



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2022

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

A.S. (MD) .No.130 of 2019

WEB COPY

1.Sumathi @ Fragrance

2.Ebanazar

3.Mettilda Rajkumari

... Appellants/ Defendants 1 to 3

Vs.

1.Bimla Nesa Rajkumari

...Respondent No.1/Plaintiff

2.Amirtha Bai

3.Samul Paul Raj

4.Jacob Paul Raj

5.Selwin Paul Raj

6.Rajan Paul Raj

7.Charlet Gnana Bai

8.John Leeban

9.Jesaiyan

10.Jeyachandra Sekar

11.Devaraj

12.Ponnaiyan

... Respondent Nos.2 to 12

Defendants No.4 to 14

Prayer : This Appeal Suit is filed under Section 96 of the Civil Procedure Code, to set aside the judgment and decree dated 27.09.2018 made in O.S.No.22 of 2011 on the file of the learned Principal District Judge, Kanniyakumari District, at Nagercoil.

For Appellant : Mr.K.N.Thampi

For R1 : Mr.S.Meenakshi Sundaram
for Mr.N.GA.Natraj

For R11 : Mr.N.Dilipkumar

For R9 : Mr.G.Aravinthan

For R2 to R7, R10

and R12 : Ex parte

For R8 : No appearance



J U D G M E N T

This Appeal Suit has been preferred challenging the judgment and decree of the learned Principal District Judge, Kanyakumari District at Nagercoil, dated 27.09.2018, made in O.S.No.22 of 2011.

2.The appellants are the defendants 1 to 3 in the suit. The first respondent / plaintiff has filed the suit for partition; the plaintiff and the husband of the first defendant, namely, Deva Arul Raj Kumar are children of Late Dennison Raj; Dennison Raj died on 07.08.1978 leaving his wife Kanaga Leela, daughter the plaintiff herein, and his son Deva Arul Raj Kumar as his legal heirs. The son of Dennison Raj, namely, Deva Arul Raj Kumar died on 20.05.1979 leaving his wife and children who are defendants 1 to 3 as his legal heirs; the mother of the plaintiff and the deceased Deva Arul Raj Kumar died on 13.05.1990; during the life time of the mother of the plaintiff, she executed a gift deed in respect of item Nos.1 to 3 on 03.10.1980; since the said Kanaga Leela has got only 1/3 right over the items 1 to 3, she could have passed only that right in favour of the plaintiff; the plaintiff being the legal heir of her father Dennison Raj is entitled to 1/3 share in item Nos.1 to 3 and by virtue of the gift deed executed by her mother, she became entitled to another 1/3 and totally 2/3 share in item Nos.1 to 3; in respect of other items, she has got 1/2 share along with her brother's legal heirs, namely, defendants 1 to 3; since the defendants denied the right of the plaintiff over the suit properties, she has filed the suit for partition.

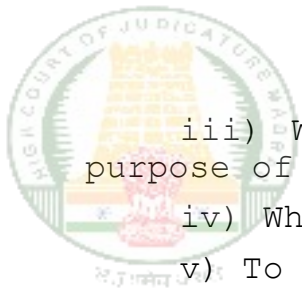
3.The appellants/defendants 1 to 3 have contested the suit by stating that the plaintiff does not have any title or share in the suit properties; it is further claimed that item Nos.4 to 6 have been given to the first defendant in lieu of dowry; the first defendant's mother had executed a sham and nominal sale deed in favour of the Dennison Raj and hence, the plaintiff cannot derive any right from her father; hence, the suit should be dismissed.

4.The other defendants are the purchasers of the properties from defendants 1 to 3; the defendants 10 to 13 alone filed a statement stating that they have purchased the property *bonafidely* and they are *bonafide* purchasers from the second defendant;

5. On the basis of the above pleadings, the learned trial Judge has framed the following issues:-

i) Whether the suit properties are joint family properties?

ii) Whether the plaintiff is entitled to the relief of partition as prayed for?



- iii) Whether the suit claim had been valued properly for the purpose of Court fees and jurisdiction?
- iv) Whether the suit as framed is maintainable?
- v) To what other relief, the plaintiff is entitled to?

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6. During the course of the trial, the plaintiff got examined herself as P.W.1 and Ex.A1 to Ex.A9 were marked. On the side of the defendants, the defendants 1, 10, 11 and 13 examined themselves as D.W.1 to D.W.4 and Ex.B1 to Ex.B12 were marked.

