



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 11.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.(MD) No.90 of 2020

WEB COPY

A.Thulasiram

... Appellant/Appellant /Plaintiff

vs.

1.M.Dhanalakshmi
2.A.Dhinagarrajan
3.Sahila Rani
4.K.Mohandoss
5.M.Rajeshwari
6.Priyalakshmi
7.M.Manikandan
8.M.Anitha

... Respondents/Respondents/Defendants

PRAYER: This Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 31.07.2019 passed in A.S.No.151 of 2017 on the file of the Fast Track Mahila Court, Dindigul confirming the decree and judgment dated 09.01.2017 passed in O.S.No.272 of 2012 on the file of the Additional Sub Court, Dindigul and allow the second appeal.

For Appellant : Mr.S.Sankar

JUDGMENT

The plaintiff in O.S.No.272 of 2012, whose suit for partition, separate possession of 1/6th share was dismissed by the trial Court upon its affirmation by the lower appellate Court has come up with this second appeal.

2. According to the plaintiff, the suit properties belonged to the joint family consisting his father Azhagarsamy Naidu, the plaintiff himself and his two brothers. It was claimed that Azhagarsamy Naidu died in the year 2007 intestate hence as the son he is entitled to 1/6th share in the suit property.

3. The suit was resisted by the defendants contending that Azhagarsamy Naidu did not die intestate, he had left a Will dated 30.12.1987 bequeathing the suit property in favour of his daughters granting life estate to his wife Angammal. On the death of Angammal in the year 2011, the property devolved on the daughters and the daughters have been in possession and enjoyment of the property. It was the further contention of the defendant's that though the suit property was treated as joint family property of the Azhagarsamy Naidu and his sons and various mortgages were executed jointly



between the year 1958 and 1970, there was a partition in the family under a registered instrument of partition dated 25.03.1975. In the said partition, the suit property was allotted to Azhagarsamy Naidu and thus Azhagarsamy Naidu is the absolute owner of the property.

4. At trial, the plaintiff was examined as P.W.1 and Exs.A1 to A17 were marked. On the side of the defendants 3 to 8, the fourth defendant was examined as D.W.1 and three other witnesses were examined as D.Ws.2 to 4. While D.W.2 is the attesor of the Will dated 30.12.1987, D.W.3 Ilango is the attesor of the settlement deed dated 05.06.2009 executed by Angammal in favour of the defendants 1, 3, 5, 6 and 8.

5. The trial Court on consideration of the evidence on record, concluded that after the partition, dated 25.03.1975 Azhagarsamy Naidu became absolute owner of the property and he having executed a Will dated 30.12.1987, the property devolves on the legatees under the Will. Therefore, the plaintiff cannot claim a share in the suit property. The claim of the plaintiff that the property was a joint family property relying upon the documents executed prior to 1975 was rejected by the trial Court. The trial Court also faulted the plaintiff for not disclosing the partition deed dated 25.03.1975. On the above finding, the trial Judge, dismissed the suit.

6. Aggrieved, the plaintiff filed an appeal in A.S.No.151 of 2017. The lower appellate Court also agreed with the findings of the trial Court on the nature of the property and right of Azhagarsamy Naidu to bequeath the same under the Will dated 30.12.1987. Upon such concurrence with the findings of the trial Court, the lower appellate Court dismissed the appeal. Aggrieved, the plaintiff has come with the second appeal.

7. I have heard Mr.S.Sankar, learned counsel appearing for the appellatant.

8. The learned counsel for the appellatant would vehemently contend that the fact that the joint execution of mortgage deed under Exs.A1 to A4 by the sons of Azhagarsamy Naidu would show that the property was treated as joint family property and as such, the Will by Azhagarsamy could be valid only to the extent of his share in the suit.

9. I am unable to agree with the said contention of the learned counsel for the appellatant. As rightly found by the Courts below, the plaintiff is guilty of suppression of fact. The plaintiff was admittedly a major on the date of the partition i.e., 25.03.1975. He is also a party to the said instrument. He has willfully suppressed the factum of partition in the plaint. Once partition has taken place and the property is allotted to coparcener, the coparcener holds it as his self acquired property and he has the power of dispossession over the said property. The Will



dated 30.12.1987 by Azhagarsamy Naidu in favour of his wife and daughters has been found to be true and valid. Therefore, the plaintiff cannot claim a share in the suit property contending that it still remains an ancestral property.

10. I do not find any perversity in the factual conclusions of the Courts below regarding the validity of the Will dated 30.12.1987 and settlement deed dated 05.06.2009. There is no question of law much less a substantial question of law in order to enable me to entertain this appeal. Hence, this appeal fails and it is accordingly, dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

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To

1. The Sessions Judge,
Fast Track Mahila Court, Dindigul.
2. The Additional Subordinate Judge,
Dindigul.

Copy to:

The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to Mr.S.SANKAR, Advocate (SR-6180[F] dated 13/02/2020)

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