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A.S.No.552 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

A.S.No.552 of 2017

1.Chodi Boiyana Venkateswaramma

2.Bodi Andhra Rajya Lakshmi

3.Kongithala Vijaya Barathi

4.Bodi Sesharathnam

5.Dasam Nirmala

6.Makana Boina Kanya Kumari

7.Chodi Boina Hema Venkata Subbaraju

...Appellants

Vs.

1.D.Prameela Rani

2.B.Krishna Kumari

...Respondents

Prayer: First Appeal filed under Section 96 of C.P.C., r/w. Order 41 Rule 1 of C.P.C., against the decree and judgment dated 01.07.2017 in O.S.No.6318 of 2015 on the file of the XVIII-Additional City Civil Court, Chennai.



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For Appellants : Mr.Reshmi Christy

for Mr.K.V.Sajeev Kumar

For Respondents : Mr.A.Prabhakaran for R1 & R2

J U D G M E N T

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

The defendants in O.S.No.6318 of 2015 on the file of the XVIII-

Additional City Civil Court, Chennai are on appeal, aggrieved by a decree for partition of 1/9th share each of the two respondents in the appeal granted by the Trial Court.

2.The parties are referred to as per their rank in the suit for the purposes of convenience. The facts that led to filing of the suit are as follows:-

One Chodi Boiyana Appa Rao @ C.H.Appa Rao had purchased the suit property under a sale deed dated 15.11.1967 as vacant land and had put up construction there on. The said Appa Rao died on 12.04.1994, leaving behind the parties to the suit namely, seven daughters, one son and wife as his legal representatives. Contending that on the death of the said Appa



Rao, each of the parties are entitled to 1/9th share in the suit property, the plaintiffs, who are the two daughters of Appa Rao sued for partition.

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3.The suit was resisted by the defendants contending that the suit property was not the self-acquisition of C.H.Appa Rao and the same was purchased out of sale proceeds of certain lands that belonged to 1st defendant, wife of the said C.H.Appa Rao, which were purchased in her name by her father in the year 1962. Therefore, according to the defendants, Appa Rao was not absolute owner of the entire property. It was further contended that the late Appa Rao wanted the 7th defendant, son alone to take the entire property, since he had spent huge amounts for the performance of the marriage of the seven daughters and in deference to his wishes, the five daughters and the mother had relinquished their 1/6th share each in favour of the 7th defendant / son under a release deed dated 10.08.2015. The plaintiffs who did not want to honor the wish of the father had almost immediately after the execution of the release deed, sent legal notice seeking partition on 14.09.2015. Therefore, according to the defendants, the plaintiffs are not entitled to any share over the suit properties.



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4. On the above pleadings, the following issues were framed by the learned Trial Judge on 29.03.2016:-

"1. Whether the plaintiff is entitled for partition with respect of 1/9th share in the schedule mentioned property?

2. To what other relief the plaintiffs is entitled for ?"

The following additional issues were framed on 02.09.2016:-

"1. Whether it is true, as alleged by the 7th defendant that the property is not the absolute property of the said C.H.Appa Rao, since the property was purchased by selling his Mother's Jewels?"

5. At trial, the 1st plaintiff was examined as P.W.1 and Exs.A1 to A5 were marked. The 1st defendant and one Bodi Ram Mohan Rao were examined as D.W.1 & D.W.2. Exs.B1 to B3 were marked. The learned Trial Judge rejected the claim of the defendants that the property was purchased from and out of the sale proceeds of the land belonging to the 1st defendant, wife of Appa Rao on the ground that the sale deed in respect of the land belonging to the wife of Appa Rao is subsequent to the sale deed under which the suit property was purchased.



6.While the suit property was purchased under Ex.A1 dated 15.11.1967, the sale deed relating to the property belonging to the 1st defendant situate in Krishna District of Andhra Pradesh is dated 12.06.1968 Therefore, the learned Trial Judge disbelieved the version of the defendants that the property was purchased from and out of the sale proceeds of the land belonging to the 1st defendant, wife of Appa Rao. Having rejected the contention, the learned Trial Judge concluded that the property belonged to Appa Rao absolutely on the basis of Ex.A1, sale deed and granted a decree for partition.