7. At the conclusion of the trial, on considering the evidence available on record, the learned trial Judge had decreed suit by way of passing a final decree in favour of the plaintiff in respect of her entitlement over 2/3 share in item Nos.1 to 3 and 1/2 share in item Nos.4 to 6; however, an observation has been made in respect of item No.6 that the plaintiff would be having only the mortgagor's right. Aggrieved over the same, the defendants 1 to 3 have preferred this Appeal Suit.

8. Heard Mr.K.N.Thampi, learned counsel appearing for the appellants and Mr.N.Dilipkumar, learned counsel appearing for the first respondent.

9. The learned counsel for the appellants/defendants 1 to 3 submitted that the first respondent/plaintiff is in no way related to the property and she is not aware of the location, survey number or boundaries of the properties; the concept of joint family is unknown to Christian Law; the parties belong to Christian Religion; but, the learned trial Judge has wrongly framed the issue as to the existence of the joint family; the earlier suit filed by the plaintiff was left to be dismissed for default and that was not taken into consideration by the trial Judge; the appellants have perfected their title by way of adverse possession and the right of the plaintiff in the suit property got ousted; it is wrong on the part of the trial Court to pass a preliminary decree for partition in favour of the plaintiff.

10. The learned counsel for the first respondent/plaintiff would submit that admittedly, the suit item Nos.1 to 5 were self-acquired properties of the plaintiff's father - Dennison Raj; being his daughter, the plaintiff has got every right to get a share in his properties; the learned trial Judge has rightly observed that the defendants have not taken the plea of ouster and proved the same; no plea of adverse possession can also be taken against the co-owner like the plaintiff; the learned trial Judge has dealt the issues correctly and passed a decree in favour of the plaintiff and



it does not require any interference.

11. Based on the above submissions, I feel that the following points for consideration are essential to decide this Appeal Suit:

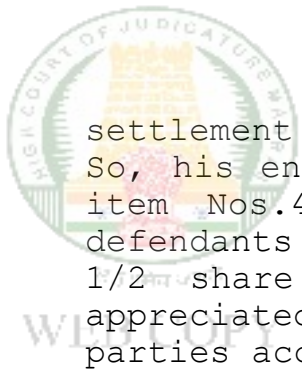
(i) Whether the plaintiff is entitled to the relief of partition as claimed by her as the legal heir of her father Late Dennison Raj?

(ii) Whether the preliminary decree for partition and separate possession passed by the trial Judge is fair and proper?

12. The fact that the original owner of the suit properties is Late Dennison Raj, is not disputed. The relationship between the parties is also not denied. The plaintiff is the daughter of Late Dennison Raj and the first defendant is the wife of one Deva Arul Raj Kumar, who is son of Late Dennison Raj. The defendants 2 and 3 are the children of the first defendant and Deva Arul Raj Kumar. The suit item Nos.1 to 3 were acquired by the father of the plaintiff - Dennison Raj in the year 1949 itself by virtue of a family partition. There is no dispute on that point also. The suit item No.4 was purchased by the Dennison Raj by virtue of Ex.A1 sale deed dated 04.03.1971. Item No.5 was also purchased by the Late Dennison Raj on 02.02.1978 by virtue of Ex.A2 sale deed dated 02.02.1978. In respect of Item No.6, Dennison Raj has obtained a mortgage from one Kamalabai on 02.02.1978 (Ex.A3). After the demise of Dennison Raj on 07.08.1978, his legal heirs, namely, his wife Kanaga Leela, his son Deva Arul Raj Kumar and his daughter, the plaintiff herein have inherited the suit properties.

13. The mother of the plaintiff - Kanaga Leela has executed a settlement deed in her favour on 03.10.1980 and the same is marked as Ex.A4. Though the settlement deed has been executed for the entire extent in item Nos.1 to 3, the mother of the plaintiff was being one of the legal heirs of LateDennison Raj, she could pass title in respect of her 1/3 right in item Nos.1 to 3. It cannot be denied that plaintiff as daughter is entitled to 1/3 share. Along with 1/3 right, she acquired through the gift deed dated 03.10.1980, her share in respect of item Nos.1 to 3 got enhanced to 2/3 share and the son of Dennison Raj, Deva Arul Raj Kumar is entitled to 1/3 share.

