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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-01-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.941 of 2008

And

M.P.No.1 of 2013

1.Minor Mohana Sowmya,
Daughter of Sivasami represented by
her natural mother and guardian
Santhamani.

2.Minor Prabhu Shankar,
Son of Sivasami represented by
his natural mother and guardian
Santhamani.

3.Santhamani

.. Appellants/Plaintiffs

vs.

1.M.Sivasami
2.Tulasiammal
3.S.Shanmugam
4.N.Santha

.. Respondents/Defendants

Appeal Suit is preferred under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 20.02.2008 passed in O.S.No.396 of 2004 on the file of the learned Additional District Judge, Fast Track Court No.I, Coimbatore.

For Appellants : Mr.S.Mukunth for
M/s.Sarvabhauman Associates

For Respondent-1 : Mr.S.K.Rameshuwar

For Respondents-3&4 : Mr.S.P.Karthik

For Respondent-2 : No such address



J U D G M E N T

The appeal suit on hand is directed against the judgment and decree dated 20.02.2008 passed by the learned Additional District Judge, Fast Track Court No.I, Coimbatore in O.S.No.396 of 2004.

2. The suit was instituted by the appellants and the respondents are the defendants.

3. The suit for partition of the suit properties by dividing into 12 equal shares and allot 3/12th share each to the first plaintiff and the second plaintiff by dividing the properties by metes and bounds with good and bad soil and allot one such share to each of the first and the second plaintiff and separate possession and for permanent injunction.

4. The third plaintiff Smt.Santhamani is the wife of the first defendant Mr.M.Sivasami and the plaintiffs 1 and 2 are the children born from and out of the wedlock between the third plaintiff and the first defendant. The suit was mainly instituted on the ground that the immovable properties stand in the name of the first defendant, who is the husband of the third plaintiff, is a family property and therefore, the plaintiffs are entitled for partition.

5. In short, on account of the difference of opinion between the husband and the wife, the plaintiffs are constrained to institute a suit for partition claiming that the suit schedule properties belong to the family.

6. The written statement was filed by the defendants, denying the contentions mainly on the ground that the suit schedule properties are not the joint family properties, which all are self acquired. The properties are housing plots and those housing plots are purchased from and out of the income earned by the father of the first defendant and therefore, it is a self acquired property and the same cannot be construed as a family property or an ancestral property.

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

(i) Whether the suit schedule properties are ancestral/joint family property or not ?

(ii) Whether the plaintiffs are entitled for partition of the suit schedule property ?

(iii) Whether the plaintiffs are entitled for the relief of permanent injunction or not ?



8. The Trial Court, considering the documents filed by the parties to the lis on hand, made a finding that the suit properties were purchased by the father of the first defendant and the documents marked before the Trial Court revealed that all such properties are self acquired and accordingly came to a conclusion that the suit properties are not joint family properties or ancestral properties. The purchase of the properties by the father of the first defendant was established before the Trial Court through various documents and those documents were also considered by the Trial Court.

9. This apart, the first defendant inherited the property through a Will executed by the father of the first defendant and therefore, the first defendant became the absolute owner of the suit schedule property as per document Ex.B-4. In view of the fact that the suit schedule property is the absolute property belongs to the first defendant, who is the husband of the third plaintiff, the relief of partition was declined by the Trial Court.

10. Perusal of entire findings of the Trial Court, this Court is of an opinion that the plaintiffs had not established, at any point of time, before the Trial Court that the suit schedule property is a joint family property or the ancestral property, which is capable of being partitioned as prayed for in the suit.

11. Contrarily, the defendants are able to establish that the suit schedule property was acquired by the first defendant, who is the husband of the third plaintiff, by way of a Will from his father and he became the absolute owner of the suit schedule properties and therefore, the relief of partition cannot be granted as this Court do not find any perversity or infirmity in respect of the findings as there is no contra evidence produced by the plaintiffs, so as to disprove the documents filed by the defendants before the Trial Court. In the absence of any such doubt or ambiguity, there is no reason for this Court to interfere with the factual findings arrived by the Trial Court with reference to the documents filed by the respective parties before the Trial Court.

12. This being the facts and circumstances, this Court is of an opinion that further elaborate discussions with reference to the documents are unnecessary as the plaintiffs had not established any prima facie case, so as to establish that the suit property is the joint family property or the ancestral property. In the absence of any such proof, there is no need to



go further. In a suit for partition, the plaintiffs have to establish that the properties are incapable of being partitioned and the legal right for claiming such partition of the properties. In the absence of any such legal right or the capability, there is no need to go further into the issues, as the plaintiffs have not established any prima facie case for the purpose of considering the suit for partition. Under these circumstances, this Court has no hesitation in arriving a conclusion that the plaintiffs have not established any prima facie case for the purpose of establishing their right for partition of the suit schedule properties.

13. Accordingly, the judgment and decree dated 20.02.2008 passed by the learned Additional District Judge, Fast Track Court No.I, Coimbatore in O.S.No.396 of 2004 is confirmed and consequently, the present appeal suit stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Additional District Judge,
(Fast Track Court No.I),
Coimbatore.

2.The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to M/s.Sarvabhauman Associates, Advocate SR.1177

A.S.No.941 of 2008

KK(CO)
CB(09/09/2020)