



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.11.2021

PRONOUNCED ON : 22.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

AS.No.950 of 2015
(Through Video Conferencing)

1.Malliga
2.Srinivasan
3.Nirmala
4.Dinesh Kumar

...Appellants/Defendants

Vs.

Durga Devi

...Respondent/Plaintiff

Prayer:-This Appeal Suit has been filed, Section 96 of CPC, against the judgement and decree, dated 04.08.2015, made in OS.No.107 of 2014 by the Principal District Judge, Krishnagiri.

For Appellant : Mr.C.Munusamy

For Respondent : Mr.C.Prabakaran

JUDGEMENT

1.This Appeal Suit has been filed, by the Defendants, against the judgement and decree, dated 04.08.2015 made by the Principal District Judge, Krishnagiri, in OS.No.107 of 2014, filed for partition of the suit properties into five equal shares and to allot 1/5th share to the Plaintiff and for separate possession and for injunction.

2.The case of the Plaintiff is that the 1st Defendant is the mother and the Defendants 2 and 4 are brothers and the 3rd Defendant is sister of the Plaintiff. The suit properties are the joint family and ancestral properties and the Plaintiff and the Defendants are in joint possession and enjoyment of the same. The marriage of the Plaintiff with one Prabakaran was an inter caste marriage. The father of the Plaintiff died on 29.07.2009. The name of the Plaintiff was not included in the legal heirship certificate obtained by the Defendants. The Plaintiff had been demanding for partition of the properties. Even in the panchayat held in the Village, the Defendants did not come forward for partition. Since the Defendants are



attempting to alienate the suit properties, the suit had been filed, seeking the reliefs, as stated above.

3. The case of the Defendants is that the description of the suit property is not correct and the relationship between the parties is admitted. The husband of the 1st Defendant, Murugesan died on 29.07.2009 and during his life time, the Plaintiff contracted an inter-caste marriage with one Prabhakaran, in 2007, in spite of protest raised by the family. Prior to her marriage, in the panchayat held in the Village, a family arrangement took place between the parties, allotting the suit property in favour of the Defendants and it was agreed that the Defendants should take care of the parents and hence, the Plaintiff is not entitled to claim partition of the same. Suppressing the said family arrangement, the suit had been filed. If for any reason, the court comes to the conclusion that the Plaintiff is entitled to any share in the properties, the Plaintiff will have to share the above said liabilities also. The suit is bad for non-joinder of the necessary parties and properties. The plaintiff is barred from claiming partition in respect of the house properties, as per the provision of Section 23 of Hindu Succession Act. In such circumstances, the suit is liable to be dismissed.
4. In the additional written statement, it is stated that after filing of the written statement, the description of the suit property was amended, by way of an interlocutory application and survey numbers are wrongly mentioned and hence, the suit is liable to be dismissed.
5. Before the Trial Court, on the side of the Plaintiff, Ex.A1 to Ex.A3 were marked and PW.1 was examined. On the side of the Defendants, DW.1 was examined. The Trial Court had decreed the suit, as prayed for. Aggrieved against the same, this Appeal Suit has been filed by the Defendants.
6. This Court heard the submissions of the learned counsel on either side.
7. The learned counsel for the Appellant has submitted that the Appellants and the Respondent had already made an oral partition in respect of the suit properties and the court below erred in not considering the said fact and erroneously decreed the suit. He would pray to allow this appeal and to remand the matter back to the trial court.
8. The learned counsel for the Respondents would submit that the court below, after perusal of all the records, came to the correct conclusion and that there is no necessity for interfering with the judgement and decree of the court below



and he would pray for dismissal of this first appeal.

9. This Court considered the rival submissions of the learned counsel on either side and also perused the materials available on record.

10. DW.1 had deposed that a family arrangement was made between the Plaintiff and the Defendants in the presence of Kuppammal, Susila and Selvam and as per the family arrangement as agreed by the Plaintiff, the suit property was allotted to her husband and other children. To prove the above said contention of DW.1, no one was examined. After perusal of the oral and documentary evidence, the court below came to the correct conclusion that the Plaintiff is entitled for partition as prayed for. Therefore, there is no necessity to interfere with the judgement and decree of the court below. Therefore, this Appeal Suit is liable to be dismissed.

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

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

Srcm

To

1. The Principal District Judge, Krishnagiri

2. The Section Officer, VR Section, Madras High Court

+1cc to M/s.C.Prabakaran, Advocate, S.R.No.12206

+1cc to M/s.L.P.Shanmugasundaram, Advocate, S.R.No.11783

AS.No.950 of 2015

SSD(CO)
RGA(05/05/2022)