(2015) 11 MAD CK 0095

In the Madras High Court

Case No : Civil Suit No. 739 of 2011 and A. No. 357 of 2014

K. Rajeswari APPELLANT

Vs

Padmavathi and Others RESPONDENT

Date of Decision : 23-11-2015

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12, Order 6 Rule 1

Citation : (2015) 11 MAD CK 0095

Hon'ble Judges : G. Chockalingam, J.

Bench : Single Bench

Advocate : A. Muthukumar, for the Appellant; S. Gopi, for the Respondent

Judgement

G. Chockalingam, J.—The Civil Suit is filed by the plaintiff for partition of the suit properties into four equal shares and allot one such share to the plaintiff; to appoint an Advocate Commissioner for actual division of the suit properties and put the plaintiff in possession of her 1/4 share; to restrain the first defendant, her men and agents from alienating the suit properties; to direct the defendants to pay the plaintiff her share of profits in the suit properties from the date of suit, and to direct the defendants to pay the costs of the suit to the plaintiff.

2. It is the case of the plaintiff that she is the mother of K. Dayalan, who died intestate on 04.02.2011, that the first defendant is his widow and the defendants 2 and 3 are his minor daughters; that the said K. Dayalan is the eldest son of the plaintiff, that since he was her first son, the first item of the suit properties was purchased in his name out of the funds supplied by her husband and the other sons; the house that stood in her name was sold in order to keep the first item of the suit properties with the family of her husband and his other sons; the debts incurred on the security of the first item of the suit properties, were cleared from the funds provided by her husband and her other sons, that her husband and her other sons contributed money to her deceased son K. Dayalan for improving the first item of the suit properties in order to augment the income of the plaintiff''s family; the first item of the suit properties is available for partition on the death

of the plaintiff''s eldest son K. Dayalan, as the plaintiff and the defendants are Class-1 heirs entitled to equal shares in the suit properties; that the deceased Dayalan and the defendants were residing in a portion of the first item of the suit properties, that after his death, the defendants are in possession of the same as co-owners; that the deceased son of the plaintiff, namely K. Dayalan collected rents from the tenants on leasing out the other portions of the first item of the suit properties, that he was paying a portion of the rent to the plaintiff towards her share and his father, that the plaintiff''s husband invested his retirement benefits in the first item of the suit properties, that as there is no pension and other income after the retirement of the plaintiff''s husband, they are depending upon the rental income from the first item of the suit properties, that after the death of the plaintiff''s son, the first defendant is avoiding to pay the plaintiff''s share in the rental income which she is collecting, that the Life Insurance Policies were in the name of the deceased son and there was Bank Accounts in his name and first defendant''s name, that the plaintiff is in joint possession of the suit properties with the defendants, that the plaintiff is entitled to 1/4 share in the jewels which includes family jewels, and the same are with the first defendant, that since the first defendant refused to heed to the plaintiff''s legitimate demand, she issued lawyer''s notice dated 23.08.2011 to the defendants demanding partition and separate possession of her 1/4 share in the suit properties as well as the amounts which were lying in the credit of the deceased son''s Bank accounts at the time of his death, besides the amount due under the Life Insurance Policies; that the defendants issued reply notice dated 08.09.2011 through Advocate stating that her brothers helped her, that the deceased son had not taken any Insurance Policy, that the deceased did not deposit any amount in his Bank Accounts and he maintained zero balance and the said account was closed after his death, that the deceased did not invest any amount in shares, that the deceased obtained a loan from M/s. G.E. Money Finance and after his death, the said loan was discharged at Rs. 3,60,000/- from the first defendant''s brother, that in order to discharge a loan of Rs. 7,50,000/- borrowed by the deceased from one Kuppusamy, the defendants were forced to sell a property measuring 62 cents at Enathi Melpakkam, Gummidipoondi Taluk, that the said allegations in the reply notice of the defendants, are false and therefore, she has filed this suit for the reliefs stated supra.

