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CRP NPD.No.186 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

Date :05.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.186 of 2022 & CMP.No.6990 of 2022

G.Gunasundari

... Appellant

Versus

T.Sridhar [died]

1. S.Uma Maheswari

2. Minor S.Srisai Lakshmi

Rep. by her mother and Natural Guardian

S.Uma Maheswar

S.A.eevarathinammal [died]

3. Housing Development Finance Corporation Ltd.,

Rep. by its Senior Manager,

ITC Centre Second Floor, No.760, Anna Salai,

Chennai – 600 002.

... Respondents

PRAYER : This Appeal Suit has been filed under section 96 read with Order 41 Rule 4[A] of Code of Civil Procedure to set aside the judgment and decree in I.A.No.14900 of 2018 in O.S.No.10755 of 2010 dated 10.07.2010 on the file of the II Additional City Civil Court, Chennai.



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For Appellant : Mr.K.B.Gopi

For Respondents : Mr.E.Senthil Kumar – R1 & R2

JUDGMENT

This appeal has been directed against the Order of the trial Court rejecting the suit filed for partition.

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

3. The suit has been originally filed by the plaintiff seeking 1/3rd share in the suit property. The plaintiff is the sister of the first defendant. The suit property has been purchased by their father S.K.Jagadesan. The second defendant is the grand mother of the plaintiff and the first defendant. The said S.K.Jagadeesan died intestate on 01.06.2007. Thereafter, the plaintiff being the legal heir of the said Jagadeesan filed the suit.



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4. The written statement has been filed by the defendants, admitting the relationship. However, it is stated that during the life time, his father had left a Will dated 17.04.1998, granting life estate to his wife and vested remainder to his son, the first defendant herein. In the suit, an application has been taken out by the defendant to reject the plaint on the ground there was no cause of action for claiming partition, since the Will has been already proved in the Original Petition in O.P.No.467 of 2013, the trial Court considering the fact that the Will has been proved before this Court in O.P.No.467 of 2013 in the manner known to law and in the said proceedings, the plaintiff is also a party, rejected the suit. Challenging the said Order, the present appeal has been filed.

5. The learned counsel appearing for the appellant would mainly contend that the Will is said to have been executed in the year 1998 and the Original Petition has been filed seeking Letters of Administration only after the demise of the testator and that too after filing of the suit. Therefore, according to him, the Letters of Administration ought to have been obtained within a period of three years. Further, there are serious suspicious circumstances attached to the Will. Hence, according to him, it has to be



decided only in the suit. Therefore, the trial Court shutting the doors of the plaintiff at the initial stage itself is not valid in the eye of law.

6. Whereas, the learned counsel appearing for the respondent would submit that the plaintiff was already a party in the proceeding seeking Letters of Administration and the Will has been clearly established in the manner known to law and there is no property available for partition and therefore, the suit cannot be maintained. Hence, submitted that the trial Court has rejected the suit and same needs no interference.

7. In the light of the above submission, the points that arise for consideration is

1. Whether the Order of the trial Court rejecting the suit is proper?

2. Whether the suit is liable to be rejected in view of the Letters of Administration granted by this Court?



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WEB COPY 8. Points 1 & 2 :

The suit has been proceeded as if the plaintiff's father died intestate and therefore, she is entitled to 1/3 share in the property. The second defendant is the grandmother of the plaintiff and the first defendant and she has also been made as a party. Whereas, it is the specific contention of the defendants in the written statement that the father of the parties, viz., S.K.Jagadeesan, executed a Will during his life time and bequeathed the property in favour of the first defendant, who is his only son, with life interest to his wife. Therefore, according to them, after the death of the said S.K.Jagadeesan, the property came to the hands of the first defendant as per the Will.

9. It is not disputed that the property is a self acquired property of the said S.K.Jagadeesan. The specific stand of the first defendant is that his father left a Will reserving life interest to his wife and vested the remainder to the first defendant. In this regard, a careful perusal of the Will as well as the Court documents, the fact that the Will pleaded in the Written statement was already



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the subject matter of the proceedings in the Original Petition in O.P.No.467 of 2013 before this Court wherein, the plaintiff has also been made a respondent.

In the said proceedings, the Will was subject matter for grant Letters of Administration in respect of the property.

10. The Will propounded by the first defendant has been established in the manner known to law. One of the attesor to the Will has also been examined to prove the execution of the Will. The evidence of attesting witness proved the Will as required under the law, taking note of that this Court granted Letters of Administration on the basis of the Will. Therefore, when the very Will, which was the subject matter of the proceedings initiated before this Court wherein the plaintiff is also one of the party and the Will has already been proved, the property automatically go to the legatee as per law.

Therefore, the suit filed for partition by the plaintiff is not maintainable, as there is no property available for partition. As long as the Letters of Administration granted by this Court has not been challenged and the same has not been annulled, the parties cannot seek for partition of the property which



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was already the subject matter of the Will dated 17.04.1998. In such view of the matter, I do not find any infirmity in the Order of the trial Court rejecting the plaint.

11. Accordingly, this appeal suit is dismissed. There shall be no Order as to costs. Consequently, connected miscellaneous petition is closed.

05.02.2025

Index : Yes / No

Internet: Yes

Speaking/non speaking order

vrc

To,

The II Additional Judge,
City Civil Court, Chennai.



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N. SATHISH KUMAR, J.

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