



A.S.No.272 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.06.2023

CORAM

THE HON'BLE MR. JUSTICE S.VAIDYANATHAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

Appeal Suit No.272 of 2023

and

Civil Miscellaneous Petition No.10314 of 2023

K.Balakrishnan

... Appellant / Defendant

Versus

Mrs.Krishnaveni (Died)

1. M.Vijayalakshmi

2. A.Kalaiselvi

... Respondents/Plaintiffs

Prayer: The Appeal Suit filed under Section 96 read with Order 41 & 41-A of the Code of Civil Procedure to set aside the Preliminary Decree and Judgment, dated 30.11.2022 in O.S.No.201 of 2009 on the file of the Additional District Judge, Kancheepuram at Chengalpet.

For Appellant : Mr.Nazaraullah
For Mr.D.Charles Muthushanthan



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JUDGMENT

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[The Judgment of the Court was delivered by K.RAJESAKER,J.,]

This Appeal has been filed by the defendant, challenging the Judgment and decree passed in O.S.No.201 of 2009, dated 30.11.2022 on the file of the Additional District Judge, Kancheepuram at Chengalpet, wherein the trial Court has passed Preliminary Decree for partition and consequential injunction against the defendant.

2. The parties are referred to hereunder according to status and ranking before the trial Court.

3. The appellant is the defendant and the respondents are the plaintiffs. The suit was filed by the plaintiffs for the following reliefs:

(a) for passing preliminary decree to divide the suit schedule mentioned properties into three equal shares and allot two such shares to the plaintiffs by metes and bounds.

(b) for appointing an Advocate Commissioner to suggest the mode of division for passing of final decree.



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(c) for permanent injunction restraining the defendant, their men, servants, agents or any person claiming through him from in any manner altering the superstructure or dealing with Item II of suit schedule property.

(d) directing the defendants to pay the costs of the suit; and

(e) for granting such other further relief, deemed, fit, proper just and necessary in the circumstances of the case.

4. The case of the plaintiffs is that the first plaintiff is the wife, the plaintiffs No.2 and 3 are daughters, and the defendant is the son of late A.S.Kandasamy. The first item of the suit property originally belonged to one Pachaiaammal, the mother of A.S.Kandasamy and she bequeathed the same in favour of his son as per registered Will dated 29.05.1992. After the death of Pachaiaammal, the said property was in possession and enjoyment of A.S.Kandasamy. He has also purchased the second item of the suit property and from his own funds he was in possession and enjoyment of the same. During his life time, the defendant and his wife has not treated, the plaintiffs No.1 and Mr.A.S.Kandasamy properly, neglected and forced plaintiff No.1 out of Item No.2 of the suit property. A.S.Kandasamy died on



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12.01.2009, leaving behind the plaintiffs and the defendant as his legal heirs.

5. After the death of A.S.Kandasamy, the defendant, along with his wife, have removed several valuable documents and jewels purchased by A.S.Kandasamy and refused to handover the same to the plaintiffs. Hence, the plaintiffs have issued legal notice dated 07.04.2009, to return back the stolen articles and also for partition of the suit properties, for which, the defendant has issued reply notice and refused for partition. Hence, the plaintiffs have come forward to file the suit by including the movable properties as item No.3 and claimed allotment of each 1/3 share.

6. The case of the defendant is that he admits the averments with regard to the title of the first and second item of the suit properties and also the relationship between the parties. The defendant was always been ready to take care of his mother, the first plaintiff herein, but due to intervention of the second and third plaintiffs, the dispute among the family has reached beyond the point of no return. He has denied that he has taken away the valuables and documents from the house of the plaintiffs and



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alleged that the first and third plaintiffs have taken away the valuables and documents of his father. He has also alleged that during the month of August 2009, the plaintiffs have attempted to sell the “Gun” belonging to the defendant's father which was already deposited by the defendant on 09.02.2009 in the Hindustan Armory, Chennai and one another Air Rifle was taken away by the third plaintiff and the same is in her custody. The plaintiffs have also withdrawn a sum of Rs.3,42,000/- after the death of the defendant's father, which was lying as Fixed Deposit in the Bank a account of his father. On 30.10.2009, the plaintiffs have attempted to attack the defendant and a police complaint has also been lodged in this regard. For the reasons stated above, the defendant prays to dismiss the suit.

7. During the pendency of the suit, the first plaintiff had died and the plaint was amended, and shares of the each parties were enlarged from 1/4 to 1/3 each shares.

