



A.S.No.316 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 01.04.2025

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.316 of 2023

and

C.M.P.No.11646 of 2023

C.Padmavathi

... Appellant/1st Defendant

-vs-

1. S.Pavithra

... Respondent/2nd Defendant

2. V.Santhakumari

3. Minor V.Madhuvadani

Rep. by her Mother/Natural

Guardian V.Santhakumari

... Respondents/Plaintiffs

Prayer: Appeal Suit is filed under Section 96 of CPC to set aside the judgment and decree dated 31.10.2022 made in O.S.No.81 of 2018 on the file of the Additional District Judge (FTC), Vellore, Vellore District.

For Appellant : Mr.M.Sathish Kumar

For R2 & R3 : Mr.R.Malaichamy

For R1 : No Appearance

J U D G M E N T

Challenging the decree and judgment of the Trial Court granting partition in favour of the plaintiffs, the 1st defendant has filed the present appeal.



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Background of the case in nutshell:

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2. The plaintiffs are wife and daughter of one Venkatesan respectively. The 1st defendant is the mother of the said Venkatesan. According to the 1st plaintiff, the marriage between the 1st plaintiff and the deceased Venkatesan took place on 10.03.2004 and initially, there was a cordial relationship between them. However, in the year 2013, the said Venkatesan started leading immoral life and he was also addicted to alcohol and at last, he has become mentally ill and become a mentally disabled person. It is averred in the plaint that taking advantage of the mental illness of Venkatesan, the defendants 1 and 2 fabricated certain documents and claimed rights over the property. According to the 1st plaintiff, since she was alone taking care of Venkatesan, the suit has been filed for partition.

3. The 1st defendant alone has filed a written statement, contending that the suit properties in respect of A and B schedule properties originally belonged to her husband and later, her husband had executed a Settlement Deed in favour of his son, namely, Venkatesan. That apart, the 'C' schedule property was purchased by her son Venkatesan. According to



the 1st defendant, her son was not conscious till his death and he had executed a Registered Will in her favour in respect of properties scheduled as 1 & 6 on 11.12.2017. It is the contention of the 1st defendant that the 1st plaintiff did not care of her husband. That apart, her son has applied divorce in H.M.O.P.No.199 of 2013. The 1st plaintiff left the matrimonial house in the year 2012 itself and never returned to her marital home.

4. The Trial Court, based on the above pleadings framed the following issues:

i) Whether the suit schedule A, B properties are ancestral property of C.Venkatesan?

ii) Whether the suit schedule C property are purchased from and out of income received from A and B Schedule property?

iii) Whether the plaintiff is entitled for partition in the suit schedule mentioned A,B,C properties into 3 equal shares and allot 2 such shares to the plaintiff?

iv) To what other relief?

5. On the side of the plaintiff, the 1st plaintiff was examined as P.W.1 and Ex.A1 to Ex.A5 were marked. On the side of the defendants, the 1st defendant was examined as D.W.1 and Ex.B1 to Ex.B5 were marked.



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6. The Trial Court, after considering the entire evidence, decreed the suit. Challenging the same, the 1st defendant has filed the appeal.

7. Learned counsel for the appellant would mainly submit that the Trial Court has not considered the Will executed by the appellant's son in her favour. Pursuant to the said Will, a sale deed has also been executed by the appellant. This aspect has not been considered. Once the Will has been acted upon and sale deed has also been executed, the Trial Court ought to have considered the same. However, the Trial Court has granted partition in respect of all the properties, which is not maintainable in law.

8. Whereas learned counsel for the respondents 2 & 3 would contend that the so-called Will has not been proved in the manner known to law and therefore, merely on the basis of some self serving document, the Will cannot be relied upon.

9. In the light of the above, the Points for consideration are as to,



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i) whether the appellant has proved the Will as pleaded in the written statement? and

ii) whether the decree and judgment of the Trial Court is proper and valid?

POINTS:

10. From the above pleadings, the relationship of the parties is not in dispute. 'A' & 'B' schedule properties were settled in favour of Venkatesan, who is none other than the son of the appellant and husband of the 2nd respondent herein. It is also not disputed as to the purchase of 'C' schedule property by Venkatesan, who died on 23.12.2017. It is admitted on both sides that the said Venkatesan was unwell from the year 2015, which is fortified by the evidence of D.W.1, When a suggestion was put to D.W.1 by the plaintiffs, D.W.1 categorically deposed that her son was not conscious and it was D.W.1, who was only looking after him. The very suggestion unfolds the truth that Venkatesan was bedridden from the year 2015 as per the evidence of D.W.1 and it was established on record that the said Venkatesan was not in a position to move anywhere. Therefore, it can be



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inferred that the alleged Will pleaded by the 1st defendant is highly doubtful.

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In any event, the Will has not been produced before the Trial Court and none of the attesting witnesses has been examined, in the absence of which, merely on the basis of some recital in the later document about the Will, it cannot be said that the Will has been proved in the manner known to law.

11. That apart, as the title to the properties standing in the name of Venkatesan is not disputed, Venkatesan is the absolute owner of the properties and after his death, Class-I legal heirs are equally entitled to shares. The 1st plaintiff is the wife; the 2nd plaintiff is the daughter and 1st defendant is the mother of Venkatesan, who are all, being Class-I legal heirs, equally entitled to their respective shares. The Trial Court, in fact has elaborately discussed about the very execution of the Will. The documents produced by the appellant, namely, payment receipts from the hospital, indicates that Venkatesan was in the hospital from 07.12.2017 to 20.12.2017. That being the position, the execution of the Will dated 11.12.2017 creates a cloud of suspicion in minds of the Court. That apart, the Will has neither been produced before the Trial Court nor proved in the



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manner known to law. Considering all these aspects, the decree and judgment of the Trial Court passing preliminary decree in respect of 2/3rd shares to the plaintiffs does not require any interference by this Court. The points are answered accordingly.

12. In the result, the instant Appeal Suit is dismissed. The decree and judgment of the Trial Court is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

01.04.2025

Index: Yes / No
Internet: Yes / No
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To:

1. The Additional District Judge (FTC),
Vellore,
Vellore District
2. The Section Officer,
V.R.Section,
High Court,
Madras.



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N.SATHISH KUMAR,J.,
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