

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.45 of 2013

MP.No.1 of 2013

1. Irusayee
2. Selvakumar
3. Manickam
4. Prakash
5. Praveen Kumar
6. Mani Kumar

... Appellants/Defendants

Vs.

Lakshmi

... Respondent/Plaintiff

PRAYER: Appeals under Section 96 of the Code of Civil Procedure, 1908, against the judgment and decree made in O.S.No.127 of 2010, on the file of the Principal District Judge, Namakkal District, dated 11.04.2012.

For Appellants : Mr.P.Rathanavel

For Respondent : Mr.A.V.Raja

JUDGMENT

The Appeal Suit on hand is directed against the judgment and decree passed in O.S.No.127 of 2010 dated 11.04.2012. The appellant is the first defendant in the Suit. The Suit was instituted by the first respondent in the Appeal Suit for partition claiming 1/4th share in the property and to pass a preliminary decree to that effect.

2. The case of the first respondent plaintiff in the plaint are that the plaintiff and the defendants 2 and 3 are sons and daughters of the first defendant. The 3rd defendant died during the pendency of the Civil Suit and legal representatives were impleaded as parties. The suit schedule properties originally belonged to Mr.Marimuthu Konar, who is the husband of the first defendant and father of the plaintiff and the defendants 2 and 3. The said Marimuthu Konar, with his brother Perumal Konar and there was a partition in the family on 16.05.1964. The said Marimuthu Konar got B schedule property, i.e., the suit schedule property and was in possession and enjoyment of the property.

The said Marimuthu Konar died intestate before 30 years back from the filing of the suit and the plaintiff was entitled to 1/4th share of the property. It is stated as, when the plaintiff and defendants are in joint possession and enjoyment of the property, the plaintiff wanted to partition the property and demanded partition directly on 04.05.2010 and the lawyer notice was issued. Since the defendants have not agreed, the plaintiff was constrained to institute a suit for partition.

3. The second defendant filed a written statement denying the allegations. The plaintiff and the defendants 2 and 3 are the children of the 1st defendant is admitted. The family partition dated 16.05.1964 was denied. The properties were allotted to the 2nd defendant and appointing one Sivanandi Konar as guardian and the properties belonged to 2nd defendant. After the partition deed dated 16.05.1964, within three months, Marimuthu Konar died and therefore, the fact remains that Marimuthu Konar died before 46 years back.

4. The plaintiff fell in love with one Manickam, and she got married which is a love marriage. The plaintiff demanded amount from the first defendant for family expenses and seervarisai (Sridhana). The 1st defendant met out the demand and on 26.04.1980, she gave a sum of Rs.3 lakhs cash and 7 sovereign of gold chain and by receiving the same, the plaintiff executed a family agreement, and promised not to demand any more property. The plaintiff's son and the plaintiff demanded Rs.1 lakh cash and 5 sovereign jewels, but the defendant refused to meet out the demand and out of ill will the plaintiff institute to filed this partition Suit.

5. An additional written statement was also filed and the Trial Court framed the issues, as to whether the plaintiff is entitled to 1/4th share in the properties, whether the 2nd defendant is in exclusive possession and enjoyment of the properties, whether the plaintiff received Rs.3 lakhs and gold kodi weighing 7 sovereign and executed family agreement on 26.04.1980, and what relief if any the plaintiff is entitled to. With reference to the issue Nos.1 and 2, the Trial Court examined the witnesses P.W.1 and P.W.2 and the documents are also considered. Ex.A1 is partition deed dated 16.05.1964 in the first defendant family. Ex.A2 is the lawyer notice issued by the plaintiff to the defendants. Ex.A3 and Ex.A4 are the reply notices issued by the defendants. Ex.B1 is the family agreement dated 26.04.1980.

6. A perusal of the evidences P.W.1, P.W.2, DW 1 and DW2 and documents marked, the Trial Court adjudicated the issues stating that the P.W.1 deposed as P.W.1 and the defendants 2 and 3 are sons and daughters of the 1st defendant. The properties

originally belonged to Marimuthu Konar, who is the husband of the first defendant and the father of the plaintiff and defendants 2 and 3. The said Marimuthu Konar got the property, by way of partition in his family, on 16.05.1964, B schedule property, i.e., the suit property and from the date of partition, the said Marimuthu Konar was in possession and enjoyment of the property. Marimuthu Konar who is the father of the plaintiff died intestate, and the plaintiff and the defendants 1 to 3 are entitled to each 1/4th share in the property. The defendants were not ready for any amicable partition and consequently, the plaintiff issued notice and instituted suit for partition.

7. The plaintiff is the daughter of the 1st defendants and the properties originally belonged to Marimuthu Konar who is the father of the plaintiff and defendants 1 to 3. There is no disputed in this aspect. The plaintiff claims 1/4th share in the property, even that 1/8th share in the property is concerned, the plaintiff executed release of the property on 26.04.1980 by receiving a sum of Rs.3 lakhs and also 7 sovereigns of gold chain etc., and therefore the plaintiff's right is denied by the defendants.

8. The Trial Court considered the said agreement marked as Ex.B1 'Family Compromise Agreement' dated 26.04.1980. The recitals of the agreement show that the document is the release deed and if the document is the release deed for consideration, then the document is to be compulsorily registered. But Ex.B1 is not registered and the unregistered release deed is not admissible in evidence. The facts remains that whether the plaintiff is having 1/4th share in the property or whether the plaintiff is having 1/8th share in the property as alleged by the defendants. Both the plaintiff and the defendants father Marimuthu Konar died before 30 years back and according to the defendants Marimuthu Konar died before 46 years back.

