



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

CROSS.OBJ.(MD)No.34 of 2021
and
C.M.P(MD)No.8073 of 2021

M.Kalidas

... Appellant

/Vs./

1.Sathyabama

2. Sethulakshmi

...Respondents

PRAYER: Cross Appeal is filed under Order 43 Rule 1 of the Civil Procedure Code, to call for the records and set aside the Appeal in A.S(MD)No.190 of 2021 against Clause (ii) of the Decree and Judgment, dated 10.12.2019 passed in O.S.No.37 of 2016 by the Learned Principal District Judge, Ramanathapuram.

For Appellant : Mr.G.Prabhu Rajadurai

For Respondents : M/s.V.Meenakshi Sundaram

JUDGMENT

This Cross Objection is filed by the 1st defendant in the suit in A.S. (MD)No.190 of 2021 and to set aside the clause (ii) of the judgment and decree



dated 10.12.2019 passed in O.S.No.37 of 2016 by the Learned Principal District Judge, Ramanathapuram.

2. The plaintiff in the suit is the 1st respondent herein, the 1st defendant in the suit is the cross objectors herein and the 2nd defendant in the suit is the 2nd respondent herein. For the sake of convenience, the contesting parties shall be referred to as plaintiff and the defendants.

3. The plaintiff namely Sathyabama had filed the suit in O.S.No.37 of 2016 for partition to divide the two items of suit schedule properties and allot 1/3rd share to the plaintiff and the cancel the settlement regarding the 1st item of the suit property settled by 2nd defendant in favour of 1st defendant. The suit was decreed partly decreed wherein the suit as far as 1st item is dismissed by upholding the settlement deed in favour of the 1st defendant, as far as 2nd item partition was granted for 1/3rd share to the plaintiff.

4. Aggrieved over the same the plaintiff Satyabama had filed appeal suit in A.S.(MD)No.190 of 2021. The 1st defendant Kalidas had filed Cross.Obj.(MD)No. 34 of 2021.



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5. Pending appeal suit and cross objections, the 2nd defendant has preferred a petition under Senior Citizens Act wherein the settlement deed was executed in favour of 1st defendant/bother was set aside and the same was challenged in a writ petition and the same is pending along with interim stay. Therefore, the rights of the plaintiff and defendant as far as the 1st item of the suit property ought to be considered based on the outcome of the said writ petition. The plaintiff had challenged as against the 1st item alone, since the said settlement deed was set aside, the plaintiff had withdrawn the appeal suit vide order dated 29.01.2024.

6. The cross objection is filed challenging the judgement passed as far as the 2nd item is concerned. It is seen that the property was purchased by the mother, thereafter, the same was settled in the name of the father and the father died intestate. Therefore, the wife and the two children are entitled to 1/3rd share. Subsequently, the mother has executed a release deed in favour of the son giving 1/3 share which was allotted to the mother. Based on the released deed 2/3rd share in the 2nd item of the property would be allotted to the 1st defendant.



7. But the contention of the 1st defendant is that as far as 1/3rd share which was allotted to the plaintiff/daughter was also released based on the oral release and on payment of Rs.2,00,000/- to the plaintiff. The plea of oral release is unbelievable and further oral release is illegal. Therefore, this Court is of the considered opinion that the 1st defendant is entitled to 1/3rd share and another 1/3rd share belonging to the mother based on the released deed and totally he is entitled to 2/3rd share in the second item of the property.

8. Accordingly, this Cross Appeal is disposed of holding that the plaintiff is entitled to 1/3rd share in the second item of the suit property and the 1st defendant is entitled to 2/3rd share in the second item of the suit property and Judgment and Decree dated 10.12.2019 passed by the Trial Court in O.S.No.37 of 2016 is hereby modified.

9. No Costs. Consequently, connected miscellaneous petition is closed.

16.07.2024

Index : Yes / No

NCC : Yes / No

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TO:

1. The Principal District Court,
Ramanathapuram.

2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Judgment made in
CROSS.OBJ.(MD)No.34 of 2021

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