

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 16TH DAY OF APRIL 2021

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

A.No.4408 of 2016
in
Tr.C.S.No.91 of 2004

1.K.Jamuna
2.D.Gunalan
3.D.Dhayalan
4.D.Ravindran
5.D.Anandan

...Plaintiffs

-Vs-

1.S.Pushpavathi (Deceased) (*)
represented by her legal Representatives)

2.Karunakaran (*)

3.D.Malathi (*)

4.S.Sakthivel (*)

..Defendants

(Defendants 2 to 4 impleaded as per order of court (*)
dated 05.10.2010 made in Appln.No.4200 of 2009.

A.No.4408 of 2016

1.K.Jamuna
No.7/10B, Viswanathan Koil Street,
Bhat Road, Chennai 600 016.

2.D.Gunalan
No.79/1, Plot No.B
Ramachandra Nagar
Madhanadapuram, Porur-600 116.

3.D.Dayalan

4.D.Raviendran
Both at Pillayar Koil Street,
Old Kelambakkam, Chennai-603103.

5.D.Anandan
E.B.Quartes, Porur, Chennai.

..Applicants/Plaintiffs

-Vs-

1.S.Pushpavathi (Deceased)
Rep. by her legal representatives

2.S.Karunakaran
No.19, (Old No.7) Haji Shaik Hussain 1st Lane
Royapettah, Chennai-600 014.

3.D.MalathiAccessOld No.486, Mint Street,
Chennai-600 079.

4.S.Sakthivel
No.19, (Old No.7),Haji Shaik Hussain 1st Lane
Royapettah, Chennai-600 014.

..Respondents/Defendants

Application praying that this Hon'ble Court be pleased to permit the applicants/Plaintiffs to amendment the plaint and include the para 6-A of the plaint and include the prayer as (c) of the plaint and as described in schedule hereunder.

This application coming on this day before this court for hearing, the Court made the following order:

This application has been filed seeking to introduce the following prayer in the suit which is one for partition:-

“To declare the Deed of cancellation dated 14.03.1995 registered as Document No.582 of 1995, SRO in Mylapore is illegal and not binding upon the plaintiffs and consequently to declare that the plaintiffs are entitled to 2/3rd share in the property described in the schedule to the plaint.”

The facts leading to the filing of the application are as follows:-

2. According to the plaintiff, the property in question belonged to one Sagunthala Ammal, who died intestate on 15.10.1999 leaving behind the 1st plaintiff, who is the sister of Sagunthala Ammal, the plaintiffs 2 to 5 who are the legal heirs of the other sister Nagabushanammal, who died prior to the suit on 24.07.1993. The 1st defendant is the other sister Pushpavathi, since she died pending suit, the defendants 2 to 4 were brought on record as her legal representatives.

3. The claim of the plaintiffs is that the deceased Sagunthala Ammal

had executed three registered settlement deeds on 31.05.1990 registered as

Document Nos.1186, 1187 and 1189 of 1990 settling 1/3rd undivided share of the property in favour of each of her sisters. Therefore, according to the plaintiffs the 1st plaintiff would be entitled to 1/3rd share and the plaintiffs 2 to 5 would be entitled to the other 1/3rd share, which was settled on Nagabushanammal, who is her sister.

4. The suit is being resisted by the defendants contending that the deceased Sagunthala Ammal had cancelled the settlement deeds on 14.03.1995 and executed a Will on the very same day bequeathing entire property in favour of the 1st defendant. The 1st defendant had filed T.O.S.No.24 of 2003 seeking letters of Administration with the Will annexed. The suit which was pending before the City Civil Court as O.S.No.5974 of 2001, was transferred and tried along with T.O.S.No.24 of 2003, which was pending here.

5. The plaintiffs would claim that they have not sought for the prayer for declaration as to the invalidity of the cancellation deed and they came to know about the cancellation deed only upon filing of the written statement and therefore they should be allowed to amend the plaint to include the prayer as aforesaid.

6. This application being resisted by the defendants on various grounds including the fact that similar relief has been sought for before the City Civil Court in I.A.No.2956 of 2003 and despite the application having been allowed, the plaintiffs have not taken any steps for amending the plaint.

7. I have heard Mr.C.Ramesh, learned counsel appearing for the plaintiffs and Mrs.V.J.Latha, learned counsel appearing for the respondents.

8. I do not think that the amendment itself is necessary. The plaintiffs' claim is on the basis of the registered instrument of settlement. The defendants deny the claim of the plaintiff on the ground that the registered instruments of settlement executed on 31.05.1990 in favour of the plaintiffs as well as the 1st defendant have been cancelled by a Deed dated 14.03.1995. The question is as to whether the cancellation of the settlement deed is valid or not. If the cancellation is invalid the plaintiffs would succeed, if the cancellation is held to be valid and the Will is proved, the defendants would succeed. I do not find any need for incorporation of prayer regarding validity or otherwise of the cancellation deed. The said question will have to be anyway decided in the partition suit while deciding the entitlement of the plaintiffs to a share in the property. The prayer for

declaration that is sought to be included is wholly unnecessary in my considered opinion.

9. Therefore, this application for amendment is **dismissed** without prejudice to the right of the parties.

Sd./-R.S.M.J
16/04/2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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