



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.02.2022

Coram:

THE HONOURABLE Mr.JUSTICE N.ANAND VEKATESH

S.A.No.756 of 2012

1.C.M.Mani
S/o.late Manickam

2.Arukkani
W/o.C.M.Mani

..Appellants/Defendants

.Vs.

N.Rukmani
W/o.Nagendran

..Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 09.01.2012 made in A.S.No.57 of 2011, on the file of the III Additional Subordinate Judge, Erode confirming the judgment and Decree dated 14.07. 2010 made in O.S.No.38 of 2008, on the file of the First District Munsif at Erode.

For Appellants : Mr.V.Anandhamoorthy

For Respondent : Ms.NS.Tanvi
for Mr.D.Nagasaila

JUDGMENT

The defendants are the appellants in this Second Appeal. The respondent/plaintiff filed a suit to declare the Settlement Deed dated 05.02.2007, executed by the 1st defendant in favour of the 2nd defendant as null and void and for a partition and allotment of half share in the suit property.

2.The case of the plaintiff is that the suit property which is a dwelling house measuring an extent of 300 sq.ft., situated in a land measuring 630 sq.ft., originally belonged to



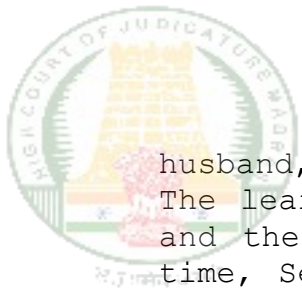
her father Manickam. The plaintiff and the 1st defendant are sister and brother. The further case of the plaintiff is that her father died intestate and on his demise, she is entitled for her half share in the suit property. She insisted for her share from the 1st defendant. In the meantime, the 1st defendant had executed a Settlement Deed in favour of his wife, who is the 2nd defendant and settled the entire property. Aggrieved by the same, the present suit was filed.

3.The main defense that was taken by the 1st defendant is that subsequent to his father's death, he has paid a sum of Rs.25,000/- [Rupees twenty five thousand only] to the plaintiff and the plaintiff has also relinquished her share in the suit property. Therefore, according to the 1st defendant, the plaintiff is not entitled for any share in the suit property and had sought for the dismissal of the suit.

4.The trial Court on considering the facts and circumstances of the case and on appreciation of evidence held that the Settlement Deed executed by the 1st defendant in favour of the 2nd defendant on 05.02.2007 is null and void. The trial Court also passed a preliminary decree and directed allotment of half share in favour of the plaintiff.

5.Aggrieved by the judgment of the trial Court, the defendants filed an appeal. The lower Appellate Court on considering the oral and documentary evidence and also the findings rendered by the trial Court, found that there is no evidence to show that the 1st defendant had paid any money to the plaintiff and thereby the plaintiff relinquished her share in the property. The lower Appellate Court also found that the plaintiff and the 1st defendant are entitled for half share each and that the 1st defendant is entitled to execute a Settlement Deed with respect to his half share and therefore, the entire Settlement Deed cannot be declared as null and void. Therefore, the lower Appellate Court upheld the Settlement Deed insofar as the half share that was conveyed by the 1st defendant in favour of the 2nd defendant. However, insofar as the preliminary decree is concerned, the lower Appellate Court confirmed the findings of the trial Court. Aggrieved by the same, the defendants have filed the present Second Appeal.

6.The learned counsel for the appellants submitted that the suit property is a dwelling house measuring an extent of 300 sq.ft., in which, the appellant and his family members are residing and hence, the learned counsel submitted that the plaintiff who had married long back and residing with her



husband, will not be entitled to any share in dwelling house. The learned counsel submitted that the father of the plaintiff and the 1st defendant died on 01.06.1993 and at that point of time, Section 23 of the Hindu Succession Act, 1956 was in force and this provision specifically barred the female heir, who is married from claiming any right in the dwelling house. Therefore, the learned counsel submitted that the plaintiff is not entitled for any share in the suit property.

7. There is no dispute with regard to the fact that the suit property belonged to the father of the plaintiff and the 1st defendant. There is also no dispute with regard to the fact that the father died intestate leaving behind the plaintiff and the 1st defendant as his legal heirs. It is true that Section 23 of the Hindu Succession Act, 1956 which was a special provision dealing with dwelling house, barred the female heirs from claiming any partition of the dwelling house until the male heirs chose to divide their respective shares in the dwelling house. This bar was equally applied to the daughter also and in fact her right of residence in the dwelling house was recognized only until she gets married and once she marries, her right of residence in the dwelling house was also taken away provided that she had not separated from her husband or she had not been deserted by her husband or where she becomes a widow.

8. Section 23 of the Hindu Succession Act was omitted by the amendment Act in the year 2005 with effect from 09.09.2005. By virtue of this omission, the female heirs will be entitled to seek for a partition even insofar as dwelling houses are concerned and the bar was entirely removed. The present suit was filed by the plaintiff in the year 2007. As on the date of filing of the suit, there was no bar for the plaintiff to seek for a partition of the dwelling house and to claim her half share.

9. Insofar as the findings of both the Courts are concerned, this Court does not find any ground to interfere with the same. The lower Appellate Court has rightly held that the plaintiff is entitled for half share in the property and that the Settlement Deed that was executed by the 1st defendant in favour of the 2nd defendant can be upheld insofar as his half share in the suit property is concerned. Hence, this Court does not find any perversity in the findings of both the Courts below. There is no substantial question of law involved in the present Second Appeal.



10. By virtue of the preliminary decree passed by the trial Court and which has been upheld up to this Court, the half share of the plaintiff in the suit property has been recognized. Ultimately, since the property in question is a dwelling house, it will always be left upon to the trial Court to take appropriate decision during the final decree proceedings by keeping in mind the fact that the suit property is a dwelling house. The partition Act itself provides for the manner in which the division of property can be made and in some cases, it is possible to determine the value of the property and allot the share by means of payment of money. A wide discretion is available to the trial Court to balance the equities during the final decree proceedings while dealing with the allotment of share in the dwelling house. This Court need not delve much upon the manner in which the share should be allotted in the final decree proceedings.

11. In the result, this Second Appeal is dismissed. Considering the facts and Circumferences of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

KP
To

1.III Additional Subordinate Judge, Erode.

2.First Additional District Munsif, Erode.

Copy to:

The Section Officer

V.R.Section, High Court, Madras.

+1cc to M/s.D.Nagasaila, Advocate SR.No.9418

+1cc to Mr.V.Anandhamurthy, Advocate SR.No.9154

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VG II(CO)
CB(14/03/2022)