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AS. No.394 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2024

CORAM:

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

AS. No. 394 of 2018

Bandla Mani (Died)

2.B.Radha

(2nd appellant brought on record as legal heirs of the deceased sole appellant viz., Bandla Mani and R6 to R9 brought on record as legal heirs of the deceased R1 viz/. Parvathi @ Rajeswari vide Court order dated 04.10.2022 made in CMP No. 16885 of 2021 in A.S No. 394/2018 and CMP No.16854 of 2021 in A.S No. 394 of 2018(SSSRJ)(SSJ).

...Appellant

1.Parvathi @ Rajeswari (Died)

2.Bandla shanmugam

3 Bandla Srinivasalu

4.B.Eswari

5.B.Sujatha

Respondents R4 and R5 impleaded. Vide Court order dated 05.07.2021 passed in CMP no. 10552 of 2020 in A.S no. 394 of 2018.(GKIJ)

6. Nagabhushanan

7.P.Bhaskar

8.P.Pramakumari

9.P.Nagaraju

10.B.Gopikrishna

R10 impleaded, vide order of Court dated 25.08.2023 made in CMP No. 3989 of 2022 in A.S No. 394 of 2018(TVTSJ)



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...Respondents

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PRAYER : This first appeal is filed under Section 96 of CPC r/w Order 41 of CPC, against the judgment and decree made in O.S No. 126 of 2010 on the file of the IV Additional District Judge, Tiruvallur @ Ponneri, dated 26.07.2017 in decreeing a suit for partition.

For Appellant : Mr. V.Raghavachari, Senior counsel.

R1 Died

For R2 & R3 : Mr.T.Paranthaman

For R4 & R5 : Not appeared.

For R6 to R9 : Mr.D.Senthil Kumar

JUDGMENT

This first appeal has been filed against the judgment and decree made in O.S No. 126 of 2010 on the file of the IV Additional District Judge, Tiruvallur @ Ponneri, dated 26.07.2017 in decreeing a suit for partition.

2. Originally one Parvathi @ Rajeswari filed the suit in O.S No. 126 of 2010 before the IV Additional District Judge, Thiruvallur @ Ponneri for partition against his brothers/defendants. The said suit was contested by the



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defendants by filing written statement. On the side of the plaintiff she was examined as P.W.1 and marked Ex.A1 to Ex.A9. On the other side, two witnesses examined and marked Ex.B1 to Ex.B12. After considering the oral and documentary the evidence the Trial Court allowed the suit and passed the preliminary decree by allotting 1/4 share in the property. Challenging the said decree the first defendant filed this appeal. During the pendency of the appeal both the original appellant and the respondent were died. Hence, their legal heirs were impleaded and they conducted the present appeal.

3. The Plaintiff and the defendants are sister and brothers. The case of the plaintiff is that suit properties were purchased by her parent and enjoyed by them till their death. The plaintiff's father died intestate in year 1986 leaving behind the plaintiff and the defendants as legal heirs to inherit his estate absolutely. Thereafter her mother died in the year 1991 intestate. After death of her parents a first defendant act as custodian of the suit property and also substantial cash left behind by the plaintiff's father estimated about Rs.5,00,000/- and gold jewellery which were left in the custody of the first defendant. Thereafter, the plaintiff claimed her 1/4 share in the suit property on various occasions but the defendants postponed the



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same. Further, the first defendant maintaining major share of the suit property and collecting rents and huge sum by renting out the house and also harvesting the agricultural land for the last two years. Till the date first defendant has not rendered any accounts for the rents received and income derived from harvesting operations, in which the plaintiff is entitled to 1/4 share. Hence, she filed the suit for partition and mense profit .

4. The defendant admitted the relationship between the parties. The first defendant denied that the suit property was belongs to his father and he stated that he purchased the suit properties from his own income as a teacher. Further, he denied that he was not act as a custodian of the suit property as alleged by the plaintiff and also family arrangements was made on 19.01.1984 before the panchayataars where their parents were alive, wherein the plaintiff and the defendants participated, wherein the land comprised in S. No. 245/3, 245/4 and 245/2 sitauated at Thanipoodi Village, Gummidipoondin taluk in all together an extent of 0.49 cents of Punja lands were agreed to given to the plaintiff by the parents and accordingly after the demise of the parents plaintiff take possession of the said property and paying kist in her name from the year 1995 onwards. By suppressing the above facts the plaintiff filed the present suit. Further the said family



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arrangements were witnessed by the panchayatars wherein both the plaintiff and the defendants affixed their signature. This defendant being the absolute owner he is in possession of the suit property uninterruptedly for the past 27 years with the knowledge of the plaintiff and therefore he is entitled to claim additional benefit of ouster coupled with the fact that plaintiff herself in possession and enjoyment of agricultural lands in the above survey number in terms of family arrangement dated 19.01.1984. Hence, prays to dismiss the suit.

