

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI
O.S.A.No.246 of 2019

Dr.V.N.Sujeer,
Power Agent of D4 (Dr.Mrs.Sheila)
Old No.19, New No.2, Second Floor,
3rd Street, Habibullah Road,
T.Nagar, Chennai-600 017. .. Appellant/Applicant

Vs.

1. Mrs.Shalini
2. Dr.V.Satish
3. Dr.(MRs.).Sudha
4. Dr.(Mrs.).Shobha .. Respondents/Respondents

Original Side Appeal (OSA) filed under Order XXXVI Rule 1 of the Original Sides Rules of this Court, read with Clause 15 of the Letters Patent against the order dated 11.07.2019 in Application No.2819 of 2019 in C.S.No.783 of 1985 on the file of this Court.

For appellant : Dr.V.N.Sujeer, appellant-in-person

For respondents : Mr.Venkatesan for R-1
Mr.V.Manisekaran for R-2
Mr.P.K.Mohanavel for RR-3 & 4

JUDGMENT

(The Judgment of the Court was delivered by R.Subbiah, J)

This Original Side Appeal (OSA) has been filed by the Power Agent-Dr.V.N.Sujeer of the fourth defendant-Dr.Mrs.Sheila and the said Power Agent is the husband of the plaintiff-Shalini. This Appeal is filed against the order dated 11.07.2019 in Application No.2819 of 2019 in C.S.No.783 of 1985 passed by the learned Single Judge of this Court in dismissing the said

application filed by the plaintiff to direct the Registry of this Court to incorporate the title as mentioned in the Schedule in the final Decree in item No.2 in Schedule-A to the plaint in C.S.No.783 of 1985. The Schedule-A as prayed for by the appellant pertaining to item No.2 of the properties therein, reads as under:

"Schedule-A"

"The Schedule A item 2 property in the plaint of C.S.No.783/1985 is a self acquired property of late Dr.M.V.Bhat. He had bequeathed the said property by a registered Will dated 30.09.1981 to his legal heirs. Dr.M.V.Bhat expired on 26.10.1985 and the said Will came into force. In T.O.S.No.42 of 1989 the due execution of the said Will was proved and Letters of Administration was granted to the beneficiaries. In A.No.3817 of 1989 on 05.09.1989 a consent Preliminary Decree was granted to the six beneficiaries under the Will and each is entitled to take 1/6 share therein.

The blue print of the plan showing the whole of item.2 of the Schedule A shall form part of this final Decree."

2. The said Suit in C.S.No.783 of 1985 is filed before this Court by the said Dr.Mrs.Shalini for the following reliefs as stated in the plaint:

(i) to direct the division of the properties mentioned in Schedule-A into six equal shares and direct the defendants to put the plaintiff in possession of one such share;

(ii) to direct the division of the properties mentioned in Scheduled-B into seven equal shares and direct the defendants to put the plaintiff in possession of one such share therein;

(iii) to direct the division of the properties in Schedule-C and that may be found belonging to Late Dr.M.V.Bhat into seven equal shares and direct the defendants to put the plaintiff in possession of one such share to her;

(iv) to direct the division of the amount payable as pension tentatively mentioned in Schedule-D payable by the Government of Tamil Nadu to Late Dr.M.V.Bhat;

(v) to direct the defendants to render a true and proper accounts of all the assets including cash, jewels, fixed deposits and direct the defendants to pay 1/7th share therein to the plaintiff;

(vi) to appoint a Commissioner to divide the properties - immovable and movable, cash, fixed deposits, jewels and other

assets of Late Dr.M.V.Bhat and allot to the plaintiff her share thereof; and

(vii) to direct the defendants to pay the costs of this suit.

3. The first respondent-plaintiff and the respondents 2 to 4 - defendants 3, 5 and 6, have appeared through their respective counsels in this appeal.

