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Second Appeal No.334 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 06.09.2024

Pronounced On : 28.10.2024

CORAM:

THE HONOURABLE JUSTICE Mr.N.SENTHILKUMAR

Second Appeal No.334 of 2016
and C.M.P.No.6194 of 2016
and MP.Nos.2 & 3 of 2015

S.K.Sakunthala @ Shanthi (Deceased)

2.M.Selvaraj

3.S.Suresh

4.V.Jothi

5.S.Manopriya

... Appellants

Vs.

Dharman (Deceased)

2.Adhilakshmi

3.S.Ramesh (Given up)

... Respondents

(Respondent Nos.2 and 3 brought on record as LR of the first deceased respondent as per the Court order dated 03.03.2016 by this Court made in M.P.Nos.4 to 6 of 2015 in S.A.No.48461 of 2008).

(Appellants 2 to 5 and respondent No.3 brought on record as LR's of the deceased sole appellant dated 07.08.2015 made in M.P.No.1403 of 2015 in S.A.No.48461 of 2008).

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the decree and judgment dated 19.09.2007 passed in A.S.No.105 of 2007 on the file of the VII Additional City Civil Court, Chennai and reversing the judgment and decree dated 28.07.2006 passed in O.S.No.2844 of 2005 on the file of the XVII Asst. City Civil Court, Chennai.



Second Appeal No.334 of 2016

For Appellants : Mr.E.Prabu
For Respondents
R1 : Died (Steps taken)
R2 : Mr.K.P.Ashok
R3 : Given up vide in EB

JUDGMENT

The appellant is the plaintiff in the suit and as against the reversal finding in the Appeal Suit, the present Second Appeal is filed.

2. For the sake of convenience, the status of the parties are referred as plaintiff and defendant as referred in the suit.

3. The suit in OS.No.2844 of 2005 was filed before the XVII Assistant City Civil Court, Chennai and as against the decree and judgment passed by the Trial Court, an Appeal was filed in A.S.No.105 of 2007 before the VII Additional City Civil Court, Chennai.

4. The plaintiff has filed a suit for partition with a prayer directing the defendant to make partition of the suit property by metes and bounds and to allot and hand over the vacant possession of half share in the suit property



and further direction to the defendant to pay a sum of Rs.800 per month as plaintiff's share towards future mesne profits from the date of plaint till the date of the partition and separate possession and to bear the cost of the suit.

5. The case of the plaintiff is that the mother of the plaintiff Chokkammal had married one Manickam and out of the wedlock, the defendant was born. After the death of the said Manickam, the plaintiff's mother Chokkammal had married one S.M.Raju and out of their wedlock, the plaintiff was born. The plaintiff's mother Chokkammal and S.M.Raju jointly purchased a property in Survey No. L332/6, Door No.35, Old No.7/6, Appasamy Street, Harrington Road, Chetpet, Chennai to an extent of 1200 Sq. ft. by virtue of sale deed dated 19.12.1960 vide Document No.3322/1960.

6. Subsequently, the plaintiff's mother Chokkammal and S.M.Raju had developed difference of opinion and a dispute between them arose in the year 1962 in respect of the right and title over the suit property. The plaintiff's mother was declared as absolute owner of the suit property vide judgment in S.A.No.502 of 1967. The plaintiff was residing with her mother Chokkammal till her marriage which took place in the year 1971. The defendant who is the brother of the plaintiff had not spent even a single pie



towards the marriage of the plaintiff.

7. The plaintiff's mother Chokkammal, during her life time had stated orally that after her death, the plaintiff and the defendant should share the property equally i.e., 600 Sq.ft., each. After the marriage of the plaintiff, the defendant's mother constructed a house for him in one portion for an extent of 600 Sq.ft., and three tenancy portion in the other part admeasuring 600 Sq.ft., in the suit property and started collecting the rents derived from the same.

8. The Plaintiff's mother Chokkammal died in the year 1973 due to ailment and the plaintiff bonafidely expected partition of her share from the defendant who is none other than the brother of the plaintiff. The plaintiff had made several attempts to execute the oral partition made by the mother of the plaintiff, since there was no response from the defendant, the plaintiff issued a legal notice dated 17.06.2004 calling upon him to partition the suit property by metes and bounds and to hand over the vacant possession of the share of 600 Sq.ft., in the suit property. The defendant had given reply to the plaintiff's legal notice by denying the claim made by the plaintiff and he did not come forward to honour the oral partition made by the plaintiff's mother Chokkammal.



