



WEB COPY



A.S.No.628 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.628 of 2016
and
C.M.P.No.17846 of 2016

1.G. Parimalam
2. E.Thangavel

... Appellants

Vs.

1.P.Karthikeyan.
2.Bhavani

... Respondents

PRAYER : First Appeal filed under Section 96 of the Code of Civil Procedure against the judgment and decree dated 18.02.016 in O.S.No.322 of 2013 on the file of the III Additional District Judge, Salem.

For Appellant : M/s.P.Jagadeesan
For Respondent : M/s.L.Mouli [R.1]
: R.2, served - No Appearance.

JUDGMENT



The defendants 2 and 3 in the suit O.S.No.322 of 2013 on the file of the III Additional District Judge, Salem are the appellants before this Court challenging the decree for partition granted by the learned Judge. The facts in a nutshell are narrated hereinbelow and the parties are referred to in the same ranking as before the Trial Court.

2. The plaintiff had filed the above suit stating that he is the son of one Rajendran born through his first wife Saroja. After divorcing his first wife, the said Rajendran had married the 1st defendant as his 2nd wife. The 2nd defendant is the wife of Rajendran's brother Gopal and the 3rd defendant is his colleague.

3. The suit properties were the ancestral properties of Rajendran, Gopal and their family and under a registered partition deed dated 16.09.2004, the suit properties were allotted to the share of Rajendran. The plaintiff and Rajendran had constituted a Hindu Undivided Joint Family and the plaintiff is a co-parcener along with Rajendran. Therefore, each of them are entitled to a half share in the suit



properties.

WEB COPY

4. After divorcing his first wife, the said Rajendran had not provided anything to the plaintiff for his education or otherwise and on 13.01.2013 he died leaving behind him surviving the plaintiff and the 1st defendant as his legal heirs. After the death of Rajendran, the plaintiff had demanded an amicable partition from the 1st defendant. However, the 1st defendant was postponing the same under one pretext or the other. Meanwhile, one Selvakumar had filed a suit O.S.No.105 of 2013 on the file of the II Additional Sub Judge, Salem against the plaintiff and the 1st defendant for recovering money due under a promissory note said to have been executed by Rajendran. It is only then that the plaintiff had come to know that Rajendran and the 1st defendant had colluded together and created a power of attorney in favour of the 3rd defendant on 27.07.2009 who in turn had created a sale deed dated 28.11.2012 in respect of the suit schedule property in favour of the 2nd defendant. The plaintiff is not a party to the



proceedings. Therefore, the plaintiff is not bound by the sale. Hence the suit.

5. The 1st defendant had alone contested the suit and in her written statement she would deny the plaintiff's right to the property. However, the 1st defendant would state that after the death of Rajendran, she and the plaintiff as legal heirs are entitled to the property both having a half share. She would submit that the sale in favour of the 2nd defendant is a collusive sale and no consideration has passed and possession was also not delivered to the 2nd defendant. Therefore, the sale deed in favour of the 2nd is invalid and would not bind the 1st defendant and plaintiff. She would submit that she is ready for a partition.

6. Defendants 2 and 3 who had been served with the summons had entered appearance through their respective counsels. However, neither had they filed their written statement nor had they contested the



suit. Therefore, they were set ex parte.

WEB COPY

7. The Trial Court had framed the following issues:-

1. Whether the power of attorney deed dated 27.07.2009 and subsequent sale deed dated 28.11.2012 are not valid and binding on the plaintiff and the 1st defendant?

2. Whether the plaintiff is entitled to get the relief of declaration in respect of the sale deed dated 28.11.2012?

3. Whether the plaintiff is entitled to get the relief of preliminary decree for partition as prayed for?

4. Whether the plaintiff is entitled to get the relief of permanent injunction as prayed for?

5. To what other relief?

8. The plaintiff had examined himself as P.W.1 and marked Ex.A.1 to A.3. On the side of the defendants, no witness was examined and no documents were marked.

9. The learned Trial Judge observed that even the 1st defendant had admitted that the power of attorney dated 27.07.2009 and the sale



deed dated 28.11.2012 executed by the 3rd defendant in favour of the 2nd defendant, Ex.A.2 were not binding on the plaintiff and herself as they were sham and nominal documents and possession was never delivered to the 2nd defendant under the said document i.e. Ex.A.2. However, the defendants 2 and 3 have not chosen to examine any witness. In fact, defendants 2 and 3 have not even filed a written statement. Therefore, since there is no contra evidence let in, the learned Judge had observed that the power of attorney dated 27.07.2009 and the sale deed dated 28.11.2002, Ex.A.2 were not binding on the plaintiff and the 1st defendant and the plaintiff is entitled to the declaration that the sale deed dated 28.11.2012 executed by 3rd defendant in favour of the 2nd defendant as null and void. The suit was ultimately decreed. Challenging the same the defendants 2 and 3 have filed the above appeal.

10. Heard the learned counsels on either side.

11. The only point for consideration that arises for consideration



in the above First Appeal is ***Whether the learned III Additional Judge, Salem has failed to consider the evidence before decreeing the suit?***

12. The plaintiff has come to Court claiming a share in the property on the basis of the fact that the suit properties are the ancestral properties of his father, Rajendran which was allotted to him under a partition deed dated 16.09.2004 marked as Ex.A.1. A perusal of Ex.A.1 would clearly show that the property is the ancestral property of Rajendran and therefore the plaintiff would also have a right to the property. The sale deed, Ex.A.2 has been executed by the 3rd defendant in favour of the 2nd defendant on the strength of a power of attorney said to have been executed by the deceased Rajendran and the 1st defendant in favour of the 3rd defendant in respect of the entire property despite the fact that the plaintiff had a half share in the same. The plaintiff is not a party to the said proceedings and therefore not bound by the sale.



WEB COPY

13. The 1st defendant has filed a written statement stating that though Ex.A.2, Sale deed has been executed possession has not been handed over to the 2nd defendant. Defendants 2 and 3 have not chosen to contest the suit and have therefore admitted the case put forward by both the plaintiff and the 1st defendant.

14. The Trial Court has rightly decreed the suit on the basis of the available evidence. The Trial Court has taken note of the fact that the plaintiff along with his father, late Rajendran are jointly entitled to the suit properties each having an undivided half share. The documents both the power of attorney said to have been executed in favour of the 3rd defendant and the sale deed executed in favour of the 2nd defendant are in respect of the entire property including the plaintiff's share. Therefore, the Trial Court had rightly held that the plaintiff is entitled to a partition with reference to his half share and that the power of attorney dated 27.07.2009 and Ex.A.2 sale deed dated 28.11.2012 are not binding on the plaintiff's share. Injunction was also granted



A.S.No.628 of 2013

restraining the defendants from alienating and encumbering the suit property till final partition is effected. Therefore, the point for consideration is answered against the appellants.

15. In fine, the above First Appeal is dismissed and the Judgment and Decree of the Trial Court in O.S.No.322 of 2013 on the file of the III Additional District Judge, Salem is confirmed. No costs. Consequently, the connected Miscellaneous Petition is closed.

16.04.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
shr

To
1.The III Additional District Judge, Salem.

P.T. ASHA, J,

shr



WEB COPY



A.S.No.628 of 2016

A.S.No.628 of 2016
and
C.M.P.No.17846 of 2016

16.04.2024