



A.S.No.539 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2023

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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1. K.Ramu (died on 12.10.2010)
2. R.Harikrishnan .. Appellants

Versus

1. K.Varadaraj @ Varadan (deceased)
2. P.Devaki
3. K.Selvamani
4. P.Sarojini
5. V.Dhanapal
6. D.Venkatesan
7. D.Natarajan

(Defendants 4 and 5 already on record, recorded
as L.Rs of the deceased 1st defendant, as per order
dated 08.04.2010 on memo) .. Respondents

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code to set aside the judgment and decree of the learned V Additional Judge, City Civil Court, Chennai, dated 23.08.2011 in O.S.No.9531 of 2010 (transferred C.S.No.262 of 2007 from the file of Original Side of the High Court, Chennai), dismissing the plaintiffs' claim for partition and separate possession of plaintiffs' half share in the plaint / decree mentioned schedule



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of properties and consequently, to pass a preliminary decree for partition and separate possession as prayed for in the plaint.

For Appellants : No Appearance

For Respondents : Mr.P.Amarnath, for RR-6 and 7

JUDGMENT

This Appeal Suit is directed against the judgment and decree, dated 23.08.2011 passed by the learned V Additional Judge, City Civil Court at Chennai in O.S.No.9531 of 2010, thereby, dismissing the suit for partition filed by the plaintiffs.

2. The case of the plaintiffs is that the first plaintiff's father late *Krishnasamy Chettiar*, was the absolute owner of the suit schedule property, which is self- acquired house property, bearing old Door No.2, New Door No.5, Singara Garden, 7th Street, Old Washermanpet, Chennai - 600 021. The first plaintiff's father married one *Peria Angammal* through which the first plaintiff was born. However, even during the validity and subsistence of the said marriage, he went into an extra-marital illegitimate relationship with one *Chinna Angammal* and the defendants 1 to 3 are the children of the said *Chinna Angammal*. Upon the death of the first plaintiff's father, the



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suit schedule property is liable to be partitioned and the first plaintiff is entitled to half share and hence the suit.

3. The defendants 2, 6 and 7 resisted the suit by filing the written statements admitting the above said relationship between the parties, however, it was submitted that the property is self-acquired property of *Krishnasamy Chettiar*. By a registered deed of settlement, dated 02.09.1952, the property was settled by him in favour of *Chinna Angammal* and their children, the defendants 1 to 3, reserving life estate to himself. Since the father of the first plaintiff died in the year 1964 and since the said *Chinna Angammal* also pre-deceased him, the defendants 1 to 3 are the owners of property. In fact, dispute arose among them, on account of which, a partition suit was filed, in which, ultimately, a compromise decree was recorded in the Appeal Suit. Therefore, the first plaintiff can have no manner, right, title or interest over the suit schedule property.

4. On the strength of the said pleadings, the Trial Court has framed the following issues:-

1) Whether the alleged Settlement Deed executed by the Krishnasamy Chettiar on



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02.09.1952 in respect of the plaint schedule property is a Will or Settlement as per law?

2) Whether the alleged Settlement is the Will, it is enforceable without being probated?

3) Whether the plaintiff is entitled to 1/2 shares in the suit property as claimed by him?

4) Whether out of Court Settlement, recorded, wherein the 2nd defendant is a party is binding on her?

5) To what relief the parties are entitled?

5. On the said issues, the parties let in evidence. The first plaintiff examined himself as **P.W.1** and the second plaintiff was examined as **P.W.2**. **Exs.A-1** to **A-16** were marked on behalf of the plaintiffs. The second defendant was examined as **D.W.1** and the sixth defendant was examined as **D.W.2**. **Exs.B-1** to **B-4** were marked on behalf of the defendants.

6. The Trial Court, thereafter, proceeded to consider the case of the parties and considered the contention of the plaintiffs that the said settlement deed, which is marked as **Ex.B-1**, dated 02.09.1952, cannot be termed as settlement deed, but, only as a Will. It is the contention of the plaintiffs that since one of the persons to whom the bequeath is made



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namely, *Chinna Angammal*, pre-deceased the testator, the entire Will became invalid and therefore, the property is available for partition among the first plaintiff and the defendants 1 to 3. The Trial Court found that there is no question of considering **Ex.B-1** as a Will as the recital clearly transfers the right *in presenti*, while, the executant reserved life estate alone to him. In that view of the matter, since the property, being the self-acquired property, being dealt with and settled by the father of the first plaintiff and the defendants 1 to 3, the Trial Court held that it is no longer available for partition. Among the co-sharers, already a suit for partition has been filed which ended in a compromise decree. Holding thus, the present suit was dismissed. Aggrieved by the same, the present Appeal Suit is filed before this Court.

