



A.S.No.201 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2023

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.201 of 2010

Malathi Pandurang

.. Appellant

Versus

1. Sri Singeri Mutt, Sringeri
represented by its Administrator,
Sringeri, Chikmagalore District,
Karnataka State.

2. N.N.Murthy

3. Leela Ramnath

4. H.N.Varadaraj

5. V.Nandakumar

6. Padma Sundararaghavan

7. Gayathri Ramaswami

.. Respondents

Prayer : Appeal Suit filed under Section 96 and Order XLI Rules 1 and 2 of Civil Procedure Code against the order of the learned Principal District Judge, Coimbatore made in unnumbered O.S.CFR.No.17705 of 2009, dated 19.11.2009 rejecting the plaint.

For Appellant : Mr.I.Abrar Mohamed Abdullah

For Respondents : No Appearance for RR-2 to 5



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A.S.No.201 of 2010



A.S.No.201 of 2010

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JUDGMENT

This Appeal Suit is filed against the judgment and decree, dated 19.11.2009, in and by which, the plaint filed by the plaintiff in O.S.(CFR).No.17705 of 2009, was rejected by the Trial Court.

2. The suit is filed with a prayer for partition to divide the suit property into six equal shares and to allot 1/6th share to the plaintiff. The case of the appellant / plaintiff is that earlier, in respect of the properties of the family members, there was a suit for partition in O.S.No.867 of 1995 on the file of the learned Subordinate Judge, Coimbatore, in which the present suit property was also a subject matter as Schedule-III therein. The said suit was referred for arbitration and the learned Sole Arbitrator passed a preliminary award on 25.08.2004. Aggrieved by the same, an application under Section 34 of the *Arbitration and Conciliation Act, 1996* in A.O.P.No.197 of 2004 was filed and the learned Additional District Judge, Coimbatore, by an order, dated 18.07.2008, dismissed the same. Aggrieved thereby, C.M.A.No.2797 of 2008 was filed before this Court and a Division



A.S.No.201 of 2010

WEB COPY

Bench of this Court, by an order, dated 22.12.2008, set aside the award and remanded the matter back to the learned Arbitrator.

3. After the remand, in respect of the present property, it was pleaded before the learned Arbitrator that the property was bequeathed in favour of *Sringeri Mutt*, by a Will, dated 08.01.1992 and the Will was also contested. The appellant / plaintiff also sought to implead the first respondent / defendant in the present suit namely, *Sringeri Mutt* in the arbitration proceedings before the learned Arbitrator. The learned Arbitrator dismissed the impleading application on 07.05.2009. Thereafter, a final award was passed on 25.08.2004. In the said award, the Arbitrator held that as far as the schedule property is concerned, he cannot decide the issue in the absence of the *Sringeri Mutt* being a party to the arbitration and therefore, the learned Arbitrator did not delineate any share in respect of the schedule property and left the matter open by giving liberty to the appellant / plaintiff to take appropriate proceedings for recovery of her share in the schedule property is concerned. Therefore, the present suit is filed for partition in respect of the suit schedule property.



A.S.No.201 of 2010

WEB COPY

4. The Trial Court, upon consideration of the case of the appellant / plaintiff, had taken a view that since partition has been prayed in the earlier suit in respect of the suit property also and that the same having been referred to arbitration, even if the learned Arbitrator had dismissed the application for impleading, the appellant / plaintiff's remedy is to file an appeal as against the order of dismissal and the present suit is not legally maintainable and rejected the plaint.

5. Heard *Mr.I. Abrar Mohamed Abdullah*, learned Counsel for the appellant. There is no representation by the Learned Counsel who entered appearance on behalf of the respondents 2 to 5. Even though notices were served on the first and seventh defendants, they have not appeared before this Court. On consideration of the grounds of appeal and the records of the case and the submissions made by the learned Counsel for the appellant / plaintiff, the point that arises for consideration is that whether or not the Trial Court was right in rejecting the plaint in view of the earlier arbitration proceedings ?



A.S.No.201 of 2010

WEB COPY

6. On a perusal of the plaint and the averments made therein, it is averred that after the matter being referred by the Court, the learned Arbitrator did not implead *Sringeri Mutt* as a party to arbitration as the *Sringeri Mutt* was not a party in the Original Suit which was referred to him for arbitration. In that view of the matter, it is contended in the plaint that the learned Arbitrator has left the remedy open to the appellant / plaintiff to seek recovery of 1/6th share inasmuch as the present suit property is concerned. In that view of the matter, since the matter is not decided on merits, it cannot be said that the present suit is barred on the principles of *res judicata*. When there is no adjudication inter-parties on the issue as to the validity of the Will by including the beneficiary of the Will as a party, the matter remains undecided and it cannot be said that the suit is barred by law. Since *Sringeri Mutt* is also not a party to the earlier proceedings, the principles of constructive *res judicata* cannot also be applied. Therefore, the Trial Court erred in rejecting the plaint as barred by law. In that view of the matter, this Appeal Suit succeeds.

7. In the result,

(i) The Appeal Suit in A.S.No.201 of 2010 is allowed;



A.S.No.201 of 2010

WEB COPY

(ii) The judgment and decree, dated 19.11.2009 in O.S.(CFR).No.17705 of 2009 is set aside;

(iii) O.S.(CFR).No.17705 of 2009 is restored to file to be proceeded further in accordance with law;

(iv) Considering the fact that the suit is of the year 2009, the Trial Court is directed to do the needful to proceed with the suit as expeditiously as possible;

(v) There shall be no order as to costs.

02.06.2023

Index : yes
Speaking order
Neutral Citation : yes
grs

To

The Principal District Judge,
Coimbatore.



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A.S.No.201 of 2010

D.BHARATHA CHAKRAVARTHY, J.,

grs

A.S.No.201 of 2010

02.06.2023