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S.A.No.216 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.216 of 2017
and
CMP.No.5073 of 2017

L.Chandran (Deceased)
1.C.Devaraj
2.Leelavathai
3.Latha

...Appellants

Vs.

Moorthy (Deceased)

1.L.Anandan
2.Nethravathi
3.K.Deepu
4.K.Priyanka
5.Geetharani
6.M.Magesh
7.Prabavathi

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree of the District Judge and the Appellate Authority of the Nilgiris at Udthagamandalam in A.S.No.7 of 2015



S.A.No.216 of 2017

dated 19.10.2016 confirming the judgment and decree in OS.No.139 of 2010

dated 03.09.2015 on the file of the learned Subordinate Judge,
Udhagamandalam.

For Appellants : Mr.G.Ethirajalu

For Respondents : Mr.S.Rajmakesh for R1 to R4
R5 to R7 - Left

JUDGMENT

The unsuccessful defendants in the suit are the appellants. The respondents filed a suit for partition of their 3/4th share in the suit property. The suit was decreed by the trial Court and the same was confirmed by the First Appellate Court. Aggrieved by the concurred findings, the unsuccessful defendants have come up with this Second Appeal.

2. According to the respondents/plaintiffs, the suit property originally belonged to Mariammal mother of the first respondent. She died intestate leaving behind her sons/plaintiffs 1 & 2, first defendant and one L.Kumar to succeed her estate. The said L.Kumar pre-deceased his mother and the legal representatives of L.Kumar were arrayed as plaintiffs 3 to 5 in the



S.A.No.216 of 2017

suit. Therefore, it was the claim of the respondents/plaintiffs that they were entitled to 3/4th share in the suit property and the appellants/first defendant and his heirs were entitled to 1/4th share in the suit property. It was further averred that in spite of the demand for partition the defendants were not amenable for the same. Therefore, the respondents were constrained to file a suit for partition claiming 3/4th share in the suit property.

3. The appellants/defendants filed a written statement denying the averment in the plaint as if Mariammal died intestate. It was claimed that the first defendant was a mentally disordered person and taking note of the said fact, a settlement deed was executed in favour of the first defendant on 14.05.2008 out of love and affection. Therefore, the appellants/defendants claimed absolute right over the suit property under the settlement deed executed by Mariammal in favour of the first defendant.

4. The trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that Ex.B11 settlement deed relied on by the appellants/defendants could not convey any title to the first defendant as it was an unregistered settlement deed. Further the appellants



S.A.No.216 of 2017

failed to examine the attesor to the settlement deed to prove the same.

Therefore, the trial Court rejected the defence and granted a decree for partition of 3/4th share as prayed for. Aggrieved by the same, the appellants preferred an Appeal in A.S.No.7 of 2015 on the file of the District Judge, Nilgiris at Udthagamandalam. The first Appellate Court also affirmed the findings of the trial Court and dismissed the appeal. Hence, the unsuccessful defendants have come up with this Second Appeal.

5. The learned counsel for the appellants submitted that Ex.B11 settlement deed executed by Mariammal was an unregistered document and the same was acted upon and therefore, the respondents are not entitled to maintain a suit for partition. The learned counsel for the appellants further submitted that the Courts below failed to offer proper opportunity to the appellants/defendants to examine the attesor under Ex.B11 settlement deed and therefore, the matter shall be remanded back to the Courts below to enable the appellants to examine the attesor to prove the document.

6. Even as per the admitted case of both the parties, the suit property was Poramboke and the same was assigned in favour of Mariammal



S.A.No.216 of 2017

under Ex.B11 on 30.12.2006. The said Mariammal had four sons namely, L.Moorthy, L.Anandan, L.Chandran and L.Kumar. The said L.Moorthy was arrayed as first plaintiff and he died and in the suit his legal representatives were brought on record as plaintiffs 6 to 8. The second son/L.Anandan was arrayed as second plaintiff and the fourth son of Mariammal, L.Kumar, pre-deceased her and his legal representatives were arrayed as plaintiffs 3 to 5. Thus even on death of Mariammal, plaintiffs were entitled to 3/4th share in the suit property. The third son of Mariammal was arrayed as first defendant. He died pending suit and his legal representatives namely wife and children were arrayed as defendants 2 to 4.

7. Thus, the defendants are entitled to 1/4th share after the death of Mariammal. In the suit, the defendants raised a specific plea that during life time of Mariammal, she executed an unregistered settlement deed in faovur of first defendant, L.Chandran under Ex.B11 dated 14.05.2008. The unregistered settlement deed stated to have been executed by Mariammal could not convey any title to the first defendant. Therefore, the same is liable to be ignored. Further the Courts below also rejected Ex.B11 on the ground that the attestor to the said document was not examined. Even assuming that the attestor to the



S.A.No.216 of 2017

settlement deed was examined, the execution of an unregistered settlement deed could not convey any title to the first defendant.

8. In such circumstances, both the Courts below rightly rejected the defence raised by the appellants/defendants and granted a preliminary decree for partition in favour of the respondents as prayed for. I do not find any substantial question of law to interfere with the said findings, the Second Appeal stands dismissed.

9. a) In the result, the Second Appeal stands dismissed by confirming the judgment and decree passed by the Courts below.

b) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed

14.12.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
dna



S.A.No.216 of 2017

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To

- 1.The District Judge and the Appellate
Authority of the Nilgiris at Udhagamandalam.
- 2.The Subordinate Judge, Udhagamandalam.



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S.SOUNTHAR, J.
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