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S.A.No.133 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2023

CORAM

THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.No.133 of 2023 and
C.M.P.No.3842 of 2023

1.S.Powlena
S.Mani Maran(deceased)
S.Malar Mannan(deceased)
2.S.Jayakumar
3.S.Mani Megalai
4.S.Tamil Selvi
5.M.Balasubramani
6.E.Pushpalathan
7.M.Raja Pandian
8.M.Saravana Murthy
9.A.Sangeetha Lakshmi
10.P.Selvakumar
11.P.Rajesh Kumar
12.P.Sasikumar

...Appellants

Vs.

M.Muthaih(deceased)
1.M.Bommie
2.M.Krishnaveni
3.M.Kamala Devi
4.M.Devaki Rani
5.M.Jayakumari
6.S.Muthu Selvam

...Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 10.01.2019 in AS.No.204



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of 2017 on the file of the XVII Additional City Civil Court, Chennai confirming the judgment and decree dated 25.07.2016 in OS.No.2741 of 2004 on the file of the XV Assistant City Civil Court at Chennai insofar as it is against the appellants.

For Appellants : Mr.D.Saikumarran

For Respondents : Mr.S.Prabhakar

JUDGMENT

This second appeal is directed as against the judgment and decree dated 10.01.2019 in AS.No.204 of 2017 on the file of the XVII Additional City Civil Court, Chennai confirming the judgment and decree dated 25.07.2016 in OS.No.2741 of 2004 on the file of the XV Assistant City Civil Court at Chennai, thereby decreed the suit for partition.

2. The appellants are the defendants and the respondents are the plaintiffs. The respondents filed suit for partition in respect of the suit schedule property bearing door No.1/15, Mangalapuram 8th Street, Chetpet, Chennai in survey No.406/116. It was assigned to one Narayanasamy, who died intestate leaving behind his only son Munuswamy. Munuswamy also died in the year 1970 leaving behind the plaintiffs and one, Soundararajan as his legal heirs. The first defendant is the wife of the said Soundararajan



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and the other defendants are his children. Therefore, the respondents filed suit for partition claiming 5/7th share in the suit schedule property.

3. Resisting the same, the appellants filed written statement stating that after demise of the said Munuswamy, his son Soundararajan i.e. the husband of the first defendant managed the entire property and he had spent considerable amount for development of the suit property. All the money was spent by him for the marriage of all the plaintiffs. None of the family members contributed any amount in order to develop the suit schedule property. Therefore, the plaintiffs relinquished their right in respect of the suit property in favour of the husband of the first defendant. After demise of the said Soundararajan, the plaintiffs threatened the respondents to vacate the the premises and filed the present suit for partition.

4. On the basis of the pleadings, the trial court framed the following issues:

(a) Whether the suit is maintainable?

(b) Whether the plaintiffs are entitled for a preliminary decree of partition as prayed for?



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(c) To what other relief, if any, are the plaintiffs entitled to?

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5. In support of the plaintiff's case, P.W.1 was examined and seven documents were marked as Ex.A.1 to Ex.A.7. On the side of the defendants, D.W.1 and D.W.2 were examined and Ex.B.1 was marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed the suit. Aggrieved over the judgment and decree of the trial Court, the appellants herein preferred an appeal suit in AS.No.204 of 2017 before the XVII Additional City Civil Court, Chennai. The first appellate Court on appreciating the materials placed on records, dismissed the appeal by confirming the judgment and decree passed by the trial Court. Challenging the same, the defendants have come forward with the present second appeal.

6. The learned counsel for the appellants has raised the following substantial questions of law:

a) Whether the lower appellate court is correct in law in confirming the judgment of the trial court without giving any finding with regard to possession of the plaintiff?



b) Whether the lower appellate court is correct in confirming the judgment of the trial court without considering the Ex.B1?

c) Whether the lower appellate court is correct in law in confirming the judgment of the trial court without analysing that the first plaintiff signature was forged?

d) Whether the lower appellate court is correct in law in confirming the judgment of the trial court without analysing that all the plaintiffs are sufficiently settled during their marriage with jewels and stridhana from the year 1946 to 1976 and they have no right in the schedule property?

e) Whether the lower appellate court is correct in law in confirming the judgment of the trial court without analysing that patta for the lands stood in the name of the defendants father Soundarajan and first plaintiff Muthiah and the joint family property status got extinguished way back?

7. The learned counsel appearing for the appellants would submit that they obtained assignment patta from the revenue officials and they are in possession and enjoyment of the suit schedule property. At no point of time, the plaintiffs were in possession and enjoyment of the suit schedule property. The appellants had spent huge amount in order to develop the suit schedule property. In fact, the plaintiffs got married and the entire expenses



were borne out by the husband of the first defendant. Already the plaintiffs got married in the year 1946 and 1972 respectively with all sridhana articles and presentations. Therefore, they have no share over the property and already they relinquished their right in respect of the suit schedule property. Immediately after the demise of the husband of the first defendant, the present suit came to be filed for partition.

8. Heard, the learned counsel appearing on either side.

9. On perusal of records, revealed that the respondents filed suit for partition. The suit property is a self acquired property of one, Narayanasamy. Therefore, daughters are not disqualified from inheriting the self acquired property of the father and the appellants could not deny the rights of the respondents from inheriting the suit schedule property. With mere production of patta in the name of the husband of the first defendant, it could not confer any title over the property. Further, the appellants contended that the signature of the first plaintiff was forged one and even then, they did not take steps to prove the same. Though the appellants contended that during the plaintiffs' marriage, they were presented jewels and all the expenses were borne out by them, PW1 and PW2 categorically



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deposed that they got love marriage and no amount was spent during their marriage by the appellants herein. Therefore, the courts below rightly decreed the suit for partition and allotted their respective shares and this Court does not find any valid reason to interfere with the findings rendered by the Courts below as such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and decreed the suit filed by the respondents. As such, this Court is of the considered opinion that no substantial questions of law involved in this appeal.

10. Accordingly, the judgment and decree dated 10.01.2019 in AS.No.204 of 2017 on the file of the XVII Additional City Civil Court, Chennai confirming the judgment and decree dated 25.07.2016 in OS.No.2741 of 2004 on the file of the XV Assistant City Civil Court at Chennai is confirmed and this Second Appeal is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To

- 1.The XVII Additional City Civil Court,
Chennai
- 2.The XV Assistant City Civil Court at Chennai
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

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