



SA. No.475 of 2010

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2024

CORAM:

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

SA. No.475 of 2010
and CMP No. 82 of 2017

1.Panbarasu
2.Saraswathy

... Appellants

Vs.

1.Valarmathi Vasuki
2.Chinaaponnu Ammal
3.Vallal Pari

..Respondents

PRAYER : This Second appeal filed under Section 100 of Civil Procedure Code, against the Judgement and decree dated 15.12.2009 and made in AS No. 54 of 2007 on the file of Sub Court, Chidambaram, allowing the appeal and reversing the judgment and decree dated 13.10.2005 and made in OS No. 404 of 2004 on the file of Additional District Munsif Court, Chidambaram.

For Appellants : Mr.N.A.Nissar Ajmed



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For Respondent : Mr.V.Ayyadurai, Senior counsel,

for Mr.B.N.Subbarayar

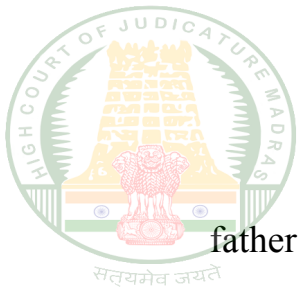
R2 Died

R3 Refused

JUDGMENT

This second appeal has been filed against the Judgement and decree dated 15.12.2009 made in AS No. 54 of 2007 on the file of Sub Court, Chidambaram, allowing the appeal and reversing the judgment and decree dated 13.10.2005 made in OS No. 404 of 2004 on the file of Additional District Munsif Court, Chidambaram.

2. The first respondent herein filed the suit in OS No. 404 of 2004, on the file of Additional District Munsif Court, Chidambaram, claiming 1/4 share in the suit property as described in the schedule with an extent of 5550 square feet with tiled house with four boundaries situated at Chidambaram Taluk, Malabuvanagiri Palayakara street, against her mother and two brothers and fourth defendant is the purchaser of the property. The defendants 1, 3 and 4 contested the suit another brother/second defendant remains exparte. According to the plaintiff, the suit property belongs to her



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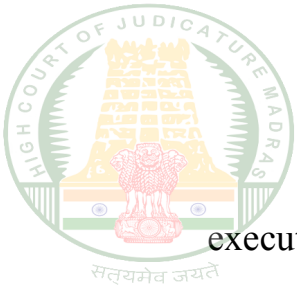
father Sadagopa Pillai, who died leaving behind wife and daughter, two

sons as his legal heirs, as it is self acquired she is entitled to 1/4th share.

The defendants denied the plaintiff claim stating already she realized her share and received amount in respect of the property belongs to his father, who executed the release deed by receiving a sum of Rs.1,000/- in respect of land belongs to her father which was marked as Ex.B2.

3. Considering the oral and documentary evidence, the Trial Court held that as per the Ex.B2/release deed dated 02.05.1985, she relinquished all her right in respect of suit property. Therefore she is not entitle to claim share in the suit property. Accordingly, suit was dismissed.

4. Challenging the same, she preferred an appeal in AS No. 54 of 2007 before the Sub Court, Chidambaram, wherein the first appellate Court independently analysed the oral and documentary evidence on record held that thought it is named as released deed, there is nothing mentioning about the property. Therefore, it does not pertaining to the suit property. Moreover, in earlier suit in OS No. 172 of 1999 against Ulaganathan but there is nothing mention about the alleged release deed, which said to be



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executed by the plaintiff in the said suit also been dismissed. Further, in that

suit it was mentioned that this plaintiff also under the possession of the suit

property. Therefore, the first appellate Court concluded that if at all the

plaintiff relinquished her share in respect of the suit property through Ex.B2

in earlier suit he should have mentioned the same. On the other hand, suit

contested by the legal heirs in respect of suit properties as well as there is no

mentioning about the property description in Ex.B2. Therefore, the defence

taken up by the contesting defendant as such plaintiff relinquished her share

through Ex.B2 is unsustainable. Accordingly, appeal was allowed by setting

aside the findings of the Trial Court and granted 1/3 share to the plaintiff.

The first appellate Court made an observation that mentioning about

Rs.1,000/- in release deed not equivalent to the alleged share claimed by the

plaintiff. Admittedly, mother also executed settlement deed in favour of her

two sons which was marked as Ex.B2. Mother also not been given any share

to the daughter/plaintiff. Therefore, in respect of suit property plaintiff's was

allotted with 1/3 share. During the pendency, the mother of the plaintiff was

died. Challenging the findings of the first appellate Court subsequent

purchaser/defendant 3 and 4 preferred this appeal.



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5. The second appellant/third defendant submitted that even prior to the filing of the suit he purchased the property in the year 2003 for valid consideration for an extent of 2760 sq.ft. from the third defendant and remaining extent is enjoyed by the second defendant, who is the brother of the third defendant, after the purchase of Eastern half share he put up house around 1000 square feet and enjoyed the remaining. Further, the plaintiff already executed a released deed, based on that her two brothers equally entitle to half share in the suit property. Accordingly, he purchased the half share belongs to the third defendant but the Court below failed to appreciate Ex.B2/release deed executed by the plaintiff. Though there is no proper recitals to show that she relinquished her right over the property but execution of the documents not been properly appreciated. Therefore he prayed to set aside the findings of the Court below.

6. This Court admitted the appeal with the following substantial questions of law:

i. Whether the lower appellate Court is right in holding that the registered release deed dated 02.05.1985 would not absolve and relinquish the alleged right of the first respondent over the suit property.

