



OSA.No.73/2014

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE P.B.BALAJI

OSA.No.73/2014

1.R.Gajendran [Died]
2.G.Kanmani
3.N.Thenmozhi
4.G.Kayalvizhi
5.G.Anand Raj

.. Appellants

****Appellants 2 to 5 brought on record as
LRs of deceased sole appellant vide order
dated 24.11.2022 made in CMP.No.18791
and 18789/2022 in OSA.No.73/2014**

Vs.

1.R.Shanmugam [Deceased]
2.G.Kalaiarasan
3.G.Dilli
4.J.Manimaran
5.J.Arivuselvan
6.J.Deenadayalan
7.M.Rajasekaran



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8.M.Chandrasekaran
9.Malliga Shanmugam
10.Anuradha Rajasekar
11.Menaka Panidan

.. Respondents

****RR9 to 11 brought on record as LR's of
deceased 1st respondent vide order dated
13.02.2017 made in CMP.Nos.1961 to 1963/2017
in OSA.No.73/2014**

Prayer:- Original Side Appeal filed under Order 36 Rule 1 of O.S.Rules read with Section 15 of Letters Patent against the judgment and decree of the learned Single Judge of this Court dated 21.06.2013 made in CS.No.408/2008.

For Appellants	:	Mr.J.Hariharan for M/s.KV Law Firm
For RR 2 to 8 & 11	:	No appearance
R10	:	No such person
For R9	:	Mr.D.Prasanth for Mr.S.Senthilnathan



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JUDGMENT

[Judgment of the Court was delivered by S.S.SUNDAR, J.,]

- (1) The 1st defendant in the suit in OS.No.108/2008, as the appellant, filed the above Original Side Appeal. Pending Appeal, the 1st defendant by name R.Gajendran, died and hence, appellants 2 to 5 were brought on record as the legal representatives of the deceased sole appellant.
- (2) It is seen that the 1st respondent/plaintiff by name Shanmugam, also died during pendency of the appeal and therefore, respondents 9 to 11 were brought on record as legal representatives of the deceased 1st respondent.
- (3) Brief facts that are necessary for the disposal of this Original Side Appeal are as follows:-
- (4) The deceased 1st appellant and the deceased 1st respondent herein are the sons of one Mr.V.Rajamanickam. The wife of Mr.V.Rajamanickam, namely, Smt.Sivabhushanammal, mother of the 1st appellant and 1st respondent herein, died on 05.10.2005. Mr.V.Rajamanickam died on 10.09.1983 leaving behind his wife Sivabhushanammal, plaintiff/1st respondent herein and the 1st



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defendant/1st appellant herein and two other daughters by name Kanchana, Vijayakumari and another son by name Ganesan. The sister of the deceased 1st appellant by name Kanchana died on 10.10.2003 leaving behind defendants 4 to 6 as her legal heirs in the suit. Smt.Vijayakumari, also died on 28.05.1997 leaving behind defendants 7 and 8 as her legal heirs and the brother of the deceased 1st appellant, namely, Ganesan, died on 17.04.2007 leaving behind defendants 2 and 3.

- (5) The suit property is an extent of 1560 sq.ft. with the building in Kanniappa Nagar. The deceased / 1st respondent as plaintiff filed the suit for partition and allotment of 1/5th share in the suit schedule property and for consequential reliefs. It is admitted that the suit property namely Plot No.223 in Kanniappa Nagar was originally allotted in favour of father of appellants Mr.V.Rajamanickam by the Tamil Nadu Slum Clearance Board. It is stated by the 1st respondent that the entire amount due and payable to TNSCB was paid by Mr.V.Rajamanickam. Since he died on 10.09.1983 before even getting the Sale Deed, it is stated by the plaintiff that the Sale



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Deed dated 10.04.1997 was executed in favour of the mother of the appellant and 1st respondent by name Mrs.Sivabhushanammal. It is admitted that the Sale Deed in favour of the appellant's mother was registered as Doc.No.643/1997. Stating that the mother of the 1st appellant and 1st respondent is not the absolute owner of the property and that the property devolved on all the children of Mr.V.Rajamanickam, the suit came to be filed for partition of plaintiff's 1/5th share.

