

In the court of the I Additional District Judge, Madurai.

Present: Tmt. Deepthi Arivunithi, B.A.,B.L.,

I Additional District Judge, Madurai.

Tuesday the 31st day of January 2017

OS No.136/13

1. M. Ganthiyammal

2. S. Sasikala

3. P. Devi

... Plaintiffs

/ Vs/

1. K. Periyampillai

2. K. Samuthiram @ Murugesan

3. M. Karuppiah

4. Pandiyammal

5. G. Kaleeswari

... Defendants

This suit came up for final hearing on 23.1.17 before me in the presence of Tvl. K. Santhanakaruppusamy, Counsel for the plaintiff, and the defendants called absent and were set exparte. Upon hearing the plaintiff counsel, having perused the connected records and having stood over till this day for consideration, this court passed the following,

JUDGMENT

The suit is filed for (1) passing of preliminary decree for partition of plaintiff's 3/12th share in the suit properties by metes and bounds, (2) to declare the alleged partition deed dated 27.9.11 entered by the defendants 1 to 3 alone is not a valid and not a genuine as fraudulent, null and void, (3) to declare the alleged preliminary decree obtained by the defendants no.4 and 5 against the defendants no. 1 and 2 dated 18.9.12 passed in OS No. 553/2010 by the III Addl. Sub Judge, Madurai as fraudulent, null and void and for costs.

Brief facts of the plaint :

2. The suit properties originally belonged to one Late Maarnadu and defendants

1 and 2. It is the Hindu Undivided Joint family properties. The 1st plaintiff is the wife and the 2nd and 3rd plaintiffs are the daughters and the 3rd defendant is the son of Maarnadu. The said Maarnadu died on 1.2.2002 leaving behind him the plaintiffs and the 3rd defendant as his legal heir for his entire estate. After his demise the entire estate were devolved upon the plaintiffs and D3 and as such they have inherited the properties and jointly enjoyed the same without effecting any partition. In addition to this the deceased Maarnadu had 4/12th share of right over the properties set forth in the plaint schedule. The plaintiffs are having 3/4th share of right over the share of the deceased Maarnadu's 4/12th share of right out of the properties stated in the plaint schedule. In spite of repeated requests the defendants 1 to 3 did not come for amicable partition and to divide the properties into 12 equal shares and to allot 3/12th share of properties. The defendants 1 to 3 willfully and wantonly evaded without any valid reasons. The defendants 1 to 3 have no right to deny their share. D4 and D5 are strangers to the plaintiffs and D1 to D3. D4 and D5 filed a suit in OS 553/2010 before the III Addl. Sub Judge, Madurai against the D1 and D2 without adding the original legal heirs of the deceased Maarnadu and got a preliminary ex parte decree fraudulently against the defendants 1 and 2 with an intention to defeat and to defraud the plaintiffs and 3rd defendant. It was alleged that the 4th defendant is the wife and the 5th defendant is the daughter of deceased Maarnadu. They have no right over the properties and no right or locus standi to file the alleged OS No.553/2010 before the III Addl.Sub Court, Madurai against the defendants 1 and 2 without adding the plaintiffs and 3rd defendant. The partition deed dated 27.9.11 is a fraudulent one. The plaintiffs do not want to continue in joint family status. The defendants are prolonging and evading to give proper share and hence the plaintiffs have sent a legal notice to the defendants no.1 to 5 on 10/4/13 calling upon the defendants 1 to 3 to partition the joint family properties and to give them separate 3/12th share of properties. After receiving notice the defendants 1 to 4 did not send any reply or took steps to partition the properties. Hence, the suit.

3. The defendants 1 to 5 called absent and were set ex parte. No written statement filed on their behalf.

4. On behalf of the plaintiff, PW1 has been examined and Ex.A1 to A12 were

marked. The defendants 1 to 5 called absent and were set exparte. No witness examined on the side of defendants.

5. The plaintiff has examined herself as PW1 and filed the following documents to substantiate her case. Ex. A1 is the copy of the death certificate of one Maarnadu. Ex. A2 is the copy of the legal heirship certificate issued in favour of the said Maarnadu. Ex. A3 is the copy of the will dated 12.05.1998 executed by one Karuppiyah. Ex. A4 to Ex. A6 are the copies of the Chitta in the name of the said Karuppiyah. The certified copy of the partition deed dated 22.09.2011 is marked as Ex. A7. The certified copy of the decree and judgment in O.S. No. 553/2010 is marked as Ex. A8 and Ex. A9. The copy of the legal notice sent by the plaintiffs dated 10.04.2013 is marked as Ex. A10. The acknowledgement cards are marked as Ex. A11. The copy of the cancellation of will dated 14.03.2002 is marked as Ex. A12.

