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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.858/2018

[Virtual Mode]

1.M.Srinivasan

2.B.Annapoorani

...Appellants / Defendants

Vs.

1.Annamalai

2.Hari

...Respondents / Plaintiffs

Prayer :- Appeal Suit filed under Section 96 CPC and Order 41 Rule 1 CPC against the judgment and decree passed in OS.No.260/2009 by the learned Principal District Judge, Kancheepuram District at Chengalpattu dated 12.12.2017.

For Appellants : Ms.Anitha for Mr.R.Iyappan

For Respondents : Mr.V.Ramana Reddy

JUDGMENT

- (1)The above Appeal Suit has been preferred by the defendants in the suit in OS.No.260/2009 on the file of the learned Principal District Judge, Kancheepuram.
- (2)The respondents herein, as plaintiffs filed the suit in OS.No.260/2009 for partition and separate possession of their 2/4th share in the suit property. The suit property is an extent of about 58 cents comprised in S.Nos.192/3 and 192/4 in Pudupakkam Village, Thiruporur Sub Registration District.
- (3)It is the case of the plaintiffs that the suit property which is described as a Nanja land, is the absolute property of the plaintiffs' mother Tmt.Amma Kannammal and that she acquired the said property by virtue of a Sale Deed dated 16.02.1970. Stating that Tmt.Amma Kannammal died intestate in the year 1998, the plaintiffs came forward with the suit for partition as the legal heirs of the deceased Tmt.Amma Kannammal.



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(4) The suit was contested mainly by the 2nd defendant by filing a detailed written statement which was adopted by the 1st defendant. It is the case of the 2nd defendant that the father of plaintiffs and defendants died in the year 1982 while the 2nd defendant was very young. Though Tmt.Amma Kannammal had managed her family and celebrated marriages of the 2nd plaintiff and defendants, it is stated that the 2nd defendant had some physical problem, for which the mother was always worrying.

(5) It is the further case of the 2nd defendant that their mother had advised all her sons that the suit property should be given to the 2nd defendant as sridhana. It is further stated that all the three brothers agreed to this course and that therefore, they handed over the suit property to the 2nd defendant immediately after the death of their mother Tmt.Amma Kannammal.

(6) It is further stated that the marriage of the 2nd defendant was celebrated later on 23.06.1993. It is on the basis of such oral arrangement, the 2nd defendant contested the suit on the ground that the suit property is under the exclusive possession and enjoyment of the 2nd defendant and that she is alone the absolute owner of the property. It is also stated by the 2nd defendant that she had settled the suit property to her minor daughter by a registered document dated 06.07.2009. It was further contended that the daughter of the 2nd defendant has filed another suit in OS.No.401/2009 before the District Munsif Court, Chengalpattu, against the plaintiffs.

(7) The Trial Court framed a specific issue, whether the suit property was given as sridhana to the 2nd defendant at the time of marriage, and found that the 2nd defendant miserably failed to prove her case regarding the settlement / arrangement as pleaded by the 2nd defendant. Though no ground was raised in the written statement, during the course of argument, it was suggested before the Court that Tmt.Amma Kannammal had one more son by name Shankar and that, he had not been impleaded as a party. The Trial Court, by relying upon the admission of PW1 during his cross-examination that the plaintiffs had one more brother by name Shankar and that he was not impleaded as a party as his whereabouts are not known, granted a decree for 2/5th share by stating that such course would meet the ends of justice. Except granting the decree for partition, the suit was dismissed as regards the prayer for permanent injunction restraining the defendants from alienating the suit property. Aggrieved by the said judgment and decree, the present Appeal Suit is preferred by the defendants.



(8) It is unfortunate to note that in the Memorandum of Grounds, several grounds are raised without touching the issues on the basis of which the decree is challenged. Except stating that the 2nd appellant herein is in continuous possession of the suit property for more than 16 years and that the daughter of the 2nd appellant had not been impleaded as a party in the suit, no other specific ground is raised challenging the findings of the Trial Court.

(9) In the said circumstances, this Court has to consider the following points:-

[i] Whether the suit property was given as sridhana to the 2nd defendant at the time of her marriage?

[ii] Whether the suit is bad for non joinder of the daughter of the 2nd defendant?