- (6) The suit was contested by the defendant on the ground that the property belonged to Mrs.Sivabhushanammal exclusively by virtue of the Sale Deed dated 10.04.1997 and that she had executed two Settlement Deeds in favour of the 1st defendant as well as in favour of her another son by name Ganesan on 16.06.2005. It is only by virtue of the Settlement Deeds alleged to have been executed by Mrs.Sivabhushanammal, the deceased 1st appellant/1st defendant claimed exclusive title in respect of the suit property along with his brother Ganesan and contested the suit for partition.
- (7) The learned Single Judge of this Court, after considering the entire



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evidence, came to the conclusion that the properties is not the exclusive property of Mrs.Sivabhushanammal and that the Sale Deed obtained by her from TNSCB will not cloth her with absolute right as the original allotment was in favour of the father and the entire consideration was paid by the father Mr.V.Rajamanickam during his lifetime. The learned Judge further held that the Settlement Deeds dated 16.06.2005 executed by the mother Mrs.Sivabhushanammal in favour of Ganesan and the appellant herein are invalid. In view of the findings on the issue regarding the title as well as the validity of the two Settlement Deeds, the learned Judge held that the plaintiff is entitled to 1/5th share in the suit property. Aggrieved by the judgment and decree made in CS.No.408/2008 by the learned Single Judge, the 1st defendant has preferred the above appeal.

- (8) This Court heard the learned counsel for the appellants and the learned counsel for the 9th respondent and also perused the materials placed.
- (9) The learned counsel for the appellants is unable to demonstrate



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before this Court, how the suit property could be claimed by the mother as her exclusive property. It is not in dispute that original allotment of property by TNSCB was in favour of Mr.V.Rajamanickam and the said allotment was in the year 1961. Before the Trial Court, no evidence was let in to show that the mother Mrs.Sivabhushanammal had obtained the Sale Deed in her individual capacity without reference to the previous allotment in favour of her husband Mr.V.Rajamanickam. The Sale Deed was in recognition of the pre-existing right of Mr.V.Rajamanickam and there is no evidence to show that the property could be treated as the absolute property of Mrs.Sivabhushanammal. As the wife and senior member of the family of Mr.V.Rajamanickam, she is supposed to hold the property only in trust for benefit of all the legal heirs of Sri.V.Rajamanickam. This Court has no reasons to interfere with the finding of the learned Judge in CS.No.408/2008 holding that the suit property is the absolute property of Mr.V.Rajamanickam, father of plaintiff.

(10) The execution of Settlement Deeds is not seriously disputed. The



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learned Judge held that the Settlement Deeds cannot be given effect to as the mother had no right in the property. However, under Section 8 of the Hindu Succession Act, wife of Mr.V.Rajamanickam, is also a heir entitled to equal share along with the children. Therefore, the Settlement Deeds are valid to the extent of $1/6^{\text{th}}$ share of the mother, namely, Mrs.Sivabhushanammal. The plaintiff is therefore, entitled to only $1/6^{\text{th}}$ share in the suit property. Since settlement is held to be valid to the extent of mother's share, the appellants and the legal representatives of Ganesan are entitled to $1/6^{\text{th}}$ share in accordance with the Settlement Deeds. From the Settlement Deeds, it is seen that the mother has been given 880 sq.ft., to the appellant and an extent of 680 sq.ft., to Ganesan. This 880 sq.ft., represents 56.4% and 680 sq.ft., represents 43.6%. The legal heirs of settlee are entitled to the same proportion/percentage out of settlor's $1/6^{\text{th}}$ share.

(11) Since Settlement Deeds are held to be valid in respect of $1/6^{\text{th}}$ share



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WEB COPY of Mrs.Sivabhushanammal, the plaintiff is entitled to 1/6th share.

- (12) In the result, the Original Side Appeal is **partly allowed** and the judgment and decree in CS.No.408/2008 is modified by granting a preliminary decree in respect of deceased 1st respondent/plaintiff's 1/6th share in the suit property. No costs.

[SSSRJ] [PBBJ]
01.03.2023

AP
Internet : Yes

To

The Section Officer,
VR Section, High Court
Chennai.



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