



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.11.2021

PRONOUNCED ON : 11.02.2022

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

A.S.No.406 of 2014

and

M.P.No.1 of 2014

R. Vijayalakshmi

. ... Appellant/Plaintiff

Vs.

1. Chandrasekhar

2. Soundariammal

3. Bala Pavitra

4. M. Hari Prakash

5. H. Krithika

6. The Competent Authority Special District Revenue Officer,
26, Co-operative Colony, 1st street,
Krishnagiri – 635 001.

... Respondents/Defendants

PRAYER: This Appeal Suit is filed under Section 96 C.P.C., to set aside the Judgment and Decree dated of the learned I Additional District Judge, Salem dated 21.10.2013 in O.S.No.99 of 2008.

For Appellant : Mr.Bala Ganesh

for Mr.T.M. Hariharan

For Respondents : Mr.I. Abrar Md.Abdullah for R3-R5

Assisted by Mr.Gunasekaran

For R1, R2 & R6 : No appearance



WEB COPY

J U D G M E N T

This appeal is filed challenging the Judgment and Decree in O.S.No.99 of 2008 dated 21.10.2013 of the learned I Additional District Judge, Salem. The plaintiff is the appellant before this Court and the parties, for the ease of understanding, are referred to in the same litigative status as before the trial Court.

2. The case of the plaintiff is as follows:

The plaintiff had filed the suit for a partition and permanent injunction.

(a) The plaintiff would submit that originally the suit properties belongs to one Rajaram Reddiyar who is the father of the plaintiff and 1st defendant is the husband of the 2nd defendant. Her father died on 19.01.1987. On 17.09.2007, the 1st defendant called the plaintiff to come to her native village to effect a partition deed. Immediately, she along with her mother went to Omalur Registration Office and they were made to wait



in the car and the 1st defendant obtained signatures from both of them in the car itself and she was not given opportunity to read the contents of the document. At Salem Sub-Registrar Office, signatures of the plaintiff were obtained for which no money have been given to the plaintiff. No time is given to her to peruse the documents. On 12.12.2007, she was handed over a settlement deed in original and xerox copy of the documents. After perusal of the same, it was understood that all the properties of her father have been changed into the name of the 1st defendant and only 10 cents of land given to her. It is stated that 23 cent of lands was acquired in S.No.73/1A by the 6th defendant without serving notice to her and she is having 1/3rd share in the said property.

3. The defendants 3 to 5 remained exparte before the trial court.

4. The case of the 1st defendant is as follows:

The first defendant had filed a written statement denying the allegations contained in the plaint that by making false representation to the



plaintiff, he has obtained the signatures in the documents as if they are the partition deed and transferred the properties in his favour. On the advise of the plaintiff, the 1st defendant has made arrangements with the document writer to draft sale deed, settlement deed and release deeds. The plaintiff is a well educated woman and after knowing the contents of the documents only, she has subscribed her signatures. On 17.09.2007 due to disputes between the political parties, the Sub- Registrar of Omalur was asked to stop all the registration by 3.30 p.m., and also the plaintiff refused to stay for some more time and hence they registered the sale deed, settlement deed and release deeds on the same day. After receiving the sale consideration, the plaintiff and 2nd defendant left the office and after execution of registered release deed, he has sold 0.22 acres of land in S.No.84/2A, 0.01 acre in S.No.84/3A, 0.67 acres to one K. Subramaniam on 28.07.2009. Thereafter, K. Subramaniam is in possession and enjoyment of the said properties and he is the necessary party in the suit. The court fee paid is not proper and necessary party has not been impleaded and also the description of the properties is not correct.



WEB COPY

5. The 2nd defendant has filed a written statement supporting the averments of the plaintiff.

6. The 6th defendant has filed written statement stating that a notification under Section 3A(1) of National Highways Act 1956 was published in the Government Gazette and the name of the plaintiff does not find place in the village accounts and hence no notice was sent to her. Further the defendants 1 and 2 were in possession and enjoyment of the lands and Rs.7,00,451/- was paid to them as compensation. He would therefore seek to have the suit dismissed.

7. Issues of the Trial Court:

The I Additional District Judge, Salem, had framed the following issues:

“a) Whether the plaintiff has executed the sale deed in favour of defendants 3 to 5 voluntarily after receiving sale consideration?”



b) Whether the plaintiff and 2nd defendant have executed the release deed voluntarily in favour of the 1st defendant?

c) Whether the plaintiff is entitled for 1/3rd share in the item 1 of the suit properties?

d) Whether the plaintiff is entitled for 1/3rd share in the item 2 of the suit properties?”

8. Additional Issues:

“a) Whether the court fee paid is proper and whether the suit is bad for non-joinder of necessary parties?

b) To what other relief the plaintiffs are entitled for ?”

9. The plaintiff had examined herself as PW1 and Exs.A1 to A13 were marked. On the side of the defendants, the first defendant had examined himself as DW1 and marked Exs.B1 to B5 in support of their case.

10. The trial court has dismissed the suit with costs. Challenging the same, the appellant is before this Court.



WEB COPY

11. The learned counsel for the appellant has submitted that the 1st defendant played a fraud and almost the entire property were allotted to him. The entire claim of the 1st defendant is based on the allegation on panchayat. But the Panchayatars are not examined. Also, by misrepresentation signatures were obtained. No amounts were paid and she signed the documents without knowing the contents. The Judgment and Decree of trial court are not in confirmity with law, weight of evidence and the probability of the case. Therefore, she prays that this appeal may be allowed.

12. In this case, the appellant has not marked the partition deed of her father. For that, no proper explanation was given by her. The perusal of Ex.A2 shows that the property was self-acquired property of the 2nd defendant. Therefore, she cannot claim share in the property. On perusal of records, it is seen that Ex.A3 shows that the 2nd defendant has acquired the property on 04.12.1991 through partition deed. So, the appellant is not entitled to seek partition in that land. Moreover, A1 sale deed was executed



by plaintiff and defendants 1 and 2. It is also recited that all the three executants have jointly received a sum of Rs.6,63,000/- as a sale consideration. Ex.A4 and Ex.A5 are the release deeds executed by the plaintiff and defendants. It is recited that the plaintiff and 2nd defendant have received Rs.1,54,250/- for Ex.A4 and Rs.1,28,500/- for Ex.A5. But she has not examined any witness to disprove the same. The burden of proof lies on the plaintiff. She stated that those documents were executed on the basis of misrepresentation. She has signed in the document. To prove her contention, she has not examined any witness. Sale deed in her favour was not included in the plaint schedule. That documents are also not produced by her. For the legal notice, no reply has been given by the appellant/plaintiff. The suit suffers for want of impleading the necessary parties. In this case, PW1 failed to prove her case.

13. Considering the oral and documentary evidence, the Court below has rightly dismissed the suit and this Court finds no grounds to set aside the judgment and decree of the learned I Additional District Judge, Salem. For the foregoing reasons, the appeal deserves to be dismissed and opines



that no interference of this Court is required.

WEB COPY

14. In the result, the first appeal stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

11.02.2022

Index : Yes/No
Internet: Yes/No
gv

To

1.The I Additional District Judge, Salem.

2. The Section Officer,

V.R.Section, High Court of Madras.



WEB COPY



A.A.NAKKIRAN.,J.

gv

A.S.No.406 of 2014
and
M.P.No.1 of 2014

11.02.2022