



A.S.No.112 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.02.2025

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.112 of 2023

and

C.M.P.No.4667 of 2023

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C.Manivannan

.. Appellant

Vs.

1. C.Mohan
2. C.Prakasam
3. C.Jothi
4. T.Padmini
5. T.Sudhakar
6. T.Vinoth

.. Respondents

Appeal Suit (First Appeal) filed under Section 96 of the Code of Civil Procedure (i.e. CPC) read with Order 41 Rules 1 and 2 of CPC, against the judgment and decree dated 14.07.2017 in O.S.No.3751 of 2016 on the file of the XVII Additional Judge (FAC), City Civil Court, Chennai.

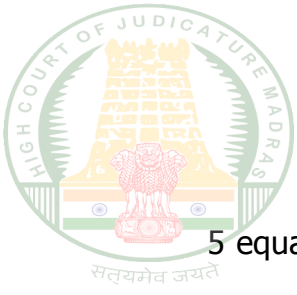
For appellant : Mr.J.Milton Arul Rajendran

For respondents: Mr.J.Ram

JUDGMENT

In this First Appeal (Appeal Suit), challenge is made to the preliminary decree dated 14.07.2017 passed by the trial Court, dividing the suit property into

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5 equal shares by metes and bounds and the plaintiff is allotted 1/5th share and the defendants 1 to 3 are allotted 1/5th share each and defendants 4 to 6 are allotted 1/5th share jointly along with the plaintiff and the other defendants.

2. The present First Appeal (Appeal Suit) is filed by the third defendant.

3. The suit has been filed by the plaintiff who is the son of one Late S.V.Chengalvarayan and the second defendant is the daughter of the said Chengalvarayan. The fourth defendant is the wife of one Thiyagarajan, who is one of the sons of S.V.Chengalvarayan. The fifth and sixth defendants are the sons of the said Thiyagarajan.

4. According to the plaintiff, the suit property belongs to his father Late S.V.Chengalvarayan. Despite repeated requests, the defendants have not come forward for amicable settlement. Hence, the present suit was filed by the plaintiff.

5. The defendants 1 and 2 have taken a stand that they are ready for partition. The other defendants, ie. defendants 3 to 6 remained ex-parte before the trial Court.

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6. Based on the documentary evidence on the side of the plaintiff in Exs.A-1 to A-9 and the defendants' side documents marked as Exs.B-1 and B-2 and also based on the evidence of P.W.1 plaintiff and the defendants' side evidence D.Ws.1 and 2, the trial Court granted preliminary decree allotting 1/5th share to the plaintiff and also 1/5th share to the defendants 1 to 3 and 1/5th share to the defendants 4 to 6, along with the plaintiff and the other defendants. The trial Court also determined the rights of the defendants through sharers. Based on this judgment of the trial Court in the suit, the present First Appeal is filed by the third defendant.

7. According to the appellant/third defendant, the trial Court should have divided the suit property into 1/6th share and their mother has already executed a settlement deed in respect of the share of the plaintiff, which has not been taken note of by the trial Court. Hence, the present appeal is filed by the third defendant.

8. Learned counsel for the appellant contended that the mother executed a settlement deed in favour of the appellant/third defendant, and therefore, the appellant is entitled to a larger extent of the property, which has not been taken



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note of by the trial Court.

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9. Learned counsel for the appellant further contended that this First Appeal has been filed suppressing the very final decree passed by the trial Court in the connected proceedings. Suppressing the passing of the said final decree, the present First Appeal has been filed by the third defendant in the year 2023. In any event, no written statement whatsoever had been filed by the defendants 3 to 6, but defendants 1 and 2 have filed written statement in the suit, which was considered by the trial Court. For the first time, the appellant had projected the alleged settlement deed.

10. This Court also heard the submissions of the learned counsel for the respondents in the present appeal, on the above aspects of the matter.

11. Heard both sides and perused the materials available on record.

12. In the light of the judgment and decree of the trial Court, the point for consideration that arises in this appeal is that, in the absence of any defence made with regard to the alleged settlement deed, whether the appellant/third defendant can canvass the settlement deed for the first time in this appeal,

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without any pleadings and further that, whether the challenge to the settlement deed is valid in the eye of law ?

13. The suit has been filed claiming 1/5th share. At the time of filing of the suit, the mother has not been added as a party to the suit. She had already died and therefore, 1/5th share has been claimed. It is not disputed by the defendants that the plaintiff is entitled to his share from their father's property. Despite the opportunity having been given, the appellant/third defendant has not put forth his defence at any point of time. The suit was decreed by the trial Court on 14.07.2017, granting preliminary decree in favour of the plaintiff and the rights of the parties have been determined in the preliminary decree itself. Therefore, the rights of the parties having already been determined by the trial Court pursuant to the passing of the preliminary decree passed in the year 2017, the appellant has not taken any steps to project the so-called settlement deed said to have been executed by the mother. Even after filing of the final decree proceedings before the Court, the First Appeal is filed in the year 2018 initially, but after re-presentation of the papers, the First Appeal was numbered only in the year 2023, challenging the preliminary decree alone. When the final decree proceedings have already been passed and even engrossed in the stamp papers, the "lis" is pending between the parties with regard to the challenge of the



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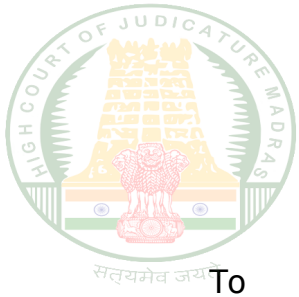
preliminary decree alone. In this view of the matter, merely on the basis of the so-called settlement deed, relied upon by the appellant/third defendant, he cannot have any better rights with regard to the suit property. Further, it is to be noted that even assuming that there was any settlement deed executed by the so-called mother, the same does not even confer any right to the parties and that as far as the share of the parties is concerned, it is to be noted that the family is a joint Hindu family and the suit property is common property and it cannot be settled between the parties without any consent of others. Therefore, the settlement deed itself cannot be projected for any better right of the appellant/third defendant at this stage. The point framed in this appeal is accordingly answered against the appellant/third defendant.

14. The trial Court has considered all the issues in proper perspective and this Court does not find any merit in the present First Appeal, which is accordingly dismissed, confirming the judgment and decree of the trial Court. There shall be no order as to costs in this appeal. Consequently, the miscellaneous petition is closed.

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Index: Yes/no
Speaking Order: Yes/no
Neutral Case Citation: Yes/no
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1. XVII Additional Judge, City Civil Court, Chennai.
2. The Section Officer, V.R. Section, High Court, Madras.



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N.SATHISH KUMAR, J

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