



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.04.2022

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH
SA.No.644 of 2012
and MP No.1 of 2012

Jayabal ..Appellant/1st defendant in
Trial Court
Vs.

1. Anbukarasi

2. Raja

3. Muthulakshmi

4. Minor Surya
S/o.Kannan

5. Minor Maruthanayagam
S/o.Kannan

.. Respondents/Plaintiff
/Defendants 2 to 5

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree dated 06.01.2012 made in A.S.No.33 of 2011 on the file of the Court of the District Judge, Nagapattinam, confirming the Judgment and decree dated 06.10.2010 made in O.S.No.13 of 2009 on the file of the Court of the Principal Subordinate Judge, Mayiladuthurai.

For Appellant : Mr.P.Anbarasan

For Respondents: Mr.B.Jawahar for R1 and R2

JUDGMENT

The 1st defendant is the appellant in this second appeal.

2. The 1st respondent / plaintiff filed a suit seeking for the relief of partition and for allotment of 1/3rd share in the suit property.

3. The case of the plaintiff was that she is the daughter of one Pichai ammal alias Gandhimathi, who is the 2nd wife of one Ramu. Apart from the plaintiff, the 2nd defendant and one Kannan were also born to Pichai Ammal and the said Kannan died leaving behind his legal heirs viz defendants 3 to 5. The 1st defendant is the son of Ramu through his first wife.

The further case of the plaintiff is that the suit property



was purchased by his mother through a registered sale deed dated 03.02.1965, marked as Ex.A1. The said Pichai Ammal died on 08.08.2006 and to substantiate the same, the death certificate was marked as Ex.A2. In view of her demise, the plaintiff claims that he, the 2nd defendant and defendants 3 to 5 who are the legal heirs of deceased Kannan are entitled for 1/3rd share in the suit property. The grievance of the plaintiff was that the defendants were not coming forward to partition the suit properties and they were attempting to sell the suit properties including the share of the plaintiff and left with no other option, the suit was filed seeking for the relief of partition.

4. The 1st defendant filed a written statement which was adopted by defendants 3 to 5. They took a stand that the suit property was purchased by the father of the 1st defendant out of his own earnings and was in possession and enjoyment of the property. The mother of the plaintiff viz., Pichai Ammal executed a Will dated 23.03.1985 in favour of her husband. After the demise of Pichai Ammal, her husband Ramu became the absolute owner of the property. Thereafter, the said Ramu executed a Will on 30.08.1991 marked as Ex.B9 in favour of the 1st and 2nd defendants and the deceased Kannan. On his demise, they became the absolute owner of the suit property. Accordingly, the defendants questioned the share claimed by the plaintiff and sought for the dismissal of the suit.

5. The 2nd defendant filed a written statement and sailed along with the claim made by the plaintiff.

6. Both the Courts below on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, decreed the suit in favour of the plaintiff and passed a preliminary decree in the partition suit. Aggrieved by the same, the 1st defendant has filed this Second appeal.

7. Heard Mr P.Anbarasan, learned counsel for the appellant and Mr.B.Jawahar, learned counsel for the respondents 1 and 2 and this Court also carefully perused the materials available on record and the findings of both the Courts below.

8. Both the Courts below took into consideration the fact that Pichai ammal had sufficient means to purchase the suit property. Subsequently, she is said to have executed a Will in favour of her husband and there was no requirement for Pichai ammal to execute such Will if she is not the absolute owner of the suit property. This Will which is said to have been executed in favour of the husband Ramu was not even filed by the 1st defendant. In the absence of the Will dated 23.03.1985 exhibited on the side of the 1st defendant, the 1st defendant cannot claim a right based on Ex.B9 Will



executed by his father. Under such circumstances, both the Courts below concurrently held that the suit property absolutely belonged to the above said Pichai ammal and her legal heirs viz., the plaintiff, 2nd defendant and the legal representatives of the deceased Kannan, will be entitled for 1/3rd share in the suit property.

9. In the considered view of this Court, the findings rendered by both the Courts below is based on appreciation of oral and documentary evidence and this Court does not find any perversity in those findings. In any event, no substantial question of law is involved in this second appeal.

10. In the result, this Second Appeal is dismissed. Considering the facts and circumstances of the case and the relationship between the parties, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

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To

1. The District Judge, Nagapattinam

2. The Principal Subordinate Judge,
Mayiladuthurai.

Copy To:-

The Section Officer
VR Section, High Court
Madras.

+1 cc to Mr.B.Jawahar, Advocate Sr.NO.28319

+1 cc to Mr.P.Anbarasan, Advocate Sr.NO. 28103

SA.No.644 of 2012

SSN(CO)

A.SK(19/05/2022)