14. Deva Arul Raj Kumar predeceased his mother by leaving his wife and children as his legal heirs. So his share in the suit properties would have been inherited by defendants 1 to 3. After the demise of Kanaga Leela, share of Deva Arul Raj Kumar in respect of items 4 and 5 would be enhanced to 1/2 share. So far as item Nos.1 to 3 are concerned, the mother had already executed the

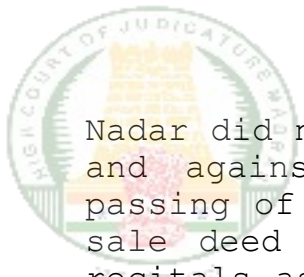


settlement deed in respect of her right in favour of the plaintiff. So, his entitlement to 1/2 share would be applicable in respect of item Nos.4 and 5. Since Deva Arul Raj Kumar had died, the defendants 1 to 3 would inherit 1/3 share in item Nos.1 to 3 and 1/2 share in item Nos.4 and 5. The learned trial Judge has rightly appreciated the above facts and worked out the shares of respective parties accordingly.

15. However, it is claimed by the appellants/defendants 1 to 3 that the plaintiff had abandoned her right in the suit properties and she settled at Chennai. It is further submitted that she never visited the suit properties and her evidence would show that she was not even aware of its location and description and other details. So, it is claimed by the appellants that the plaintiff had abandoned her right in the suit properties.

16. The learned counsel for the first respondent/plaintiff submitted that the plaintiff being the daughter of Dennison Raj is a lawful co-owner of the suit properties and the said right cannot be denied, just because the defendants were allowed to be in possession of the suit properties. The learned trial Judge has also rightly pointed out that the defendants had not pleaded ouster and let in any evidence to that effect. Since the appellants did not deny their relationship with the plaintiff and the fact that she is a lawful legal heir of the original owner Dennison Raj, their possession over the suit property would be for themselves and also on behalf of the other co-owner, namely, the plaintiff also. Even if the plaintiff is not in direct possession of the suit properties, the possession of the defendants would be considered as joint possession along with the plaintiff also. In fact, the cause of action of the suit itself has arisen only because the appellants/defendants have denied the right of title and possession of the plaintiff. So, the right of the plaintiff to claim partition in respect of the properties belonged to her father, cannot be denied.

17. It is further submitted by the learned counsel for the appellants/defendants 1 to 3 that item No. 4 was given as security for dowry at the time of first defendant's marriage with Deva Arul Raj Kumar, in favour of the Dennison Raj. On perusal of Ex.A1 - sale deed, dated 04.03.1977, it is seen that its recitals are like that of a regular sale deed and it does not make any mention about the security, viz., dowry etc. It is claimed by the learned counsel for the appellants that the vendor in Ex.A1 - sale deed, viz., Chinna Thambi Nadar is the father of the first defendant. Had the sale deed, dated 04.03.1977 (Ex.A1) been executed only as a security for dowry or just as a sham and nominal document, its validity ought to have been questioned by the executant within three years from the date of its execution. Admittedly, Chinna Thambi



Nadar did not challenge the sale deed by stating that it was illegal and against the public policy. Under such circumstances, the passing of title in favour of the Dennison Raj by virtue of Ex.A1 - sale deed cannot be denied now. In the absence of any specific recitals as to any other interest than the saleable interest of the seller, no adverse intention can be inferred, in contravention to Section 91 and 92 of the Indian Evidence Act.

18. In a similar fashion, it is stated that Ex.A6 is the mortgage deed executed by the mother of the first defendant in favour of Dennison Raj and the plaintiff cannot derive any right in respect of item No.6 also. Admittedly, item No.6 was not owned by the father of the plaintiff, namely, Dennison Raj; so, that property cannot be subjected in a suit for partition, though the plaintiff might claim interest of the mortgagee through inheritance. Barring item No.6, the plaintiff's share in respect of item Nos.1 to 5 has been rightly arrived and settled by the learned trial Judge. Thus, Point Nos.1 and 2 are answered accordingly.

19. In the result, this Appeal Suit is partly allowed and the judgment and decree, dated 27.09.2018, made in O.S.No.22 of 2011 on the file of the Principal District Judge, Kanyakumari District, is confirmed in respect of allotment of the shares in respect of item Nos.1 to 5 and the preliminary decree for partition and separate possession of plaintiff 2/3 share in items 1 to 3 and 1/2 share in items 4 and 5 is passed. The suit is dismissed in respect of item No.6 alone. No cost.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

cp

To

1.The Principal District Judge,
Kanyakumari District, at Nagercoil.

2.The Section Office,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

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+1 CC to M/s.N.GA.NATRAJ, Advocate (SR-13687[F] dated 23/03/2022)

+1 CC to M/s.K.N.THAMPI, Advocate (SR-13661[F] dated 23/03/2022)

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+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-13970[F] dated 23/03/2022)

+1 CC to M/s.G.ARAVINTHAN, Advocate (SR-14058[F] dated 24/03/2022)

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22.03.2022

RD(07.04.2022) 7P 8C