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A.S.No.247 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.247 of 2021
and
C.M.P.No.12204 of 2021

1.P.H.Noorjahan

2.H.Hamim

... Appellant

Vs.

1. Mrs.Mohideen Fathima.

2.Mrs.Hajira

3.G.H.Thajunnissa

... Respondents

Prayer:- Appeal is filed under Section 96 of C.P.C to set aside the judgement and decree column No.1 dated 24.07.2019 in O.S.No.2278 of 2017 on the file of the Principal Judge, City Civil Court, Chennai.

For Appellant : M/s.N.Saravanan

For Respondents : M/s.V.Anugha for M/s.M.Fakkir
Mohideen for R.1 and R.2.

: Not ready in notice [R.3]



A.S.No.247 of 2021

WEB COPY

JUDGEMENT

The defendants 1 and 2 before the Principal Judge City Civil Court, Chennai in O.S.No.2278 of 2017 are the appellants before this Court challenging the decree for partition passed by the Principal Judge. The facts are herein below set out briefly with the parties being referred to in the same ranking as before the Trial Court.

Plaintiff's case:-

2. It is the case of the plaintiff that the suit schedule property belonged to their mother Kairunnissa Beevi who had purchased the same under a registered sale deed dated 15.02.1973 out of her own funds. She had passed away on 23.05.2006 leaving behind her surviving the plaintiffs and the husband of the 1st defendant. Their father had pre-deceased their mother. Therefore, on the death of their mother, the plaintiffs and the late husband of the 1st defendant succeeded to the property of their mother.



A.S.No.247 of 2021

WEB COPY

3. The plaintiffs would submit that their brother Hayat Basha, after the demise of their mother had fallen seriously ill and had to be hospitalized. On his recovery, the plaintiffs had met their brother and requested him to partition and grant them their share in the suit property. The said Hayat had informed the plaintiffs that he had instructed his wife, the 1st defendant herein and his children the 2nd and the 3rd defendants and that it would be done at the earliest. Thereafter, their brother had once again fallen ill and ultimately died on 23.08.2014.

4. The plaintiffs had waited for six months after the death of their brother and thereafter approached the 1st defendant and asked her for their due share in the suit schedule property. However, the 1st defendant had abused them and sent them away. The plaintiffs had attempted to mediate a solution which had also ended in a failure.



A.S.No.247 of 2021

WEB COPY

5. The plaintiffs thereafter came to know that the defendants had let out the ground floor, 2nd floor and the 3rd floor of the suit schedule property and were collecting a rent of over Rs.30,000/- per month from April 2006. Since the defendants were not coming forward to amicably settle the issue, the plaintiffs had issued a legal notice dated 21.11.2016 and the 1st defendant alone received the legal notice but issued no reply. The defendants 2 and 3 refused to receive the notice.

6. The plaintiffs would submit that as per Muslim law a woman legal heir of a deceased muslim is entitled to one share while a male legal heir is entitled to two shares and therefore, the plaintiffs are entitled to 1/4th share each in suit schedule property as per the Mohammeden law of inheritance.



A.S.No.247 of 2021

WEB COPY

7. The plaintiffs would submit that their mother had not executed any Will/ mortgage deed or sale/ created any encumbrances in respect of the suit property. Once again, the plaintiffs had issued a notice dated 23.11.2016, calling upon the defendants to come forward to partition the property. However, there was no response to the said notice as well. The plaintiffs would submit that the defendants are collecting nearly Rs.30,000/- per month towards rent and the defendants are therefore liable to pay Rs.15,000/- per month to the plaintiffs towards the plaintiffs' share. Further 4 and 1/2 sovereign gold jewellery which was left behind by their late mother is in the hands of the 1st defendant and that also has to be partitioned. Therefore, the plaintiffs have come forward with this suit for partition.



A.S.No.247 of 2021

Defendant's Case:-

WEB COPY

8. The 1st defendant alone had filed a written statement inter alia denying the claim of the plaintiffs and contending that the claim that the suit property was purchased by the plaintiffs' mother, Kairunnissa Beevi from out of her own funds is absolutely false. The plaintiff's mother did not have any wherewithal to purchase the property.

