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AS. No.369 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MRS. JUSTICE N.MALA

AS. No.369 of 2015

Thulasimani

.. Appellant

Versus

1. Thangavel
2. Kalaimani
3. Unnamalai
4. Rajammal
5. Minor Mohan Kumar
Rep. by next friend and guardian
Thangavel
6. Pullar
7. Murugesan

.. Respondents

PRAYER: First Appeal filed under Section 96 of C.P.C., against the judgment and decree dated 23.03.2015 made in O.S.No.23 of 2013 on the file of the Additional District Judge, Dharmapuri.

For appellant	:	Mr.V.Nicholas
For respondents	:	Mr.C.Parthiban
for RR1 to 5	:	for Mr.M.V.Krishnan
for RR6 & 7	:	No Appearance



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JUDGMENT

(Judgment of the Court was delivered by S.S.SUNDAR, J)

This appeal is filed against the judgment and decree dated 23.03.2015 made in O.S.No.23 of 2013 on the file of the Additional District Judge, Dharmapuri.

2. The plaintiff in OS.No.23 of 2013 on the file of the Additional District Judge, Dharmapuri is the appellant in the above appeal. The plaintiff filed a suit for partition for her 5/16th shares and for consequential reliefs apart from seeking declaration of 2 gift settlement deeds executed in favour of the fifth defendant dated 13.12.2012 and 20.12.2012 as null and void and not binding on her. The suit is also for a declaration that the sale deed dated 13.12.2012 executed by the first defendant in favour of the fifth defendant and another sale deed dated 29.11.2022 executed by the first defendant in favour of the seventh defendant are null and void and not binding on the plaintiff.



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3. The plaintiff filed the suit as a daughter of the first defendant by referring to the genealogy in the following manner: One Unnamalai, who is the third defendant in the suit, is the mother of the first defendant by name Thangavel. The said Thangavel originally married one Dhanalakshmi. Since the first defendant had no issues with the said Dhanalakshmi, it is stated by plaintiff/appellant that according to customary practice, with the consent of Dhanalakshmi, he married one Palaniammal. It is further stated that the plaintiff and the second defendant are the two daughters of the said Palaniammal. As regards the suit properties, it is the case of the plaintiff that "A" scheduled properties are the ancestral properties of the first defendant and his father by name Munusamy Gounder. As regards "B" scheduled properties, it is stated that the first defendant purchased the same out of the income from the "A" scheduled properties.

4. The suit was contested by the first defendant on many grounds. Primarily the suit was resisted by him disputing the legal status of the plaintiff as his daughter. It is the specific case of the first defendant that Dhanalakshmi is his legally wedded wife and there is no marriage between the first defendant and the mother of the plaintiff. It is also the case of the first defendant that the first defendant is the absolute owner of "A" and "B" scheduled properties and he has every right to deal with the properties.



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5. After hearing both sides, the Trial Court specifically found that the plaintiff has not proved the marriage of the plaintiff's mother with the first defendant. Since the plaintiff has not filed any piece of paper to prove her status as a daughter out of a valid marriage between the plaintiff's mother and the first defendant, the Trial Court found that the plaintiff is not entitled to seek partition.

6. The Trial Court further held that even assuming that the plaintiff is the illegitimate daughter of the first defendant, as the properties are joint family properties of the first defendant, she cannot get any share in the property during the life time of the first defendant. Since the plaintiff is not entitled to claim any share in the suit scheduled properties in view of the specific finding on the legal status of the plaintiff, the Trial Court held that alienation of the suit properties by the first defendant by settlement or sale cannot be challenged by the plaintiff. Aggrieved by the judgment and decree of the Trial Court, the plaintiff has preferred the above appeal.

7. The learned counsel appearing for the appellant though vehemently argued that the Trial Court failed to look into the pleadings and evidence in a proper perspective, he is unable to demonstrate before this Court, how the



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finding of the Trial Court is erroneous, particularly with reference to the finding that the plaintiff has not proved the factum of marriage between the plaintiff's mother and the first defendant.

8. It is admitted that the said Dhanalakshmi is the wife of the first defendant and she was the living wife of the first defendant when alleged marriage with plaintiff's mother took place. The plaintiff has not even stated the date of marriage and whether it was before or after 1956. Be that as it may, the plaintiff's claim of legal status as daughter of the first defendant has to be proved by establishing the marriage of her mother with the first defendant in the manner known to law. In the absence of any evidence to prove the factum of marriage, the plaintiff ought to have examined her mother/Palaniammal to prove the marriage. However, she examined the said Dhanalakshmi as PW2, who is the wife of the first defendant. PW2 deposed that the marriage between the first defendant and the plaintiff's mother was solemnized in her house, whereas the plaintiff had deposed that their marriage was performed in a Temple, which is quite contradictory. PW2 is also an interested witness in the sense that the alienation by first defendant would also affect her right.

9. The Trial Court has given a finding against the appellant regarding



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factum of marriage by considering the evidence on record and circumstances that the plaintiff failed to prove the marriage of her mother with the first defendant. This Court is unable to interfere with the findings of the lower Court as the learned counsel appearing for the appellant is unable to rely upon any evidence to dislodge the findings of the Court below. Even if the plaintiff is accepted as the illegitimate daughter, she can not seek partition during the life time of her father nor challenge the alienation by the first defendant. Therefore, this Court finds no merit in this appeal. Accordingly, this appeal is dismissed and the judgment and decree dated 23.03.2015 made in O.S.No.23 of 2013 on the file of the Additional District Judge, Dharmapuri is confirmed. However, there is no order as to cost.

(S.S.S.R.J.) (N.M.J.)
09.11.2022

Speaking Order : Yes / No
Index : Yes / No
pvs

To
1. The Additional District Judge, Dharmapuri
2. The Section Officer,
V.R.Section, High Court, Madras



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