9. The Trial Court made a finding that, it is not the case of the plaintiff that she got married after the year 1989. Unless, the plaintiff claimed that she got married after 1989 and her father died after 2005, she will not be co-parcener to get equal share along with the male members as per Hindu Succession Tamil nadu Amendment Act, 1989 and Hindu Succession Central Act 2005. Thus, both Marimuthu Konar and his son the 2nd defendant, each having, half share in the property. The property half share belonged to the Marimuthu Konar, the plaintiff is entitled to 1/8th share in the property. Accordingly, the Trial Court arrived a conclusion that the plaintiff is entitled to 1/8th share in the property. The Court recorded that the learned counsel for the defendant also fairly conceded that the plaintiff is having 1/8th share in the property as per Law.

10. Considering the facts, documents and evidences as well as the submission of the learned counsel for the defendants conceding the propositions of the Law that the plaintiff is entitled to have 1/8th share of the property. The Trial Court decreed the suit holding that the plaintiff is entitled for 1/8th share in the property and accordingly, the preliminary decree is passed.

11. The first defendant in the suit who is none other than the mother filed the Appeal Suit mainly relying on the ground that she paid Rs.3 lakhs and some gold jewels to the appellant and the appellant also signed the family compromise agreement and therefore the share allotted by the Trial Court is erroneous. The learned counsel appearing on behalf of the appellant also reiterated that when the first respondent plaintiff admitted the fact that she had received a cash amount of Rs.3 lakhs and gold jewels, her claim for partition cannot be maintained at all.

12. The Trial Court categorically found that the family compromise agreement dated 26.04.1980 is a release deed and the said release deed is not registered and an unregistered released deed in respect of the property right cannot be taken as a valid evidence and accordingly, rejected the family compromise agreement marked as Ex.B1. This Court do not find any infirmity or perversity in arriving a conclusion that an unregistered release deed cannot be accepted as a valid evidence. Thus, the Trial Court has rightly arrived a conclusion that the plaintiff is entitled for 1/8th share in the suit schedule property. This apart, the learned counsel for the defendants before the Trial Court also fairly conceded that the plaintiff is entitled for 1/8th share of the property. This being the factum, this Court has no hesitation in coming to the conclusion that the Trial Court has decided the issues in consonance with the documents, evidences and by following the principles of Law. Accordingly, the judgment and decree dated 11.04.2012 in O.S.No.127 of 2010 is confirmed and A.S.No.45 of 2013 stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Principal District Judge,
Namakkal District.

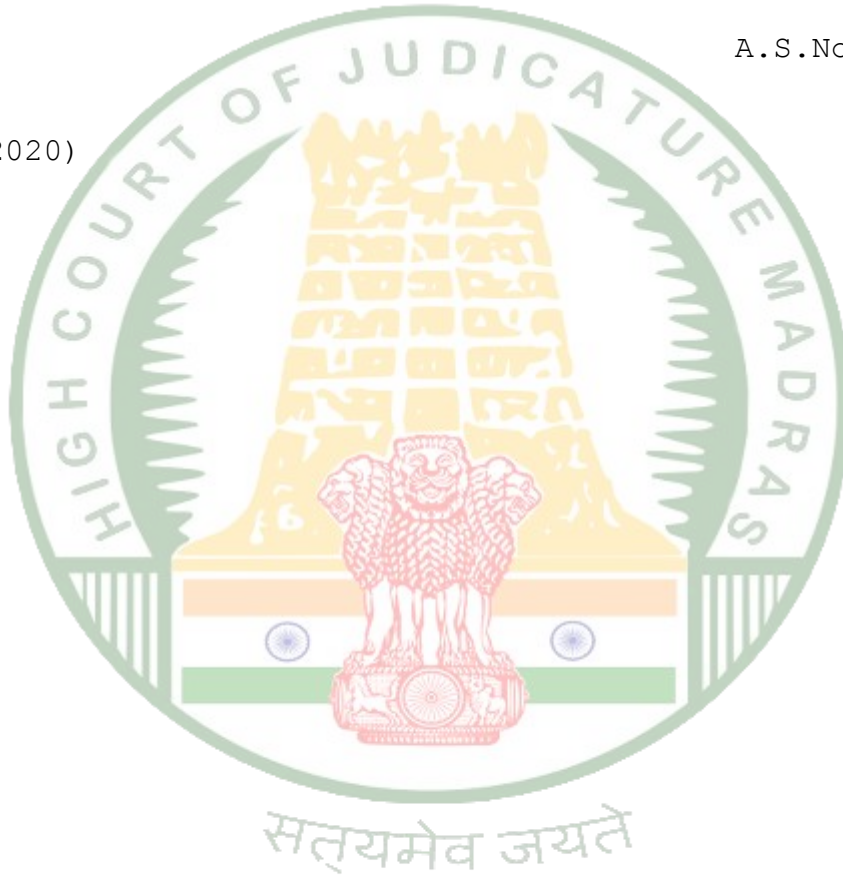
Copy to

The Section officer
VR Section
High Court, Madras 104.

+1 CC to Mr.P.Rathanavel, Advocate sr 6618.

A.S.No.45 of 2013

SSI (CO)
SP(31/08/2020)



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