

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-01-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.804 of 2006

Revathy W/o. Saravana Kumar

... Appellant/Plaintiff

vs.

1. Balasubramanian (Deceased)
2. Rani W/o. Balasubramanian
3. Vijayakumar, S/o.Balasubramanian
4. Ravikumar, S/o.Balasubramanian
5. Sureshkumar, s/o.Balasubramanian ... Respondents/Defendants
(R1 died memo recorded vide order dated 29.10.2011
in A.S.No.806/2006)

RR2 to 5 recorded as Legal Representatives of the Deceased First
Respondent vide Memo order dated 10/12/2011

Appeal under Section 96 of the Code of Civil
Procedure, 1908, read with Order 41, Rule 1 of the Code of Civil
Procedure, 1908 against the judgment and decree made in
O.S.No.25 of 2005 on the file of the Additional District Judge,
Fast Track Court, Dharmapuri dated 22.05.2006.

For Appellant: Mr.Saravanan

for M/s.Abrar Mohamed Abdullah

For Respondents: Mr.K.R.Sundararajan (for R3 to R5)
R1died (Steps taken)

J U D G M E N T

The appeal suit is directed against the judgment and
decree dated 22.05.2006, passed in O.S.No.25 of 2005. The suit
was instituted by the appellant for partition. The
appellant/plaintiff is the daughter-in-law of the respondents 1
and 2 and respondents 3 and 4 are sons of the respondents 1 and
2. The deceased husband of the appellant/plaintiff Mr.Saravana
kumar is also the son of respondents 1 and 2 and after his
death, the appellant instituted a suit for partition claiming
share in respect of the suit schedule property. The relationship
between the parties are not disputed.

2. The appellant/plaintiff mainly contended that the suit property was joint family property of his husband Mr.Saravana Kumar and the defendants in the suit. The defendants 1 and 2 are having four sons and amongst them and the husband of the appellant/plaintiff. The marriage of the appellant/plaintiff with the deceased Saravanakumar was solemnized on 07.12.2000. The husband of the appellant/plaintiff was undertaking building contract works at Kodikarai and he earned lakhs of rupees and paid the said amount to the defendants 1 and 2 for the purpose of purchasing the suit schedule properties. In other words, it is contended that the deceased husband of the appellant/plaintiff had contributed money for the purpose of purchase of the suit schedule properties. The properties are enjoyed jointly by the husband of the appellant as well as the respondents. The husband of the appellant died on 23.11.2003 and thereafter the respondents have not accepted for sharing of the properties and consequently, the appellant was constrained to institute a suit for partition.

3. The contentions of the appellant/plaintiff are disputed and denied by the respondents and in the written statement they have denied the allegations by stating that the suit schedule properties are the self acquired properties of the respondents 1 and 2 and the deceased son of the respondents 1 and 2 had never earned such a huge amount so as to invest the same for purchase of suit schedule properties. This apart, the suit schedule properties are not joint family properties and it is self acquired and therefore, the appellant cannot claim any right over the property. Further it was contended that, the defendants 1 and 2 instituted a suit in O.S.No.472/2005 for the relief of permanent injunction on the file of the District Munsif Court, Salem and in the said suit, a memo was filed and a sum of Rs.2,55,000/- was settled on 31.05.2005. The appellant also admitted the memo and further he made an endorsement that she will not claim any right over the suit property. At the outset, in lieu of the O.S.No.472/2005, the appellant had received a sum of Rs.2,55,000/- from the respondents 1 and 2 and agreed that she will not proceed further in respect of the suit schedule property.

4. The respondents made a contention that on this ground itself the suit is liable to be dismissed as the appellant had accepted the monetary consideration in lieu of declining her right and accordingly, the suit was disposed of. Thus, the suit for partition cannot be maintained both on the ground that the appellant has no legal right in respect of the self acquired properties of respondents 1 and 2 as well as the

appellant had received a sum of Rs.2,55,000/- from the respondents 1 and 2 and made an undertaking that she will not claim any rights over the suit schedule properties.

5. The Trial Court framed the issues as to whether the plaintiff entitled to the partition as prayed for, whether the suit properties are the joint family properties of the plaintiff's husband and the defendants, whether the suit properties are the self acquired properties of the defendants 1 and 2, whether the alleged memo dated 31.05.2005 is true and the judgment on the file of the District Munsif, Salem, dated 01.06.2005, will bind over the parties.

