

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2019

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.S.No.117 of 2017

1.R.Viswanathan
2.Ms.Juliet Jaishree Rani ... Plaintiffs

Vs

1.Christopher Jayaprakash
2.Ms.Leema Arokiamary ... Defendants

Plaint filed under order IV Rule 1 of O.S. Rules read with Order VII Rule 2 of C.P.C., praying for judgment and decree as follows:

- i) Directing the division of the suit schedule items 1 and 2 of the properties by metes and bounds and allot cumulative 2/3rd share to the plaintiffs
- ii) Directing the defendant to pay Rs.60,000/- per month as mesne profits to the plaintiffs
- iii) Declaring that the purported deed of settlement document No.1651 of 2016, dated 06.04.2016 under which the first defendant purportedly settles the suit property in favour of his wife, the second defendant falsely claiming absolute rights in the suit properties and hence, the said settlement deed is false, frivolous and speculative and not at all binding on the plaintiffs
- iv) For costs of the suit

(Prayer amended as per order dated 09.01.2019 in A.No.135 of 2019)

in C.S.No.117 of 2017)

For Plaintiffs : Mr.T.Viswanatha Rao

For Defendants : Set ex-parte on 31.07.2018

JUDGMENT

The suit has been instituted for direction, directing the division of the suit schedule items by metes and bounds and allot cumulative 2/3rd share to the plaintiffs herein; directing defendants to pay Rs.60,000/- per month as mesne profits and for declaration, declaring that the settlement deed dated 06.04.2016 executed by the first defendant in favour of the second defendant is false, frivolous and speculative and not at all binding on the plaintiffs.

2. The second plaintiff is the daughter and the first defendant is the son of the first plaintiff, while the second defendant is the wife of the first defendant.

3. The case of the plaintiffs is that the first plaintiff married one Thanapackiam, who was working as Junior Assistant in Public Works Department in Tamil Nadu Government and out of the lawful wedlock, the second plaintiff and first defendant were born to them. The first plaintiff's

wife died on 01.09.2015, leaving behind the plaintiffs 1 and 2 and the first defendant as her legal-heirs. The further case of the plaintiffs is that the deceased was earning a meagre income and the suit properties were purchased from and out of the joint family nucleus of the first plaintiff. While the plaintiffs are entitled for 2/3rd share in the suit properties, the first defendant had executed a settlement deed in favour of his wife, as if, he was the absolute owner of the property. It is the case of the plaintiffs that the settlement is non-est in law.

4. Though the defendants had entered their appearance on receipt of the suit summons on 24.10.2017 through their counsel, but however, they were set exparte for non filing of the written statement on 31.07.2018.

5. The first plaintiff was examined as P.W.1 and marked the following documents as Exs.P1 to P6 as documentary evidence in order to prove the suit claim:-

Ex.P1 is the certified copy of marriage certificate between first plaintiff and deceased Smt.Thanabagyam dated 17.05.1974.

Ex.P2 is the copy of the sale deed in favour of Late Smt.Thanabagyam dated 08.12.19985.

Ex.P3 is the Death Certificate of Late Smt.Thanabagyam dated 01.09.2015.

Ex.P4 is the original Legal Heirship Certificate relating to Smt.Thanabagyam dated 01.10.2015.

Ex.P5 is the copy of Encumbrance Certificate obtained dated 24.11.2016 by the plaintiffs in respect of suit property mentioned amongst other properties.

Ex.P6 is the copy of purported Settlement Deed, Document No.1651 of 2016, dated 06.04.2016, executed by the first defendant in favour of the second defendant.

6. The learned counsel for the plaintiffs submitted that the plaintiffs have proved their case by producing the oral and documentary evidence and they are entitled for decree sought for in the suit.

7. Taking into consideration, the pleadings, the evidence of P.W.1 and Exs.P1 to P6, this Court is of the view that the plaintiffs have proved their case and the Suit is liable to be decreed and accordingly, preliminary decree is passed as prayed for. There is no order as to costs.

29.01.2019

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To

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

K.KALYANASUNDARAM, J.,

r n s

C.S.No.117 of 2017

29.01.2019