5. The second defendant filed the written statement adopted by third defendant:

6. The Second defendant stated that after death of their parents the first defendant has not taken steps to divide the suit property and he wants to grab the entire property in his favour and they are ready to divide the suit property

7. Heard the learned counsel for the appellants and the learned counsel for the respondents

8. Now the point to be decided is whether document Ex. B1 unregistered partition deed said to be executed between the parties is valid or not?



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9. The plaintiff and the defendant are brothers and sisters. According to the appellant/first defendant, during the life time of their parents properties were divided with the help of panchayatars and 49 cents was allotted to the plaintiff and life interest was given to their parents. After the demise of their parents all were enjoyed the property as per the division held in family arrangement in the presence of panchayatars, to that effect as collateral purpose in order to prove the panchayat held in the family and with regard to the division of the property to that extent the document can be relied though it was unregistered one. On perusal of Ex.B1/Family arrangement / xerox copy of the (பாகப்பிவினை பாலிகத்து பத்திரம்) as per the terms of the said document the property stands in the name of the parents was putting to division and life interest was given to the parents after their demise all the legal heirs including plaintiff is entitled to take division of the property, the plaintiff was given 49 cents in which their father also signed, mother also fixed her thumb impression, the said division was happened in the presence of the five panchayatars in the year 1984. Though it was unstamped, unregistered it may be considered for collateral purpose with regard to division of the property in the presence of the panchayatars.



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10. But on the side of the plaintiff as well as other defendants denied

Ex.B1, the plaintiff as well as defendants 2 and 3 who are other brothers and sisters of the appellant/first defendant not entered into witness box to deny the Ex.B1 document as well as family arrangements held in the year of 1984. Admittedly, the husband of the plaintiff entered into box despite the plaintiff was alive at that time. The husband is entitled to give evidence on behalf of the wife which is permissible in law but it depends upon the nature and facts of the case. In the instant case the plaintiff claimed share in the property belongs to her parents but the first defendant contended that during the life time of their parents the suit property was divided in the presence of the panchayatras. Accordingly, after their demise she took her possession and also paid kist to that land kist receipt was marked as Ex.B5. On perusal of Ex.B5/kist receipt it was paid by the Parvathy and Patta also in her name all those documents obtained by the first defendants through Right to Information Act. The first defendant also obtained tax receipt which stands in the name of the other defendants marked as Ex.B11 and Ex.B12 stands in the name of the second and third defendants shows that they are also paying tax separately. Therefore, though Ex.A1 was unstamped unregistered not be permissible in evidence as it was not



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registered but with regard to the arrangements held in the family in the presence of the panchayatars about the family property as collateral purpose to prove fact establish the said panchayat document, Ex.B1 can be taken into consideration with limited extent. According to the first defendant their parents signed in the document. If at all it was not signed by the parents the plaintiff and the defendants should have entered into witness box to prove their case but they were absent therefore the adverse inference can be drawn against them. Moreover, the husband of the plaintiff was not known about the affairs in the family before his marriage with the plaintiff therefore as his evidence cannot be taken into account with regard to the purchase of the property as well as the alleged family arrangements made in the family. With regard to enjoyment of the property the plaintiff ought to have appeared before the Court to give evidence, but she failed to entered into witness box. Therefore, the evidence of P.W.1 is not acceptable one the Trial court failed to accept the same and also erroneously relied by P.W.1 as well as declined to accept the Ex.B1 for limited extent as such is unfair and liable to be set aside. The Trial Judge failed to appreciate the Kist receipts which was marked by the first defendant from which the first defendant proved that already property was divided all were enjoyed



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separately for near about 77 years suppressed but all these facts the plaintiff filed suit which itself clearly reveals that at the instigation of her husband she come forward with the present suit. Therefore, she has not entered into witness box which probablise the defence taken by the first defendant. Therefore, the findings rendered by the Trial Court is set aside. Accordingly, issue is answered.

11. In the result, this Appeal is allowed. Thus, suit is dismissed. No costs. Consequentially connected miscellaneous petition is closed.

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T.V.THAMILSELVI,J.

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To

1. The IV Additional District Judge, Tiruvallur @ Ponneri.
2. The Section Officer,
V.R Section.

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