(10) Regarding the first point, the Trial Court has discussed the available evidence and found that the 2nd defendant has failed to prove her case regarding delivery of property to the 2nd defendant as sridhana by the other members of the family. It is not the case of the appellants that the property was given to the 2nd defendant by the mother herself during her lifetime. The 1st defendant was examined as DW1. Even the 2nd defendant did not go to box to substantiate her case. It appears that the 1st defendant is the author of the written statement. Except the document-Ex.B1, which is the Sale Deed executed in favour of Tmt.Amma Kannammal and the patta under Ex.B2 in the name of Tmt.Amma Kannammal, no other document is produced before the Court below by the defendants. The documents produced on the side of the defendants, namely, Exs.B1 to B3, are only the Xerox copies. Ex.B3 is the Xerox copy of the Settlement Deed executed by the 2nd defendant in favour of her daughter. None of these documents will show the exclusive possession of the 2nd defendant over the suit property or the relinquishment by brothers. It is to be seen that the Settlement Deed was executed just few days prior to the filing of the suit. Though four witnesses were examined, no ground is raised relying upon the nature of evidence given by the witnesses. In such circumstances, this Court has no valid reason to interfere with the findings of the Lower Court.

(11) As regards the second point, the suit is for partition of plaintiffs' 2/4th share in the suit property. It is not a suit for declaration of title in respect of the whole property. The alleged Settlement Deed under Ex.B3 was executed only by the 2nd defendant in favour of her daughter. The plaintiffs are not parties to the document and hence, they are not bound by the recitals in the Settlement Deed - Ex.B3. The 2nd defendant as a co-owner, is entitled to 1/4th share and hence, she is



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entitled to dispose of her interest in favour of her daughter. Since the Settlement Deed-Ex.B3 may be valid in respect of the share of the 2nd defendant, the plaintiffs cannot be non-suited on the ground of non-joinder of the daughter of the 2nd defendant as a party to the suit.

(12) The learned counsel for the appellants submitted that the plaintiffs are not in joint possession and therefore, the plaintiffs ought to have paid ad-valorem Court fee in stead of fixed court fee.

(13) This Court is able to see that the point was never raised before the Trial Court. The issue that was framed in the Trial Court was whether the suit had been properly valued for the purpose of Court fees. Since the issue itself was regarding valuation of the property and not Court fee paid by the plaintiffs, this Court is unable to consider the issue without proper pleadings. Even assuming that the plaintiffs are entitled to raise a ground in this appeal, this Court is unable to consider the same as the appellants/defendants have not proved the exclusive possession of the 2nd defendant over the suit property.

(14) By way of supplementary argument, the learned counsel for the appellants submitted that the suit has been decreed in respect of 2/5th share by accepting the case that the plaintiffs have failed to implead one another brother of the plaintiffs by name Shankar.

(15) It is to be noted that there is no plea regarding non-joinder of any sharer to the suit in the entire written statement. The argument appears to have been developed taking lead from the deposition of PW1 during cross-examination about one of the sons of Tmt.Amma Kannammal. It is the case of PW1 that the whereabouts of the other brother is not known to anybody. In the absence of any specific grounds raised in the written statement, this Court is unable to consider the same in this appeal suit to tilt the balance. If the appellants have raised a specific ground in the Grounds of Appeal for 1/4th share, this Court would have considered the issue more seriously. In the absence of any other valid ground, this Court is unable to sustain any of the arguments advanced by the learned counsel for the appellants.

(16) In view of the foregoing discussion, this Court has no hesitation to hold that there is no merits in this Appeal. Hence, the Appeal Suit fails and is liable to be dismissed. Accordingly, the same is dismissed confirming the judgment and decree dated 12.12.2017 passed in OS.No.260/2009 by the learned Principal District Judge, Kancheepuram District at



Chengalpattu. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS-VIII)

Sub Assistant Registrar

AP

To

1.The Principal District Judge,
Kancheepuram at Chengalpattu.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.R.Iyappan, Advocate, Sr.No.1275

+1cc to Mr.V.Ramana Reddy, Advocate, Sr.No.1175

A.S.No.858/2018

SS(CO)
RVM(30/03/2022)