



A.S.No. 474 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2023

CORAM:

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

A.S.No. 474 of 2019

Chitra jagannathan
W/o. late Jagannathan

.. Appellant

Vs

1. S.Kalavathy
2. S.Chitharanjan
3. S.Damodharan
4. O.Rajeshwari
5. O.Nisha (minor)
6. Aarush (minor)
7. S.Sumithra
8. T.Padma
9. T.Sheelapriya
10. Sangamithra Prabhakara Rao
11. Sujitha Ramesh

... Respondents

PRAYER : Appeal Suit filed under Sec. 96 r/w Order 41 of Civil Procedure Code, praying to set aside the judgment and decree dated 12.07.2017 passed in O.S.No.4251 of 2014 on the file of XVIII Addl. City Civil Court, Chennai.



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For Appellant : Mr.B.Leelesh Sundaram

For Respondents : Mr. R.Swarnavel

JUDGEMENT

The appellant herein is the 9th defendant in the suit in O.S.No.4251 of 2014. Originally, the suit was filed by the 1st respondent/plaintiff against defendants 1 to 11 claiming her 2/35th share in the suit property contending that the suit property is the self-acquired property of her father-in-law deceased K. Srinivasulu and after his demise, as a legal heir of his eldest son Seshadri, she claimed 2/35th share from the other legal heirs, for which they refused and also contended that defendants 9, 10 and 11 already relinquished their share in the suit property.

2. For the sake of convenience, parties are referred as per the ranking in the suit.



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3. Before the trial court, the defendants 1 to 8 filed a written statement admitting plaintiff's claim and not raised any objection to decree the suit as prayed for in the plaint. But, the 9th defendant, one of the daughter of deceased Srinivasulu filed a separate written statement contending that she is in joint and constructive possession of suit property, thereby she is entitled 1/6th share in the suit property and also contended that she never executed any relinquishment deed or letter in respect of the suit property as alleged by the plaintiff stating that the alleged letter might have fabricated by the 1st defendant with the help of other sharers in order to defraud her claim, thereby she prayed to allot 1/6th share in the suit property.

4. Before the trial court, the plaintiff was examined as P.W.1 and on her side, documents in Ex.A1 to A15 were marked. No evidence on the side of defendants including 6th defendant. Based on the oral and documentary evidence adduced on the side of plaintiff, the trial judge concludes that the suit property, Ex.A1 stands in the name of plaintiff's



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father-in-law deemed as self-acquired property and also considered the settlement deeds executed by daughter of deceased K.Srinivasulu, Ex.A11 and Ex.A12 as well as affidavit and receipt issued by 9th defendant, another daughter, which were marked as Ex.A6 and A7 concludes that daughters of Srinivasulu relinquished their share. Therefore, the remaining legal heirs of Srinivasulu alone entitled for share in the suit property. Accordingly, the suit was decreed allotting 2/35th share in favour of plaintiff as she prayed for by passing a preliminary decree in her favour. Challenging the said findings, the 9th defendant preferred this appeal.

5. The learned counsel for 9th defendant/appellant would submit that the trial judge failed to follow the legal proposition prescribed under Sec.9 of Hindu Succession Act, thereby the 9th defendant is entitled to 1/6th share in the suit property. He would further submit that the trial judge erred in passing a decree by simply relying the prayer made by the plaintiff, without proper appreciation of facts and failed to consider that the 9th defendant is in joint and constructive possession of the suit



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property, thereby she is entitled 1/6th share. He would also submit that the trial judge erroneously allotted 2/35 share to the plaintiff without following the legal proposition as required under Hindu Succession Act. Hence, he prayed to set aside the decree passed by the trial judge.

