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O.S.A.No.57 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 14.11.2024**

CORAM :

**THE HONOURABLE MR. JUSTICE S.S. SUNDAR**

**AND**

**THE HONOURABLE MR. JUSTICE P. DHANABAL**

**O.S.A.No.57 of 2024**

1.Sumitha Arons  
2.Shruti Reddy  
Represented by their Power of Attorney Agent  
Promod Ranjan  
Having office at Paramount Plaza  
Third Floor, 37, Mahatma Gandhi Road,  
Nungambakkam, Chennai – 34.

... Appellant

Vs.

1.P.Viresh Reddy  
2.P.Vishal Reddy  
3.P.Pradyumna Reddy  
4.P.Prashanthi Reddy  
5.P.Chenga Reddy  
6.Varanasi Soumini Reddy  
7.Yerrabolu Venkata Seshamma  
8.The Sub-Registrar, Joint-II,  
Thousand Lights,  
268, Bharathi Salai,  
Express Estate, Royapettah,  
Chennai – 600 014,  
Tamil Nadu.

... Respondents



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Original Side Appeal filed under Order XXXVI Rule 1 of Original Side Rules and Clause 15 of the Letters Patent against the judgment and decree dated 23.02.2022 in C.S.No.175 of 2021 on the file of this Court.

|                |   |                                                  |
|----------------|---|--------------------------------------------------|
| For Appellants | : | Mr.T.Srikrishna Bhagavat                         |
| For R1 to R4   | : | Mr.Darshit B. Jain<br>for Mr.Richardson Wilson   |
| For R8         | : | Mr.T.Arun Kumar<br>Additional Government Pleader |
| R5             | : | Left                                             |
| For R6 and R7  | : | Service awaited                                  |

### **J U D G M E N T**

(Judgment was delivered by **S.S. SUNDAR, J.**)

Even though the matter has been listed on few occasions under the caption "for reporting settlement" at the request of the learned counsel on either side, the learned counsels are unable to report settlement.



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2.This Original Side Appeal is directed against the judgment and decree of the learned Single Judge dated 23.02.2022 in C.S.No.175 of 2021.

3.The appellants filed the suit in C.S.No.175 of 2021 for the following reliefs :

- a) *Seeking for partition of suit schedule property by metes and bounds after determining the share of Plaintiffs and Defendants by way of passing preliminary decree for the suit schedule property and thereafter pass a final decree after due inspection of the Advocate Commissioner by dividing the property by metes and bounds of the property and hand over the same to the Plaintiffs and the Defendants with their respective shares by physical division and render justice.*
- b) *declaration that the Settlement Deed dated 24.08.2017 executed by Mrs.P.Padmavathiamma, wife of the 5th Defendant and mother of 3rd and 6<sup>th</sup> defendants and registered as Doc.No. 1004/2017 in favour of Sri P. Chenga Reddy, the 5th Defendant is null and void as she does not have right to make such settlement deed in favour of the 5th Defendant and consequently direct the Sub Registrar,*



*Chennai, Central Joint-II to cancel the entry as per Section 98 of Registration Act and Rule 98 of Civil Rules of Practice and render justice.*

- c) permanent injunction restraining the 5th Defendant claiming any right based on the above Settlement Deed dated 24.08.2017 executed by Mrs. P.Padmavathiamma, wife of the 5th defendant and mother of the 3rd and 6th defendants in favour of 5th Defendant and registered as Doc. No. 1004 of 2017 at the Office of the Sub Registrar, Chennai Central Joint-II and render justice.*
- d) Declaration that the Settlement Deed dated 24.08.2007 executed by Mrs. P. Padmavathiamma, wife of the 5th defendant and mother of 3rd and 6th defendants based on the fraudulent family member certificate as if she got property from Mr. Y.Subbarama Reddy and registered as Doc. No. 1005/2007 at the Office of the Sub Registrar, Chennai Central Joint-II in favour of P. Pradyumna Reddy, the third Defendant herein as that document of family member certificate is fraudulent document and is to be declared as null and void and consequently direct the Sub Registrar, Chennai, Central Joint-II to cancel the entry as per Section of Registration Act and Rule 98 of Civil Rules of Practice and render justice.*
- e) permanent injunction restraining the 3rd Defendant*



*claiming any right based on the above Settlement Deed dated 24.08.2017 executed by Mrs. P. Padmavathiamma, wife of the 5th defendant and mother of 3rd and 6th defendants based on the fraudulent family member certificate she got from Mr. Y.Subbarama Reddy and registered as Doc.No. 1005/2007 at the Office of the Sub Registrar, Chennai Central Joint-II and thus render justice.*

