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A.S.No.7 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2023

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI**

A.S.No.7 of 2019

1.Kanna Bai

2.B.Jayavelu

3.B.Palani

4.B.Ravikumar

..Petitioners

Vs.

1.B.Vijayalakshmi

2.B.Kalaivani

3.Amuda @ Selvi

...

Respondents

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure read with Order 41 Rule 1 of the Code of Civil Procedure against the judgment and decree dated 04.09.2017 made in O.S.No.88 of 2011 on the file of the Principal District Court, Kancheepuram District at Chengalpattu.

For Appellants : Mr.M.Guruprasad

For Respondents : Mr.Kingsten Jerold



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A.S.No.7 of 2019

J U D G M E N T

The defendants in O.S.No.88 of 2011, a suit for partition are the appellants. The said suit was laid by the respondents herein who are the daughters of one Boopathi Mudaliar seeking partition and separate possession of their 3/7th share in the suit schedule properties.

2. According to the plaintiffs the properties are self acquired properties by the said Boopathi Mudaliar, who died intestate on 27.02.2007 leaving behind the plaintiffs and the defendants. The plaintiffs who are three in number are the daughters, the 1st defendant is the wife and the defendants 2 to 4 are the sons of Boopathi Mudaliar. Contending that their demands for partition were not met, the plaintiffs sought for partition.

3. The suit was resisted by the defendants contending that the 2nd defendant also contributed physically and financially for the well being of the family and apart from minor contributions by the 1st defendant, the marriage of all the three daughters were performed with



A.S.No.7 of 2019

the contribution of the 2nd defendant. It is also claimed that various jewels and other articles were given as sreedhana to the daughters. It is stated that the family owned only a thatched hut when Boopathi Mudaliar was alive and it is only after his death the properties were developed by the sons who are the defendants 2 to 4. In fact the defendants 2 to 4 entered into a partition between themselves dividing the properties amongst themselves on 19.05.2008 under a registered partition deed in respect of suit first item. Though separate written statements were filed by the 1st defendant and the 2nd defendant, the contentions were substantially the same.

4. On the above pleadings the trial Court framed the following issues:

1. Whether the plaintiffs are entitled to partition of 3/7th share in the suit schedule properties?

2. Whether there was a partition between plaintiffs 2 to 4 in respect of the suit properties?

3. Whether the partition deed dated 19.05.2008 is valid and binding upon the plaintiffs?

4. To what relief?



A.S.No.7 of 2019

WEB COPY

5. The learned Principal District Judge, Kancheepuram District at Chengalpattu found that the defendants have not established the fact that they had made certain contributions towards purchase of properties. Admittedly, the properties stand in the name of Boopathi Mudaliar, the father of the plaintiffs and the defendants 2 to 4. He had died intestate. Therefore, by operation of Section 8 of the Hindu Succession Act the plaintiffs and the defendants would be entitled to equal shares in the suit properties, which is $1/7^{\text{th}}$ each. The learned trial Judge rejected the claim of the defendants that Boopathi Mudaliar had borrowed monies and the debts were settled by the 2nd defendant. The evidence of the mother who was examined as DW2 was not believed by the learned Judge. The learned Judge also took note of the fact that DW2 also said that Boopathi Mudaliar performed the marriage of all the three daughters in a grand manner. On the above findings, the learned trial Judge decreed the suit as prayed for. Aggrieved the defendants are on appeal.



A.S.No.7 of 2019

6. We have heard Mr.M.Guruprasad, learned counsel appearing for the appellants and Mr.Kingsten Jerold, learned counsel appearing for the respondents.

7. Mr.M.Guruprasad, learned counsel appearing for the appellants would reiterate the defense that was projected before the trial Court and contend that the trial Court must have taken into account the evidence of DW1 who had said that the 2nd defendant has discharged the loans of her husband and should have directed the plaintiffs to share atleast the loans that were repaid by the 2nd defendant.

8. Mr.Kingsten Jerold, learned counsel appearing for the respondents would contend that no details of any loan was given in the evidence. Though the 2nd defendant was examined as DW1, he was not able to give the particulars of any loan that was borrowed by the father. Even in the proof affidavit of DW2 except the statement that the 2nd defendant has discharged the loans, there were no other particulars given. Therefore, the trial Court was justified in concluding that the plaintiffs are



A.S.No.7 of 2019

entitled to 3/7th share in both the properties. The act of the defendants 2 to 4 in partitioning the property without including the other shares viz., the mother and daughters should also be taken note of according to the learned counsel.

9. We have considered the rival submissions. The following points arise for determination:

1)Whether the trial Court was right in disbelieving the evidence of DW2 and granting a decree for 3/7th share without making provision for repayment of debts.

2)Whether the action of the defendants 2 to 4 in entering into a partition without including the daughters and the mother can be justified.

Point No.1:

10. As regards the loans, we find the evidence very laconic. There are no particulars given and not even the amount of loan is spelt out. All that is stated by mother DW2 is that her husband had borrowed



A.S.No.7 of 2019

monies and he has not paid back the same. We do not find any record of such loan having been borrowed also. We are therefore unable to fault the trial Court for disbelieving the evidence of DW2 on the question of borrowing. Therefore, point No.1 is answered in faovur of the respondents.

Point No.2:

11. Admittedly the property belong to Boopathi Mudaliar, who died intestate. Upon his death all his Class I heirs would be entitled to equal shares. Such being the case, the defendants 2 to 4 were not justified in entering into a partition excluding the other sharers viz., the mother and the plaintiffs in the suit. The conduct of the defendants 2 to 4 in entering into partition without including the daughters as parities cannot deprive the daughters of their right to seek partition. Hence, point No.2 is also answered in favour of the respondents.

12. Mr.Kingsten Jerold, learned counsel appearing for the respondents would point out that the decree of the trial Court reads as if



A.S.No.7 of 2019

II Item of property measures only 720 sq.f. instead of 10720 sq.f. as found in the plaint. Mr.M.Guruprasad, learned counsel appearing for the appellants would fairly concede that the suit property measures 11440 sq.f. and though amendment to that effect was allowed, the same was not carried out. Hence, while drafting the decree the Registry will show item No.II as measuring 11440 sq.f. instead of 720 sq.f.

13. For the foregoing reasons the appeal fails and it is **dismissed** except the above modification of the extent of the II Schedule property. No costs.

(R.S.M.,J.) (R.K.M.,J.)
07.09.2023

dsa
Index : No
Internet : Yes
Neutral Citation : No
Speaking Order



A.S.No.7 of 2019

To

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The Principal District Judge,
Kancheepuram District,
Chengalpattu.



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A.S.No.7 of 2019

R.SUBRAMANIAN,J.
and
R.KALAIMATHI,J.

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