3. The defendants filed written statement under Order 6 Rule 1 of the Madras High Court Original Side Rules read with Order 8 Rule 11 CPC, contending that the suit is not maintainable either in law or on facts, that the plaintiff knew that the first defendant''s husband was a Plumber and earning meagre amount and spent his earnings on liquor, that the first defendant''s husband was not saving any amount, that he was running their family only as a Kartha and being the sole male member of the family, did not contribute money for the needs of their family, the first item of the suit properties was purchased by the brothers of the first defendant for her from and out of their own funds to secure her life and her minor children and registered the said property in her name and her husband''s

name to avoid family dispute, that subsequently a portion of the property measuring 312 Sq.Ft. was sold by the deceased K. Dayalan during his lifetime under sale deed and the remaining extent of 2088 Sq.Ft. is in joint possession and enjoyment of the defendants, in which, she has exclusive right over her half a share, namely 1044 Sq.Ft. along with the superstructure therein, that she is the joint owner of the property along with her deceased husband K. Dayalan under sale deed dated 04.05.2001, that none contributed money to purchase the subject property as alleged in the plaint, that the brothers of the first defendant purchased the said property along with another property for her out of their love and affection towards her as she is only sister to them, that the plaintiff, her husband and the other sons are trying to grab the properties from the defendants, that the deceased K. Dayalan mortgaged the said property with M/s. G.E. Money Finance and obtained Rs. 5,25,000/- as loan in 2006 and after his demise, it was informed by the Banker that Rs. 11,72,000/- is due, that thereafter, the brothers of the first defendant settled the loan account by paying Rs. 3,60,000/- and got released the document pertaining to the property, that the deceased K. Dayalan borrowed Rs. 7,50,000/- from one Mr. L. Kuppusamy, who is none other than the brother of the plaintiff and after his demise, the brothers of the first defendant settled the above amount by executing a sale deed in respect of a property measuring 62 cents situated in Enathi Melpakkam Village, Gummidipoondi Taluk, Thiruvallur District, which was also purchased by the brothers of the first defendant for her, that the deceased husband of the first defendant leased out the said property to third parties, that the plaintiff being one of the legal heirs of the deceased, is also liable to pay the debts of the deceased K. Dayalan, that the subject property is the ''Stridhana'' property of the first defendant and hence the question of claiming share in the same or the income from the same does not arise, that it is false to state that the deceased was paying portion of the rent to the plaintiff towards her share and her husband, that the deceased was not in possession of any jewel as alleged in the plaint, that the deceased did not take any Insurance Policy, that the deceased was having Savings Bank Account in which he had not deposited any amount and it was maintained with zero balance, that the deceased did not invest any amount in Shares, that she has denied the averments of the plaintiff in reply notice, dated 08.09.2011, that the plaintiff is not entitled to 1/4 share in the suit properties and the plaintiff has no claim in mesne profits and other claims, and prayed for dismissal of the suit.

4. By order dated 19.08.2013, this Court framed the following issues for consideration in this suit:--

"(1) Whether the plaintiff is entitled to 1/4 share in the suit properties as a legal heir of her deceased son Dayalan?

(2) Whether the claim of the first defendant that the suit properties are her Stridhana properties and therefore not available for partition, is correct?

(3) Whether the plaintiff is entitled to a share in the rental income?

(4) Whether the plaintiff and her husband have made contributions towards the purchase of the suit property and improvements made thereon?

(5) Whether the claim of the defendants that the first item of the suit properties was purchased by her brothers, is legally and factually correct?

(6) Whether the suit has been properly valued and proper Court fee has been paid? and

(7) To what reliefs the plaintiff is entitled to?"

5. During the course of trial, the plaintiff examined her husband as P.W. 1 and marked Exs. P-1 to P-10. The first defendant examined herself as D.W. 1, besides her younger brother as D.W. 2 (P. Balasundaram) and marked Exs. D-1 to D-8.

