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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2021

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

A.S.No.242 of 2018
and
C.M.P.No.4223 of 2018

1.Valliyammal
2.Murugan
3.Sakthi

...Appellants /Defendants

Vs.

Sivagami

... Respondent/Plaintiff

PRAYER: Appeal Suit filed under Section 96 of CPC against the judgment and decree dated 07/12/2017 in O.S.No.91 of 2016 on the file of II Additional District Court, Salem.

For Appellants : Mr.R.Subramanian

For Respondent : Mr.S.Kaithamalai Kumaran

JUDGMENT

The Appeal suit is filed against the judgment and decree dated 07/12/2017 passed in O.S.No.91 of 2016 on the file of II Additional District Court, Salem.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.The case of the plaintiff is that the first defendant is the mother and the second defendant is the brother of the plaintiff. The third defendant is the wife of the second defendant. The suit property and the other properties originally belonged to her grandfather and after his death, his sons viz., Palaniyappan, the father of the plaintiff and Chinnannan inherited the said properties. Thereafter, patta has been issued separately recognizing their possession and enjoyment of their respective properties. The father of the plaintiff had been in possession and enjoyment of the suit property and he died intestate leaving behind the plaintiff and the first and second defendants. Therefore, in the suit property during the life time of her father, she was entitled to have 3/9 shares and the defendants 1 & 2 were entitled to



have 3/9 shares. After the death of her father, his 3/9 shares devolved upon the plaintiff and the defendants 1 & 2. Therefore, the plaintiff is entitled to have 4/9 shares. Hence, the suit for partition.

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4. Resisting the same, the defendants filed their written statement stating that after the death of Palaniappan, the father of the plaintiff and the second defendant and husband of the first defendant, the plaintiff received a sum of Rs.2,00,000/- towards relinquishment of her share in the suit property and also for getting compassionate appointment to be provided in favour of the second defendant. Only thereafter, the patta was granted in favour of the second defendant. The plaintiff's marriage was organized in the year 1987 and suppressing the receipt of Rs.2,00,000/- for relinquishment of her share, the present suit was filed for partition. Since the second defendant became the absolute owner of the suit property, he had executed a settlement deed dated 27.08.2016 in favour of the third defendant. Therefore, prayed for dismissal of the suit.

5. On hearing the rival pleadings, the learned trial Judge framed the following issues for determination of the suit :-

"1. Whether the alleged release deed by the plaintiff after receiving Rs.2 lakhs from the 2nd defendant is true?

2. Whether the settlement deed dated 27.08.2016 is valid and acted upon?

3. Whether the plaintiff is entitled to get preliminary decree for partition as prayed for?

4. Whether the plaintiff is entitled to get permanent injunction as prayed for?

5. To what relief?"

6. On the side of the plaintiff, she examined PWS 1 and 2 and marked Exs.A1 to A5. On the side of the defendants, they examined DWS 1 to 3 and marked Exs.B1 to B11.

7. On considering the oral and documentary evidence adduced by the respective parties and the submission made by both the learned counsel, the trial Court decreed the suit as prayed for. Aggrieved by the same, the present Appeal suit has been preferred by the defendants.



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8.The learned counsel appearing for the defendants submitted that the plaintiff failed to plead that the suit property is the ancestral property. Even according to the plaintiff, the suit property originally belonged to her grandfather and after the death of her grandfather, it devolved upon his two sons viz., the plaintiff's father and his brother. They had been in the possession and enjoyment of the suit property and patta had also been issued separately in favour of their respective shares. In fact, after the demise of the plaintiff and the second defendant's father, the plaintiff received a sum of Rs.2,00,000/- for relinquishment of her share in the suit property and also for getting compassionate appointment to the second defendant. He further submitted that the suit property is the self acquired property. As per Section 15 of the Hindu Succession Act, the plaintiff is entitled to have only 1/3 share in the suit property and prayed for modification of the judgment and decree passed by the trial Court.

9.Per contra, the learned counsel appearing for the plaintiff submitted that the suit property originally belonged to the plaintiff's grandfather and the same was derived by her father and his brother. Thereafter, they have been issued a separate patta and as such, admittedly, the suit property is the ancestral property. After the demise of their father, his share devolved upon his legal heirs viz., the plaintiff and the defendants 1 & 2. Therefore, the plaintiff is entitled to have 4/9 share in the suit property. The trial Court rightly allowed the suit and subsequently, no interference need to be entertained with the judgment and decree passed by the Court below by this Court.

10.Heard the learned counsel for the plaintiff as well as the learned counsel for the defendants.

11.The plaintiff is the sister of the second defendant and daughter of the first defendant in the suit. The third defendant is the wife of the second defendant. The only point raised by the learned counsel for the defendants is that the suit property is self acquired property and the plaintiff is entitled to have only 1/3 share in the suit property. Admittedly the suit property originally belonged to the grandfather of the plaintiff and after his demise, his sons viz., the father of the plaintiff and his brother derived the suit property. During their life time, they have been in the possession and enjoyment of the property and they were issued separate patta in respect of their respective possession and enjoyment of the property. Therefore, the property was ancestral one and during the life time of their father of the plaintiff and the second defendant, only they are having equal share in the suit property, in which, 3/9 share. That apart, after the demise of their father, his



share is devolved upon his legal heirs and as such, the plaintiff became entitled to have 4/9 share in the suit property. Though the plaintiff has got married in the year 1987 and as per Section 6 of the Hindu Succession Act, 1956 as amended by the Central Amendment Act 39/2005 and Tamil Nadu Amendment Act 1/90, the daughter became coparcener in respect of the ancestral property. Therefore, she is also entitled to equal share in the suit property. Accordingly, the trial Court decreed the suit as prayed for and this Court finds no infirmity or illegality in the judgment and decree passed by the trial Court.

In the result, the Appeal Suit is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
ASSISTANT REGISTRAR

TRUE COPY

SUB ASSISTANT REGISTRAR

sms
To

The II Additional District Judge,
Salem.

Copy to

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

+1cc to Mr.S.Kaithamalai Kumaran, Advocate Sr.32079
+1cc ot Mr.R.Subramanian, Advocate Sr.31657

A.S.No.242 of 2018
and
C.M.P.No.4223 of 2018

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