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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

A.S.No.513 of 2016
and C.M.P.No.12039 of 2016

Priya ..Appellant/Respondent/Plaintiff

Vs.

1. Rajkumar

2. Nandhavel

...Respondents/Petitioners/Defendants 5&6

PRAYER: Appeal Suit filed under Section 96 of C.P.C., to set aside the Judgment and Decree dated 24.02.2016 passed by the learned IV Additional District Judge, Coimbatore in I.A.No.326 of 2015 in O.S.No.365 of 2014, rejecting the plaint as not maintainable and allow the above first appeal.

For Appellant : Mr.V.Nicolas

For Respondents : Mr.T.Balaji

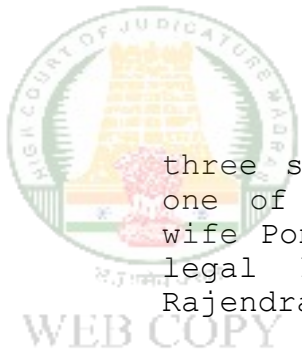
For Mr.A.Thiyagarajan

JUDGMENT

The Appeal Suit is filed as against the Judgment and Decree dated 24.02.2016 passed by the learned IV Additional District Judge, Coimbatore in I.A.No.326 of 2015 in O.S.No.365 of 2014, thereby allowing the petition for rejection of plaint.

2. The appellant is the plaintiff and the respondents are the defendants 5 & 6. The appellant filed suit in O.S.No.365 of 2014 for partition in respect of the suit property. While pending the suit, the respondents filed a petition in I.A.No.326 of 2015 for rejection of plaint. The trial Court allowed the petition and rejected the plaint as not maintainable. Aggrieved by the same, the appellant has filed this present Appeal Suit.

3. The learned counsel appearing for the appellant/plaintiff submitted that one Marappa Gounder has got three sons viz., Thangamuthu Gounder, Velusamy Gounder and Mylsamy Gounder. The said Marappa Gounder was cultivating the suit land as lessee and he himself divided the leasehold land into three portions equally and gave to his three sons to cultivate. After the demise of the said Marappa Gounder, his



three sons continued to cultivate the land. In the year 1996, one of the sons Thangamuthu Gounder died, leaving behind his wife Ponnammal and two sons viz., Rajendaran and Selvaraj as his legal heirs. The appellant is the daughter of the said Rajendran, who is the first defendant in this present suit.

3.1. While being so, other sons viz., Velusamy Gounder and Mysamy Gounder expressed their intention to purchase the suit land and hence the said Ponnammal viz., grandmother of the appellant herein, gave a sum of Rs.4,000/- to purchase the said land. But the document was registered in the name of Velusamy Gounder and Mysamy Gounder in the year 1967. Thereafter, in the year 1982, the said Rajendaran, Selvaraj and Ponnammal, who are the defendants 1, 3 & 4 herein, filed suit for partition as against the said Velusamy Gounder and Mysamy Gounder in O.S.No.1544 of 1982 before the II Additional District Munsif Court, Coimbatore and the same was decreed by allotting 1/3 share in the suit land.

3.2. Aggrieved by the same, the said Velusamy Gounder preferred an appeal in A.S.No.128 of 1990 before the II Additional Subordinate Court, Coimbatore and the same was allowed. As against the said judgment, the defendants 1, 3 & 4 herein filed Second Appeal before this Court in S.A.No.8 of 1993 and the same dismissed by confirming the judgment passed by the first appellate Court. In the above proceedings, the defendants colluded with each other and the defendants 1, 3 & 4 did not get into the witness box and have not produced any revenue documents. Hence in all the proceedings, the defendants 1, 3 & 4 have not conducted the case properly. Since, the appellant is not a party to the above said proceedings, she filed the present suit for partition. Without considering the above facts, the trial Court allowed the petition filed by the respondents and rejected the plaint. Therefore, she prayed to set aside the impugned order by allowing this appeal suit.

4. The learned counsel appearing for the respondents/defendants 5 & 6 submitted that the defendants 1,3 & 4 herein had already filed suit for partition in O.S.No.1544 of 1982 against the other family members, on the file of the II Additional District Munsif, Coimbatore, and the same was decreed. Aggrieved by the same, an appeal suit was filed in A.S.No.128 of 1990 and the same was allowed. As against the said judgment, Second Appeal was filed before this Court in S.A.No.8 of 1993 by the defendants 1, 3 & 4, and the same was dismissed by holding that the 4th defendant viz., Ponnammal had not proved the passing of consideration of Rs.4,000/- from her for purchase of the suit property. Therefore, the suit filed by the appellant's predecessor was negatived by two appellate forums. Even then, the appellant or her family members did not challenge



the same and as such the judgment and decree passed by this Court had attained finality. Now, after passing of several years, the appellant filed this present suit that too without any cause of action. Therefore the suit itself is not maintainable and the trial Court rightly rejected the plaint. Hence, he prayed for dismissal of this appeal suit.

5. Heard Mr.V.Nicholas, learned counsel appearing for the appellant and Mr.T.Balaji, learned counsel appearing for the respondents.

6. It is seen from the records that this Court had already held in the earlier suit that the suit property is that of Velusamy Gounder and Mysamy Gounder and as such the appellant's predecessors failed to establish that the suit property is a joint family property. The only plea raised by the appellant is that she is the daughter of the first defendant and grand daughter of the late Thangamuthu Gounder and she is not a party to the earlier proceedings and as such the judgment and decree passed in the earlier suit shall not bind upon her. She cannot take that stand as she is not a party to the earlier suit.

7. While dismissing the second appeal in S.A.No.8 of 1993, this Court had categorically held that the plaintiffs, who are the defendants 1, 3 & 4 herein, failed to prove the original leasehold right by Marappa Gounder and direct cultivation by his three sons viz., Thangamuthu Gounder, Velusamy Gounder and Mysamy Gounder and alleged contribution of Rs.4,000/- by the fourth defendant viz., Ponnammal to purchase the suit property. Therefore, the appellant cannot raise the same issue in the present impugned suit. It is directly hit by the principles of res judicata and there is no cause of action to file the present suit. Therefore, the Court below rightly allowed the petition and rejected the plaint in O.S.No.365 of 2014. This Court finds no illegality or infirmity in the order passed by the Court below.

8. In the result, the Appeal Suit stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rts



To

The IV Additional District Judge,
Coimbatore.

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Copy to

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

+1cc to Mr.V.Nicolas, Advocate, S.R.No.32635

+1cc to M/s.A.Thiyagarajan, Advocate, S.R.No.32521

A.S.No.513 of 2016 and
C.M.P.No.12039 of 2016

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NSK 24/09/2021