Issues (1) to (5):

6. Learned counsel for the plaintiff contended that the suit schedule property in item No. 1 was purchased out of the funds of plaintiff''s husband (i.e. the father of the deceased K. Dayalan), in the name of the deceased K. Dayalan; that even though the sale deed is in the name of the deceased K. Dayalan, the said item No. 1 of the suit property belongs to the plaintiff; that the deceased K. Dayalan leased out some portions of item 1 of the suit property to various tenants and collected rental amounts and paid some amount to the plaintiff''s share; that earlier in 2003, the plaintiff entered into sale agreement in favour of one Chandrasekar, which is Ex. P-6 and at that time, it is stated that the property was purchased out of the funds of the husband of the plaintiff, in the name of the deceased Dayalan. He further contended that Ex. P-7 dated 05.05.2004, is the deed of undertaking, jointly executed by the deceased Dayalan and his wife (first defendant) in favour of the plaintiff and her husband, in which, they undertook to give the share of rental income to the plaintiff in respect of item No. 1 of the suit property. Learned counsel for the plaintiff further pointed out that pursuant to the order of this Court dated 19.12.2012 in Application No. 1304 of 2012 in C.S. No. 739 of 2011, the first defendant issued cheques (Ex. P-8 series) each for Rs. 1,725/-, in favour of the plaintiff in respect of the said rental share and hence, it is the crux of the contention of the learned counsel for the plaintiff that after the death of her son Dayalan, the plaintiff is entitled for 1/4 share in item No. 1 of the suit property and that the first defendant is falsely claiming that item No. 1 of the suit property is Stridhana property. He mainly contended that the first defendant is not entitled to claim the entire property as of her own and she is only entitled to 1/4 share in the same and the defendants 2 and 3 are entitled to 1/4 share each. Hence, according to the learned counsel for the plaintiff, the suit filed by the plaintiff for partition of 1/4 share is maintainable, before which, the plaintiff sent Ex. P-1 Lawyer''s notice to the defendants, which was duly acknowledged by the first defendant and the same is evident from Ex. P-2, and the first defendant sent reply notice in Ex. P-3 to the plaintiff''s Advocate, disputing her claim. Therefore, for these reasons, he requested this Court to

decree the suit as prayed for.

7. Learned counsel for the defendants contended that the suit properties belong to the first defendant, since first item of the suit property was purchased out of the funds provided by the brother of the first defendant and hence, the same is to be treated as her Stirdhana property and the said property was purchased in her husband''s name, i.e. Dayalan''s name as name-lender, and hence, neither the plaintiff nor the said Dayalan has any right, title or interest over the suit property. He further contended that after the purchase of item No. 1 of the suit property, the deceased Dayalan and the first defendant sold some portion of the same to one Thameemun Ansari, which is evident from Ex. D-3. Learned counsel for the defendants denied execution of Ex. P-7 deed of undertaking executed by the first defendant and her deceased husband (Dayalan), as the fact remains that the property is the first defendant''s Stridhana property given by her brother(s), though it stood in the name of the deceased husband, yet, absolutely, it belongs to the wife (first defendant) and children (defendants 2 and 3). He further contended that no properties as stated in item No. 2 of the schedule mentioned properties exist, i.e. jewels, and they are not available in the hands of the defendants. Learned counsel therefore prayed for dismissal of the suit.

8. Heard learned counsel appearing on either side and perused the materials available on record.

9. It is admitted that the plaintiff is the mother of the deceased Dayalan (i.e. her son); the first defendant is the wife of the deceased Dayalan and the defendants 2 and 3 are the daughters of the deceased Dayalan. It is further admitted that the deceased Dayalan died intestate on 04.02.2011. It is therefore not in dispute that the plaintiff and the defendants are the legal heirs of the deceased Dayalan. The marriage invitation between the deceased Dayalan and the first defendant is marked as Ex. P-4.

10. It is the stand of the first defendant that item No. 1 of the suit property was purchased as per Ex. D-1 sale deed executed by one M.P. Jayakumar in favour of the deceased Dayalan and his wife (first defendant). Though both parties rely on the Savings Bank Account Pass Book of the deceased Dayalan, which was maintained with George Town Co-operative Bank Limited, the fact remains that there is no substantial amount lying to his credit, as the deceased Dayalan was only a Plumber and earning meagre amount, coupled with the fact that he was a liquor addict and has no other independent source of income. According to the first defendant, the deceased Dayalan, at the most, was only a name-lender to item No. 1 of the suit property, which is evident from Ex. D-1. Further, the first defendant contended that the deceased Dayalan was taking treatment in various hospitals for his ailments, which is evident from Ex. D-4 medical records. The first defendant further states that item No. 1 of the suit property was purchased by raising loan, which was subsequently redeemed and the same is evident from Exs. D-6 and D-7, which are the communications sent by M/s. G.E. Money Financial Services Limited. The first defendant''s main stand is that item No. 1 of

