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A.S.No.528 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.528 of 2020
and
C.M.P.No.7508 of 2020

1.Mrs.Maragatham

2.Mrs.Malar

3.Mr.M.Prabhakaran

4.Mrs.M.Bhuvaneshwari

5.Mr.M.Lingesan

6.Mrs.M.Sumatra

... Appellants

Vs.

1.Mr.G.Inbasekaran

2.Mr.G.Kalaighanam

3.Mrs.A.Nirmaladevi

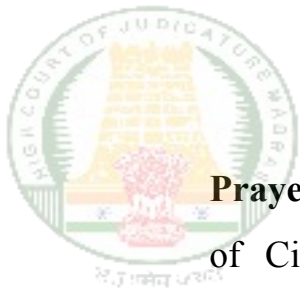
4.Mrs.Sasikala

5.Mr.M.Sekar

6.Mr.M.Anandan

7.Mrs.M.Menaga

... Respondents



Prayer: Appeal Suit is filed under Order XLI Rule 1 Section 96 of the Code of Civil Procedure, to set aside the judgment and decree passed in O.S.No.3433 of 2013 on the file of the IV Additional Judge, City Civil Court, Chennai dated 04.10.2019.

For Appellants : Mr.K.Balaji

For Respondents : Mr.Palani
For Mr.K.P.Gopalakrishnan

J U D G M E N T

The Appeal Suit has been instituted against the judgment and decree dated 04.10.2019 passed in O.S.No.3433 of 2013.

2. The appellants are the defendants and the respondents / plaintiffs instituted a Suit for partition claiming equal share by metes and bounds to allot share to the plaintiff and for separate possession. The plaintiffs have stated that the suit mentioned property absolutely belonged to Mr.P.Chinnasami and his wife Kannammal, who died in the year 1962 and 1990 respectively. Both died intestate leaving behind two daughters namely 1.Maduraiveni, 2.Vijaya alias Vijayalakshmi and one son Mr.Mohan as their legal heirs. The said Maduraiveni died in the year 2010 leaving behind two



sons namely G.Inbasekaran / 1st plaintiff and kalaiganam / 2nd plaintiff and one daughter A.Nirmaladevi / 3rd plaintiff as her legal heirs. The said Mohan, husband of the 1st defendant died leaving behind his wife Maragadham, three sons namely M.Ravichandran, M.Prabhakaran, Lingesan and two daughters M.Bhuvaneswari and M.Sunithra as his legal heirs. Mr.M.Ravichandran, died leaving behind his wife and two daughters as legal heirs.

3. On 13.06.1994 all the legal heirs availed mortgage loan for a sum of Rs.50,000/- from Madras Purasawalkam Hindu Janopakara Saswatha Nidhi or the Permanent General Benefit Fund Limited by mortgaging the suit mentioned property measuring an extent of 1624 Sq.ft and executed Mortgage Deed, which was signed by all the legal heirs. The mortgage was redeemed by repaying the loan amount. The plaintiffs have stated that they are residing at different places and they are in constructive joint possession of the suit property. From the rent amount derived from the suit mentioned property, they were receiving 2/3rd portion of the rent amount and from March 2010 onwards, the entire rent amount is being enjoyed by the defendants without sharing the portion to the plaintiffs. The plaintiffs came



to know that the defendants are attempting to dispose off the entire suit schedule property and thereafter, they have issued a legal notice for partition and subsequently instituted a suit for partition.

4. The defendants 1 to 6 filed a written statement stating that the plaint averments are false. The plaintiffs have no right to claim over the suit property. Smt.Maduraiveni, the mother of the plaintiffs 1 to 3 and 4th plaintiff got married during the year 1950 and they ceased to be the members of the joint family at the time of marriage and they were given sufficient gift and stridhana by Mr.P.Chinnasami i.e., the defendant's father in law. After the death of Mr.P.Chinnasami in the year 1962 succession opened and his wife Smt.Kannammal and their only son C.Mohan shared the joint possession and enjoyment of the suit property. After the death of Mrs.Kannamal in 1990, the said property had been devolved on the 1st defendant's husband Mohan and he became the absolute owner of the property and was living with his family.

5. The 1st defendant's husband Mr.Mohan died on 05.10.1983 leaving behind the wife / 1st defendant and other defendants as his legal heirs.



Accepting the right of the 1st defendant's husband and family, Mrs.Maduraiveni the mother of the plaintiffs 1 to 3 and the 4th plaintiff jointly executed a Consent Deed on 27.10.1993 before the Advocate Commissioner of oath and Notary Public consenting for mutation of Revenue Records in the name of the 1st defendant, who is the window of their only brother.