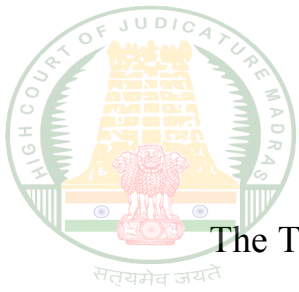


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ii. Whether the lower appellate Court erred in not properly considering the released deed Ex.B2, settlement deed Ex.B3 and partition deed Ex.B4.

7. By way of reply, the learned counsel appearing for the respondent submits that as a daughter she is entitle for 1/3 share in the property which is self acquired property belongs to her father and the alleged released deed relied by them was not executed by her voluntarily. But without giving any share to her, her brothers divided the suit property among themselves and sold share to the third and fourth defendant which would not bind her for the reason that she is having 1/3 share in the property and the same was rightly appreciated by the Courts below. He prays to dismiss this appeal.

8. The plaintiff and defendants 2 and 3 are daughter and son of the first defendants/ Chinnaponnu Ammmal and her husband Sangodaappillai. The plaintiff claiming 1/4 share in the property belongs to her father and thereafter her mother died hence she claiming 1/3 share in the suit property. According to brothers/defendants 2 and 3, the plaintiff already relinquished her right in their favour by executing release deed/Ex.B2 dated 02.05.1985.



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The Trial Court accepted the release deed and dismissed the suit stating that

she has no right to claim share in the property as she had already relinquished her right over the same in favour of her brothers. But the first appellate Court held that there is no mentioning about the property in the said release deed and also defendant failed to establish that said release deed is pertaining to the suit property. Admittedly, there is no proper description found in Ex.B2. So also in earlier suit proceedings in O.S No. 172 of 1999 filed by the plaintiff and her brothers against one Ulaganathan, wherein they mentioned that all were in possession of the property and not mentioned about the release deed said to be executed in the year 1985 which is prior to the said suit. If really the release deed was executed in respect of suit property it should have mentioned in the earlier suit but they did not mentioned.

9. Considering the earlier suit proceedings in O.S No. 172 of 1999, there is no mentioning about the released deed dated 02.05.1985. Earlier suit was filed in the year 1999, wherein it was claimed that all were enjoyed the suit property including the plaintiff herein therefore the first appellate Court rightly held that Ex.B2 is not pertaining to the suit property nor they



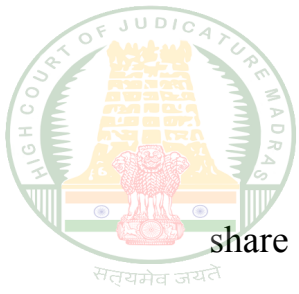
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have proved that plaintiff relinquished her share as such is acceptable one.

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10. Even Ex.B3, which said to be executed by the mother Ciannaponnu Ammal in favour of her two sons but the same also not been mentioned in the earlier suit OS No. 172 of 1999. More particularly, their mother Chainnaponnu ammal in the earlier suit stated that all were enjoying the property jointly. Moreover, Ex.B3 was executed by her mother in respect of lands belongs to her which is prior to Ex.B2 document of the year 1983, in which no reason was assigned for not giving any property to her daughter. Therefore, the contesting defendant failed to establish that the plaintiff had relinquished her share in respect of suit property and the same was rightly observed by the first appellate Court which needs no interference.

11. Originally, the plaintiff claiming 1/4 share in the suit property but while suit pending her mother was died. Subsequently, she is entitle for 1/3



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share in the suit property. Accordingly, the plaintiff is entitle for 1860 sq.ft.

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Admittedly, her two brothers alone divided the entire extent, Eastern half was given to the first appellant/third defendant, Western half was given to the second defendant/third respondent herein. Second defendant remained exparte. Further, he enjoyed the Western half portion of the suit property partly put up the construction with vacant site. As on date, total extent comes around 2760 sq.ft. in its entirety. The first respondent/plaintiff entitle to 1860 sq.ft. Therefore, in Eastern half she is entitle to 900 sq.ft. on Western side she is entitle for 900 sq.ft.

12. The subsequent purchaser/Fourth defendant is inclined to give Rs.2,50,000/- for the property as per the direction of this Court. They are also hailing from poor family put up construction through their hard earned money and purchased prior to the suit in the year 2003 itself. Considering the above, 900 sq.ft. share belongs to the first respondent/plaintiff in Easter half share. The second appellant/fourth defendant is directed to give Rs.2,50,000/- to the plaintiff within a period of 90 days from the date of receipt of a copy of this judgment, remaining 940 sq.ft in the Western half which is under the possession of second defendants/third respondent herein. Therefore third respondent is directed to give 940 square feet to the plaintiff



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within a period of 90 days from the date of receipt of a copy of this

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Judgement, if fails, plaintiff is entitle to proceed with execution proceedings for Western half (940 sq.ft) If the second defendant fails to hand over the 940 sq.ft. within a period of three months, the plaintiff is entitle to file execution proceedings. Accordingly, questions of law are answered.

13. In the result, the appeal is disposed of. No Costs. Consequentially, pending petition(s), if any, is/are closed.

19.10.2024

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To

- 1.The Section Officer,
V.R Section.
2. The Additional District Munsif Court, Chidambaram.
- 3.The Sub Court, Chidambaram.



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T.V.THAMILSELVI,J.

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