the suit property was purchased out of the funds contributed by her brother(s), who helped in purchasing item No. 1 of the suit property by settling the debts of the deceased Dayalan, which resulted in Ex. D-8 sale deed executed by the first defendant in favour of one L. Kuppusamy. It is the further case of the first defendant that her deceased husband Dayalan mortgaged item No. 1 of the suit property with M/s. G.E. Money Financial Services Limited, which is evident from Ex. D-6 letter of the said G.E. Money Financial Services Limited addressed to the deceased Dayalan in respect of the repayment of the loan and the property was redeemed by the first defendant out of the funds provided by her brother(s). Hence, the first defendant submits that the suit is not maintainable, as the suit properties are her Stridhana properties.

11. It is admitted that even though the plaintiff averred in the plaint that item No. 1 of the suit schedule property was purchased in the name of the deceased-son of the plaintiff, the plaintiff has not produced any document executed in favour of her deceased son Dayalan.

12. On the side of the plaintiff, it is contended that item No. 1 of the suit property was purchased out of the funds provided by the plaintiff''s husband and that the plaintiff''s deceased son Dayalan and his wife, the first defendant executed the deed of undertaking in Ex. P-7 that they will settle the dues in respect of the funds given by the plaintiff and her husband. Since Ex. P-7 deed of undertaking is totally denied on the side of the defendants, even taking for granted that the said deed of undertaking was signed by the first defendant, it is clearly admitted by the plaintiff that item No. 1 of the suit property belongs to the deceased Dayalan and the first defendant, and the plaintiff and her husband gave financial assistance to settle the dues of the first defendant and her deceased husband Dayalan. Therefore, Ex. P-7 deed of undertaking cannot be relied on to contend that item No. 1 of the suit property belongs to the plaintiff or her husband or the same was purchased in the name of the deceased Dayalan for their benefit.

13. On the side of the defendants, it is argued that item No. 1 of the suit property was purchased out of the funds provided by the brother(s) of the first defendant and it may have to be regarded only as Stridhana property and that all the dues in respect of the said property were only settled by the brother(s) of the first defendant. At this juncture, it is pertinent to note that no document is produced on the side of the defendants to prove the fact that the brother(s) of the first defendant purchased the property as Stridhana property for the first defendant. Hence, the argument of the learned counsel for the defendants that item No. 1 of the suit property was purchased as Stridhana property and the deceased Dayalan was shown as name-lender to the transaction and that the funds were provided by the brother(s) of the first defendant, is not sustainable.

14. Therefore, it is clearly proved by the plaintiff and the first defendant that the suit property was jointly purchased by the deceased Dayalan and his wife, the first defendant and Ex. D-1 sale deed was executed thereunder and after the

purchase, the first defendant and the deceased Dayalan have also settled the dues for purchase of property as per Ex. D-1. Out of the property purchased by Ex. D-1, the first defendant and the deceased Dayalan sold 312 Sq.Ft. North-Eastern portion of it, to one Thameemun Ansari, which is evident from Ex. D-3. Therefore, the first defendant clearly proved that the remaining portion alone had been enjoyed by the first defendant and her deceased husband Dayalan. Subsequent to the death of the plaintiff''s son Dayalan, who died intestate, his mother (plaintiff) and the wife of the deceased Dayalan and their daughters, namely the defendants 2 and 3 are entitled to equal share in the said remaining portion, i.e. Dayalan''s undivided share.

15. From the documents marked on the side of the defendants, it is crystal clear that item No. 1 of the suit property was purchased by the deceased Dayalan and his wife, the first defendant and they have undertaken to pay the mortgage amount and that the loan was also discharged and the sale deed was redeemed.

16. Even though it is argued on the side of the defendants that in respect of the purchase of item No. 1 of the suit property and redeeming the mortgage loan of the same, the first defendant''s brother(s) supported the first defendant by giving money to the first defendant, the same is not substantiated by way of documents. There is no proof that the first defendant''s brother(s) monetarily supported her to discharge the above mortgage-loan. In view of the same, it is to be held that the first defendant is the joint purchaser of the suit property with the deceased Dayalan (her husband) and has only equal undivided share (1/2) in the suit property.