6. The said Maduraiveni and Mrs.Vijaya the 4th plaintiff herein have neither made any claim nor right over the suit property. They were well settled along with their husbands and family. Because of that only they have given the Consent Deed and affidavit sworn before the Commissioner of oath and Notary Public on 27.10.1993 relinquishing their rights as well as rights of their legal heirs in favour of this defendant.

7. During 1994, when her family had financial crises they have sought to get loan amount of Rs.50,000/- from the Madras Purasawalkam Hindu Janorpakera Saswatha Nidhi or the Permanent General Benefit Fund Limited. Since the Fund's Rules and Regulations insisted by way of abundant caution for the signatures of all the heirs irrespective of their subsisting right or claim over the property this defendant requested her



sister in law that is the mother of the plaintiffs 1 to 3 and the 4th plaintiff for held and they have obliged out of love and affection on their borhter's family. Though they have signed the Deed, they have not received any amount. Likewise the 1st defendant and her family have never demanded any amount from Mrs.Maduraiveni and Mrs.Vijaya for discharging the loan amount. Only the 1st defendant and her children have repaid the entire principal and interest amount and discharged the entire loan. Mere signing in the Deed on the request of the fund will not confer any right or claim on them especially when they have already consented for the absolute right of the 1st defendant. The plaintiffs 1 to 3 only with an ulterior motive is preventing the 4th plaintiff also from signing the discharge Deed.

8. Further the defendants state that they are living in the suit property and there is no question of paying 2/3 rent to the plaintiffs till February 2010. Even if the 1st defendant had received any rent she need not pay any shares to the plaintiffs. The suit property is the only property possessed and enjoyed absolutely by the 1st defendant and her family. After receipt of the plaintiff's notice dated 09.11.2012, the 1st defendant has informed the same to her close relatives. At their interference, the plaintiffs have not agreed to



precipitate the matter, hence the defendants have not replied to the said notice and the suit is frivolous and not maintainable. Therefore prayed to dismiss the suit with cost.

9. Based on the pleading between the parties, the Trial Court framed the following issues:

- 1. Whether the plaintiffs are entitled for the relief of partition and separate possession of the suit property as prayed for?*
- 2. Whether the plaintiffs are entitled for permanent injunction as prayed for?*
- 3. Whether the contention of the defendants that the plaintiffs 5 to 8 have no right in the suit property since 4th plaintiff had executed consent deed is valid according to law?*
- 4. To what other relief the parties are entitled to?*

10. The 1st plaintiff was examined as PW1 and Ex.A1 to Ex.A13 documents were marked. On the side of the defendants, the 4th defendant was examined as DW1 and 5th defendant was examined as DW2 and Ex.B1 to Ex.B10 documents were marked. The Trial Court considered issue Nos.1 to 3 based on the documents and evidences placed by the respective parties



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11. The findings of the Trial Court are that Ex.B1 and Ex.B2 are Electricity Consumption Card and Property Tax, which stands in the name of the father-in-law of the 1st defendant Mr.P.Chinnasami and Property Tax Card assessed in the name of the Chinnamsami, who is the father of the 4th plaintiff. Ex.B4 and Ex.B5 are the Consent Deed executed by the said Smt.Maduraiveni, who is the mother of the plaintiffs 1 to 3 and 4th plaintiff Vijaya alias Vijayalakshmi. The Trial Court found that the said Consent Deed was not written in the stamp paper. Thus, the burden of proof heavily lies on the plaintiff. On perusal of the Ex.A2, admittedly, the Mortgage Deed was executed not only by the legal heir Mohan, who is the son of Chinnasami and Kannammal but also executed by their daughters Maduraiveni and Vijaya and her sons and daughters. Ex.A2 Mortgage Deed would reveal the fact of admitting the right and title over the suit schedule property of the legal heirs of the two daughters Maduraiveni and Vijaya and their son Mohan and their legal heirs have executed the Mortgage Deed in favour of Madras Purasawalkam Hindu Janapakera Saswatha Nidhi or the Permanent General Benefit Fund Limited on 13.06.1994. Thus, the Trial



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Court drew an inference that after the death of Chinnasami and Kannammal, their son Mohan and daughters Maduraiveni and Vijaya have inherited the property and after the death of Maduraiveni and vijaya alias Vijayalakshmi their legal heirs the sons and daughters are having right over the suit schedule property. The defendants exhibited Ex.B1 Electricity Consumption Card and Property Tax Card and receipts would show that the properties are in the name of one P.Chinnasami. The plaintiffs had proved the relationship between the parties by exhibiting the legal heir certificate and death certificate of the Grand Father Mr.P.Chinnasami and Grand Mother Kannammal and their daughters Maduraiveni and Vijaya alias Vijayalakshmi.

