



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

A.S.NO.216 OF 2017

R.Chandrashekar

...Appellant/
1st Defendant

Vs

1. R.Ragupathy
2. R.Prem Kumar
3. R.Deepan Chakravarthy

...Respondents/
Plaintiffs/2nd & 3rd Defendants

PRAYER:

Appeal Suit filed under Section 96 of the Code of Civil Procedure to set aside the decree and judgment of the Learned Principal District Judge, Vellore in O.S.No.112 of 2013 dated 07.12.2016 and dismiss the O.S.No.112 of 2013 on the file of the Principal District Judge, Vellore.

For appellant : Mr.Bharath Chakravarthy
for M/s.Sai Bharath

For respondents : Ms.R.T.Sundari

JUDGMENT

The first defendant has approached this Court by way of this First Appeal, challenging the judgment and decree passed by the Principal District Judge, Vellore in O.S.No.112 of 2013. The parties are herein referred to in the same rank as before the trial Court.

2.Plaintiff case:-

The plaintiff had filed a suit in O.S.No.112 of 2013 for partition and separate possession of his 1/4th share in the suit schedule property. The property in question was a house measuring an extent of 2,295 sq. ft. comprised in S.No.120/1 in Rangapuram Village, Vellore District. It is a case of the plaintiff that he is the father of the first defendant through his 1st wife and the defendants 2 and 3 are sons through 2nd wife. All of them together constituted a Joint Hindu Family. The property in question traces its origin to an ancestral property.



3.The plaintiff would submit that he is a retired defence personnel. While in service, he had earned and saved money and wanted to construct a house on the site in question. Infact, the land was mortgaged to the military authorities as the plaintiff has availed a loan of Rs.5 lakhs. The plaintiff had constructed two portions of the house one in the front and one in the rear. The superstructure was constructed in the year 1985 at a cost of Rs.12,00,000/-. The plaintiff has demolished the old dilapidated house and reconstructed the terraced house in the suit property. He had discharged the entire mortgage debt.

4.The plaintiff had celebrated the marriage of the first defendant in the year 2006 and bride was non other than the plaintiff's sister's daughter. He had given a good education to his son and his son is now working as a Software Engineer, earning a sum of Rs.50,000/- per month. Till the marriage of the first defendant, the relationship was smooth. However, after the marriage, he had totally changed and developed hatred towards the plaintiff, in which conduct, he was ably assisted by his in-laws. The first defendant was living with his in-laws, wife and daughter in the portion of the suit property and he never permitted the plaintiff to live in the suit property. The plaintiff has sought the intervention of the third parties to resolve the disputes, since the suit property was indivisible and therefore, the same had to be sold. He had suggested that the sale price could be divided amongst the plaintiff and the defendants equally. He had also offered to purchase the entire house by paying the value of 3 shares to the defendants or in the alternative, the first defendant could purchase the entire suit property giving the market value to the other sharers. However, there was no response to the suggestions and the plaintiff issued a registered legal notice dated 24.08.2013. Despite receiving the said notice, the first defendant has not come forward for the settlement. Therefore, the first defendant has come forward with the present appeal.

5.The first defendant had filed a written statement inter alia contending that the property originally belonged to his paternal grandfather Ramasamy Naidu. He however denied that his father had spent money for the construction and he feigned ignorance of the mortgage in favour of the military authorities. The case of the first defendant was that the house was constructed out of the money given by his mother Muniyammal. His mother was worried that the father would ignore her and he shall only take care of the second wife's children as he had been married by then. The plaintiff and the other children had collectively taken a decision to put the first defendant in possession of the suit property. Therefore, there has been an



oral partition and the first defendant is an occupation of the portion allotted to him. The first defendant would state that he was always treated badly by the father. While the defendants 3 and 4 had schooling in premier institutions he had been sent to the local school. Likewise, the father had no thought of his marriage till he was 33 years old. It was only when the third defendant's marriage has been fixed, that he got the first defendant married to his sister's daughter. It is the contention of the first defendant that the father had not given him any education as stated by him and that he had completed his MCA out of his own earnings. The first defendant denied that he is living with his in-laws in the suit property. Further, the plaintiff had leased out a half of the property and was earning a rental income therefrom. He would submit that the contention of the plaintiff that the property is not indivisible is totally false. The defendants 2 and 3 had accepted the case of the plaintiff and sought for a partition of their 1/4th share.

6.The learned District Judge had framed issues as to whether the first defendant was entitled to a half share as claimed by him and whether the plaintiff was entitled to a 1/4th share as claimed by him.

7.The plaintiff has examined himself as PW.1 and marked Exs.A1 to A7. On the side of the defendants, the first defendant has examined himself as DW.1, examined one Krishnaveni as DW.2 and also marked Ex.B1.

8.The learned Judge disbelieved the contention of the first defendant that there was an oral partition since no proof to substantiate the same had been let in by the first defendant. Further, the first defendant had admitted that the property which included the house was the ancestral property of the plaintiff. Though the plaintiff had submitted that he had spent money for putting up the construction he had only sought for a 1/4th share in the suit property. Therefore, the learned Judge has decreed the suit as prayed for.

9.Challenging the said judgment and decree, the first defendant has filed the instant first appeal.

10.The points for consideration that arises in the above appeal is whether the first defendant has proved his case of oral partition thereby entitling him to a half share in the suit property.

11.The entire case of the first defendant rests on the plea that his mother had invested money for the construction of the superstructure and that there has been an oral partition between the parties, pursuant to which, he has been put in possession of



the property. To substantiate the above contention, admittedly the defendant has not let in any evidence either oral or documentary. The learned Judge has extracted the cross examination of the first defendant as DW.1, wherein he has admitted that the property belonged in his paternal grandfather and that his father namely the plaintiff had been working in the military. The witness has also admitted that at the time of the construction of the house he was a school going child. His further contention that his paternal grandmother had wanted the property to devolve on him has also not been substantiated. Therefore, in the absence of proof to show that the first defendant's mother had contributed money for construction of the house and that the parties had orally partitioned the property, the case of the first defendant cannot be accepted and the trial Court has rejected his contention. Once the defence case is disbelieved and the case of the plaintiff that the property being ancestral, belongs to the plaintiff stands proved, this Court holds that the trial Court has rightly decreed the suit. This Court does not find any reason to reverse this judgment and decree. Therefore, the First Appeal stands dismissed. There shall be no order as to costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vkr/gd

To

1. The Principal District Judge, Vellore.
2. The Section Officer,
VR.Section, High Court,
Madras.

+1cc to Mr.T.Saikrishnan, Advocate, S.R.No.48371
+1cc to Ms.R.T.Sundari, Advocate, S.R.No.48357

A.S.No.216 of 2017

KK(CO)
PM/29/10/2021