8. Based on the pleadings, the following issues have been framed by the trial Court.



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(1) Whether the plaintiffs are entitled to 2/3 shares in the suit properties? and

(2) To what other reliefs are the plaintiffs entitled to?

9. Before the trial Court, the third plaintiff has been examined as P.W.1 and through her, Exs.A1 to A20 were marked. The defendant was examined as D.W.1 and Exs.D1 to D8 were marked.

10. After full trial, the trial Court has decreed the suit in favour of the plaintiffs for partition of Item Nos.1 and 2 properties into three equal shares and allotment of two shares in favour of the plaintiffs. As far as the third item is concerned, the trial Court has dismissed the suit on the ground that there is no evidence produced by both sides to substantiate their case that properties were taken away by their adversaries.

11. Aggrieved by the decree, the defendant has filed this appeal, on the ground that the trial Court has decreed, for partition of Item Nos.1 and 2 of the suit properties without any evidence and the trial Court has failed to consider the withdrawal of the Fixed Deposit of an amount of



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Rs.2,40,000/- by the plaintiffs from the Savings Bank Account along with Rs.80,430/- of accrued pension, in which, the defendant is entitled for his share. Hence prays to set aside the decree of the trial Court.

12. Before the trial Court, the plaintiffs have marked the certified copy of the Will executed by Pachaiaammal in favour of A.S.Kandasamy dated 29.05.1992 as Ex.A1. It is the admitted case of the defendant that both Item Nos.1 and 2 of the suit property belong to his father. He has not disputed the fact that the first item of property is bequeathed in favour of A.S.Kandasamy by his mother and II Item of the suit property is self acquired property of his father. Till his demise, A.S.Kandasamy was in possession and enjoyment of both Item Nos.1 and 2 of the suit properties.

13. The trial Court has considered the admission made by the defendant in his written statement and incorporated the pleadings regarding admission in the impugned judgment and has rightly come to the conclusion that each of the plaintiffs 2 and 3 (after demise of the plaintiff No.1) are entitled to 1/3 share in the suit properties.



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14. After admitting the case of the plaintiffs with regard to title to Item Nos.1 and 2 of the suit properties, the objection raised by the defendant for partition is that the plaintiffs have withdrawn money kept in the Bank Account of his father, hence, he objected for partition of the suit properties. Nowhere, he disputed the title. Hence, the objection with regard to the partition is not sustainable and the defendant is estopped from raising a dispute regarding title to Item Nos.1 and 2 of the suit properties by filing this appeal.

15. It is also contended by the learned counsel for the appellant that in the 3rd Item of the suit property which are movables and Bank balance, he is also having a share and hence the defendant shall be allotted 1/3 share in the above properties. Whereas, the plaintiffs contends that the defendant has taken away gold jewels and documents. But they have not listed as to what are the documents taken away by the defendant. Similarly, they have not adduced any evidence to show that those movables are available for partition.



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16. The defendant in his pleadings as well as in his evidence, has stated that the third plaintiff had taken away the Air Rifle that belongs to his father. One another “Gun”, which has been deposited with the Hindustan Armory, Chennai, had been attempted to be sold by the plaintiffs. He has also stated that, around Rs.2,40,000/- have been withdrawn from the Fixed Deposit of his father. But no proof of such withdrawal of Fixed Deposit or to substantiate his claim about the attempt of sale of Gun by the plaintiffs.

17. Similarly, the defendant herein has not made any claim or share in Item No.3 of the suit property and without claiming any share in the above properties, now, he claims that he is having a share in the suit properties. No evidence about the existence of the above items, had been produced by the defendant before the trial Court and he has not given the list of other properties which are to be subjected for partition and has not sought for partition. He has only sought for dismissal of the suit, and now making new case with regard to the Item No.3 of the suit properties which is not permissible. Hence, the defendant is not entitled to any share of Item No.3 of the suit properties by filing this appeal, which is the prayer made against his own pleadings before the trial Court.



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18. The trial Court has also considered the evidence adduced by both the plaintiffs and the defendant with regard to Item No.3 of the suit properties and has held that the facts pleaded by them have not been proved through acceptable evidence and hence, they are not entitled for any share in Item No.3 of the suit properties.

19. In the result, the Appeal Suit stands dismissed without ordering notice to the respondents. The Judgment and Decree passed in O.S.No.201 of 2009, on the file of the Additional District Judge, Kancheepuram, Chengalpet, dated 30.11.2022 is hereby confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

(S.V.N.,J.) (K.R.S,J.)
01.06.2023

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No
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To:

1. The Additional District Judge,
Kancheepuram, Chengalpet.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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