

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-02-2020

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.NO.8 OF 2017

C.Ashok Kumar

.. Appellant/Plaintiff

vs.

1. Mrs.Santhammal
2. Mr.Inbarasu
3. Mr.Anandarasu

.. Respondents/Defendants

Prayer:-

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.138 of 2012 on the file of the III Additional District Court, Tiruvallur, Poonamallee, dated 27.09.2016.

For Appellant : Mr.M.Chidambaram

For Respondents : Mr.Anil Relwani

J U D G M E N T

The appeal suit is filed against the judgment and decree dated 27.09.2016, passed in O.S.No.138 of 2012. The plaintiff is the appellant in the appeal suit. The suit was instituted for partition to pass a preliminary decree and allot 1/4th share from the suit properties described in the plaint schedule.

2. The appellant/plaintiff contended that the first defendant is his mother and the defendants 2 and 3 are the brothers. The appellant/plaintiff states that the suit properties are the ancestral properties of the plaintiff and the defendants. A larger extent of property was acquired by Mr.Chandraiya, who is the husband of the 1st defendant and the father of the plaintiff and the defendants 2 and 3. Mr.Chandraiya had purchased several items of properties. Mr.Chandraiya was a PWD contractor and through his contract works, he earned several items of properties. Plaintiff states

that he is the eldest son, accompanied with his father's contract work, obtained heavy vehicle driving license (Road Roller) and supported the business of his father, who abandoned his school education. Right from the young age, he is attached with his father's business and earned lot of money and under the joint earnings Late. Mr.Chandraiya had purchased the properties. The properties set out in the suit schedule are the ancestral properties and the properties purchased by them was from the ancestral nucleus and also the joint effort of the plaintiff and his father Mr.Chandraiya.

3. During the life time of Mr.Chandraiya, in the year 2001, he executed a will and the same was registered as document No.35 of 2008 before the Sub-Registrar at Anna Nagar. Mr.Chandraiya arranged the marriage of the plaintiff in a grand manner during the year 2008. Apart from the will, Mr.Chandraiya and the first defendant mother had executed a settlement deed in favour of the plaintiff as father and mother of the plaintiff during the year 2010. Therefore the plaintiff's father as well as defendants were jointly enjoyed the suit properties as a Hindu Joint Family Properties without any division. Mr.Chandraiya died intestate.

4. It is contended by the plaintiff that he performed the last rights and all the obsequies ceremonies and on the 16th day ceremony, the plaintiff requested the first defendant his mother to divide the properties and allot his share. At that point of time, the first defendant revealed the fact that Mr.Chandraiya had cancelled the earlier will of the year 2008 and executed another will in the month of May 2011. Even in respect of legal heir certificate, the defendants had already submitted an application seeking legal heir certificate from the Competent Authority.

5. The plaintiff states that the second will executed in May 2011 is not a genuine one and executed by Mr.Chandraiya during the period in which he has not in a position to execute such a will. Thus, the will of the year 2011 is a fraudulent one. The contention of the plaintiff is that he is the eldest son of Late.Mr.Chandraiya and first defendant and the defendants 2 and 3 are his brothers. He also contributed for the purchase of many number of items in the suit schedule properties and the first defendant and his father Late. Mr.Chandraiya had treated him as the eldest son for all purposes and executed a settlement deed as well as the will. Setting out all these facts and circumstances, the plaintiff instituted the suit for partition.

6. The defendant disputed the contentions in the plaint by filing a written statement. Even the claim of the plaintiff that he is the eldest son of Mr.Chandraiya is denied specifically. The plaintiff never accompanied Mr.Chandraiya in his contract work and the joint purchase was also denied. Mr.Chandraiya was a PWD contractor and from and out of his income, he purchased several items of properties. The plaintiff had not supported the business of Mr.Chandraiya and it is specifically stated that the plaintiff is an orphan. The plaintiff right from his young age was attached with Mr.Chandraiya in his business is also false. He was working as a servant and for that he received wages from Mr.Chandraiya. At the outset, the defendants denied the claim of the plaintiff as the son of Mr.Chandraiya and first defendant and in their written statement, it is contended that the plaintiff is an orphan and he is not a biological son of the first defendant as well as Late.Mr.Chandraiya. For the works done along with Mr.Chandraiya, wages were paid to him and therefore, the suit for partition is untenable.

7. The Trial Court framed the issues as to whether the plaintiff is entitle to 1/4th partition in the suit property, whether the plaintiff is not the son of Mr.Chandraiya and to what other relief.

8. In respect of the second issue, as the same is a vital issue to be decided, the Trial Court considered the pleadings, documents as well as the evidences. The Trial Court made an observation to find out whether the plaintiff is the biological son born to the deceased Mr.Chandraiya as well as the first defendant. The said point raised by the plaintiff was seriously disputed by the defendants. The first defendant also in clear terms held that the plaintiff is not her son. Though the plaintiff have produced the school certificate, marriage invitation and other ceremonies, in order to establish that the plaintiff is the son of the first defendant and the Late.Mr.Chandraiya, the Trial Court found that the plaintiff is not the biological son born to Late.Mr.Chandraiya and the first defendant. The plaintiff was taken from Kilpauk Medical College Hospital at the age of 3 1/2 years and he was brought up by the family of Mr.Chandraiya. The plaintiff in his deposition has categorically admitted the said fact that he is an orphan and he was brought up by the family of Mr.chandraiya. The plaintiff also has not filed the suit by claiming that he is the adopted son. When the plaintiff himself admitted the fact that the he is not the biological son and further not established that he was adopted by Late.Mr.Chandraiya and the first defendant as the son, the Trial Court is right in arriving a conclusion that the plaintiff is not entitled to claim any partition in respect of

the properties belong to Mr.Chandraiya's family.