4. Earlier, in the very same A.No.2819 of 2019, this Court, by order dated 10.06.2019, had ordered the application as prayed for, by observing as follows:

"The Power Agent of the fourth defendant Dr.V.N.Sujeer, filed this application seeking to direct the registry to incorporate the title as mentioned herein in the schedule in the Final Decree in item No.2 in Schedule-A to the plaint in C.S.No.783 of 1985.

2. Heard Dr.V.N.Sujeer, who appears in person on behalf of the fourth defendant.

3. Mr.V.V.Sathiya, learned counsel representing Mr.M.V.Venkataseshan, who appears on behalf of the first respondent, Mr.V.Manisekaran, learned counsel appearing on behalf of second respondent and Mr.Mohanvel, learned counsel appearing on behalf of the third and fourth respondents have no objection to incorporate the title as prayed for by the fourth defendant.

4. In view of the submission of the learned counsel on either side, this application is ordered as prayed for.

5. The Registry is directed to incorporate the title as mentioned in the schedule A to the Judges summons in the Final Decree in item No.2 in Schedule A to the plaint."

5. Subsequently, in the very same application (A.No.2819 of 2019), by the impugned order dated 11.07.2019, the learned Single Judge observed as follows:

"This application is filed seeking a direction to the Registry to incorporate the title as mentioned in the schedule in the Final Decree in item No.2 in Schedule A to the plaint in C.S.No.783 of 1985.

2. Since all the learned counsel appearing for respondents 1 to 4, including

the learned counsel for the plaintiff, who is the first respondent, had expressed no objection for incorporating the title as prayed for by the fourth defendant, this application was ordered on 10.06.2019.

3. However, on going through the papers, this Court found that in Schedule "A" to the Judges summons instead of giving description of the property, the applicant had narrated as to how the property has devolved upon the fourth defendant/the applicant herein, which is not in order.

4. It has to be admitted that the Registry has also made a mistake in passing this application and numbering the same.

5. In view of the above, this application itself is not maintainable. The order dated 10.06.2019 is hereby recalled and this application is dismissed."

6. It is to be noted that in the Schedule-A of the properties in the suit, instead of giving the description of the property of the parties, it was narrated as to how the property (ies) devolved upon the appellant. It is because of this reason that the learned Single Judge, by the impugned order dated 11.07.2019, had recalled the earlier order dated 10.06.2019.

7. Heard the appellant-in-person and the learned counsel appearing for the respondents and perused the materials available on record.

8. The appellant requested this Court to allow the application in A.No.2819 of 2019 as prayed for, by inviting the attention of this Court to the averments made in the affidavit filed in support of the Judge's Summons in A.No.2819 of 2019. He explained the details of description of the properties and as to how the property(ies) devolved upon the appellant.

9. It is common knowledge that in the Schedule of property (ies) attached to any plaint, only the details of the description of the property(ies) will be mentioned and not as to devolving nature of the properties or otherwise, or any other details of the properties. To put it precisely, in specific, the schedule of properties would contain only the survey number, patta number, boundaries, location, ad-measurement of properties in a record of settlement or survey, Registration District, City, etc., as enunciated under Order 7 Rule 3 of the Civil Procedure Code (CPC).

10. Hence, per-se, A.No.2819 of 2019 itself is not maintainable, as rightly rejected by the learned Single Judge by the impugned order, which needs no interference by this Court in this O.S.A. This appeal sans merit and is liable to be dismissed with exemplary costs. The parties like the appellant herein are taking the Court for a ride in litigating these kinds of matters and wasting the judicial time of this Court. However, taking a lenient view, this Court is not awarding any costs and dismisses this appeal in-limine.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Sub-Assistant Registrar,
Original Side,
High Court,
Madras.

+1 cc to M/s.P.K.Mohanvel, Advocate Sr.No.83918
+1 cc to Dr.V.N.Sujeer, Advocate Sr.No.83919

AKM/08.11.19/5P-4C /

O.S.A.No.246 of 2019

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