District Judge, Krishnagiri

2.The Subordinate Judge, Hosur

Copy to

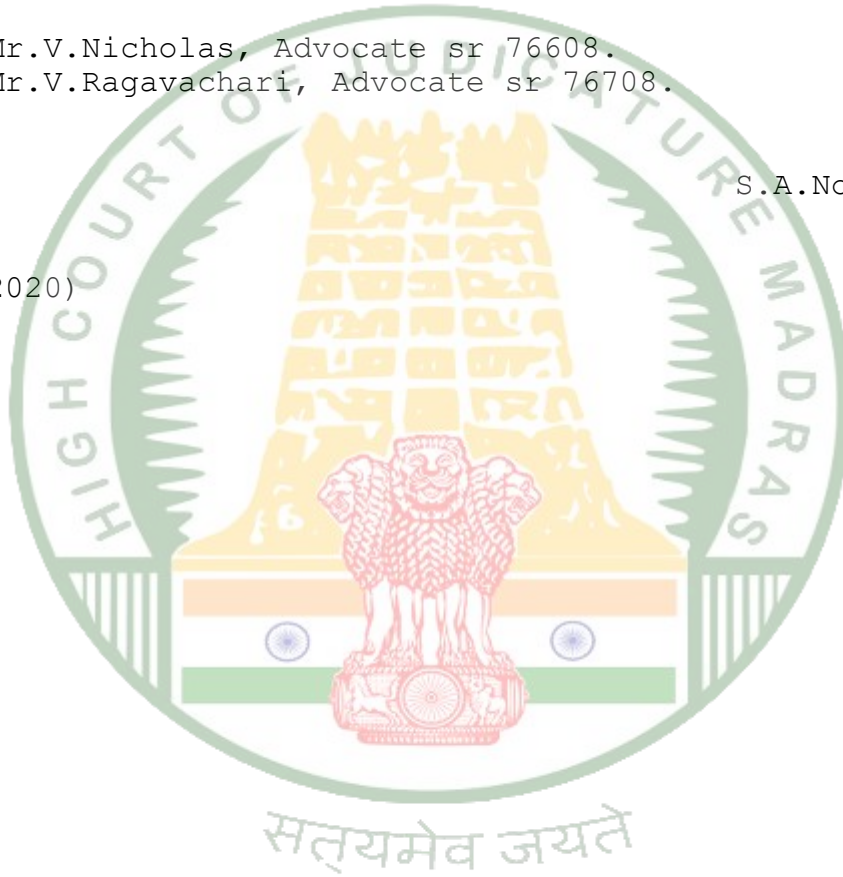
The Section officer
VR Section
High Court, Madras 104.

+1 CC to Mr.V.Nicholas, Advocate sr 76608.

+1 CC to Mr.V.Ragavachari, Advocate sr 76708.

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CP(CO)
SP(06/01/2020)



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