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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

A.S(MD)No.8 of 2015

G.K.Srinivasan (Died)

2. Sumathi

3. Praveena

4. Vignesh

... Appellants

[Appellants 2 to 4 are brought on record as LR's of the deceased sole appellant, vide Order of this Court, dated 01.09.2023]

/Vs./

1. S.Janarthanan

2. S.Kalpana

...Respondents

PRAYER: Appeal Suit is filed under Section 96 of the Civil Procedure Code, to set aside the Judgment and Decretal order, dated 08.09.2014 passed by the I Additional District Judge (PCR Court), Thanjavur in O.S.No.108 of 2015 and allow the appeal.

For Appellants : Mr.N.Balakrishnan, for
M/s.D.Ramesh Kumar

For Respondents : Mr.J.Alaguram Jothi

JUDGMENT

This Appeal Suit is filed to set aside the Judgment and Decretal order, dated 08.09.2014 passed in O.S.No.108 of 2015 on the file of I Additional District Judge (PCR Court), Thanjavur.



2. The 1st plaintiff is the son of defendant / G.K.Srinivasan and the 2nd plaintiff is the daughter of the defendant / G.K.Srinivasan born through first wife of G.K.Srinivasan. Originally, the suit in O.S.No.108 of 2015 was filed by arraying the said G.K.Srinivasan as defendant. Pending the appeal suit the said G.K.Srinivasan died and after his demise, his second wife, daughter and son were impleaded as legal heirs. The defendant legal heirs are the Appellants herein and the Plaintiffs are the Respondents herein. For the sake of convenience, the contesting parties shall be referred to as Plaintiffs and Defendants as per the ranking referred in suit.

3. The suit in O.S.No.108 of 2015 was filed to pass a decree of partition in favour of the plaintiffs by declaring the 2/3 share to the plaintiffs in the 'A' schedule properties and 2/9 share of the 'B' schedule property by dividing it by metes and bounds after taking in account of the good and bad soil and also the market feasibility by way of passing a preliminary decree and also pass a final decree according the terms of preliminary decree. The said suit was partly allowed by granting preliminary decree of 2/9th share in “B” schedule property, but declined partition as far as “A” schedule property is concerned. Aggrieved over the same, the Defendants have filed this Appeal.



4. The facts of the case are that, originally the suit property belongs to one G.Krishnamurthy Naidu. During his lifetime, the said G.Krishnamurthy Naidu has executed a partition deed allotting the 'A' schedule of the suit property to one Subbiah Naidu and the 'B' schedule property to one Rajarathinam. Without knowing this fact, the children of first wife (son Janarthanan and daughter Kalpana) had filed a suit for partition. Believing the contention of the plaintiffs the suit was allowed. Aggrieved over the same, the G.K.Srinivasan had filed this present Appeal, but pending the appeal suit the said G.K.Srinivasan died and his second wife and her children were impleaded as legal heirs. Now, the First Appeal is being contested between the 1st wife's children and the 2nd wife and her children.

5. The Trial Court has held that the “A” schedule of suit properties are shown as “A” Schedule in the partition deed marked as Ex.A1 and the said properties were allotted to one G.K.Selvaraj and not G.K.Srinivasan/defendant. This fact is admitted by the plaintiffs in their deposition and therefore, the Trial Court had declined to grant partition as far as “A” schedule of suit properties. The plaintiffs have not preferred any appeal against this portion of the judgment and hence the same had attained finality.



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6. As far as “B” schedule of suit properties are concerned, it is seen the same is allotted to one Rajasekaran another brother of the said G.K.Srinivasan under a Will marked as Ex.B1. The Trial Court had held that the defendant G.K.Srinivasan has stated in the written statement that the said property belongs to his brother Rajasekaran but has not stated in the written statement how the said Rajasekaran is entitled to the same. But had suddenly produced the Will during deposition, hence the same was objected for marking the same as document. The Trial Court further held that the defendant had not mentioned about the Will in the written statement, thereby deprived the opportunity for the plaintiffs to deny the said fact. For these reasons the Trial Court had granted preliminary decree for partition of 2/9th share in “B” schedule property. After hearing the arguments this Court is of the considered opinion that when the defendant had disclosed that the said “B” schedule of suit properties belong to the one Rajasekaran, then in is incumbent on the plaintiffs to implead the said Rajasekaran as one of the parties and contested the case. Hence the suit is bad in law for non-joinder of necessary parties. Further it is the said Rajasekaran who ought to prove the Will and not the defendant G.K.Srinivasan. Now the decree is passed behind the back of the said Rajasekaran.



7. In view of the foregoing reasons, this appeal is allowed setting aside the judgment to the extent wherein it has decreed the 2/9th share of the 'B' schedule property. As far as the 'A' schedule property is concerned, the preliminary decree which was declined by the Court below is hereby confirmed. Hence the present Appeal Suit is allowed as stated supra. No Costs. Consequently, Connected Civil Miscellaneous Petition is closed.

12.06.2024

Index : Yes / No
NCC : Yes / No

KSA

TO:

1. The I Additional District Judge (PCR Court),
Thanjavur.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

KSA

Judgment made in
A.S(MD)No.8 of 2015

Dated:
12.06.2024