



A.S.No.191 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.11.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

A.S.No.191 of 2017

1.Somasundaram
2.S.Kannammal

... Appellants

Vs.

1.G.Jayamani
2.M.Vanithamani
3.M.Perumal
4.Lakshmi
5.Arumugam
6.N.Velusamy
7.Chinnammal
8.R.Kolandasamy
9.Marimuthu
10.Subramani
11.Ramesh
12.Kolandasamy
13.K.C.Subbaiah
14.L.Saranya

...Respondents

Appeal suit is filed under Section 96 of the Code of Civil Procedure, prayed to set aside the Judgement and Decree dated 06.01.2017 made in O.S.No.240 of 2013 on the file of I Additional District Court, Erode.



A.S.No.191 of 2017

For Appellants

: Mr.Venkateseshan

For R7 to R9

: Given up

For R4 to R6,R8,R10 to R14

: No appearance

For R 1 to 3

: Mr. Kaithamalai Kumaran

J U D G M E N T

The appellants have preferred this appeal suit against the Judgment and Decree dated 06.01.2017 made in O.S.No.240 of 2013 on the file of I Additional District Court, Erode.

2. Heard, Mr. Venkateseshan, learned counsel for the appellant and Mr. Kaithamalai Kumaran, learned Counsel appearing for the respondents 1 to 3 and perused the materials available on record.

3. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.

4. The appellants herein are the defendants 1 and 2 in the suit in O.S.No.240 of 2013 on the file of I Additional District Court, Erode, filed by the respondents 1 to 3 claiming share in A and B Scheduled property by way of partition.



A.S..No.191 of 2017

WEB COPY 5. The contention of the plaintiffs is that A-Scheduled property is self held property of their grand father / Kuppamoopan. His Son Shanmugam, plaintiff's mother / Saraswathy and her sister and brother namely D1 and D2 are having equal share. However, Saraswathy died intestate leaving behind her legal heirs, who have 4/8 share in the A-Schedule property and also in B-Schedule property. They contend that the suit property belongs to the Grand father / Shanmugam, in which his daughter Saraswathy is entitled 1/3 rd share and the remaining share goes to D1 and D2 thereby they prayed for 1/3 rd share in the B-Scheduled property.

6. The said suit was contested by the defendants 1 and 2. Admitting the relationship between the parties but denied the plaintiffs claim by stating that during the life time the said Saraswathy, along with her sister Kannammal, entered into a partition deed which was registered on 17.09.2013. At that time Saraswathy was sick so she has not signed but another sister signed the document, thereby they denied the plaintiffs claim, in respect of A-Schedule property as well as the B-Schedule property. It was also stated that Sarawathy orally relinquished her share.



A.S.No.191 of 2017

WEB COPY

7. Before the trial Court issues were framed, and both the parties adduced oral and documentary evidence. To prove their case, on the side of the plaintiffs P.W.1 & P.W.2 were examined and Exs.A1 to A4 were marked. On the side of the defendants D.W.1 & D.W.2 were examined and Ex.B1 to Ex.B4 were marked. Before the trial Court, three issues were framed out of which 1 and 2 are, "whether the plaintiffs are entitled for 4/8 share in the A - Schedule property and 1/3 share in B Schedule property?". But no issues with regard to the relinquishment alleged to be made by the deceased Saraswathy.

8. After demise of said Saraswath defendants 1 and 2 along with Defendants 3 and 4 executed the said partition deed and the same would not bind her legal heirs / plaintiffs. But the contention of the defendants is that already deceased Saraswathy relinquished her rights, therefore plaintiffs have no locus standi to dispute the said partition deed. However, during the trial, the defendants admits that Saraswathy has not signed the partition deed nor they obtained any signature from the legal heirs of the deceased Saraswathy. However, she expressed her intention to divide the properties along with



A.S..No.191 of 2017

plaintiffs orally, ignoring the earlier partition deed. They also admits that no division of property was made in respect of B-Schedule property during the life time of Saraswathy.

9. The learned trial Judge considering the oral and documentary evidence on record, held that the defendant have not proved the oral relinquishment made by Saraswathy. Neither the defendants 1 to 4, nor the plaintiffs signed in the partition deed- Ex.A1, thereby decreed the suit granting 4/8th share as prayed in A-Schedule property and 1/3 rd share in B-Schedule property. In respect of B-schedule property the defendants did not prefer any appeal since they agreed that the plaintiffs are entitled for the share in suit property. More particularly with regard to the allotment of the share in A-Schedule property the defendants 1 and 2 have preferred this appeal.

10. The learned counsel for the appellant / defendants 1 and 2 submitted that before the trial Court the plaintiffs did not produce any document to show that they are in joint possession of the property along with appellants / Defendants 1 and 2. The admission made by the 1st defendant as DW1, was totally mis-construed by the trial Court and the learned trial Judge



A.S..No.191 of 2017

also failed to take note of the partition deed dated 17.09.2013. Therefore, he prayed to set aside the findings of the learned trial Judge, to that effect.

11. Admittedly A-schedule property belongs to Kuppamoopan, who had two daughters and one son namely Lakshmi/D3, Papayee and Shanmugam. Papayee died and her son is D4. Shanmugam died leaving behind 3 legal heirs namely Kannammal/D2, Saraswathy and Son Somasundaram/D1. Saraswathy died leaving behind the plaintiffs as her legal heirs viz., P1 to P3. As A-Schedule property is a self equipped property of Kuppamoopan, two daughters and one Son are entitled to $\frac{1}{3}$ share. Shanmugam died leaving behind his two daughters and one son. Hence the $\frac{1}{3}$ share divided has to be equally, each entitled $\frac{1}{9}$ Share. Saraswathy died leaving behind the plaintiffs as her legal heirs. Hence, the plaintiffs each entitled $\frac{1}{27}$ share, totally $\frac{3}{27}$ shares and for D1 & D2 each entitled $\frac{3}{27}$ share. D3 and D4 are entitled each $\frac{9}{27}$ share. But, at the time of filling the plaint schedule, the plaintiffs claimed $\frac{4}{18}$ share but there is no reason assigned how they arrived at such share. Therefore, as discussed above the plaintiffs are totally entitled to $\frac{3}{27}$ th share in the A-Schedule property and the remaining share goes to the defendants 1,2,3 and 4 as the legal heirs of the deceased Kuppamoopan. In



A.S.No.191 of 2017

respect of B-Schedule property defendants 1 and 2 are consented with the claim of the plaintiffs. Therefore, the findings of the learned trial Judge with regard to the 'A' Schedule share is set aside. Plaintiffs are entitled for 3/27 th share in the A-Schedule property and 1/3 share in 'B' Schedule by granting a preliminary decree in favour of the plaintiffs.

12. Accordingly, the appeal suit is allowed. No costs.

17.11.2023

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

rri

To,

1. The I Additional District Court, Erode.
2. The Section Officer, VR-Section,
High Court of Madras, Chennai.



WEB COPY



A.S.No.191 of 2017

T.V.THAMILSELVI,J.

rii

A.S.No.191 of 2017

17.11.2023