17. It is argued on the side of the defendants that the first defendant and her husband (deceased Dayalan) sold some portion of the suit property in respect of 312 Sq.Ft., out of 2400 Sq.Ft. (North-Eastern portion) to one Thameemun Ansari by sale deed Ex. D-3, dated 11.12.2009. Therefore, excluding the said 312 Sq.Ft. of the North-Eastern portion from item No. 1 of the suit property, i.e. the remaining portion alone belongs to the first defendant and her deceased husband. Thus, the first defendant is entitled to undivided half share in the remaining portion of item 1 of the suit property and the other remaining half share belongs to the said Dayalan and after his death, it devolves on his legal heir, i.e. his mother (plaintiff) and defendants 1 to 3 who are the wife and daughters of the deceased Dayalan. Hence, the plaintiff is entitled to 1/4 share in the undivided half share of the deceased Dayalan in item No. 1 of the suit property, i.e. 1/8 share in item No. 1 of the suit property excluding 312 Sq.Ft. North-Eastern portion. The plaintiff has proved that she is entitled to 1/4 share in the undivided half share in item No. 1 of the suit property, i.e. 1/8 share. Thus, it is clear that item 1 of the suit property was only purchased by the deceased Dayalan and his wife, the first defendant, but as per Ex. D-3, both of them sold 312 Sq.Ft. in the North-Eastern portion to the said Thameemun Ansari. Therefore, the remaining portion alone is available for partition for both parties in respect of item No. 1 of the suit property. Accordingly, the plaintiff is entitled to

1/8 share in item No. 1 of the suit property excluding 312 Sq.Ft.

18. Since the plaintiff has not proved her claim in respect of the second item of the suit property, the suit is liable to be dismissed as such in respect of second item.

19. Learned counsel for the plaintiff contended that since the defendants are attempting to alienate item No. 1 of the suit property, the defendants have to be restrained by an order of injunction from alienating item No. 1 of the suit property. Since both the parties are co-owners and close relatives, and the first defendant is now in possession of her share, as discussed above, in item No. 1 of the suit property and since the plaintiff has not proved that the first defendant is attempting to alienate first item of the suit property, the plaintiff is not entitled for injunction as prayed for by her.

20. As far as the prayer sought for by the plaintiff relating to share of profits in the suit properties from the date of suit, is concerned, it is open for the parties to initiate separate proceedings under Order 20 Rule 12 CPC.

21. Hence, in view of the aforesaid discussion, this Court is of the considered view that item No. 1 of the suit property is purchased by the first defendant and her husband out of their own funds and no contribution was made towards the purchase of item No. 1 of the suit property by the plaintiff and her husband or the brother(s) of the first defendant and the plaintiff is entitled to 1/4 share in the undivided half share of the deceased son K. Dayalan''s property, excluding the portion sold out by the deceased Dayalan and the first defendant. The claim of the first defendant that the suit properties are her Stridhana properties, is answered against the first defendant. The plaintiff is entitled for income from the undivided half share of Dayalan''s property as stated above. Issue Nos. (1) to (5) are answered accordingly.

22. Issue No. (6): Even though the first defendant has raised a plea that the suit is not properly valued and proper Court fee has not been paid, there is no evidence or contra argument advanced on the side of the defendants to that effect. Further, the suit is for partition and the suit is properly valued and Court fee is paid as per the provisions of the Tamil Nadu Court Fees and Suits Valuation Act and High Court Fee Rules. Issue No. (6) is answered accordingly.

23. Issue No. (7):

"In the result, there shall be a preliminary decree of partition in respect of item No. 1 of the suit property, in favour of the plaintiff for 1/8 share, excluding 312 Sq.Ft. in North-Eastern portion, which was sold out as per Ex. D-3 and Ex. D-3 shall form part of the decree in this suit. The suit is dismissed in respect of second item of the suit property. The parties are at liberty to apply for final decree proceedings to divide item No. 1 of the suit property as per the preliminary decree. Considering the close relationship between the parties, there shall be no order as to costs. In view of the decision as rendered above in the suit, A. No. 357 of 2014 is closed."

