



A.S.No.550 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

Date :13.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.550 of 2022 & CMP.No.20568 of 2022

Indumathi

... Appellant

Versus

J.Sulochana

... Respondent

PRAYER : This Appeal Suit has been filed under section 96 read with Order 41 Rule 1 of Code of Civil Procedure to set aside the judgment and decree dated 29.04.2019 made in O.S.No.04 of 2016 on the file of the Principal District Court, Vellore.

For Appellant : Mr.C.Vinodhkumar

For Respondent : No appearance



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JUDGMENT

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Challenging the decree and judgment of the trial Court in passing the preliminary decree in the respect of the suit property declaring the rights of the plaintiff's half share in the property, the present appeal has been filed.

2. The parties are arrayed as per they own ranking before the trial Court.

3. The plaintiff and the defendant are sisters. The property has been originally allotted to the father of the plaintiff and the defendant under a registered partition deed dated 07.12.1957 entered between himself and his brothers. The father of the parties died on 19.08.1993 leaving behind the plaintiff and the defendant and their mother Lakhmi Ammal. The said Lakshmi Ammal also died on 21.10.2014. Therefore, the plaintiff filed the present suit claiming half share in the property.

4. Admitting the relationship and the character of the property, it is the



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contention of the defendant in the written statement that the father has originally mortgaged the property to one Arputhammal. The said mortgage was discharged by the husband of the defendant. Besides he has also discharged several debts of their father. Therefore, in view of the amount paid by the defendant, 80 cents of the land was given to the defendant by her father. The plaintiff also attested the said document. Hence, disputed the claim.

5. Based on the above pleadings, following issues have been framed by the trial Court :

1. Whether the plaintiff cannot claim any right under the principle of Estoppel by attestation?

2. Whether the suit property was improperly valued and the Court Fees paid is incorrect?

3. Whether the plaintiff is entitled to a preliminary decree of partition?

4. Whether the plaintiff is entitled to a decree of



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permanent injunction against the defendant?

5. To what other relief, the plaintiff is entitled to?

6. On the side of the plaintiff, she examined herself as P.W.1 and Ex.A.1 to A.8 have been marked. On the side of the defendant, she examined herself as D.W.1 and Ex.B.1 to Ex.B.3 have been marked. The trial Court rejecting the contention of the defendant, granted preliminary decree in favour of the plaintiff. Challenging the same, the present appeal came to be filed.

7. The learned counsel appearing for the appellant would contend that the plaintiff claiming partition of the property which has been mortgaged by their father as Ex.B.3 mortgage deed, which has been given to the defendant. Therefore, the plaintiff is not entitled to any share.

8. Despite notice served on the respondent and name printed in the cause list, none appeared for the respondent.



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9. In the light of the above submissions, now the point that arises for consideration is

Whether Ex.B.2 and Ex.B.3 convey any title to the property and those documents are admissible in evidence?

10. Point :

As far as the relationship is concerned, there is no dispute. The plaintiff and the defendant are sisters. The character of the property is also not in dispute. The only contention of the defendant is that since her husband has discharged the mortgage loan availed by her father, her father executed Ex.B.2 wherein 80 cents were agreed to be given to the defendant. Therefore, according to the defendant, as per Ex.B.2, the property has already been conveyed to the defendant. Therefore, the plaintiff is not entitled for partition.



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11. As rightly pointed out by the trial Court, Ex.B.2 is only an unregistered document and the same will not be admissible in evidence, particularly when a right is sought to be established on the basis of an unregistered document. When a person claims right on the basis of an unregistered document, such document is not valid in the eye of law and it cannot be admitted in the evidence and such a document will not convey or create or extinguish any right, particularly in respect of an immovable property and the document is hit by Section 17 of the Registration Act. Hence, I do not find any merits in this Appeal and the parties are equally entitled to a share in the property. The point is answered accordingly.

12. In the result, the Appeal Suit is dismissed and the judgment and decree of the trial Court in O.S.No.04 of 2016 dated 29.04.2019 is confirmed. There shall be no Order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet: Yes

Speaking/non speaking order

vrc

To,

The Principal District Judge,
Vellore.



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N. SATHISH KUMAR, J.

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