7.We have heard Ms.Reshmi Christy, learned counsel for the appellants and Mr.A.Prabhakaran, learned counsel for the respondents.

8.Mrs.Reshmi Christy, learned counsel appearing for the appellants would vehemently contend that the Trial Court ought not to have rejected the contention of the defendants that the property was purchased out of the sale proceeds of the lands belonging to the 1st defendant under Ex.B3, overlooking the specific recital in Ex.B3 to the effect that these lands are



being sold to discharge the debts incurred in purchase of the property in the name of her husband at Nungambakkam, that is the suit property. She would also point out that with a view to honour the desire of the father, all other five daughters have executed a release deed in favour of the 7th defendant and it is only the plaintiffs, who do not want to abide by the wishes of the father who have approached the Court seeking partition.

9.Contending contra, Mr.A.Prabhakaran, learned counsel for the respondent would submit that the defendants have failed proved that the suit property was purchased from and out of the contributions made by the 1st defendant. Except the recital in Ex.B3, sale deed, there is no other evidence to show that the suit property was purchased from and out of the proceeds of sale of agricultural land belonging to the 1st defendant. He would also fault the defendants for not examining the 1st defendant as a witness.

10.No doubt, the sale deed, Ex.B3 specifically recites that the 1st defendant is selling her property to discharge the debts that were incurred in purchasing the suit property in the name of her husband but, that recital by



itself cannot led to inference that the suit property was not treated to be that of Appa Rao. The very fact that all the defendants namely, defendants 1 to 6 have joined together and executed a release deed in favour of the 7th defendant describing the property as belonging to Appa Rao and each of them having 1/9th share would probabalise the claim of the plaintiffs that the property was treated only as the property of Appa Rao. Therefore, according to the learned counsel, the plaintiffs are entitled to their 1/9th share each. We have considered the rival submissions.

11.The following point arises for determination in the appeal:-

i) Whether the Trial Court was right in rejecting the claim of the appellants that the property was purchased from and out of the sale proceeds from the agricultural lands that belonged to Appa Rao as ancestral property and the 1st defendant.

12.The suit property was purchased on 15.11.1967 in the name of Appa Rao. The sale deed, Ex.A1 does not give any indication as to how the consideration was contributed or as to whether the 1st defendant had contributed for the purchase of the property. Therefore, that recitals in the document are not very helpful. Ex.B3 sale deed dated 12.06.1968 contains



a recital that the property is being sold to discharge the duties incurred in purchase of the suit property.

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13.No doubt, the said recital would be an indication of the source of consideration. When we look into Ex.A3, release deed executed by the defendants 1 to 3 in favour of the 7th defendant, we find a recital that the property belonged to Appa Rao and the defendants 1 to 7, being parties to the said release deed are estopped from contending otherwise. We are therefore, unable to fault the Trial Court for having concluded that the deceased Appa Rao was owner of the property and the plaintiffs are entitled to 1/9th share in the property. Therefore, we do not see any reason to interfere with the preliminary decree that has been passed.

14.We make it clear that the 7th defendant as the major shareholder would be entitled to purchase the shares of the plaintiffs, since the property appears to be indivisible as it measures 36 feet North-South and 100 feet East-West. In the event the plaintiffs are not willing to part with their share of the property for a reasonable value, the Court will grant for final decree which will be of 2/9th of 36 feet width abutting the road only and nothing



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more than that. Since the plaintiffs would be entitled to a division of property with width on road side of 4 feet each only, the Trial Court will determine the share of the plaintiffs while passing a final decree and divide the property accordingly, giving the road facing width of 4 feet each of the plaintiffs. This Appeal is therefore, **dismissed** with the above observations. No costs. Consequently, connected miscellaneous petitions, if any, are closed.

(R.S.M., J.) (R.S.V., J.)
10.04.2024

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Speaking

Nuetral Citation :No

To:-

The XVIII- Additional Judge,
City Civil Court, Chennai.



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