



WEB COPY



AS No.525 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15-02-2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AS No.525 of 2018

A.Revathi

.. Appellant

vs.

1.G.Banumathi

2.G.Rosaiah

3.G.Saraswathi

4.S.Pushpa

5.B.Sumathi

6.G.Balaraman

.. Respondents



AS No.525 of 2018

PRAYER : This Appeal Suit is filed under Section 96 r/w Order XLI, Rule 1 of the Civil Procedure Code against the judgment and decree dated 08.02.2018 passed by the learned XVIII Additional Judge, City Civil Court at Chennai in OS No.3209 of 2016.

For Appellant : Mr.P.Raja

For Respondents-1 and 2 : Mr.R.Krishnaswamy

For Respondents-3 to 6 : Mr.H.Srinivasan

J U D G M E N T

The present Appeal Suit has been instituted against the judgment and decree dated 08.02.2018 passed by the learned XVIII Additional Judge, City Civil Court at Chennai in OS No.3209 of 2016.

2.The appellant is the fourth defendant, the respondents 1 and 2 are the plaintiffs and the respondents 3 to 6 are the defendants 1, 2, 3 and 5 in the suit.



AS No.525 of 2018

3. The respondents 1 and 2/plaintiffs instituted the suit for partition.

4. The avements in the plaint reveals that the suit property originally belonged to the first plaintiff, who purchased the same under the Sale Deed dated 06.12.1973 bearing document No.3560 of 1973 on the file of the Sub-Registrar Office at Saidapet.

5. The first plaintiff settled the site of the suit property in favour of her husband Mr.S.Gajapathi under Settlement Deed dated 26.03.1980 bearing document No.866 of 1980 on the file of the Joint Sub Registrar II at Saidapet. Pursuant to the Settlement, the husband of the first plaintiff S.Gajapathi took possession of the site of the suit property constructed a house and enjoying the same.

6. There was an allegation of encroachment against the husband of the first plaintiff and a suit was filed in OS No.1037 of 1982 on



AS No.525 of 2018

the file of the Principal District Munsiff Court at Poonamallee against Mr.S.Gajapathi, the husband of the first plaintiff. The suit was dismissed and he filed an Appeal Suit in AS No.25 of 1988 on the file of the Sub Court at Poonamallee, which was also dismissed after contest. Thereafter, the said Mr.S.Gajapathi, husband of the first plaintiff purchased the suit property from Mr.K.Sankaranarayanan through the Sale Deed dated 06.09.1989 bearing document No.1414 of 1989. The said Mr.S.Gajapathi subsequently died intestate leaving behind him, his wife, Tmt.G.Banumathi, first plaintiff and his two sons namely Mr.G.Rosaiah, the second plaintiff and Mr.G.Balaram, the fifth defendant and four of his daughters namely, Tmt.Saraswathi, first defendant, Tmt.Pushpa, the second defendant, Tmt.Sumathi, third defendant and Tmt.Revathi, fourth defendant as his legal heirs, who all are entitled to succeed in the suit property.

7. The plaintiffs state that due to the death of Mr.S.Gajapathi, they became entitled to 1/7th share in the suit schedule property and similarly all defendants are also entitled to get 1/7th share each in the suit



AS No.525 of 2018

schedule property. Since there was no amicable partition between the parties, the suit was instituted by the wife of Mr.S.Gajapathi, the first plaintiff and her son G.Rosaiah.

8. The defendants 3 and 5 filed written statement denying the plaint averments. The relationship between the parties are not disputed. The defendants have stated that they were ready for partition and they have not raised any objection and not evaded to concur with the plaintiffs for partition or for sale of the suit schedule property for dividing the sale proceeds. The defendants have stated that they have received the legal notice sent by the plaintiffs on 06.04.2011 as referred in the plaint.

9. The fourth defendant has stated in the written statement that her deceased father late Mr.S.Gajapathi executed a Will in favour of all the children except the first plaintiff/mother. Therefore, the fourth defendant in the suit objected for 1/7th share to the first plaintiff, who is the mother of the second plaintiff and the defendants.



AS No.525 of 2018

WEB COPY

10. The plaintiffs filed further reply statement denying the allegations of the fourth defendant in the written statement.

11. Based on the pleadings, the Trial Court framed the following issues:-

(1) Whether the plaintiffs are entitled to get $1/7^{\text{th}}$ share in the suit properties ?

(2) To what relief ?

12. With reference to the entitlement of the plaintiffs to get $1/7^{\text{th}}$ share in the suit property, the Trial Court made a finding that the suit property originally belonged to the husband of the first plaintiff Mr.S.Gajapathi and the said Mr.S.Gajapathi died intestate leaving behind the plaintiffs and the defendants as his legal heirs.



AS No.525 of 2018

13. The relationship between the parties are not disputed and therefore, the plaintiffs have instituted the suit admitting the entitlement of the defendants in the suit schedule property.

14. The defendants 1 to 3 and 5 have filed written statement and admitted the plaintiffs' claim and they filed counter claim after paying half of the Court Fee and sought for the relief of allotting 1/7th share to each of them in the suit property.

15. It is the fourth respondent, who filed the written statement, alleging that her father late Mr.S.Gajapathi executed a Will in favour of the second plaintiff and the defendants 1 to 5 excluding the first plaintiff/ mother. Though the fourth defendant has categorically stated in the written statement that her father deceased Mr.S.Gajapathi executed the Will in favour of the second plaintiff and the defendants 1 to 5, the Trial Court found that no such Will has been marked as document nor any such Will has been proved by the fourth defendant.



AS No.525 of 2018

WEB COPY

16. In the absence of any such Will or otherwise, the Trial Court found that there is no serious dispute between the parties regarding the allotment of 1/7th share to each of the parties to the suit and accordingly, passed a preliminary decree in respect of the suit property allotting 1/7th share each to the plaintiffs and the defendants.

17. The appellant/fourth defendant in the suit, though pleaded in the written statement, that her father late Mr.S.Gajapathi executed a Will excluding the first plaintiff, no such Will has been marked as a document nor the fourth defendant would prove any oral evidence. While-so, this Court do not find any infirmity or perversity in respect of the findings made by the Trial Court and passing a preliminary decree in respect of the suit schedule property by allotting 1/7th share each to the plaintiffs and the defendants. Thus, the appellant/fourth defendant herein has not made out any acceptable ground for the purpose of interfering with the findings made by the Trial Court.



AS No.525 of 2018

WEB COPY

18. Accordingly, the judgment and decree dated 08.02.2018 passed by the learned XVIII Additional Judge, City Civil Court at Chennai in OS No.3209 of 2016 stands confirmed. Consequently, the present AS No.525 of 2018 is dismissed. However, there shall be no order as to costs.

15-02-2023

Speaking Order/Non-Speaking Order.

Neutral Citation : Yes/No.

Internet : Yes/No.

Index: Yes/No.

Svn

To

The XVIII Additional Judge,
City Civil Court,
Chennai.



WEB COPY



AS No.525 of 2018

S.M.SUBRAMANIAM, J.

Svn

AS No.525 of 2018

15-02-2023

10/10