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S.A. No.5



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2024

CORAM :

THE HON'BLE MR. JUSTICE K. RAJASEKAR

S.A. No. 564 of 2022

and C.M.P. No.11240 of 2022

1. Laxmi
2. Murugammal ... Appellants / Respondents/ Defendants 6 & 7

Vs.

1. E. Sokkammal
2. G. Kamatchi
3. D. Loganayaki ... Respondents/ Appellants/ Plaintiffs
4. R. Lognathan
5. Govindammal
6. Bagyavathi
7. Laxmanan
8. R. Kothandan ... Respondents/ Respondents/ Defendants 1 to 5

Second Appeal filed Under Section 100 of Civil Procedure Code and Order XLII of CPC against the Judgment and Decree dated 21.09.2021 made in A.S. No.267 of 2018 on the file of the XXI Additional City Civil Court, Chennai by reversing the Decree and Judgment passed in O.S. No.791 of 2014 dated 07.10.2016 on the file of the VIII Assistant Judge, City Civil Court, Chennai.



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For Appellants : Mr. D. Panchatsaram
For RR 1 to 3 : Mr. A. Vijayakannan
For RR 4 to 8 : Mr. B. Ram Prasath

JUDGMENT

This appeal filed by the defendant Nos.6 and 7 challenging the judgment and decree of the lower Appellate Court in A.S. No.267 of 2018 dated 21.09.2021, reversing the judgment and decree in O.S. No.791 of 2014 dated 07.10.2016 on the file of VIII Assistant Judge, City Civil Court, Chennai.

2. The case of the plaintiff is that the suit property was allotted in the name of the plaintiff's father by the Tamil Nadu Housing Board vide sale deed dated 11.12.1995 and after the demise of the plaintiff's father and mother, the suit property was inherited by their legal heirs, who are the plaintiffs and defendants herein. Thereby, the plaintiff approached the defendants to divide the suit properties and to hand over his share in the suit property, as the defendants have not accepted the demand made by the plaintiff, he had filed the suit for partition and for allotment of 1/7th share to him.



3. The defendants 1 to 5 have filed their written statement admitting the claim of the plaintiff and have also pleaded that they may also be allotted their respective shares in the suit property, as per law. The contesting defendant Nos. 6 and 7 contended the suit on the ground that they are in physical possession and enjoyment of the suit property for the past 14 years, for which they are paying the property tax, EB charges, paying water tax, etc., and maintaining the property. They have also stated that the properties were purchased from their father's income and the plaintiff had not shown any interest in taking care of the family and parents. The plaintiff's mother was living with these defendants till her death and they have also spent considerable amount for maintaining the suit property and renovated the building in the property by spending more than Rs.2,00,000/-, since the plaintiff had not contributed any amount for maintenance and development of the suit property, he is not entitled to claim any share in the suit property.

4. The Trial Court after considering the pleading on both sides framed the following issues.

1. Whether the plaintiff is entitled for 1/7th share in the suit property?



Whether the plaintiff is entitled for permanent injunction or

What relief or cost the plaintiff is entitled for?

5. The Trial Court after considering the submissions made on both sides and evidence placed on record has held that the plaintiffs have suppressed the fact that, in the year 2007 itself, the suit for partition was filed before the City Civil Court and it was subsequently settled between the parties in the Lok Adalat proceedings and the award was also passed to that effect. This suppression of material was taken into consideration by the Trial Court and dismissed the suit.

6. Aggrieved over the judgment and decree of the Trial Court, the plaintiffs have preferred an appeal in A.S.No.267 of 2018 on the file of the XXI Additional Judge, City Civil Court, Chennai. During pendency of appeal, the plaintiff died and his legal heirs were impleaded as appellants 2 to 4 and they are arrayed in the second appeal as Respondent Nos.1 to 3. The lower Appellate Court after considering the submission and evidence placed on record had disagreed with the findings of the Trial Court and recorded that the award passed by the Lok Adalat is only to the effect that the suit was agreed to be withdrawn by the plaintiff and it has no legal consequences for initiating a fresh suit for partition



of the suit property and the lower Appellate Court had decreed the suit for partition by declaring that the plaintiff is entitled to 1/7th share in the suit property.

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7. Aggrieved over the same, the defendant Nos. 6 and 7 have filed this second appeal. This Court after considering the submission of both sides, while admitting this appeal had framed following substantial question of law:

1. Whether the Lower Appellate Court is correct in law in reversing the judgment and decree of the Trial Court in O.S.No.791 of 2014 by the VIII Assistant City Civil Court, Chennai especially when the earlier suit in O.S.No.4270 of 2007 on the file of the XVIII Assistant City Civil Court, Chennai for partition has been filed by the very same plaintiff had been withdrawn by him before the Lok Adalat?