7. Perused the memorandum of grounds of Appeal Suit filed on behalf of the appellant and heard *Mr.P.Amarnath*, learned Counsel appearing on behalf of the respondents 6 and 7.

8. On a perusal of the memorandum of grounds of appeal, it is seen that the contention of the appellants is that the Trial Court failed to



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appreciate the fact that the defendants 1 to 3 are only the illegitimate children born through an invalid marriage and ought not to have held that the property will belong to them. It is further contended that the settlement deed under **Ex.B-1** is only a Will and as per several judgments of the Hon'ble Supreme Court of India as well as this Court, once it is treated as Will, it is not admissible in evidence unless it is probated and therefore, the Trial Court ought not to have relied upon the same and ought to have decreed the suit.

9. Per *contra*, *Mr.P.Amarnath*, learned Counsel appearing on behalf of the respondents 6 and 7, would submit that **Ex.B-1** clearly reads as a settlement deed and the rights have been transferred *in presenti* and can never be termed as a Will. Therefore, the Trial Court has rightly dismissed the suit.

10. I have considered the rival contentions of the parties and perused the material records of the case. The point which arises for consideration in this case is whether **Ex.B-1** is a settlement deed or a Will ? It is necessary to extract the recital of the **Ex.B-1** deed as the entire arguments of both the



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sides rally around the same. The said **Ex.B-1**, settlement deed reads as hereunder:-

"You are my second wife. My first wife Periya Angammal aged about 46 years is living with me. You have begotten three sons and two daughters. My first wife Periya Angammal also had begotten two sons and a daughter. Since, I feel ill and I am bed ridden and on the advise of the Doctors, I decided to settle my properties in your favour and in favour of my first wife out of natural love and affection. I have decided to write the settlement in order to avoid the dispute among my children and the whole aim that my children to be lived happily and peacefully. Out of self earning I have acquired schedule mentioned properties and also acquired the property in Door No.3, Thambu Chetty Street, Kalmandapam, Royapuram, Chennai, and I am in peaceful possession and enjoyment of the same as the absolute owner. The property 2nd listed above had been mortgaged for Rs.1,000/- in favour of Mayilai Hindu Sasvatha Nithi and my sons are made as party to the mortgage deed and the same will be redeemed by me. I hereby settle the schedule mentioned property, namely, house bearing Door No.5, Singara Garden 7th Street, Old Washermenpet, Chennai-21 in your and in favour your children and I am not having the right to revoke the deed. But, I decided to receive the rents derived from the suit property. After my demise, you and your sons, namely, Varadan, Vasudevan and Thangamani, will become the absolute owner of the property with the right to alienate the same as full pledged. Owners"



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11. A perusal of the above, it would be clear that **Ex.B-1** is a settlement deed. It clearly settles the suit schedule property on the said *Chinna Angammal*, the second wife of the said *Krishnasamy Chettiar* and her children namely, *Varadan*, *Vasudevan* and *Thangamani*. It only reserves the right to receive rents till the life time of the Donor. Therefore, there can be absolutely no doubt whatsoever about the construction of the above document that it transfers the right *in presenti* and is in the form of a gift and therefore, absolutely, no exception whatsoever can be taken to the findings of the Trial Court in holding that the property is not available for partition and that it has been dealt with by the original owner thereof namely, the father of the first plaintiff and the defendants 1 to 3, *Krishnasamy Chettiar*, during his life time itself and is not available for partition.

12. Accordingly, this Appeal Suit in A.S.No.539 of 2012 fails and is dismissed. There shall be no order as to costs.

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Index : yes



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Speaking order

Neutral Citation : yes
grs

To

The V Additional Judge,
City Civil Court, Chennai.



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D.BHARATHA CHAKRAVARTHY, J.,

grs

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