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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.11.2021

PRONOUNCED ON : 15.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

AS.NO.512 OF 2013

Latha

... Appellant/Plaintiff

Vs

1. Ramasamy (died)

2. Sakundala

(R1 - deceased - Substituting his
LR's is dispensed with vide order
of Court dated 31.08.2017 made in
Memo dated 30.08.2017 vide court
order dated 03.12.2019 in A.S.No.512/13)

... Respondents/Defendants

Prayer:- This Appeal Suit has been filed, under Order 41 Rule 1 read with Section 96 of CPC to set aside the judgement and decree, dated 06.04.2011, passed in OS.No.67/2009, by the District Court, Karaikal.

For Appellant : Mr.S.Sounthar

Respondents : R1-Dispensed With

: R2-No appearance

JUDGEMENT

1.This Appeal Suit has been filed, against the judgement and decree, dated 06.04.2011, passed in OS.No.67/2009, by the District Court, Karaikal.

2.The suit was filed, seeking a judgement and decree, permitting the Plaintiff to sue as an Indigent person, setting aside the partition deed, dated 09.08.1983 executed by the 2nd Defendant in favour of the 1st Defendant and for a preliminary



decree for 1/4th share of the Plaintiff in the suit property and for mesne profits.

3. The case of the Plaintiff, as set out, in the plaint is that the A-Schedule property originally belonged to one Govinda Maistry, who died on 08.09.1957, leaving his two sons, namely, the 1st Defendant and one Ponnaiyan, the father of the Plaintiff and the husband of the second Defendant and five daughters, namely, Pranambal, Nagarethinam, Achiammal, Rajamani and Baby. The daughters are not entitled to the estate and the sons are entitled to the estate equally. Ponnaiyan also died, leaving behind him the Plaintiff and the 2nd Defendant as his sole legal heirs and they filed a suit for partition in OS.No.10 of 1982 and it was decreed on 13.11.1982, which had become final. The Plaintiff was aged 5 years when the suit in OS.No.5 of 1982 was filed. The final decree proceedings were initiated by the Plaintiff and the 2nd Defendant. The 2nd Defendant, without any legal authority, had transferred all the rights of the Plaintiff by way of a partition deed in favour of the 1st Defendant on 09.08.1983. The said deed is not valid as far as the share of the Plaintiff's 1/4th share is concerned. The Plaintiff had filed a similar suit for cancellation of the document of partition deed, dated 09.08.1983 in OS.No.13 of 1998 and the same was tried and on a preliminary issue on the payment of court fee, this court directed to pay additional court fee vide judgement dated 04.09.1998. The Plaintiff filed a Revision against the said order in CRP.No.453 of 2001 and the same was dismissed on 22.2.2001. In the said suit, the Plaintiff had taken time from 22.11.1996 to 22.02.2001 till the copy of the order in CRP.No.453/2001 was signed by the registry on 18.06.2001 and it has to be deducted in view of Section 14 of the Limitation Act. The demand for partition was made to the 1st Defendant on many occasions, including by a notice dated 08.04.1996. In such circumstances, the suit has been filed, seeking reliefs, as stated above.

4. The case of the Defendants, as set out in the written statement, filed by the 1st Defendant is that the present suit filed for the same relief is barred by resjudicata, since there was already a suit for partition filed in OS.No.10 of 1982 filed by the 2nd Defendant as against the 1st Defendant and the Plaintiff and obtained their shares in the suit properties. The suit properties are in possession of third parties, pursuant to the sale. It was only a partition effected in pursuance of the preliminary decree in OS.No.10 of 1982. The said partition was effected by compromise and the entire family debt was paid by the 1st Defendant. The lands were sold by the Plaintiff and the 1st Defendant. The partition



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effected on 09.08.1983 was duly registered. The 1st Defendant had filed a suit for recovery of possession of her property on the east of his house in OS.No.14 of 1997. The Plaintiff had wrongly included the properties in the name of the mother of the 1st Defendant, that is item Nos.1 to 7 of the suit properties in which the Plaintiff has no right. The real date of birth of the Plaintiff is 05.04.1975. The Plaintiff has purposely given a wrong date of birth as if she had attained majority in the year 1996 in order to save the law of limitation. The present suit is barred by time. The second item of the property was already sold on 05.05.1973 itself. The similar suit filed for partition by the Plaintiff in OS.No.13 1998 was tried and dismissed and even the revision filed by the Plaintiff as against the dismissal order was also dismissed on 22.10.2001. In such circumstances, the suit is liable to be dismissed.

5. Before the Trial Court, on the side of the Plaintiff, Ex.A1 to Ex.A9 were marked and PW.1 was examined. On the side of the Defendants, Ex.B1 to Ex.B6 were marked and DW.1 was examined. The Trial Court had dismissed the suit. Aggrieved against the same, this Appeal Suit has been filed by the Plaintiff.
6. This Court heard the submissions of the learned counsel on either side.
7. The learned counsel for the Appellant has submitted that the Trial Court has not discussed the main issue and simply dismissed the suit, stating that the suit was barred by limitation and therefore, the suit is to be remanded back to the Trial Court for fresh disposal.
8. This Court considered the submissions of the learned counsel for the Appellant and also perused the materials available on record.
9. A perusal of the records shows that she has filed a suit in OS.No.13 of 1998 on 22.11.1996 for the same relief and that suit was dismissed on 04.09.1998 for want of proper court fee. Then, she preferred a revision petition and that petition was also dismissed on 22.10.2001. She has intentionally foregone her claim in the earlier proceedings. She has not stated why she has not pursued that suit and abandoned it. She has filed the present suit for the very same relief. Hence, the present suit is not maintainable, as per Order 2 Rule 2 of CPC. Therefore, there is no necessity to interfere with the impugned judgement of the Trial Court and this Appeal Suit is liable to be dismissed.



10. In fine, this Appeal Suit is dismissed. No costs.

Sd/-

Assistant Registrar (CS-IX)

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//True Copy//

Sub Assistant Registrar

Srcm

To

The District Judge,
Karaikal.

Copy To

The Record Keeper,
V.R. Section,
Madras High Court.

+1cc to Mr. S. Sounthar, Advocate, S.R.No.17654

AS.No.512 of 2013

SS (CO)

RLP (02/06/2022)