



AS. No.209 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09. 2023

CORAM:

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

AS. No. 209 of 2017

A.C.Ramani

...Appellant

Vs.

1.A.R.Geetha

2.A.C.Ashokumar

3.A.C.Prabu

4.A.C.Hemavathi

5.A.S. Anand Babu

...Respondents.

PRAYER : This first appeal is filed under section 96 read with Order XLI Rule 1 of the Civil Procedure Code, praying to set aside the judgment and preliminary decree passed in O.S No. 2094 of 2013 on the file of the XV Additional City Civil Court, Chennai dated 18.04.2015.

For Petitioners : Mr.P.Johnson

For R1 : Mr.I.John Arockiadas

For R2 to R4 : Mr.E.Muthunarayana Moorthy

For R5 : Not Appeared



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JUDGMENT

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Challenging the impugned judgment and preliminary decree passed by the XV Additional City Civil Judge, Chennai, in O.S No. 2094 of 2013, fourth defendant in the suit preferred this appeal.

2. Originally suit in O.S No. 2094 of 2013 was filed by the first respondent herein/plaintiff for the relief of partition in respect of suit properties and the same was decreed in her favour by allotting 1/3 share in the suit property. Aggrieved over the same, the fourth defendant in suit preferred this appeal.

3. The learned counsel for the appellant submitted that the plaintiff's father Ramamurthy along with his two brother namely Srinivasan, Chinniah are sons of C.Rajagopal Naidu each having 1/3 share in the properties as per the Will dated 09.11.1966, out of two properties one is suit property and another property is bearing Door No. 1, Pulianthope, 5th lane (Cattle Shed). In the year 1999 plaintiff's father sold the said property i.e., Door No.1, Pulianthope, 5th lane (Cattle shed) and utilized the entire sale proceeds. Hence, in oral partition among the brothers plaintiff's father Ramamurthy given up his 1/3 share in the suit property in favour of the defendants thereby the plaintiff is not entitled for share in the suit property but the Trial



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Court without appreciating above facts illegally decreed the suit as such is unfair and liable to be set aside. Hence prays to allow this appeal.

4. By way of reply, the learned counsel for the respondent/plaintiff submitted that the plaintiff's father Ramamurthy was having 1/3 share in the suit property so also 1/3 share in Door No.1, Pulianthope, 5th lane (Cattle shed) was sold by all of them and equally shared the sale proceeds hence there was no such oral partition was effected as alleged by the appellant. Besides, they failed to prove oral partition. Hence he prays to dismiss this appeal.

5. Considering the submissions on either side, the issue to be decided is whether the plaintiff is entitle for 1/3 share in the suit property and whether the defendant proved their plea of oral partition?

6. For the sake of convenience parties are denoted as per the suit. Considering the submissions on either side and also the facts reveals that the suit property was originally belongs to one Rajagopal Naidu who is grand father of the plaintiff and the defendants 1 to 3 and 5, father-in-law of the fourth defendant. The said Rajagopal Naidu executed a Will dated



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09.11.1966 by bequeathing his second item of the property in favour of his sons who are fathers' of the respondents herein (Ramamurthy plaintiff's father, Srinivasan fourth respondent's father, and Chinnaih 1 to 3 respondents' father). Thereafter, Will was probated accordingly three sons became the absolute owner of the property these facts are not disputed by the parties. The contention of the plaintiff was that one of the property in bearing Door No. 1, Pulianthope, 5th lane (Cattle Shed) was sold by the plaintiff's father and his brother in the year 1999 and he received 1/3 share in sale proceeds. After the plaintiff's father death the plaintiff collecting rent from one shop portion so also defendants collecting rent from other shops. With regard to suit property the plaintiff claiming 1/3 share based on her deceased father's 1/3 share as per the Will as his only legal heir and she demanded amicable partition from the defendants who are the legal heirs of her father's brother but they refused hence he filed suit for partition. The contention of the defendant is that they denied the share of the plaintiff's father stating that entire sale proceeds obtained by selling the property bearing Door No. 1, Pulianthope, 5th lane (Cattle Shed) was utilized by the plaintiff's father and as per the oral partition deed the plaintiff's father given up his 1/3 share in the suit property hence they refused the right of the



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plaintiff. Since the defendants pleaded oral partition the burden is on them to prove the oral partition before the Trial Court but the defendants not produced any independent witness to prove their oral partition. Furthermore, in the written statement filed by the defendants there is no specific averments with regard to oral partition mere allegation is not sufficient to conclude that oral partition was effected. Therefore defendant not produced the alleged oral partition. Accordingly, issue is answered. As discussed above the Trial Court rightly decreed the suit which needs no interference. Moreover, D.W.1 also admits in his proof affidavit that the sale proceeds taken up by the plaintiff's father, 4 and 5 respondent's father. If really the fourth defendant not received the sale proceeds she should have examined herself as witness to disprove the said contention but she was not entered into witness box thereby the Trial Court rightly drawn adverse inference against her which needs no interference of this Court. Hence the defendants failed to prove the oral partition thereby the plaintiff deemed to be an co-sharer. Thus she is entitled for share in the suit property. Hence suit decreed as prayed for.



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10. In result, this appeal is dismissed. No cost. Consequentially
connected miscellaneous petition is closed.

05.09.2023

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T.V.THAMILSELVI,J.

Pb1

To

1. The XV Additional City Civil Court, Chennai.
2. The Section Officer,
V.R Section.

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