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A.S. No.61 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

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

A.S.No.61 of 2017

1.Irruliammal

2.Paapa

3.Palaniammal

... Appellants

Versus

1.Sevathan @ Suppan

2.Idumban

3.Selvam

... Respondents

PRAYER : Appeal Suit is filed under Section 96 of Code of Civil

Procedure, praying to set aside the judgment and decree passed by the learned Principal District Judge, Dharmapuri in O.A.No.57 of 2015 dated 04.06.2016

For Appellants	: Mr.S.C.Vishwanth
For Respondents	: No appearance

JUDGMENT

The appellants have prayed to set aside the judgment and decree passed by the learned Principal District Judge, Dharmapuri in O.A.No.57 of 2015, dated 04.06.2016

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2. The appellants are the plaintiffs in O.S.No.57 of 2015, dated 04.06.2016, on the file of the Principal District Judge, Dharmapuri. The respondents herein are the defendants in the said suit. Notice has been served and the name also printed in the cause list, but there was no representation on behalf of the respondents and they are hereby set as ex-parte.

3. The contentions of the appellants are that, the 1st defendant is the father of the appellants and the 2nd & 3rd defendants. They were enjoying the ancestral properties jointly in the family. The grand father of the plaintiffs, namely Samiyar @ Idumban was allotted with the properties as per the oral partition held in between the family members. Thereafter, the grand father developed the properties and after his demise, the properties were allotted to his son /1st defendant and his legal heirs and they were enjoying the properties in common without any partition. After his death, the 1st defendant maintained the entire properties.



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4. The defendants 2 and 3 put up construction in small portion of the joint family suit properties, but they denied the plaintiff's right over the properties and apart from that, the plaintiffs came to know that the 3rd defendant forcibly executed a gift deed from the 1st defendant with regard to the portion of the properties in his favour and the 1st defendant has no right to execute the gift deed in favour of one of the son / 3rd defendant, because suit properties are joint family properties. Hence, the plaintiffs have filed the present suit for partition.

5. However, on the side of the plaintiffs, the gift deed said to be executed by 1st defendant was marked as Ex.A4. The said document was executed just three months before the suit and the cause of action for the suit arose after execution of the said document. But on seeing the ex-parte decree passed by the learned trial Judge, it is seen that the Court below has not framed any issues with regard to the plaintiffs' right over the properties, nor the Court below framed any issue, though the defendants remained ex-parte before the Court below.



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6. The learned trial Judge, ought to have framed the issues, the rights of parties with regard to the suit properties based on the available evidence, but the Court below simply dismissed the suit by relying on the recitals of the gift deed, concluded that as per the recitals of Ex.A4-gift deed, the properties are belonged to the 1st defendant, and the same was gifted to the 3rd defendant.

7. As discussed above, when there is no evidence with regard to the execution of the gift deed on either side, the learned trial Judge erroneously concluded that the properties belonged to the 1st defendant based on the recitals of Ex.A4 without assigning any reason, nor supported with any evidence and as such totally perverse findings, and therefore the decree passed by the learned trial Judge is liable to be set aside.

8. When the matter is taken up for hearing, the learned counsel for the appellants / plaintiffs submitted that they have not been given proper opportunities to prove their claim before the trial Court.



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9. Considering the above submission, the case is remanded

back to the trial Court with a direction that the trial Judge is directed to dispose of the suit by issuing notice to the defendants as well as by giving opportunities to both parties to adduce evidence, and based on the available evidence, the trial Court is directed to frame issues, and decide the issues based on the oral and documentary evidence, If evidence adduced on the side of both parties trial Court is directed to dispose of the suit on merits and as per the manner known to law, within a period of five months from the date of receipt of a copy of this Judgment.

10. Accordingly, this Appeal Suit is Partly allowed and remanded.

No costs.

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Index : Yes/No

Speaking/Non Speaking order

Neutral Citation: Yes/No

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To

1. The Principal District Judge, Dharmapuri.

2. The Section Officer,

VR-Section, High Court of Madras.

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T.V.THAMILSELVI, J.

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