*f) declaration that the Settlement Deed dated 31.01.2018 executed by Mr. P. Chenga Reddy, the 5th Defendant and registered as Doc. No. 115/2008 at the Office of the Sub Registrar, Chennai Central Joint-II in favour of Mr. P. Pradyumna Reddy, the 3rd Defendant is null and void and and consequently direct the Sub Registrar, Chennai, Central Joint-II to cancel the entry as per Section 98 of Registration Act and Rule 98 of Civil Rules of Practice and render justice.*

*g) permanent injunction restraining the 3rd Defendant claiming any right based on the above Settlement Deed dated 31.01.2018 executed by Mr. P. Chenga Reddy, the 5th Defendant and registered as Doc.No.115/2008 at the Office of the Sub Registrar, Chennai Central Joint-II and thus render justice.*

*h) declaration that the Settlement Deed dated 31.01.2018 executed by Mrs. P. Padmavathiamma, wife of the 5th*



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*defendant and mother of 3rd and 6th defendants and registered as Doc.No. 116/2018 at the Office of the Sub Registrar, Chennai Central Joint-II in favour of Mr. Viresh Reddy, the 1st Defendant at the Office of the Sub Registrar, Chennai Central Joint-II is null and void and consequently direct the Sub Registrar, Chennai, Central Joint-II to cancel the entry as per Section 98 of Registration Act and Rule 98 of Civil Rules of Practice and render justice.*

- i) permanent injunction restraining the 1st Defendant claiming any right based on the above Settlement Deed dated 31.01.2018 executed by Mrs. P.Padmavathiamma, wife of the 5th defendant and mother of 3rd and 6th defendants and registered as Doc.No. 116/2018 at the Office of the Sub Registrar, Chennai Central Joint-II and thus render justice.*
- j) declaration that the Settlement Deed dated 25.05.2018 executed by Mrs. P.Padmavathiamma, wife of the 5th defendant and mother of 3rd and 6th defendants and registered as Doc.No. 571/2018 at the Office of the Sub Registrar, Chennai Central Joint-II in favour of Mrs. Viresh Reddy, the 1<sup>st</sup> Defendant is null and void and consequently direct the Sub Registrar, Chennai, Central Joint-II to cancel the entry as per Section 98 of Registration Act and Rule 98 of Civil Rules of Practice and render justice.*



- k) *permanent injunction restraining the 1st Defendant claiming any right based on the above Settlement Deed dated 25.05.2018 executed by Mrs. P.Padmavathiamma, wife of the 5th defendant and mother of 3rd and 6th defendants and registered as Doc.No. 571/2018 at the Office of the Sub Registrar, Chennai Central Joint-II and thus render justice.*
- l) *declaration that the Settlement Deed dated 23.08.2018 executed by Mr. P.Pradyumna Reddy, the 3rd Defendant and registered as Doc.No. 961/2018 at the Office of the Sub Registrar, Chennai Central Joint-II in favour of Mr. P. Vishal Reddy, the 2nd Defendant is null and void and consequently direct the Sub Registrar, Chennai, Central Joint-II to cancel the entry as per Section 98 of Registration Act and Rule 98 of Civil Rules of Practice and render justice.*
- m) *permanent injunction restraining the 2nd Defendant claiming any right based on the above Settlement Deed dated 23.08.2018 executed by Mr.P.Pradyumna Reddy, the 3rd Defendant and registered as Doc.No. 961/2018 at the Office of the Sub Registrar, Chennai Central Joint-II and thus render Justice.*
- n) *declaration that the Settlement Deed dated 23.08.2018 executed by Mr. P.Pradyumna Reddy, the 3rd Defendant and*



*registered as Doc.No. 962/2018 at the Office of the Sub Registrar, Chennai Central Joint-II in favour of Mr. P. Viresh Reddy, the 1st Defendant is null and void and consequently direct the Sub Registrar, Chennai, Central Joint-II to cancel the entry as per Section 98 of Registration Act and Rule 98 of Civil Rules of Practice and render justice.*

- o) permanent injunction restraining the 1st Defendant claiming any right based on the above Settlement Deed dated 23.08.2018 executed by Mr. P. Pradyumna Reddy, the 3rd Defendant and registered as Doc.No. 962/2018 at the Office of the Sub Registrar, Chennai Central Joint-II and thus render justice.*
- p) declaration that the Settlement Deed dated 23.08.2018 executed by Mr. P.Viresh Reddy, the 1st Defendant and registered as Doc.No. 963/2018 at the Office of the Sub Registrar, Chennai Central Joint-II in favour of Mr. Vishal Reddy, the 2nd Defendant is null and void and consequently direct the Sub Registrar, Chennai, Central Joint-II to cancel the entry as per Section 98 of Registration Act and Rule 98 of Civil Rules of Practice and render justice.*
- q) permanent injunction restraining the 1st Defendant claiming any right based on the above Settlement Deed dated 23.08.2018 executed by Mr. Viresh Reddy, the 1st*