9. Further, the father of the plaintiffs K.Adam had also left his home and was living in a Dargah like a saint and it was the 1st defendant's husband who had discontinued his education and had joined the business and was taking care of his mother and sisters. He was running the family business, a Gutka shop from the year 1965 and had developed the business and gained money. He had provided the funds and purchased the property in the name of his mother, Kairunnissa Beevi. The allegation that the construction had been put up by the savings of the mother of the plaintiffs is also stoutly denied.



A.S.No.247 of 2021

WEB COPY

10. It is the further case of the 1st defendant that in the year 1980-81 when the plaintiffs were minors and the 1st defendant's husband was doing business, during his free time, he used to do betting at the race course and had earned money from the betting which was also utilized for the family's welfare. It is with this money that the superstructure had been put up. The 1st defendant would submit that as per plaintiffs mother's wish, the 1st defendant's husband had not married till the age of 33. It is the case of the 1st defendant that her husband had arranged the marriage of the 1st plaintiff providing her with adequate jewelry and dowry. The 2nd plaintiff was physically challenged and it was difficult for the 1st defendant's husband to get a groom for the 2nd plaintiff.

11. It is the further case of the 1st defendant that her husband had decided to get married only at the age of 33 for the sake of his family



A.S.No.247 of 2021

and accordingly he had married the 1st defendant. The 1st defendant would further submit that she was a graduate whereas her husband was only a 5th standard pass. She was informed by her mother-in-law that she need not bother about her husband being just a 5th standard pass since he was earning considerable money through the business and also through the rental income. It was with this assurance that the 1st defendant entered into her matrimonial home.

12. The 1st defendant would submit that disputes arose in the year 1987 when her mother-in-law Kairunnissa Beevi had proclaimed that after her demise it is only the 1st defendant's husband would get the property and that the plaintiffs were not entitled to any share in the suit property subject to the condition that the 1st defendant husband got his sister the 2nd plaintiff married. Though the mother in law had agreed to give the entire property to the 1st defendant's husband, he had denied the offer as it was against the Mohamadden Law. Thereafter, the



A.S.No.247 of 2021

1st defendant's husband arranged a suitable alliance for the 2nd plaintiff. She would submit that she had given a hand loan for over a sum of Rs.170,000/- to the 2nd plaintiff during the marriage of the 2nd plaintiff's daughter. These facts have not been set out in the plaint.

13. The allegations regarding the conversation between the plaintiffs and their late brother regarding the partition of the properties were denied by the 1st defendant. She would further submit that during the medical treatment of her husband, there was no help from his sisters and she had to borrow a sum of Rs.20,00,000/- from one Kannan by depositing the original title deeds of the property.

14. The sum and substance of the defence was that the plaintiffs were not entitled to any share in the suit property since the same had been purchased and constructed upon using the money of the 1st defendant's husband. The 1st defendant would also contend that the



A.S.No.247 of 2021

ground and the 1st floor are occupied by the defendants and the 2nd and the 3rd floor which were built out of the funds of the 1st defendant was let out. The 1st defendant had retired from the government service and it is only out of the rent of Rs.4,000/- the Equated Monthly Installments were being paid. She had also denied possessing her mother-in-law's jewelry and on the contrary, stated that the plaintiffs had taken away all the jewelry of her mother-in-law. The 1st defendant, therefore, sought for the dismissal of the suit.

Trial Court:

15. The learned Principal Judge, City Civil Court, Chennai had framed the following issues:-

- 1. Whether the plaintiffs are entitled for their share in the suit property and partition?*
- 2. Whether the plaintiffs are entitled for future mesne profit as prayed for?*
- 3. To what other relief?*



A.S.No.247 of 2021

WEB COPY

16. The 1st plaintiff had examined herself as P.W.1 and Ex.A.1 to A.8 were marked. On the side of the defendants, the 1st defendant had examined herself as D.W.1 and Ex.B.1 to B.6 were marked.

