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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AS.No.410/2018
[Virtual Mode]

Marie Philomine .. Appellant/Plaintiff
Vs.

1.Mariya Susainathan @ Philominathan

2.Pomey Mary

3.Noyal Mary

4.Marie Josphine

5.Jhesindha @ Andhasu

6.Rosali

7.Immanuel Raja .. Respondents/Defendants

Prayer:- Appeal Suit filed under Section 96 r/w Order XLI Rule 1 of Civil Procedure Code to set aside the judgment and decree dated 12.01.2018 in O.S.No.17/2012 on the file of the Court of the learned District Judge at Karaikal and consequently decree the Suit in O.S.No.17/2012.

For Appellant : Mr.T.Sai Krishnan

For Respondents : Mr.J.Zea Kumar,
For M/s.Achari & Antoni Associates for R1

R2 & R5 Notice Served - No Appearance

R3- Unclaimed

R6-Refused

RR4 & R7 died.

JUDGMENT

- (1) The plaintiff in the Suit in O.S.No.17/2012 on the file of the learned District Judge at Karaikal is the appellant in the Appeal Suit.



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- (2) The appellant filed the Suit in O.S.No.17/2012 for partition and for declaration, declaring that she is entitled to a share of 0.09.32 hectares in the Suit property which is described as a property measuring to an extent of 0.41.00 hectares comprised in R.S.No.67/10, O.S.No.225/1B, corresponding to new T.S.No.13/1 and 13/2 in Keezhakasakudy Revenue Village within the municipal limits of Karaikal in Karaikal region.
- (3) The case of the appellant in the plaint is that the Suit property originally belonged to one Kuzhandaisamy the father of plaintiff and defendants 1 to 5. It is the further case of plaintiff that said Kuzhandaisamy during his life time, when he was in sound state of mind, executed a registered Will on 23.02.1977 in respect of the Suit property. It is further stated that the said Will came into force on the death of plaintiff 's father on 01.02.1980.
- (4) It is stated that as per Will, the testator created life estate over the Suit property in favour of his wife who died on 09.03.1981. It is contended further that the Suit property devolved on the persons in favour of whom the testator had bequeathed the Suit property. It is the specific case of the plaintiff that her father bequeathed an extent of 0.09.20 hectares to each of his three sons and to an extent of 0.06.70 to each of his two daughters. Therefore, it is stated by the plaintiff that after the death of her father and her mother, she is entitled to seek partition of her share as per the Will.
- (5) It is also stated that one of his brother by name Amalorbawanathan @ Anthonysamy died on 19.06.1991 and another brother by name Fransuwa @ Arokiyanathan died on 22.01.2005 as unmarried and issueless and therefore, the property that were bequeathed in favour of her deceased brothers devolved on their brothers and sisters. In the plaint, it is also stated that the plaintiff came to know that the 1st defendant was trying to sell the property by dividing the property as house sites. It is also stated that she came to know thereafter that Sale Deeds have been executed by their father in favour of the 1st defendant and 5th defendant on 23.02.1978.
- (6) Stating that the Sale Deeds stated to have been executed by their father are null and void, as they were obtained by dominating the Will of executor by collusion and fraud played by the defendants 1 and 5, the plaintiff has come



forward with the Suit for partition and declaration of her share as given under the Will.

- (7) The Suit was contested mainly on the ground that the father during his life time had executed the Sale Deeds and therefore, the plaintiffs' claim on the basis of the Will dated 23.02.1977 is unsustainable.
- (8) The defendants actually filed independent Written Statement raising several issues, to non suit the appellant. It is contended that the Suit is barred by limitation as the plaintiff has come forward with the Suit for declaration decades after the Sale Deeds were executed by her father. It is also contended that the Sale Deeds dated 23.02.1978 were executed for valid consideration and that the plaintiff has no right to question the independent sale. The 4th defendant in the Suit is also sailing along with the plaintiff/appellant and contented that she is also entitled to a share as per the Will.
- (9) The Trial Court framed an issue whether the plaintiff and the four respondents are entitled to declaration of their share as per the Will executed by their father prior to the Sale Deed.
- (10) The Trial Court found that the father Kuzhandaisamy had executed the Sale Deeds dated 23.02.1978 for valid consideration. It is also held that the Suit is barred by limitation. Though the Will stated to have been executed by the father is also admitted, in view of the subsequent alienation by the father himself in favour of other defendants, the Trial Court refused to grant any relief to the appellant. As against the judgment and decree of the Lower Court, the present Appeal Suit is preferred by the plaintiff.
- (11) Learned counsel appearing for the appellant submitted that the Trial Court erred in dismissing the Suit when the plaintiff had established before the Trial Court by evidence that the Sale Deeds were not voluntarily executed and that it was by exercising undue influence and coercion. Learned counsel submitted that the Sale Deeds were executed without any consideration. Learned counsel also submitted that the findings on the question of limitation is not sustainable as the Suit itself was filed within three years from the date of knowledge about the Sale Deeds.



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performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specifically declares to be fraudulent.

Explanation.-- Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech."

- (15) The plaintiff has not pleaded any of the circumstances which would support her case of fraud while defendants 1 and 5 getting the Sale Deed from the testator. Even with regard to undue influence or collusion absolutely there is no factual foundation in the plaint. Learned counsel appearing for the appellant strenuously argued that the Sale Deed is without any consideration. The documents namely, the Sale Deeds, are marked as Exs.B1 and B4. Exs.B1 and B4 refers to passing of consideration and the amount paid has been shown as consideration and the father who executed the document specifically acknowledged the receipt of consideration under the respective Sale Deeds.
- (16) Learned counsel appearing for the appellant suggested that the value of the property has been shown in the Will as Rs.3000/- whereas the two Sale Deeds had been executed for a sum of Rs.400/- and 2000/- respectively. The plea that was raised by the plaintiff in the plaint that the Sale Deeds are without consideration appears to be for the reasons that values shown in the two Sale Deeds are less than the value shown in the Will. The argument is not legally sustainable.
- (17) The grounds raised challenging the findings of the Lower Court on the questions of limitation cannot be appreciated. Though the plaintiff pleaded that she came to know about the Sale Deed at a later point of time the Sale Deeds were executed in the year, 1977 during the life time of father. This Court is unable to accept the case of plaintiff that she came to know about the Sale Deeds only in 2012 just prior to the filing of the Suit.
- (18) The Trial Court has given cogent reasons to hold that the Suit is barred by limitation. It is admitted that the defendants 1 to 5 are in possession of the Suit property.



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The plaintiff is out of enjoyment or possession. This does not explain why the plaintiff did not ask for partition or declaration for a long time. The findings of Trial Court are based on proper appreciation of evidence and are well founded. This Court is unable to interfere with the findings of Lower Court on facts particularly when it is not brought to the notice of this Court how they are perverse or without considering material pleadings or evidence.

- (19) As a result, the Appeal Suit stands dismissed and the judgment and decree of the Trial Court dated 12.01.2018 in O.S.No.17/2012 on the file of the Court of the learned District Judge at Karaikal is confirmed. No costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

cda

To

1.The District Judge at Karaikal.

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

+1cc to Mr.T.Saikrishnan, Advocate SR.No.1543

+1cc to Mr.Achari & Antoni Associates, Advocate SR.No.1281

AS.No.410/2018

SSD(CO)
GN(09/03/2022)