6. The learned counsel for 1st respondent/plaintiff would submit that after the death of plaintiff's father-in-law Srinivasulu, there was a deliberations with regard to division and enjoyment of the suit property. Accordingly, daughters/defendants 10 and 11 have executed an affidavit on 03.06.1995, thereby they have relinquished their share without receiving any consideration. But, another daughter/9th defendant not inclined to relinquish her right without receiving the amount, thereby, she insisted payment for her share value. Hence, other sharers have paid a sum of Rs.5,00,000/- on 07.09.1997, thereby she executed a stamped receipt before the Notary and the same was produced on the side of plaintiff as Ex.A6 and A7. Thus, from the year of 1997 onwards, sons of Srinivasulu enjoyed the suit property nor his daughters and 9th defendant also not in constructive joint possession of property and all those



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documents were properly appreciated by the trial judge, but the 9th defendant though claimed that the alleged stamped receipt is fabricated one, but she has not entered into witness box nor denied that she received a sum of Rs.5,00,000/- from the other sharers, but strangely she filed this appeal challenging the findings of trial judge as such is not admissible. Hence, he prayed to dismiss this appeal as no merits.

7. Heard and considered rival submissions made by learned counsel for appellant as well as respondents and perused the records.

8. The point for consideration is whether 9th defendant is entitled for her share in the suit property as a legal heir of her father-in-law, deceased Srinivasulu? The relationship between the parties are admitted. The property belongs to deceased Srinivasulu was acquired by self-acquisition through Ex.A1, Sale deed. He died intestate leaving behind 3 sons and 3 daughters. P.W.1 is daughter-in-law of the said Srinivasulu and she is wife of Seshadri, eldest son of the said Srinivasulu. The defendants are the legal heirs of the sons of deceased Srinivasulu and



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daughters of deceased Srinivasulu. Even among the three daughters, two of the daughters remain exparte and they have not raised any objection with regard to the averment of relinquishment made by them as well as documents relied by the plaintiff, which marked as Ex.A11 and A12. Silence on the side of defendants 10 and 11 amounting to admission of the fact, which needs no interference. The only contesting party is the 9th defendant. As a daughter of deceased Srinivasulu, she claimed that she is entitled for 1/6th share in the suit property.

9. Admittedly, the suit property is measuring an extent of 3429 sq.ft. of land and building situated at Bakthavatsalam nagar, Adyar, Chennai and the said property was purchased by Srinivasulu vide sale deed dated 18.10.1982 and he died intestate leaving behind 3 sons and 3 daughters. After the demise of Srinivasulu, with regard to division of property, there was a dispute arose in the family, however, two daughters have relinquished their share by executing a settlement deed, which is marked as Ex.A11 and A12. Another daughter/9th defendant is not inclined to relinquish her share without receiving any amount and she



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insisted her brothers to give the value equally to that of her share, thereby, they paid a sum of Rs.5,00,000/-, for which, she executed an affidavit and issued a stamped received, which are marked as Ex.A6 and A7. But, those documents are denied by the 9th defendant stating that she has not received any amount from the other sharers and those documents are fabricated by them. Admittedly, she has not adduced any contra evidence to disprove the said documents. On perusal of the affidavit and stamped receipt, if it was fabricated by her brothers, she ought to have entered into witness box and should have adduced contra evidence, but she failed. After disposal of the suit, now she preferred this appeal and contended that her brothers alone bound to prove that their defence as they are major share holders is not acceptable one. Even in the appeal ground, she has not specifically denied about the execution of stamped receipt. Therefore, those documents need not be proved by the plaintiff as rightly observed by the trial judge and silence on the part of 9th defendant/appellant also amounting to admission of the contents of documents.



