

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.01.2020

CORAM:

The Honourable Mr.Justice M.M.SUNDRESH
and

The Honourable Mr.Justice KRISHNAN RAMASAMY

Appeal Suit No.339 of 2011

R.Panneerselvam ... Appellant/Plaintiffs

Vs.

1.Chandira
2.Veerappan
3.Kumar @ Arumugam
4.Kalaiselvai
5.Kumudhavalli
6.Vetriselvi (deceased)
7.P.Marimuthu
Husband of Vetriselvi, S/o Pazhanivel

8.Minor M.Selvamuthukumaran,
S/o Vetriselvi,
(The minor represented by his
father, next friend/guardian
P.Marimuthu, the 7th respondent
(R7 and R8 are brought on record as
legal representatives of the deceased
sixth respondent vide Court order dated
18.04.2019 made in CMP.Nos.7610, 7615
& 7618 of 2019 in A.S.No.339 of 2011 by
MMSJ & CSNJ) .. Respondents

Appeal suit is preferred under Section 96 read with Order 41
of C.P.C., 1908 against the judgment and decree dated 02.03.2011
in O.S.No.18 of 2009 passed by the District Judge,
Nagapattinam.

For Appellant .. Mr.R.Jayaprakash

For Respondents .. Mr.R.Krishnaprasad for
M/s Sarvabhauman Associates

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The plaintiff is the appellant in the suit filed for partition. In the suit filed, the plaintiff has been given 1/7th share in the sixth item of the 'A' schedule property, which is the leasehold right. In respect of the remaining items mentioned in the schedule given, they have been dismissed. Aggrieved over the same, the present appeal suit has been filed.

2.The appellant and respondents 2 to 6 are the children of the first defendant and one Ramasamy Chettiar, since deceased. There was an

earlier partition between Ramasamy Chettiar and three others including the appellant. This partition deed has been registered on 02.12.1979. The appellant himself has marked the same as Ex.A4. Thereafter, the appellant sold one of the properties given to him under Ex.A4 by a registered sale deed in favour of one P.Arumugam, which has been marked as Ex.B1. It appears that the deceased N.A.Ramasamy Chettiar executed a Will under Ex.B5 bequeathing certain properties in favour of his children. The appellant was also one of the beneficiarties. These properties allotted to the deceased father under Ex.A1-partition deed dated 10.05.1953.

3. The trial Court framed the following issues for consideration.

1. Whether the plaintiff is entitled to partition of 1/4th share in the suit properties?
2. Whether the suit properties are joint family properties?
3. Whether the partition deed dated 02.12.1979 is acted upon?
4. Whether the suit is bad for non joinder of necessary parties and bad to partial partition?
5. Whether the Will dated 27.01.2006 is valid and true?
6. To what relief?

4.Before the trial Court, on behalf of the appellant, he examined himself as P.W.1 and marked Exs.A1 to A6. On behalf of the defendants, two witnesses have been examined and marked

Exs.B1 to B7. D.W.1 is one Arumugam. D.W.2-M.V.K.Veerappan, who is the attestor of the Will.

5.The trial Court upon considering the evidence, was pleased to hold that under Ex.A4, 'B' schedule properties mentioned therein was allotted to the appellant as against the others. Though it is contended that Ex.A4 has not been acted upon, the appellant deposed as P.W.1 has acknowledged the fact that he has sold certain properties pursuant to the partition made under Ex.A4 on 02.12.1979. He has further stated that patta has been changed in his name and other defendants, who got specific shares under Ex.A4. They have been paying kists separately. It is his further admission that he has executed a sale deed under Ex.B1 for the property allotted to him under Ex.A4. Thus, the trial Court has held that Ex.A4 has been acted upon. Further more, the purchasers of the properties were also not added as party defendants. Insofar as item No.1 is concerned, the trial Court, on evidence was pleased to hold that it was purchased by his father out of his own income. It is also the evidence of the appellant that the father was running a medical shop and one of the properties has been purchased when he was 16 years old, which was not included in the suit. Much reliance has also been made on Ex.B5 in which the appellant was also beneficiary.

6.Though the learned counsel appearing for the appellant has contended that the partition has not been given effect to, we do not find any reason to interfere with the well merited judgment and decree rendered by the trial Court. Exs.A4, B1 and B5 clearly non suit the appellant from seeking the relief. In fact, the appellant has admitted all the documents. He is the one, who executed Ex.B1. Therefore, he himself acted upon Ex.A4. He was also the beneficiary under Ex.B5. Further more, certain properties were not included in the suit, while the purchasers have not been arrayed as defendants. Therefore, both on merit and on the ground of partial partition and non-impleadment of proper and necessary parties, the suit has been rightly dismissed. Accordingly, the appeal stands dismissed and the issues framed by the trial Court are answered against the appellant and in favour of the respondents. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/
Sub Asst. Registrar

raa

3/4

To

The District Judge,
Nagapattinam.

copy to
The Section Officer
VR Section
High Court, Madras

+1 cc Mr.R.Jayaprakash Advocate sr2536
+1 cc to M/s.Sarvabhauman Associates sr2398

A.S.No.339 of 2011

ks(co)
aa07/09/2020