IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-01-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.602 of 2006

1.G.Balammal
2.G.Samundeswari
3.G.Subramani
4.G.Vedachalam
5.G.Chandrasekar
6.G.Anjali
(cause title accepted vide order of Court
dated 21.12.2005 made in CMP No.19951
of 2005) .. Appellants

vs.

1.Nagaraj
2.Ramaswamy
3.Soodamani
4.Kalidass
5.Gowri
6.Kaveri
7.Chandar .. Respondents/Defendants

Appeal Suit is preferred under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 29.07.2003 passed in O.S.No.4112 of 1999 on the file of the learned Additional District and Sessions Judge (Fast Track Court-IV), Chennai.

For Appellants : Mr.V.Raghupathi for Ms.G.Devi

For Respondents : No Appearance

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J U D G M E N T

The appeal suit is directed against the judgment and decree dated 29.07.2003 passed by the learned Additional District and Sessions Judge (Fast Track Court-IV), Chennai in dismissing the suit in O.S.No.4112 of 1999.

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2. The suit was instituted by Mr.Ganesan for partition and for declaration that the plaintiff is entitled to 1/4th share in the suit schedule property and for appointment of Commissioner to divide the share of the plaintiff and for costs.

3. Before institution of the suit, the suit schedule property was owned and enjoyed by the father of the plaintiff and his brothers as joint family property and they have partitioned the joint family property on 04.09.1962. The suit schedule property, more specifically, 'B' schedule was allotted to the father of the plaintiff. The suit 'A' schedule property was enjoyed by the plaintiff's father, the plaintiff and the defendants.

4. During the year 1965, plaintiff's father died intestate, leaving behind him and his legal heirs namely, Mrs.Kannammal, Mr.Ganesan (plaintiff), Mr.Nagaraj (D-1), Mr.Ramaswamy (D-2), Mr.Soodamani (D-3), Mr.Kalidaass (D-4), Smt.Gowri (D-5), Smt.Kaveri (D-6) and Mr.Chandar (D-7). A deed of partition Ex.A-1 dated 29.09.1980 was executed between the plaintiff, his mother and his brothers. The suit schedule property was divided between the brothers and sisters without allotting any share to the mother of the plaintiff. The Partition Deed was not furnished to the plaintiff and the same was not acted upon.

5. On returning back from New Delhi to Chennai, the plaintiff found that the family property was in occupation of the defendants 3 and 7 and accordingly, constrained to institute the civil suit for partition.

6. The defendants filed the written statement mainly objecting the contentions in the plaint on the ground that the suit itself is not maintainable in view of the subsequent Partition Deed registered between the parties, which is marked as Ex.B-1 dated 30.09.1986. Ex.B-1 document is the Partition Deed dated 30.09.1986.

7. As per the said Partition Deed, the plaintiff himself had relinquished his right of share in the family suit schedule property and had received the money in lieu of his share in the family suit schedule property. Thus, the suit itself is misconceived and cannot be entertained as the plaintiff had received money from the other legal heirs and in this regard, Ex.B-1 Partition Deed is evident.

8. The Trial Court framed the following issues for consideration:-

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(i) Whether the plaintiff is entitled to 1/4th share in the suit property and a decree against the defendants for partition as prayed for in the suit ?

(ii) Whether the plaintiff has relinquished his share as per Ex.B-1 Partition Deed dated 30.09.1986 ?

(iii) To what reliefs the parties are entitled ?

9. With reference to the abovesaid issues, the Trial Court found that Ex.A-1 is the Partition Deed dated 29.09.1980 and admittedly, the same had not been acted upon. The subsequent Partition Deed dated 30.09.1986, which was marked as Ex.B-1. Ex.B-2 is the Settlement Deed dated 01.10.1986.

10. The contention of the plaintiff before the Trial Court was that as per Ex.A-1 Partition Deed dated 29.09.1980, he is entitled for 1/4th share in the suit schedule property and accordingly, instituted the suit for partition and separate possession. However, the defendants could be able to establish that the said Partition Deed dated 29.09.1980 was not acted upon and the subsequent Partition Deed Ex.B-1 dated 30.09.1986 was registered and as per the said Partition Deed, the plaintiff had received the money from the other co-sharers and relinquished his 1/4th share in respect of the suit schedule property.

11. The Trial Court, ultimately, arrived a conclusion that Ex.B-1 document is unambiguous and with reference to the relinquishment of right of the plaintiff regarding his share in the family property. This Court had verified the contents in Ex.B-1 document and the said partition Deed dated 30.09.1986 was entered into between the sons of late Ekambara Naicker, wherein the plaintiff's name is found in Serial No.2.

12. As per the abovesaid Partition Deed dated 30.09.1986, the suit schedule property was allotted to Mr.Ramaswamy and Mr.Selvaraj and Mr.Nagaraj and Mr.Ganesan (Plaintiff) had received the money in lieu of their respective shares. When the Partition Deed unambiguously enumerates and agreed to between the parties that the plaintiff had received the money in lieu of his share in the family property, the Trial Court is right in dismissing the plaint by accepting the contentions of the defendants and relying on the document marked as Ex.B-1, which is the Partition Deed dated 30.09.1986. This Court do not find any perversity or infirmity in respect of the finding as the plaintiff has not established even a prima facie case for the purpose of grant of relief of the partition.

13. As far as the suit for partition is concerned, a person instituting the suit must establish that the suit

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schedule property is capable of being partitioned and he is having a legal right over the suit schedule property. In the absence of establishing any such legal right over the suit schedule property, the question of considering the relief of partition does not arise at all.

14. In the present case on hand, the defendants are able to establish that the plaintiff had relinquished his right of share by receiving the amount from the other co-sharers. In this regard, a Partition Deed was registered, which is marked as Ex.B-1 dated 30.09.1986.

15. This being the facts and circumstances, this Court has no hesitation in arriving a conclusion that there is no infirmity as such in respect of the decision arrived by the Trial Court in this issue. Accordingly, the judgment and decree dated 29.07.2003 passed by the learned Additional District and Sessions Judge, Fast Track Court No.IV, Chennai in O.S.No.4112 of 1999 is confirmed and consequently, the present appeal suit stands dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Svn

To

The Additional District and Sessions Judge
(Fast Track Court No.IV),
Chennai.

Copy to:
The Section Officer,
VR Section,
High Court, Madras-104.

+1cc to Ms.G.Devi, Advocate SR.1140

A.S.No.602 of 2006

RSK(CO)
CB(10/09/2020)

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