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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

A.S.NO.6 OF 2015

Vidyanandan

... Appellant/Plaintiff

.Vs.

1. Gnanambigai
2. Vivekanandan
3. Vimalanandan
4. Vijaya Ananda Sundari
5. Rajendran
6. Saravanan
7. Ramesh

... Respondents/Defendants

PRAYER:- Appeal Suit filed under Order XLI Rule 1 and Section 96 of the Code of Civil Procedure to set aside the decree and judgment dated 26.07.2011 passed in O.S.No.63 of 2010 by the learned Additional District Judge, (Fast Track Judge II), Cuddalore.

For appellant : Mr.R.Gururaj

For respondents : No appearance

JUDGMENT

The plaintiff is in appeal before this Court, challenging the judgment and decree passed by the learned Additional District Judge, (Fast Track Judge II), Cuddalore in O.S.No.63 of 2010. The parties are referred to in the same litigative status as before the trial Court.

2. Plaintiff case:



The plaintiff had filed a suit for partition of his 1/5th share in respect of the suit properties, which were 8 in number. It is the case of the plaintiff that the properties which are all situated in Sedapalayam Village, Cuddalore District, were ancestral properties of one Samy Naidu. The plaintiff and the defendants 3 and 4 are the sons of the 1st defendant and the 5th defendant is the daughter. The 1st defendant is the 3rd wife of said Samy Naidu. Samy Naidu had married the 1st defendant after the demise of his two wives. In the year 1999, when Samy Naidu died, he left behind him surviving the 1st defendant, the plaintiff, the defendants 3 and 4 (Children of the 1st defendant), 2nd defendant, son of Samy Naidu through his 1st wife Lakshmiammal. The defendants 5 to 7 have been impleaded since they were making an adverse claim to the suit properties. It is the case of the plaintiff that after the death Samy Naidu his legal representatives had entered into a partition on 11.09.2003 and in the said partition, the suit properties were kept in common and the same has been enjoyed by the 1st defendant for himself and on behalf of the others. It is the further case of the plaintiff that the 1st defendant being the mother was in management of the properties and she had no independent right to the same. The plaintiff and the 1st defendant had been living together, however, owing to recent misunderstandings, the plaintiff demanded a partition of his share in the suit properties. The 1st defendant had effectively evaded partitioning the properties under one pretext of the other. Therefore, the plaintiff had come forward with the above suit.

3. Written statement of the 2nd defendant:

The 2nd defendant had filed a written statement inter alia denying the contentions raised in the plaint. It was his contention that the 1st item of the suit properties was the exclusive property of Lakshmiammal, the 1st wife of the Samy Naidu and the mother of the 2nd defendant. She has purchased the same under a sale deed dated 23.10.1945. Therefore, this property was the separate and self acquired property of Lakshmiammal over which neither the plaintiff nor the defendants 1, 3 and 4 have any right. That apart, the 2nd defendant had also sold a portion of the 1st item of the property to the defendants 5 to 7 and they are in possession and enjoyment of the same.

4. It was also his case that in the registered partition dated 11.09.2003, the plaintiff had specifically admitted that they were no other joint family properties available for partition and on the very same day, the plaintiff and the defendants 1 and 3 had executed a undertaking letter that apart from the properties covered in the partition deed, the properties purchased by the 2nd defendant and his mother are the separate properties of this defendant and therefore, the



plaintiff is estopped from making any claim over the suit 1st item of the property.

5. As regards items 2 to 7, the claim of the plaintiff that the properties were purchased in the name of Alameluammal, the sister of Samy Naidu is totally false and barred by the Benami Prohibition Act. These properties are the separate property of Alameluammal and not available for partition. Therefore, these properties are also not available for partition.

6. As regard item 8, the same does not belong to the joint family and the 2nd defendant is not concerned with the same. He therefore sought for the dismissal of the suit.

7. Written statement of the defendants 5 to 7:

The defendants 5 to 7 filed a written statement in which they would submit that the plaintiff had no right over the 1st item of the property as the same belonged to the 2nd defendant and these defendants had purchased the properties from him under a valid sale deed dated 15.05.2008 and have been possession and enjoyment of the same. They sought for dismissal of the suit.

8. Trial Court:

The learned Additional District Judge had framed issues and the parties went to trial on the said issues. The plaintiff had examined himself as PW.1 and marked Exs.A1 to A4. On the side of the defendants, the 2nd defendant had examined himself as DW.1 and Rajendran, Saravanan, Ramesh as DW.2 to DW.4 respectively. He had in support of his plea marked Exs.B1 to B9.

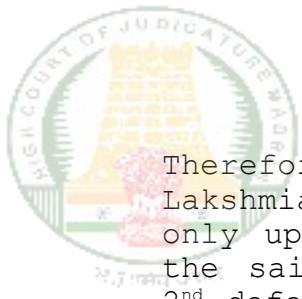
9. The learned Judge on a consideration of the evidence on record held that the plaintiff was not entitled to a decree for partition since the properties in question did not belong to the joint family of the plaintiff and defendants 1 to 4. Challenging the same, the plaintiff is before this Court.

10. Point for consideration:

The only point for consideration before this Court is that whether the Court below was right in non suiting the plaintiff and has appreciated the evidence on record while dismissing the suit?

11. Discussion:

A perusal of the records would indicate that the 1st item of the suit properties had been purchased by Lakshmiammal, the 1st wife of Samy Naidu under Ex.B1/sale deed dated 22.10.1945.



Therefore, the property in question is the exclusive property of Lakshmiammal and on her demise, the properties would devolve only upon the 2nd defendant. It is also seen that a portion of the said property has been sold to defendants 5 to 7 by the 2nd defendant under Exs.B5 to B7. Therefore, the Court below has rightly come to the conclusion that the plaintiff was not entitled to any share in the suit 1st item of the properties.

12. As regards items 2 to 7, it is admitted case of the parties, the properties stands in the name of Alameluammal who is the sister of Samy Naidu. The plaintiff case is that the properties have been purchased by the Samy Naidu out of his income in the name of his sister and therefore, the plaintiff was entitled to a share in the same. After the demise of Alameluammal, these properties had been sold to the son of the 2nd defendant by the plaintiff and defendants 1 to 3 under a sale deed dated 08.03.2004. Therefore, the plaintiff is not entitled to a share in the same. The property had been sold to the 2nd defendant's sons Kupendra Kumar and Ramachandran under Exs.B8 and B9. Therefore, these properties are not available for partition. It is also seen that the plaintiff and the defendants 1 to 3 had executed an undertaking letter Ex.B2 in which, they have clearly stated that after the partition dated 11.09.2003, there are no other properties available to the joint family. The plaintiff was also not able to prove that item 8 of the properties belong to the family. Therefore, on a conjoint reading of the above, it is clear that the trial Court has perused the records and rightly come to the conclusion that there is no other properties available for partition and has rightly dismissed the suit.

13. I do not find any reason to over turn the said judgment and decree, consequently, the First Appeal stands dismissed. No further orders to cost.

Sd/-
Assistant Registrar(I)

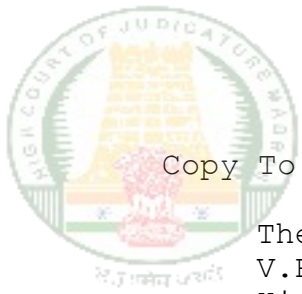
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Sub Assistant Registrar

vkr

To

The Additional District Judge,
(Fast Track Judge II),
Cuddalore.



Copy To:-

The Section Officer,
V.R. Section,
High Court, Madras - 104.

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PBS/02/12/2021