*Defendant and registered as Doc.No. 963/2018 at the Office of the Sub Registrar, Chennai Central Joint-II and thus render justice.*

- r) directing the Defendants to pay jointly and severally damages for unlawful gain on the share of the plaintiffs from October 2017 to August 2020 [total 35 months] at the rate of Rs. 10,00,000/- per month for the share of the plaintiffs which comes to Rs.3,50,00,000/- and from the date of plaint till the date of decree and realization whatever Hon'ble Court awards with interest at the rate of 18% on the sum awarded by Hon'ble Court till the date of realization of Rs.3,50,00,000/- [Rupees Three Crores and Fifty Lakhs Only] as damages for creating all these documents fraudulently and causing mental agony and fraud created by them and thus render justice.*
- s) pass an order of permanent injunctions the defendants 1 to 4 or their agents, men or anybody working under them from making material alterations or additions to the suit schedule mentioned property and thus render justice;*
- t) Pass an order of permanent injunction restraining the defendants 1 to 4 from letting out the suit schedule mentioned property till partition takes place between the Plaintiffs and Defendants and thus render justice;*



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4. During pendency of the suit, the defendants 1 and 2 in the suit filed an application in A.No.2503 of 2021 in C.S.No.175 of 2021 for rejection of plaint under Order VII Rule 11 of Code of Civil Procedure. The learned Single Judge of this Court, after hearing lengthy arguments and referring to several judgments, has held that the plaintiffs, who have filed the suit for partition and who relied upon a few Wills, cannot maintain the said suit without the Wills being probated. Referring to Section 213 of the Indian Succession Act, 1925, the learned Judge held that no suit is maintainable unless the subject Will is probated. Taking note of the fact that the petition filed by the plaintiff's father seeking probate of the Wills is at SR stage, the learned Judge held that the suit cannot be maintained without the Wills being probated.

5. Section 213 of Indian Succession Act reads as follows :

***“213. Right as executor or legatee when established.-***

***(1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in***



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*India has granted probate of the will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed.”*

From the bare reading of this provision, there is no bar for institution of suit even though no decree can be granted by relying upon an unprobated Will. If probate is obtained after the commencement of suit, the decree will not be invalid merely because the suit was instituted when the Will was not probated. From the language of Section 213 of Indian Succession Act, there cannot be an interpretation to bar the institution of suit. A Will cannot be relied upon to establish one's right without obtaining probate. Section 213 of Indian Succession Act may be relied upon to stay the suit if the suit relief is based on a Will which is required to be registered but not registered.

6.In this case, the suit is for half share in the suit property. It is alleged in the plaint that the entire suit property was purchased by three persons. Even though one third of the property of Mrs.A.Sridevamma is claimed on the basis of a registered Will dated 22.02.1996 in favour of father of plaintiffs, one half of one third share was claimed by pleading another Will executed by Mr.Y.Subbarama Reddy in favour of father of



plaintiffs and the 5<sup>th</sup> defendant, brother of plaintiff's father. Since parties are closely related, in the absence of a genealogy, this Court is unable to hold that the entire property would go to the defendants in the absence of unprobated Will.

7.The learned Judge himself extracted the specific pleading in the plaint that Chenga Reddy and Varadha Reddy had equal shares in the properties. If that is so, the plaintiffs, who are the legal heirs of Vardha Reddy which is also admitted in the order, are entitled to maintain a suit for partition even without a Will. This Court is unable to agree with the learned Single Judge that the suit is not maintainable in the absence of probate of Wills. If the Wills are probated, the plaintiffs can get allotment as per the Wills. If the Wills are not probated, the plaintiffs will get their shares in accordance with Hindu Succession Act. Even though the suit is not confined to the relief of partition and there are several other reliefs, the learned Judge has not even examined whether the plaintiff can pursue other reliefs. In case the plaintiffs have to challenge several alienations as prayed for, the plaint presented after probate can be challenged on the ground of



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limitation. It is in the said circumstances, the order of the learned Single Judge rejecting the plaint is not sustainable and therefore, the order cannot be sustained.

8.As a result, this Original Side Appeal is allowed and the judgment and decree of the learned Single Judge dated 23.02.2022 in C.S.No.175 of 2021 is set aside. The suit is restored on file. No costs.

**(S.S.S.R., J.) (P.D.B., J.)**  
**14.11.2024**

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Internet : Yes

Index : Yes

Neutral Citation : Yes



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**and**  
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