2. Whether the Lower Appellate Court is correct in law in overlooking the issue of Res-judicata?

8. The learned counsel appearing for appellants/ defendant Nos. 6 and 7 submits that, in the year 2007 itself, the plaintiff filed a suit for partition for the very same suit property and subsequently, after negotiations between the parties, the matter was amicably settled between the parties in Lok Adalat, thereby, the plaintiff had agreed to withdraw the suit, by recording the same, the Lok Adalat has passed an award. He further submitted that since the original plaintiff has not pressed the partition suit and has not come forward to claim any share in the suit



property, the legal heirs of plaintiffs herein are not entitled to file the very same suit for partition, by suppressing the fact of filing and disposal of the very same earlier suit. The Trial Court has rightly considered this aspect and dismissed the suit for partition. He further submitted that the appellants have also paid necessary taxes and spent a sum of Rs.2,00,000/- for maintaining and to safeguard the suit property, which were not taken into account by the lower Appellate Court, hence prays to allow the appeal.

9. Per contra, the learned counsel appearing for the respondents/ plaintiffs submits that, admittedly, the original plaintiff is being a son of the original owner of the suit property, he is entitled for 1/7th share and it is true that the earlier suit for partition filed by the plaintiff was dismissed as withdrawn, as per the award passed by the Lok Adalat. Subsequently, plaintiffs have filed suit in the year 2014, after the death of their mother and to assert his right in the suit property. He further submitted that the denial of right of the plaintiffs in the suit property by the contesting defendants on the ground that they have spent huge amount for the development of the suit property has not been proved. He further submitted that the earlier dismissal of the suit is not having any bar in the present suit for partition, hence prays to decree the suit.



10. I have considered the submissions made on both sides and perused the evidence placed on record.

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11. The copy of the previous suit filed and the award passed by the Lok Adalat dated 05.03.2008 was marked before the Trial Court as Ex.B.6 and on perusal of the same, it has been recorded as follows:

"Plaintiff is present. Defendants 1 and 7 are present. Defendants 2 to 6 are absent. this endorsement made by the Plaintiff is recorded. Hence the suit is closed as withdrawn without costs."

12. Admittedly, no award has been passed determining the rights of the parties therein and it is only recorded that the plaintiff has withdrawn the suit. Subsequently, the plaintiff have come forward to file a suit in the year 2014, after the death of his mother in the year 2013. Since, the disposal of the partition suit was not by determining the rights of the parties and the same could not be used by these defendants herein for denying the rights of the plaintiffs in the suit property. Section 11 of the Civil Procedure Code is not applicable to the facts of this case, since the earlier order made by the Lok Adalat was not passed by determining any issue between the same parties. This aspect has been taken note by the lower Appellate Court and rightly held that the award passed by the Lok Adalat dated



05.03.2008 has not determined any rights of the parties, hence this award does not bar to initiate a fresh proceedings by the plaintiffs, more particularly, after the death of their mother, which leads to further cause of action for claiming partition.

13. With regard to the claim made by these defendants to deny the partition on the ground that they have spent huge amount for maintenance and improvement of the property, no evidence was adduced by the defendants before the Trial Court, therefore, the arguments made by these defendants in this aspect, is not acceptable. The original plaintiff was one of the legal heirs of the original owner K. Radha, thereby the original plaintiff is having right to claim partition in the suit property.

14. The learned counsel for the appellants further submitted that this suit property is a dwelling house consisting only of 500 square feet and partitioning the same would cause prejudice to the interest of the parties. It is true that, dividing the dwelling house, which is having an extent of 500 square feet, will definitely cause prejudice to the interest of the parties. It will drastically reduce the value of the suit property. However, there are other ways prescribed under the Partition Act, 1893 and the provision of this act could be exercised during the final decree proceedings, including exercising option to purchase the shares of



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15. In view of the above discussions, the substantial question of law is answered that the order passed by the Lok Adalat could not be considered, for rejecting the rights of plaintiff, since in the award, it has been recorded that the plaintiff was agreed to withdraw the suit for partition and Section 11 of CPC is not applicable to the facts of this case. This Courts finds no infirmity in the judgment and decree of the lower Appellate Court and same is hereby confirmed.

16. Accordingly, this second appeal is dismissed. Consequently, connected civil miscellaneous petition stands closed. There shall be no order as to cost.

25.10.2024

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Index:Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

To:

1. The Section Officer,
VR Section,



High Court, Madras.

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K. RAJASEKAR, J.

stn

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