THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

A.S.No. 690 of 2020
and
C.M.P.No. 17322 of 2024

Kanmani ...Appellant

Vs.

M.Unnamalai ...Respondents

Prayer: First Appeal filed under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 07.02.2020 made in O.S.No.258 of 2017 by III-Additional District Judge, Ponamallee.

For Appellant : Mr.M.Suresh

For Respondent : Mr.D.Veerasekaran

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The defendant in O.S.No.258 of 2017 is on appeal, aggrieved by the decree for partition granted by the Trial Court, declaring 1/2 share of the plaintiff and concluding that the plaintiff would be liable for the home loan alone.

2. The plaintiff sued for partition contending that the suit property belonged to her son, Dhandapani, who died intestate on 01.10.2016, leaving behind herself, his mother, and the defendant (wife of Dhandapani) to succeed to his estate.

3. The defendant resisted the suit contending that the said Dhandapani had incurred debts towards towards housing loan, personal loan through credit cards, jewel loan and also private borrowings from his friends. Therefore, according to the defendant, the plaintiff would be liable to pay 50% of these debts. On the above pleadings, the learned Trial Judge framed the following issues:-

i) Whether the plaintiff is entitled for 1/2 share in the suit property?

ii) To what other reliefs?

4. At trial, the plaintiff was examined as P.W.1 and Exs.A1 to A8 were marked. The defendant was examined as D.W.1. Exs.B1 to B13 were marked. The Trial Court, upon consideration of the evidence on record found that the plaintiff is entitled to 1/2 share as the mother of the deceased Dhandapani. It also concluded that the plaintiff would be liable to repay the home loan which was borrowed by Dhandapani. As regards the other loan transactions namely, two loans through credit cards, a jewel loan and private borrowings as evidenced by Exs.B6 to B13, the learned Trial Judge rejected the claim of the defendant on the ground that all the promissory notes namely, Exs.B6 to B13 were time barred and the jewel loan was taken by the defendant after the death of Dhandapani. Therefore, the plaintiff cannot be expected to share the said liability. For the loans borrowed on credit cards also, the learned Trial Judge rejected the claim of the defendant and concluded that the plaintiff would be liable to share only the housing loan. The claim of the plaintiff that her husband gave Rs.10,00,000/- to Dhandapani for purchase of immovable property was also disbelieved by the Trial Court. On the said findings, the Trial Court granted preliminary decree for 1/2 share and held that she is also bound to pay the total liabilities of the home loan. Aggrieved by the said decree, the defendant is on appeal.

5. We have heard Mr.M.Suresh, learned counsel for the appellant and Mr.D.Veerasekaran, learned counsel for the respondent.

6. Mr.M.Suresh, learned counsel for the appellant would vehemently contend that though as the mother, the plaintiff would be entitled to share in the properties of the son, she would also be liable to pay the debts of the son. Therefore, according to the learned counsel, the Trial Court was not right in rejecting the claim for repayment of the debts except the home loan. The learned counsel would draw our attention to the documents which would demonstrate that the deceased Dandapani had indeed borrowed monies from various sources and, the defendant after the death of Dhandapani had settled the home loan, credit card loans and the jewel loan. The personal loans borrowed from friends on the strength of Exs.B6 to B13, remained unpaid. Therefore, according to the learned counsel, the Trial Court was not right in rejecting the claim for repayment of the other loans except the housing loan.

7. Contending contra, Mr.D.Veerasekaran, learned counsel for the

respondent would submit that the jewel loan was borrowed after the death of Dhandapani on 06.02.2017 and therefore, the mother as an heir of Dhandapani, cannot be made liable to answer the claim. On Exs.B6 to B13, the learned counsel would contend that all of them are time barred debts as the promissory notes are dated between the years 2012 and 2015 and the demand letters which have been produced by the defendant are created for the purposes of the suit. We have considered the rival submissions.

8. The only point that arose for determination on the arguments of the learned counsel for the parties is:-

Whether the Trial Court was right in concluding that the plaintiff would not be liable for other loans, apart from housing loan.