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10. By way of reply, the learned counsel for 1st respondent/plaintiff would submit that affidavit and stamped receipt Ex.A6 and A7 were issued by 9th defendant. But the counsel for 9th defendant would submit that the alleged documents are unregistered one and inadmissible in evidence for the purpose of proving the factum of partition between the parties, for which, he relied on the ratio laid down in the authority held in ***Civil Appeal No.8441 of 2015*** in the case of ***Yellapu Uma Maheswari and another vs. Buddha Jagadheeswararao and others***, wherein the Apex Court held in para 17 reads as follows :-

“17.....A thorough reading of both Exhibits B21 and B22 makes it very clear that there is relinquishment of right in respect of immovable property through a document which is compulsorily registerable document and if the same is not registered, becomes an inadmissible document as envisaged under Sec.49 of Registration Act. Hence, Exhibit B21 and B22 are the documents, which squarely fall within the ambit of Section 17(i) (b) of the Registration Act and hence, are compulsorily registerable documents and the same



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are inadmissible in evidence for the purpose of proving the factum of partition between the parties.....”

11. Per contra, learned counsel for 1st respondent/plaintiff would submit that the alleged receipt issued by 9th defendant can be appreciated in order to prove the factum of relinquishment of her share, more particularly, with regard to past transaction entered between the parties. To that effect, he relied on the ratio laid down in the authority held in ***Civil Appeal No.6141 of 2021*** in the case of ***Korukonda Chalapathi Rao and another vs. Korukonda Annapurna Sampath Kumar***, wherein the Apex Court held in paras 33, 35 and 37 reads as follows :-

“33. If we apply the test as to whether the Khararunama in this case by itself 'affects', i.e. by itself creates, declares, limits or extinguishes rights in the immovable properties in question or whether it merely refers to what the appellants alleged were past transactions which have been entered into by the parties, then going by the words used in the document, they indicate that the words are intended to refer to the arrangements allegedly which the parties made in the past. The document does not purport to by itself create,



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declare, assign, extinguish or limit right in properties. Thus, the Khararunama may not attract Sec.49(1)(a) of the Registration Act.

35. *As far as stamp duty goes, on our finding regarding the nature of the document viz., Khararunama, being record of the alleged transactions, it may not require to be stamped. We notice the following conclusion of the Division Bench of Madras High Court in **A.C.Lakshmipathy and others vs. A.M.Chakrapani Reddiar and others** reported in **AIR 2001 Mad. 135***

“42. To sum up the legal position

xxx xxx xxx

(V) However, a document in the nature of a Memorandum, evidencing a family arrangement already entered into and had been prepared as a record of what had been agreed upon, in order that there are no hazy notions in future, it need not be stamped or registered.”

36. *No doubt, when there has been a partition, then, there may be no scope for invoking the concept of antecedent right as such, which is inapposite after a disruption in the joint family status and what is more an outright partition by metes and bounds. In this regard, it is to be noticed that the*



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appellants and the respondents, admittedly, partitioned their joint family properties. This is clear from the Khararunama wherein it is stated that they have divided the joint family properties. The properties, which are mentioned in the Khararunama, became the separate properties of the respondent.”

With regard to proof of the past transaction as well as intention of party, the affidavit can be relied. But, as discussed above, 9th defendant not denied her signature in the document by giving contra evidence to that effect before the trial court. Therefore, the submission on the side of 1st respondent/plaintiff is sustainable one. However, during the pendency of this appeal, the matter was referred to mediation, wherein the appellant/9th defendant also agreed for amicable settlement as most of parties are senior citizens. Therefore, on the side of 2nd respondent, as a brother of appellant, he has agreed to pay a sum of Rs.10,00,000/- in order to close the issue once for all. To that effect, he filed an affidavit before this court. So, on considering the share as well as age of parties, without prejudice to the claim raised in the appeal, the 2nd respondent is directed to pay a sum of Rs.10,00,000/- to the appellant/9th defendant



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within a period of three months from the date of receipt of copy of this order as one time settlement in respect of her share. The affidavit submitted by the 2nd respondent shall form part and parcel of the decree. Accordingly, this appeal is dismissed as no merit and the findings of trial judge in O.S.No.4251 of 2014 is confirmed. With regard to shares of plaintiff and the defendants, they have to work out their remedy in the final decree proceedings. No costs.

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Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To

XVIII Addl. Judge, City Civil Court,
Chennai.



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T.V.THAMILSELVI, J.

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