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9. The case of the plaintiff is that the defendant was collecting a sum of Rs.16,000/- per annum towards rent of the two portions which was constructed in the suit property. Since the property was let out for tenant and the defendant was enjoying the rent collected from the other part of the suit schedule property for a period of three years, the plaintiff claimed for future mesne profits to the sum of Rs.800/- per month in the suit schedule property. After the demise of the plaintiff's mother Chokkammal, the plaintiff and the defendant who are the co-owners of the suit property, were in joint possession and enjoyment of suit property.

10. The defendant has filed his written statement and denied the averments made in the plaint. The defendant had contended that the plaintiff is an illegitimate daughter of Chokkammal and S.M. Raju. The defendant submitted that his mother Chokkammal had filed O.S.No.617 of 1962 before the City Civil Court, Chennai to declare that she is the absolute owner of the suit schedule property and the same was dismissed, against which, the said Chokkammal filed A.S.No.8 of 1966 and the same was allowed in favour of Chokkammal holding that she is the absolute owner of the suit schedule property. Aggrieved over the dismissal of A.S.No.8 of 1966, S.M.Raju had



preferred S.A.No.562 of 1967 which was dismissed declaring that the mother of the plaintiff is the absolute owner of the property. The defendant contended that, at no point of time, the plaintiff was in the custody of Chokkammal. The defendant had specifically denied the contention that his mother Chokkammal had orally informed that the plaintiff is entitled for half portion of the suit property.

11. The defendant contended that his mother had executed a settlement deed in favour of the defendant by way of a registered Doc.No.154/1972 dated 17.02.1972. From the date of the settlement deed, the defendant was in peaceful possession and enjoyment of the suit schedule property and the revenue records were mutated in the name of the defendant. The defendant had denied the contention that he is collecting a sum of Rs.16,000/- per annum from the tenants towards rent and he denied the plaintiff's claim over a share in the mesne profits.

12. The Trial Court after considering the plaint and written statement filed by the plaintiff and defendant had formulated the following issues:

- i) Whether the plaintiff is entitled to the half share in the suit property?
- ii) Whether the plaintiff is entitled to the relief of partition as claimed by



the plaintiff?

iii) Whether the plaintiff is entitled to future mesne profit as claimed for?

iv) Whether any other relief could be granted in favour of the plaintiff?

13. Before the Trial Court, the plaintiff was examined as P.W1 and marked exhibits Exs.A1 to A7. On the side of the defendant, the defendant was examined as DW1 and marked Exhibits Exs.B1 to B5.

14. The Trial Court had taken into consideration the settlement deed in Doc No.154 of 1972 marked as Ex.B4 executed by Chokkammal in favour of the defendant. The Trial Court on examining Ex.B2, which is the judgment and decree in A.S.No.8 of 1966 has declared that the defendant is the son of the said Chokkammal and the plaintiff is a child born out of illicit relationship between the said Chokkammal and S.M.Raju.

15. The Trial Court while evaluating the documents marked on either side and the cross examination of the plaintiff, has noted the statement of the plaintiff that she is aware of the settlement deed executed by the defendant's mother Chokkammal in favour of the defendant and the plaintiff did not dispute the legality of the settlement deed in favour of the defendant. Ex.B4



is the settlement deed to an extent of 1200 Sq.ft., which would show that the defendant was in possession of the suit schedule property in which there was a construction to an extent of 600 Sq.ft.

16. The Trial Court considered that though no document was marked on the side of the plaintiff to establish that Rs.600/- was collected from each portion towards rent, in the cross examination of the defendant, the defendant has admitted that he was collecting a sum of Rs.200/- from each portion and he has admitted that for the collection of rent, no receipt was issued to the respective tenants.

17. The Trial Court disbelieved the execution of Ex.B4 as the same was not proved by the defendant by examining the attesting witnesses. In view of the same, the Trial Court decreed the suit in respect of the relief of partition of the suit property and dismissed the suit in respect of the claim of future mesne profit made by the plaintiff.

18. The defendant has filed an Appeal against the judgment and decree passed in O.S.No.2844 of 2005 before the VII Additional City Civil Court, Chennai in A.S.No.105 of 2007. The First Appellate Court has taken into



consideration that there was a dispute between Chokkammal, the mother of the plaintiff and S.M.Raju and that the plaintiff is the illegitimate daughter of Chokkammal and S.M.Raju. The First Appellate Court noted that the suit property was purchased by the said Chokkammal and S.M.Raju vide sale deed dated 19.12.1960 in Doc.No.3322/1960 marked as Ex.A2.