12. The Trial Court further proceeded by considering the evidence of PW1, DW1 and DW2. It is clear that the defendants admit that the suit property originally belonged to Mr.P.Chinnasami. The Tax receipts and Electricity Consumption cards stand in the name of Mr.P.Chinnasami, who is the grand father of the plaintiffs. The 1st defendant / DW1 admits that Mr.P.Chinnasami and Kannammal are the absolute owners of the suit schedule property and he has been in possession of the suit schedule



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property and died intestate without executing any document to any of the daughters or son. The only contention of the defendants are that Smt.Maduraiveni and Vijaya alias Vijayalakshmi had executed the Consent Deed and relinquished their right and conveyed the property in the name of their brother Mohan. Even presuming that the documents executed by them is true, it does not confer any right over the suit schedule property, since they had not been executed to convey or transfer the title. The said Consent Deed admittedly was neither registered nor written in a stamped paper. When the value of the property is more than Rs.100/- registration under the Registration Act is mandatory and in the present case, the said Consent Deed had not conveyed or transferred the title in respect of the suit mentioned property. Therefore, the Trial Court has formed an opinion that even assuming that the Consent Deed was executed by Maduraiveni mother of plaintiffs 1 to 3 and the 4th plaintiff Vijaya alias Vijayalakshmi it would not convey the title and right over the suit schedule property exclusively to Mr.Mohan, the husband of the 1st defendant and father of the other defendants. Such being the factum established, daughters of Mr.P.Chinnasami and Kannammal are also having each 1/3rd share over the suit schedule property. It is not in dispute that Mr.P.Chinnasami, father-in-



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law of the 1st defendant and father of Mr.Mohan, Maduraiveni mother of plaintiffs 1 to 3 and Smt.Vijaya, the 4th plaintiff have owned the suit schedule property and therefore, Smt.Maduraiveni the mother of the plaintiff 1 to 3 and Smt.Vijaya the 4th plaintiff and the husband of the 1st defendant are having each 1/3rd share over the suit schedule property since they died intestate, the legal heirs of the Maduraiveni and Vijaya i.e., the plaintiffs 1 to 3 and 5 to 8 are having 2/3rd share over the suit schedule property.

13. The Trial Court has considered the validity of the Consent Deed relied on by the defendants. The Trial Court has further considered the relationship between the parties, which all are admitted and not disputed. Based on the admissions and an inference drawn with reference to the alleged Consent Deed, the Trial Court finally formed an opinion that the alleged execution of the Consent Deed is not a legally valid one, under which the right or interest over the property cannot be conveyed or transferred their right and it is to be held that the said Consent Deed alleged to have been executed by Smt.Maduraiveni mother of the plaintiffs 1 to 3 and 4th plaintiff Vijaya are not at all valid document and therefore, the legal



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heirs of the Maduriveni and Vijaya are having equal right over the suit schedule property and accordingly, the Trial Court held that the plaintiffs are entitled for a preliminary decree of partition of the suit property as prayed for in the suit.

14. This Court is of the considered opinion that the findings of the Trial Court unambiguously indicates that the original owners Mr.P.Chinnasami and Kannammal died intestate and therefore, their legal heirs are entitled for equal shares and subsequent Consent Deed executed by Smt.Maduraiveni and Vijaya, the legal heirs of the Mr.P.Chinnasami and Kannammal is an invalid document and did not convey any title in favour of the defendants. Thus, the validity of the said Consent Deed was considered by the Trial Court and this Court do not find any infirmity or perversity as such. The final decree proceedings are already in progress and is pending, due to the pendency of the present Appeal before this Court.

15. In view of the decision that the issue Nos.1 to 3 are answered in favour of the plaintiff, the Trial Court has not granted the other relief, which cannot be held as improper. Thus, this Court do not find any acceptable



ground for the purpose of considering the Appeal Suit filed by the appellants herein.

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16. Accordingly, the judgment and decree passed in O.S.No.3433 of 2013 dated 04.10.2019 stands confirmed and consequently, the Appeal Suit in A.S.No.528 of 2020 is dismissed. In view of the disposal of the present appeal suit, the Trial Court shall proceed with the final decree proceedings and dispose of the same as expeditiously as possible without causing any undue delay. No costs. Connected Miscellaneous Petition is closed.

27.02.2023
(2/2)

Jeni

Index : Yes

Speaking order

Neutral Citation : Yes

To

The Judge,
IV Additional City Civil Court,
Chennai.



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A.S.No.528 of 2



S.M.SUBRAMANIAM, J.

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A.S.No.528 of 2020

27.02.2023
(2/2)