



AS.No.552 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MRS.JUSTICE N.MALA

AS.No.552 of 2016
CMP.No14135 of 2017

Gayathri

Appellant

Vs

1. Kethari Narasimman
2. Vembu Mahalakshmi
3. Anuradha
4. Vasanthavalli
5. Malathi
6. Minor Bargavi, represented by R4(Guardian)
7. A.Ramakrishnan
8. R.Jaganathan
9. R.Kamatchi

Respondents

Prayer:- This Appeal Suit has been filed, under Order 41 Rule read with Section 96 of CPC, against the judgement and decree, dated, 13.06.2016, made in OS.No.18 of 2005, by the District Court, Tiruvannamalai.

For Appellant : Mr.M.Venkatakrisnan

For Respondents : Mr.B.Jawahar-R2
RR1, 3 to 9-No Appearance

JUDGEMENT

(Judgement of the Court was made by S.S.SUNDAR, J.)

1. The Appellant is the Plaintiff in OS.No.18 of 2005, on the file of the District



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Court, Tiruvannamalai. The Appellant filed the suit for partition and separate possession of her 6/9th share in all the suit properties and for consequential reliefs. The schedule of suit properties consists of 9 items, which are substantial properties situated in the Tiruvannamalai District.

2. The case of the Plaintiff is that the suit properties are the ancestral properties of the Plaintiff and the Defendants. According to the Plaintiff, the properties were acquired by the Plaintiff's great grandfather, one Veeraragava Iyer and that the Plaintiff's father, by name Vekatachari succeeded to the estate of Veeraragava Iyer. The suit properties then devolved on the three children of Venkatachari, namely, Bharadadevi, Bharathirajan and the Plaintiff's father by name, Bharatha Chakravarthy. Bharathidevi died intestate leaving behind him his only daughter, Vembu Mahalakshmi, the 2nd Defendant in the suit, as his legal heir. The paternal uncle of the Plaintiff, by name, Bharathirajan also died intestate, leaving behind him, his wife Vasanthavalli, his son Bharathanarayanan and his daughter Malathi as his legal heirs. Bharathanarayanan, son of Bharathirajan died leaving behind him his wife, by name, Anuradha and his daughter Bhargavi, as his legal heirs.
3. In view of the admitted facts and the final judgement that is proposed to be passed by this Court in this appeal, on hearing the learned counsel on either side, this Court is not inclined to go into the details of the facts in extenso.
4. Before the Trial Court, the Defendants relied upon a release deed executed by



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the 4th Defendant, namely, the wife of Bharathirajan, in favour of Defendants 5 and 6. Since it is alleged that the 6th Defendant, namely, the daughter of Bharathanarayanan and the grand daughter of the 4th Defendant, is a minor, and the 5th Defendant, who is also the daughter of the 4th Defendant is admittedly a mentally retarded person, the release deed said to have been executed by the 4th Defendant, representing the Defendants 5 and 6, was held to be invalid by the Trial Court.

5. From the pleadings, it is seen that the Plaintiff has not only claimed a share in the properties as the legal heir of Bharathachakravathy, but also on the basis of the registered release deed said to have been executed by the 4th Defendant representing the Defendants 5 and 6. Since the 4th Defendant had not obtained any permission from the Court to convey the property as a Guardian of the Defendants 5 and 6, the Trial Court held that the release deed is void. However, while holding that the release deed executed by the 4th Defendant is invalid, the Trial Court dismissed the suit in entirety.

6. The learned counsel for the Appellant submitted that the suit for partition cannot be dismissed merely because the release deed is held to be an invalid document. The said submission of the learned counsel for the Appellant is acceptable. The suit for partition is filed by the Appellant as the daughter of Bharathachakravathy, who is one of the two sons of Venkatachari. When it is not disputed that the entire property was inherited from Venkatachari, the



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Plaintiff's father, Bharathachakravarthy is entitled to 1/3rd share in all the suit properties. After the death of Bharathachakravarthy, the Plaintiff is also entitled to a share in the properties as a legal heir of Venkatachari. Merely because the document reveals that the Plaintiff is claiming more share under the release deed, the suit for partition as a whole cannot be dismissed by the Trial Court. In that view of the matter, this appeal has to be allowed. However, the matter has to be remitted back to the Trial Court for deciding whether the release deed is binding on the minor and the 4th Defendant as minor is an eo-nominee party.

7. The learned counsel for the Appellant submitted that this Court may also set aside the findings as regards the invalidity of the release deed said to have been executed by the 4th Defendant on behalf of the Defendants 5 and 6. The learned counsel pointed out that the release deed executed by the 4th Defendant, representing the right of the minor may not be invalid as the release deed is not questioned by the minor after attaining majority.
8. It is seen from Ex.A1 that the release deed was executed by the 4th Defendant for herself and also on behalf of the minor. Therefore, as per Section 8 of the Hindu Minority and Guardianship Act, the document is voidable. In the absence of any suit or counter claim to set aside the alienation by the minor, the document as a whole cannot be invalidated. Therefore, the learned counsel submitted that the findings of the Trial Court,



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in so far as the document Ex.A1 is concerned, may be set aside. Whether a document is void or voidable depends upon the terms of the document as held in several precedents. This Court is of the view that the findings of the Trial Court with regard to the validity of the document prima facie is also not based on sound principles and therefore, this Court relegate the parties to lead evidence on this issue before the Trial Court after remand. Though this Court is inclined to declare the share of the Plaintiff and the 1st Defendant as if there is no dispute, the learned counsel on either side represented that this may also be relegated to the Trial Court so as to enable the parties to lead evidence on all issues.

9. Having regard to the findings and the conclusions reached above, this Court is unable to sustain the impugned judgement and decree of the Trial Court and hence, this appeal is allowed, however, by remanding the matter to the Trial Court to decide the suit afresh.

10. In the result, this Appeal Suit is allowed. The impugned judgement and decree of the Trial Court is set aside. The matter is remanded back to the Trial Court to decide the suit afresh. The Trial Court shall permit the parties to lead evidence on the issue relating to the extent of validity of the document Ex.A1 said to have been executed by the 4th Defendant in favour of the Defendants 5 and 6. The Trial Court shall decide the suit afresh, after giving opportunity to both the parties to lead evidence on all issues. The parties shall appear



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before the Trial Court on 14.12.2022. No costs. Consequently, the connected CMP is closed.

11.The learned counsel on either side submitted that the court to which the matter has to be remanded, is the Additional District Court, Tiruvannamalai at Arani. The Registry is directed to verify the proper court having jurisdiction, to which the matter should be remanded and send the papers to the concerned jurisdictional Court, which would decide the suit afresh as indicated above.

(S.S.S.R.J.) & (N.M.J.)
16.11.2022

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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S.S.SUNDAR, J.
and
N.MALA, J.

Srcm

To

1. The District Court, Tiruvannamalai
2. The Record Keeper, VR Section, Madras High Court

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