19. The First Appellate Court considered the judgment of this Court in ***Perumal Gounder vs. Pachaiappan*** reported in AIR 1990 Mad 110 which reads as follows:

“ The first respondent though he should be considered to be the legitimate son of the first appellant cannot seek the relief of partition as such but at best may be entitled to rights in the properties of the first appellant.”

In the light of the above judgment, the First Appellate Court came to the conclusion that the appellant is not entitled to the relief of partition of the suit property as the appellant is the illegitimate daughter of Chokkammal.

20. The First Appellate Court had noted that the plaintiff had converted to Christianity after marrying one Selvaraj. The First Appellate Court has held that in view of the fact that the plaintiff has converted herself



to Christianity, she cannot claim a right over the property under the Hindu Succession Act. On the above reasons, the First Appellate Court had set aside the judgment and decree passed in O.S.No.2844 of 2005. Challenging the same, the present Second Appeal is filed.

21. The Second Appeal was admitted on the following Substantial Questions of Law.

- i) Has not the first Appellate Court erred in holding that the appellant/respondent/plaintiff has no right to get a share over her mother's property on the ground on being an illegitimate child?*
- ii) Has not the first Appellate Court erred in holding that appellant/respondent/plaintiff has no right to get a share over her mother's property on the ground that she converted herself into Christianity?*

22. Learned counsel for the appellant would contend that the plaintiff had not averred anything in the plaint regarding her conversion from Hindu religion to Christianity. In the absence of any specific pleading and in the absence of issues raised by the Trial Court on the entitlement of plaintiff over her mother's property under the Hindu Succession Act and issues regarding



the plaintiff being an illegitimate daughter, the finding given by the First Appellate Court is not sustainable.

23. Learned counsel for the respondent would contend that the Trial Court in the title dispute between the said Chokkammal and S.M.Raju had decided in favour of the defendant's mother asserting that Chokkammal is the absolute owner of the suit schedule property. The appellant/plaintiff is an illegitimate daughter of the defendant's mother Chokkammal. Therefore, she is not entitled to the relief of partition as held by the First Appellate Court.

24. Learned counsel for the respondent would further contend that the respondent/defendant's mother has executed a settlement deed in favour of the respondent/defendant by way of a Registered Doc.No.154/1972 dated 17.02.1972 marked as Ex.B4 which has established the absolute right of the defendant/Respondent in the suit schedule property.

25. It is clear that the suit property belonged to the said Chokkammal. The plaintiff has admitted that the defendant is the son of Chokkammal, therefore, he has right over the property of Chokkammal.

26. From the available records, it is clear that the defendant has taken



a stand that the plaintiff is not entitled for the relief as she is an illegitimate daughter of Chokkammal. Such a contention has been raised by the defendant before the Trial Court itself. However, the Trial Court has decreed the suit in respect of the relief of partition without examining the above said aspect.

27. This Court is of the view that the trial court has decreed the suit without examining the extent of right available to the plaintiff who is an illegitimate child of the said Chokkammal. The plaintiff has also not pleaded anything regarding her status as an illegitimate child. Therefore, the First Appellate Court is not wrong in holding that the appellant/respondent/plaintiff has failed to establish her right over the suit schedule property before the trial court.

28. That apart, as the plaintiff failed to plead about her conversion from Hindu religion to Christianity, the trial court has decreed the suit without framing any issue for determining the right available to the plaintiff to claim a share in the suit schedule property under the Hindu Succession Act, 1956.

29. Accordingly, both the Substantial Questions of Law are answered



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in favour of the Respondent. Therefore, the judgment and decree of the First

Appellate Court calls for no interference.

30. In view of the above discussions, this Second Appeal is dismissed and the judgment and decree in A.S.No.105 of 2007 dated 19.09.2007 passed by the VII Additional City Civil Court, Chennai, is confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

28.10.2024

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Index: Yes/No

Speaking Order: Yes/No

To

1.The VII Additional City Civil Court,
Chennai.

2.The XVII Asst. City Civil Court,
Chennai.



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N.SENTHILKUMAR, J.

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Pre-Delivery Order
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