17. The learned Trial Judge, on considering the evidence on record held that the defendants, contrary to the documents had come forward with a case that though the property was purchased in the name of Kairunnissa Beevi, it was the late husband of the 1st defendant who had provided the funds for the purchase and for the construction of the house. However, the defendants have not let in any shred of evidence to prove their contention.

18. The learned Judge held that the defendant had not proved any of their pleadings and considering the fact that Ex.A.1 sale deed stood in the name of Kairunnissa Beevi and after her death, the property had



A.S.No.247 of 2021

WEB COPY

devolved as per Mohamadeen Law on her daughter and her son. The defendants had not proved adverse possession and that apart there is no plea also to this effect. Therefore, the learned Judge considering the Mohamaden Law had allotted a 1/4th share each to the daughters and the 1st defendant's husband as the son got a 2/4th share. The learned Judge had negatived the case with reference to the B Schedule property as there was no proof let in by the plaintiffs to prove the availability of the jewelry. The learned Judge had also granted liberty to the plaintiffs to work out the mesne profits payable from the date of plaint till possession under Order 20 Rule 12 of CPC in the final decree proceedings. Aggrieved by this judgement and decree the defendants are before this Court.



A.S.No.247 of 2021

WEB COPY

Points for Consideration:

19. The point for consideration that arises for consideration in the above First Appeal is :-

" Whether the defendants have proved that the consideration for the purchase of the property and the construction thereon is that of the 1st defendant's husband and therefore, the plaintiffs are not entitled to a decree for partition?"

20. Heard the counsels and perused the records.

Discussion:-

21. The counsel for the appellants/defendants had vehemently contended that the property has been purchased by the 1st defendant's husband out of the income earned by him from his business. There is no pleading to show what was the age of the 1st defendant's husband



A.S.No.247 of 2021

on the date when the property was purchased. There is also no proof to show as to what was the business that had been carried on by the 1st defendant's husband. On the contrary, the 1st defendant in her written statement had stated that her husband had dis-continued his studies and joined the family business which clearly indicates that the family had a business and was earning income through the said business. Therefore, since the father had deserted them it can be presumed that the mother was taking care of the business and out of the income earned therefrom had purchased the property and put up construction thereon.

22. The learned counsel for the appellant had also contended that P.W.1 in her cross examination has admitted that in the year 1978 only the ground and the 1st floor of the suit property had been constructed and thereafter in the year 2002 the other two floors had been constructed which would only go to show that the same had been put up by the husband of the 1st defendant. This Court is unable to



A.S.No.247 of 2021

WEB COPY

appreciate this argument since the defendants have come forward with a contention that it was the husband of the 1st defendant who had contributed not only for the construction but also for the very purchase of the property in the year 1978. The 1st defendant has not pleaded as to when her husband had started his career/business and further whether he had turned a major and started taking care of the business. In the absence of any positive evidence on the side of the 1st defendant who has pleaded that the construction and purchase is made out of the funds provided by her husband, this Court can only come to the conclusion that the property in question is a self-acquired property of the mother of the plaintiffs and since she had died intestate the plaintiffs and the 1st defendant's husband being her legal heirs are entitled to the shares as prescribed in the Mohamadeen Law.

23. The concept of joint family is alien to the Mohammadeen law. Therefore, since there is no evidence on the side of the defendants



A.S.No.247 of 2021

to prove that the 1st defendant's husband had contributed for the purchase of the property, the contention of the plaintiffs that the suit property is the individual property of the said Kairunnissa Beevi has to be upheld and therefore, the claim of the defendants for an exclusive possession has to necessarily be rejected.

24. Therefore, the point for consideration is answered in favour of the plaintiffs and there appears to be no infirmity in the judgement and decree of the learned Principal Judge, City Civil Judge, Chennai. Accordingly, the above Appeal stands dismissed with costs. Consequently, the connected Miscellaneous Petition is closed.

16.11.2023

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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WEB COPY



A.S.No.247 of 2021

To

1. The Principal Judge, City Civil Court, Chennai.
2. The Section Officer,
V.R.Section,
High Court, Madras.



WEB COPY



A.S.No.247 of 2021

P.T.ASHA, J.,

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A.S.No.247 of 2021
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16.11.2023