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A.S.No.447 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

Date :17.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.447 of 2022 &

CMP.Nos.13910 & 13912 of 2023

1. V.Rajendran
2. V.Srinivasan
3. V.Viswanathan
4. S.Mangaiyarkarasi
5. V.Ramalingam

... Appellants

Versus

1. Aravindan
2. Arivoli
3. Suthanthira Aravindama

... Respondents

PRAYER : This Appeal Suit has been filed under section 96 of Code of Civil Procedure to set aside the judgment and decree dated 21.07.2022 made in O.S.No.179 of 2018 on the file of the II Additional District Court, Chidambaram.



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For Appellants : Mr.N.Kumar

For Respondent : Mr.K.Chandrasekaran

JUDGMENT

Challenging the decree and judgment of trial Court granting preliminary decree in respect of half share of Item Nos.1, 5, 7 of the suit schedule properties and half share in Item Nos.4, 6 of the suit schedule property and dismissing the suit in respect of other items, the present appeal has been filed.

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

3. It is the case of the plaintiffs that the property originally owned by their grand father Ramalinga Chettiar. The said Ramalinga Chettiar and his wife Soundara Nayagi had four daughters, viz., Saradavalli, Parvathi, Tiripurasundari and Chandra and among the daughters, Saradavalli and Chandra had died. The plaintiffs are sons and daughter of Tripurasundari and the defendants are sons and daughter of Parvathi. The grandfather of the



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parties executed a Will when he was in a sound disposing state of mind and under the Will 'A' schedule property bequeathed to Saradavalli, 'B' schedule has been bequeathed to Parvathi Ammal, 'C' schedule property has been bequeathed to Thiripurasundari and 'D' schedule property has been bequeathed to Chandra. The said Ramalinga Chettiar bequeathed 'E' schedule property to one Rajendran and 'F' schedule property to one Aravindan. As far as 'E' schedule and 'F' schedule properties are concerned, Rajendran and Aravindan would take the property absolutely. As far as the properties bequeathed to the daughters, life interest was given to them and infact, it is stated in the Will that if any of the daughter has no issue, the children of other daughters will take the property absolutely. Saradavalli and Chandra died issue less and therefore the properties bequeathed to them under the Will devolved upon the plaintiffs and the defendants, who are sons and daughters of Thiripurasundari and Parvathi. Hence, the plaintiffs sought half share in the property.

4. In the written statement filed by the first defendant, which has been adopted by the defendants 2 to 4, admitting the relationship and also execution



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of the Will dated 22.05.1972 by their grandfather, it is their case that Ramalinga Chettiar during his life time has executed more than 3 settlement deeds regarding the properties mentioned under the Will and his wife Soundaranayaki also executed settlement deeds in favour of her daughters. Based on the settlement deeds, the daughters of Saradavalli and Chandra have sold some of the properties to various persons before 1990 and most of the properties mentioned in the plaint have already been sold by them. Hence, disputed the shares.

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

1. Whether the suit properties are ancestral joint family properties of the plaintiffs and the defendants?
2. Is it true that on the basis of the settlement deeds some of the suit properties have been sold prior to 1990?
3. Whether the plaintiffs are entitled to the relief sought as per Order XX Rule 12 of Code of Civil Procedure?



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4. Whether the plaintiffs are entitled to partition as prayed for?

5. To what relief the plaintiffs are entitled to?

6. On the side of the plaintiffs, the second plaintiff has been examined as P.W.1 and Ex.A.1 to A5 have been marked. On the side of the defendants, the first defendant has been examined as D.W.1 and Ex.B.1 to Ex.B.13 have been marked on their side. The trial Court taking note of the fact that Will has been admitted by both sides, in view of the fact that properties have been dealt by the testator during his life time and also taking note of the nature of the properties dealt by the parties, viz., testator, his wife and daughters, granted partition in respect of the remaining properties. Challenging the same, the unsuccessful defendants have filed the present appeal.

7. The main contention of the appellants is that the Will has been admitted and since the Will has not been acted upon, the testator himself settled the property, by way of Ex.B.1 to Ex.B.5. That apart, the properties in



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respect of Ex.B.5, Ex.B.7 and Ex.B.8 have been sold to third parties.

Therefore, without impleading necessary parties, the suit has been filed.

According to them, though Will is admitted, as the testator himself has dealt with the properties, the Will cannot be acted upon.