9. When the plaintiff has not established that he is a legal heir and entitled for partition, the suit cannot be entertained at all. When the plaintiff in his deposition has categorically admitted the fact that he is an orphan and there is no adoption as such, then the Trial Court is right in arriving at a conclusion in respect of the issue No.2 that the plaintiff is not a son of Late.Mr.Chandraiya and the first defendant. With reference to the issues 1 and 3, the Trial Court found when the plaintiff is not a son of the first defendant and the Late Mr.Chandraiya, he is not entitled for the relief for partition as such sought for in the plaint.

10. The learned counsel appearing on behalf of the appellant mainly contended that the plaintiff was brought up by Late.Mr.Chandraiya and a new ground has been raised that the first defendant is not the mother of the plaintiff, however, Late.Mr.Chandraiya is the father of the plaintiff. However, this ground was not taken before the Trial Court nor any evidence has been produced. Even in the Appeal Suit, there is no such evidence to establish that Late.Mr.Chandraiya is the father of the plaintiff. Under these circumstances, such a ground raised for the first time in the first appeal cannot be entertained at all. The learned counsel for the appellant further states that all along the plaintiff was brought up by the family of Mr.Chandraiya and he was treated as an eldest son in the family for all purposes. Such a submission cannot be entertained for the purpose of extending the benefit of inheritance.

11. As per the Succession Act, a person has to establish that he is the son or she is the daughter and in the absence of establishing such basic fact, the suit for partition cannot be entertained at all. When the relationship between the family members are disputed, the plaintiff has to establish the relationship beyond any pale of doubt. The suit for partition can be proceeded with only if the relationships are admitted between the parties. When the relationship itself has been questioned by the defendants by stating that the plaintiff is an orphan and not the biological son born to Late.Mr.Chandraiya and first defendant, then the Trial Court is right in arriving at a conclusion that suit for partition cannot be entertained at all.

12. Perusal of entire findings of the Trial Court in its judgment, this Court is of the considered opinion that there is no perversity or infirmity as such and the suit was dismissed based on the documents as well as the evidences given by the

parties before the Trial Court. When the plaintiff himself admitted the fact that he is an orphan and he is not an adopted son, then the relief of partition cannot be granted. Accordingly, the judgment and decree passed by the Trial Court in O.S.No.138 of 2012 dated 27.09.2016 is confirmed and consequently, A.S.No.8 of 2017 stands dismissed. No Costs.

Sd/-
Assistant Registrar(AD I-MDU)

//True Copy//

Sub Assistant Registrar

pkn

To

III Additional District Court,
Tiruvallur.

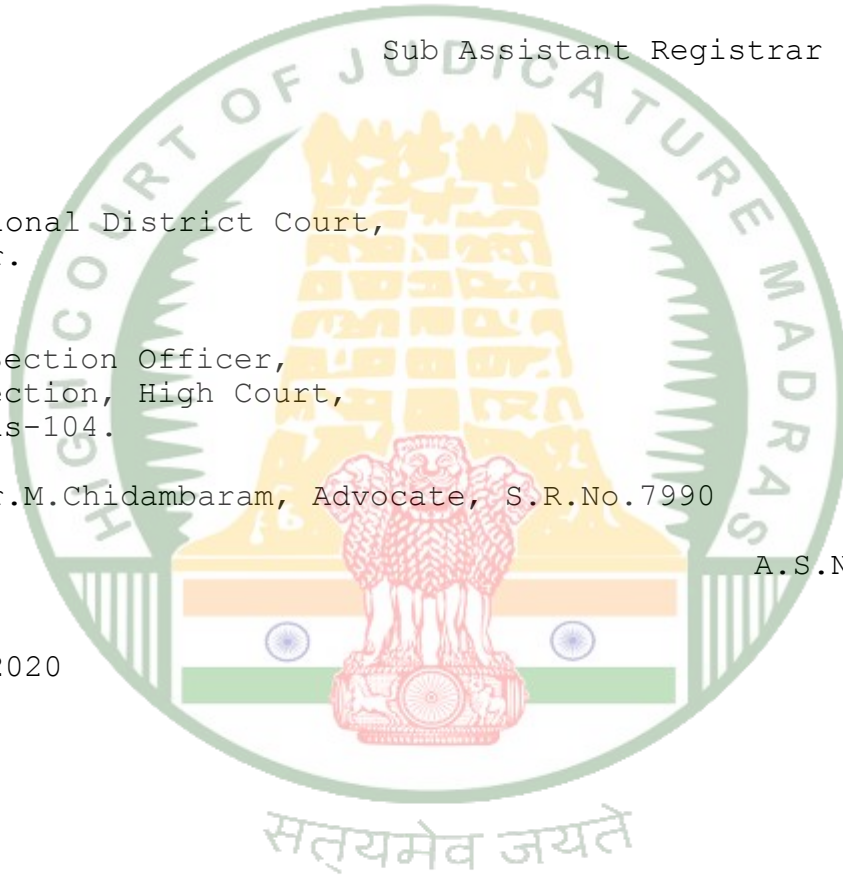
Copy To

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

+1cc to Mr.M.Chidambaram, Advocate, S.R.No.7990

A.S.No.8 of 2017

BS (CO)
CS/19/11/2020



WEB COPY