6. The case of the plaintiffs is that they are the wife and daughters of one Maaranadu and the 3rd defendant is the son of the said person. As such, it is stated that after the death of the said Maaranadu, the plaintiffs and the 3rd defendant are the legal heirs of the said person. The death certificate marked as Ex. A1 shows that Maaranadu has died on 01.02.2002. The legal heir certificate shows that the plaintiffs and the 3rd defendant are the legal heirs of the said Maaranadu. Upon perusal of the chittas filed as Ex. A4 to A6, it is seen that the properties stand in the name of one Karuppiyah, his wife Murugiammal and his son Samuthiram @ Murugesan, the 2nd defendant herein. The plaintiffs have stated that (late) Maarnadu and the defendants 1 and 2 are the legal heirs of the deceased Karuppiyah and that they were living together as a Hindu Undivided Joint family. After the death of the deceased Karuppiyah and his wife Murugiammal, the defendants 1 to 3 entered into a fraudulent deed of partition on 22.09.2011 and partition the properties, without giving any share to the plaintiffs and therefore the relief is also sought to set aside the partition deed dated 22.09.2011. Further, the plaintiffs have also stated that O.S. No. 553/2010 was filed by unconnected persons arrayed as defendants 4 and 5 by stating that they were the legal heirs of the deceased Maarnadu and a collusive exparte decree was passed to defeat the rights of the plaintiffs herein and therefore, the judgment and decree in O.S. No. 553/2010 also has to be set aside.

7. The plaintiffs have stated that the deceased Maaranadu and the defendants 1 and 2 alone are the legal heirs of (late) Karuppiah and (late) Murugiammal. Therefore, in respect of the schedule property, the 1st plaintiff's husband was entitled to a 1/3rd share. The said share would devolve upon the plaintiffs and the 3rd defendant. Thus, the plaintiffs would be entitled to 3/12th share and the 3rd defendant would be entitled to 1/12th share in the suit properties. In this case, it is seen that the plaintiffs have not filed the death certificate of (late) Karuppiah and (late) Murugiammal. From Ex. A12, it is apparent that Maaranadu predeceased his father and mother. However, no death certificate has been produced by the plaintiffs. Further, there is no legal heirship certificate produced for the said (late) Karuppiah and (late) Murugiammal to show that the defendants 1 and 2 and (late) Maaranadu alone were the legal heirs of the said persons. In Ex. A7 partition deed, there is specific recital to show that the defendants 1 and 2 and the (late) Maaranadu alone were the legal heirs of the deceased. On perusal of Ex. A7, it is seen that certain properties mentioned in Ex. A7 have been omitted to be included in the suit property survey numbers viz. s. no.362/2, 370/8A, 370/8B, 372/13, 585/2. There is no reason assigned for the exclusion of those properties. Further, as already stated, there is no proof submitted to show that the defendants 1 and 2 and one Maaranadu alone are the legal heirs of the (late) Karuppiah and (late) Murugiammal. In light of the said circumstances, this court is of the opinion that a prima facie case is not shown by the plaintiffs herein and the suit is also bad for partial partition. Therefore, this court is of the opinion that the plaintiffs are not entitled to the relief as prayed for.

8. In result, this suit is dismissed without costs.

On my dictation partly typed by the stenographer and partly typed by me in my laptop, corrected and pronounced by me in the open court this the 31st day of January 2017.

I ADDL.DIST.JUDGE, MADURAI

Witness examined on the side of the Plaintiff:

PW1 Gandhiammal

Documents marked on the side of the Plaintiff:

Ex.A.1	17.05.2002	Certified copy of death certificate in K.Marnadu
Ex.A.2	09.08.2002	Certified copy of legal heirship certificate
Ex.A.3	12.05.1998	Certified copy of Will
Ex.A.4	16.06.2010	Certified copy of Chitta
Ex.A.5	10.08.2005	Certified copy of Chitta
Ex.A.6	27.05.2004	Certified copy of Chitta
Ex.A.7	22.09.2011	Certified copy of Partition deed
Ex.A.8	18.09.2012	Certified copy of decree passed in O.S.No.553/2010
Ex.A.9	18.09.2012	Certified copy of Judgment passed in O.S.No.553/2010
Ex.A.10	10.04.2013	Office copy of the legal notice
Ex.A.11	--	Acknowledgment card
Ex.A.12	14.03.2002	Cancellation of Will deed

Witness examined on the side of the Defendants: Nil.**Documents marked on the side of the Defendants:Nil.**

I ADDL.DIST.JUDGE, MADURAI

SD DEEPHI ARIVUNITHI