On the point:-

9. The fact that the housing loan was taken by Dhandapani is admitted. The same has also been repaid in full now. Dhandapani died on 01.10.2016. Therefore, the EMI paid from 07.10.2016 has been paid by the appellant and the defendant will have to necessarily pay half of the same to the plaintiff as her contribution towards the debts of Dhandapani.

Therefore, the Trial Court has rightly concluded that the plaintiff would be liable to pay half of the 56 equated monthly instalments from 07.10.2016 i.e., Instalment No.140 to 07.05.2021 i.e., Instalment No.195 which amount to 56 instalments. As far as the other loans are concerned, the learned Trial Judge has chosen to reject the claim of the defendant.

10. From the documents available, it is seen that apart from home loan, Dhandapani has taken two credit card loans, one to the tune of Rs.4,00,000/- from Standard Chartered Bank and other to the tune of Rs.3,72,000/- from State Bank of India. As far as the loan taken from Standard Chartered Bank as evidenced by Ex.B4, it is found that the defendant has paid a sum of Rs.4,01,172.98/- on 16.11.2016, after the death of Dhandapani. Therefore, the said amount which was a loan availed by Dhandapani is also a liability of Dhandapani which should be shared by his heirs, who seek a share in his property. Therefore, the Trial Court was not right in rejecting the said claim.

11. As regards the loan borrowed from the State Bank of India, the

said loan has been paid in equated monthly instalments from 15.06.2015 to 15.05.2019. Dhandapani died on 01.10.2016 thereafter, the defendant had paid the instalments from 15.10.2016 i.e., from Instalment No.17 to 48 which is 32 instalments. The defendant would be liable to pay 1/2 of the amount paid under these 32 instalments by the plaintiff.

12. We find that the Trial Court had excluded these claims on the ground that they were personal borrowings. Be it personal borrowing or another borrowing, a sharer would be liable for the borrowings of the person in whose estate he or she stakes claim too. Adverting to the jewel loan, the Trial Court has rejected the claim of the defendant on the ground it was taken after the death of Dhandapani. From Ex.B2, we find that the jewel loan was taken on 06.02.2017.

13. Though an attempt is made by the learned counsel for the appellant that the jewel loan itself was taken only to pay the housing loan, there is nothing in the proof affidavit of the appellant to support the said contention. The defendant has not said the jewel loan was taken for a

particular purpose or for discharging the home loan or the loan borrowed by Dhandapani on the credit cards. We are therefore, unable to fault the Trial Court for having come to the conclusion that the plaintiff cannot be forced to share the jewel loan as it was a loan taken by the defendant after the death of Dhandapani.

14. As regards the other hand loans which are evidenced by Exs.B6 to B13 also, we find that all the promissory notes are time barred when evidence was tendered and none of the so called creditors have been shown to have initiated any proceedings for recovery. We are therefore, unable to conclude that the Trial Court was in error in rejecting the claim of the defendant based on those documents.

15. We therefore, conclude that the plaintiff would be liable for 56 instalments of the housing loan from 16.10.2016 till the loan payment on 07.05.2021. As regards the card loans, the defendant would be liable to pay a sum of Rs.4,01,172.98/- towards card loan with Standard Chartered Bank as evidenced by Ex.B4 and the instalments from Instalment No.17 to 48 in

the State Bank of India card loan as evidenced by Ex.B5.

16. In fine, this First Appeal is **dismissed**. The decree for partition granted by the Trial Court is confirmed. As regards the liabilities, the plaintiff will pay half of the above three loans as indicated above, before she can claim a share in the house. The parties will their own costs in the appeal. Consequently, connected miscellaneous petition is closed.

(R.S.M., J.) **(C.K., J.)**
19.11.2024

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Internet:Yes
Index: No
Speaking order
Neutral Citation : No

R.SUBRAMANIAN, J.
and
C.KUMARAPPAN, J.

KKN

To:-

The III-Additional District Judge,
Poonamallee.

A.S.No.690 of 2020
and
C.M.P.No. 17322 of 2024

19.11.2024