6. With reference to the issues 1 to 3, the Trial Court found that where a party claim for right regarding the property as joint family property, the burden of proof rest on the party ascertaining the same. With reference to the said principle, the deposition of the appellant/plaintiff was considered and it was admitted by the appellant in her evidence that the joint family has no nucleus fund. It is further admitted by the appellant that the first defendant was working in Government service and earned money. The Trial Court found by after verifying the records that the appellant/plaintiff had failed to prove that her husband Late.Mr.Saravanakumar had earned lakhs of rupees in the contract works and contributed for the purchase of the suit schedule properties. The absence of any such proof, the Court decline to accept the contentions of the plaintiff.

7. PW1 Smt.Revathy/appellant during her cross examination admitted that there is no document to prove that her husband undertook contract works in Kerala and earned lakhs of rupees and contributed his earnings to his parents respondents 1 and 2 for the purpose of purchase of the suit schedule properties. When the appellant/plaintiff herself admitted the fact that she has no proof to establish that her deceased husband earned such a huge amount on contract works for the purpose of purchase of suit schedule properties and the Trial Court has no reason to accept the contention in the plaint and accordingly, rejected the case of the plaintiff.

8. PW2 one Mr.Ezhil Kumar had deposed before the Trial Court that the deceased Mr.Saravanakumar had undertaken cable TV network in Salem Junction and was earning Rs.5,000/- per month. But in the cross examination of the defendants, the said witness PW2 admitted that he had not seen any document to establish that the deceased Mr.Saravanakumar was doing cable network and undertaken contract works and earned lakhs of rupees. In the absence of any such knowledge or proof to establish that the deceased Mr.Saravanakumar was earning such a huge amount for the

purpose of purchase of the suit schedule property, then the Trial Court considered these aspects and arrived a conclusion that the plaintiff had failed to establish her case in respect of the income earned by the deceased Mr.Saravanakumar and regarding the contribution of his earning for the purpose of purchase of suit schedule properties by the respondents 1 and 2.

9. With reference to the averments in para 18 of the written statement regarding the acceptance of a sum of Rs.2,55,000/- by the appellant/plaintiff, the memo marked as Ex.B1 and as per the said memo, the judgment was also passed in O.S.No.472/2005. The Trial Court considered these documents Ex-B1, Ex-B10 and Ex-B11. The memo filed by the parties before the District Munsif Court, Slaem in O.S.No.472/2005 reveals that in lieu of compromise, the appellant/plaintiff had received a sum of Rs.2,55,000/- from the respondents 1 and 2 and the said amount was admitted and accordingly, she had given an undertaking that she will not claim any right over the suit schedule property. Considering all these documents, the Trial Court arrived a conclusion that the plaintiff has not establish even a semblance of legal right so as to establish her right to seek partition of the suit schedule properties which all are stand in the name of the respondents 1 and 2.

10. The learned counsel appearing on behalf of the respondents made a submission that the respondents 1 and 2 also had passed away and before their death, they have executed a Will on 07.02.2011 bequeathing the property in favour of respondents 3 to 5. The Will was registered and now the respondents 3 to 5 are in peaceful possession and enjoyment of the suit schedule property.

11. This Court is of the considered opinion that in a suit for partition, a person instituting a suit must establish a legal right as well as the shares to be allotted. In the absence of establishing any such legal right, the suit cannot be entertained at all. In the present case, the appellant is the daughter-in-law of the respondents 1 and 2 and the appellant had not establish before the Trial Court that the property is a joint family properties or atleast the deceased husband of the appellant had contributed for the purchase of suit schedule properties. None of these facts were established by the appellant before the Trial Court. This apart, the respondents 1 and 2 had already filed a suit in O.S.No.472/2005 and that the said suit was compromised by settling an amount of Rs.2,55,000/- in favour of the appellant. The appellant on receipt of the said amount from the respondents 1 and 2 provided an undertaking that she will not claim any right over the suit schedule properties.

12. This being the factum, this Court is of the considered opinion that there is no reason to interfere with the findings of the Trial Court as the findings are arrived based on the documents as well as the evidences produced by the respective parties before the Trial Court. Thus, this Court has no hesitation in coming to the conclusion that there is no perversity or infirmity in respect of the findings as well as the judgment and decree arrived by the Trial Court.

Accordingly, the judgment and decree dated 22.05.2006 passed in O.S.No.25 of 2005 is confirmed. Consequently, A.S.No.804 of 2006 stands dismissed. No Costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

Additional District Judge,
Fast Track Court No.1,
Dharmapuri.

Copy to

The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.K.V.Sundararajan, Advocate Sr.1391

A.S. No.804 of 2006

ks[co]
srg 28/08/2020

WEB COPY