8. Whereas the contention of the learned counsel appearing for the respondents is that the suit itself has been filed for partition excluding the properties which has already been dealt with under Ex.B.5, Ex.B.7 and Ex.B.8. In respect of Item No.6, the trial Court considering that the property had already been sold, granted partition only in respect of remaining properties as per the Will. Hence, the same does not require any interference.

9. In the light of the above submissions, the following points are raised for consideration :

1. Whether the suit is bad for non joinder of purchasers?
2. Whether the Will is not valid merely because some of the properties are dealt by the testator?

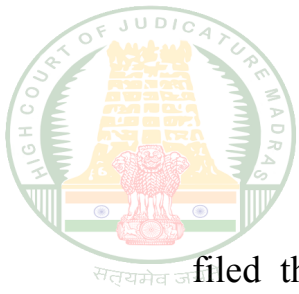


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3. To what relief the parties are entitled?

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10. The relationship between the parties has not been disputed. It is also not in dispute that Ramalinga Chettiar had four daughters, viz., Saradavalli, Parvathi, Tiripurasundari and Chandra. The property held by Ramalinga Chettiar is also not disputed by them. It is also not in dispute that the said Ramalinga Chettiar has executed a Will dated 22.05.1972 in favour of his daughters reserving life interest to them. In the Will it is clearly indicated that the property of the daughter, who died without any issues, would go to the legal heirs of other daughters. These aspects are also not disputed by the parties. The settlement deeds Ex.B.1, Ex.B.2 and Ex.B.4, executed by the said Ramalinga Chettiar, when carefully perused it is seen that settlement deed Ex.B.1 has been executed in favour of the first plaintiff, Ex.B.2 has been executed in favour to the Tripurasundari one of his daughter and Ex.B.3 in favour of his daughter Parvathi and Ex.B.4 settlement deed has been executed in favour of first defendant. In all these documents, settlement deeds were executed in respect of 1.84 cents in Item No.5 of the plaint. The plaintiff has

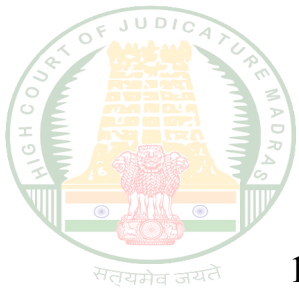


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filed the suit in respect of remaining properties alone. Ex.B.5 sale deed executed by Ramalinga Chettial in respect of the property in survey No.49/14A is no way connected with the suit properties. Ex.B.6 is the Will executed by Soundara Nayagi, the wife of Ramalinga Chettiar, in favour of her daughters Saradavalli and Chandra. It is relevant to note that Ex.B.6 will not convey any title to any of the parties, since she was given only life interest alone. Therefore, Ex.B.6 Will not convey any benefit to any of the legatees.

11. As per Sale Deed Ex.B.5, Soundara Nayagi and and Chandra have dealt to an extent of 1.33 acres in survey No.29/4A1 and also part of 49/14A to an extent of 3 ½ cents. It is to be noted that this property is also included in the plaint. Similarly, the property dealt under Ex.B.7 has also been included in the plaint. Ex.B.9 and Ex.B.10 settlement deeds executed by Soundaranayagi to her daughter Chandra. It is relevant to note that these documents also will not convey any title to the properties, since the mother had no right over the same. Since she had only life interest.



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12. It is also an admitted fact that the property bequeathed to Chandra was also not included in the suit property and partition is also not sought in respect of the above property. The execution of the Will has been admitted by both the parties. It is relevant to note that some of the properties have been dealt by the parties and some of the properties have been sold in favour of third parties and those property have been excluded by the trial Court. Therefore, the trial Court has excluded the above properties and granted preliminary decree only respect of the remaining properties. Therefore, non inclusion of those purchasers will no way affect the rights of the parties in the present suit. Hence, the trial Court considering entire documents, had excluded the properties which have been already dealt with and granted preliminary decree in respect of Item Nos.1, 5, 7. As far as the 6th item of the property is concerned, the same has already been settled by the said Ramalinga Chettiar in favour of Tirupurasundari and hence, the suit has been dismissed in respect of 6th item of the property. Hence, I do not find any merits in this appeal. The points are answered accordingly.

13. In the result, this Appeal Suit is dismissed. As far as mesne profits



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are concerned, the same has to be worked out in a separate proceedings.

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Index : Yes / No

Internet: Yes

Speaking/non speaking order

vrc

To,

The II Additional District Judge,
Chidambaram.



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N. SATHISH KUMAR, J.

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