

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2022

C O R A M

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.NO.471 OF 2022
AND C.M.P.NO.9603 OF 2022

D.Jayaprakash ...Appellant / Plaintiff

Vs.

1.Indirani

2.Kannan

3.Sasikala

4.Navaneetha Varadan

5.Chithra ...Respondents / Defendants

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code praying to set aside the judgment and decree dated 21.12.2021 made in A.S.No.23 of 2012 on the file of the Principal District Court, Tiruvallur, confirming the judgment and decree dated 28.07.2011 made in O.S.No.172 of 2008 on the file of the Sub Court, Tiruvallur by allowing this second appeal.

For Appellant : Mr.N.Manoharan

J U D G M E N T

The plaintiff in a suit for partition is the appellant before this Court, challenging the dismissal of the suit with reference to Item 2 of the suit properties.

2. The parties are referred to in the same status as before the Trial Court.

3. The plaintiff had filed O.S.No.172 of 2018 on the file of the Subordinate Court, Thiruvallur for partition claiming 1/6th share in the suit schedule properties. Item-1 of the suit schedule properties is a house, bearing Door No.19, Vallalar Street, Periyakuppam and Item No.2 of the suit schedule properties is a Marriage Hall, bearing Door No.57, Sriperumbudur Road, Manavala Nagar.

4. It is the case of the plaintiff that the suit properties are joint family properties of late Deenadayalan Naidu. The Marriage Hall in Manavala Nagar has been purchased from and out of the sale proceeds of the properties allotted to Deenadayalan Naidu. He died intestate on 19.12.1997 leaving behind him surviving his wife and 5 children, of whom, the plaintiff is his son, first defendant is his wife, defendants 2 and 4 are his other sons and defendants 3 and 5 are his daughters. On his demise, his wife and children became the joint owners of the suit properties. In the meanwhile, the plaintiff's mother, Amaravathi died on 19.10.2003 and therefore, the plaintiff and the defendants were entitled to 1/6th share each in the suit schedule properties. Therefore, he sought to have the suit properties divided. Hence, a legal notice was issued on 16.09.2002 to the defendants seeking partition. Since they have not come forward to partition the properties, the plaintiff has filed the suit in question.

5. The written statement was filed by the defendants 1, 2 and 4 and the same was adopted by defendants 3 and 5. The defendants would contend that the said Deenadayalan Naidu was employed in Integral Coach Factory and out of his own earnings, he purchased few properties, which included the suit properties and that some properties were sold by him even during his life time. Item No.2 of the suit schedule property in question was purchased by the said Deenadayalan Naidu under a Sale Deed dated 07.01.1991. Thereafter, he constructed a marriage hall from and out of his own earnings. The said Deenadayalan Naidu had executed a Registered Sale Deed dated 17.09.1992, giving a life estate to the defendants 2 to 4 and an absolute right to their children. The plaintiff was very much aware about the said Will. The defendants would contend that the plaintiff was a spend thrift and started leading a wayward life. The intention of the father to provide a business to the plaintiff so as to enable him to have a good future had also failed. In fact, the plaintiff's wife had also left him on account of his wayward life and his addiction to alcohol. Late Deenadayalan Naidu had in fact settled a house property on the plaintiff under a Registered Sale Deed 29.08.1994, which was sold away by the plaintiff. The defendants would further submit that the plaintiff had expressed his desire to purchase a house for himself, for which he had no money, and to help him the second and fourth defendant had provided the money. Thereafter, in the year 2002, the plaintiff had fallen sick and the fourth defendant had spent amounts for his medical expenses. After recovering and in recognition of the help rendered by the defendants 2 to 4, the plaintiff had executed an Agreement dated 30.08.2003, which was styled as a family arrangement. Despite the above, the plaintiff has come forward with the suit. Therefore, they sought for dismissal of the suit.

6. The Trial Court, after considering the evidence on both sides, decreed the suit with reference to Item 1 of the suit properties and dismissed in respect of Item II of the suit properties.

7. As regards as item 2 of the suit properties, the plaintiff has filed an appeal in A.S.No.23 of 2012 challenging the dismissal of the suit in respect of Item-II of the suit properties. However, the defendants too have challenged the said decree in respect of Item-1 of suit properties by filing A.S.No.24 of 2012. The appeals were filed before the learned Principal District Judge, Tiruvallur. The learned Judge dismissed both the appeals, by her common judgment and decree dated 21.12.2021. Challenging the dismissal of his Appeal No.23 of 2012, the appellant/plaintiff is before the Court.

8. The Courts below, relying upon the evidence of the attesting witnesses P.W2 and P.W3, held the Will to be a valid one, since the plaintiff has not been able to establish any suspicious circumstances surrounding its execution. The Tribunal has taken note of the fact that since his father had earlier settled a property in favour of the plaintiff, the suit II Item was given to the children of the defendants 2 and 4 with life interest being granted to the defendants 2 and 4.

9. The main ground of challenge to the judgments of the Courts below is that the Will has not been properly proved by the defendants and that it is shrouded in suspicious circumstances. The Courts below have considered the same and held that the Will has been executed by the said Deenadayalan Naidu in a sound disposing state of mind. It is an admitted fact that the deceased Deenadayalan Naidu was employed in the Integral Coach Factory. The plaintiff has not pleaded as to the income that has contributed for the purchase of II Item of the suit properties. The plaint is silent about the same. Though the plaintiff had stated that Item II of the suit properties was purchased from and out of the sale proceeds of the lands allotted to the said Deenadayalan Naidu, the same has not been established by the plaintiff. The plaintiff, after the evidence was re-opened by the orders of this Court in C.M.A.No.2356 of 2013, has marked Ex.A5, which is the partition deed of the year 1965 executed amongst Deenadayalan and others. The II Item of the suit properties has been purchased in the year 1991. The plaintiff has not established that the properties which are covered in the Partition Deed-Ex.A5, is the source of income for the construction of the Marriage Hall. Both the Courts below in detail have considered the evidence of record and I see no reason to disagree with them. Accordingly, the second appeal is dismissed, as no substantial question of

law has been made out. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

// True Copy //

Sub Assistant Registrar

srn

To

1.The Principal Judge,
Principal District Court,
Tiruvallur.

2.The Subordinate Judge,
Sub Court, Tiruvallur.

+1cc to Mr.N.Manokaran, Advocate Sr.No.37995

S.A.No.471 of 2022
and
C.M.P.No.9603 of 2022

GPL (CO)
RVM(13/07/2022)