

SUPREME COURT OF INDIA

A. Dharmalingam

Vs.

V. Lalithambal

C.A.No.5534-5535 of 2007

(Arun Mishra and Uday Umesh Lalit,JJ.,)

27.04.2018

JUDGMENT

Uday Umesh Lalit,J.,

1. These appeals by special leave challenge the common judgment and order dated 25.07.2003 passed by the High Court of Judicature at Madras dismissing Second Appeal Nos.1307-1308 of 1992 preferred by the appellant (since deceased and now represented by his legal representatives).

2. In partition between two brothers effected sometime in 1923, certain properties including the suit property came to the share of one Subramania Iyer. In a subsequent partition executed insofar as branch of said Subramania Iyer was concerned, the properties were equally divided between four sons of said Subramania Iyer, namely, defendant Nos.1 to 4 in the present proceedings. Having given 1/4th share each to said four sons, the right of enjoyment of the properties in question was retained by said Subramania Iyer and his wife Meenakshi Ammal till their life time. Defendant Nos.2 and 1, namely, S. Krishnamoorthy and S. Venkateswaran by registered sale deeds dated 11.09.1975 and 30.09.1975 respectively transferred their undivided share in the properties in question in favour of the appellant. Said Subramania Iyer and Meenakshi Ammal died in the years 1975 and 1984 respectively.

3. The appellant thereafter filed Original Suit No.64 of 1985 on the file of the District Munsif Court, Uthamapalayam seeking declaration that he was entitled to undivided half share in the suit property which was described in schedule to the plaint. Relying on two sale deeds effected by Defendant Nos.1 and 2 it was contended that the appellant was entitled to one half share in the suit property. It may be noted here that Defendant No.2, S. Krishnamoorthy did not have a son but Defendant No.1, S. Venkateswaran had four sons. However, said four sons were not made parties in Original Suit No.64 of 1985. The appellant thereafter filed O.S. No.265 of 1986 seeking injunction against the defendants named therein. In this suit said four sons of S. Venkateswaran were added as parties.

4. The aforesaid suits were contested. By its common judgment and order dated 06.01.1989 the trial court decreed Original Suit No.64 of 1985 holding the appellant to be entitled to one half share in the suit property and accordingly passed a preliminary decree in that behalf. The trial court, however, declined to grant any relief of permanent injunction against the defendants. The defendants being aggrieved, filed Appeal Nos.17 and 18 of 1989 in the Court of Subordinate Judge, Periyakulam. These appeals were disposed of by a common judgment dated 31.07.1991. The lower appellate court held that since four sons of Defendant No.1 were not parties to the suit for declaration and partition, insofar as branch of said Defendant No.1 was concerned the sale deed in favour of the appellant would be valid only in respect of share of said Defendant No.1. The lower appellate court held that the appellant would thus be entitled to the share of Defendant No.1 in his branch, namely $1/4 \times 1/6 = 1/24$ and the share of Defendant No.2. The resultant share that the appellant was entitled to was, however, computed to be $5/24$.

5. The matter was carried further by filing Second Appeal Nos.1307- 1308 of 1992 in the High Court. The second appeals were dismissed by the High Court confirming the view taken by the lower appellate court.

6. We heard Mr. V. Sudeer, learned Advocate for the appellant and Mr. V. Prabhakar, learned Advocate for the respondents. Having gone through the entirety of the matter and the relevant record we are in complete agreement with the assessment made by the lower appellate court and the High Court insofar as the merits of the matter are concerned. However, there is a small error which needs to be corrected. The addition of $1/24$ share of Defendant No.1 and $1/4$ th share of Defendant No.2 would aggregate to $7/24$ and not $5/24$. Except for this correction, the judgments under appeal do not call for any interference by this Court.

7. We, therefore, allow the present appeals only to the aforesaid extent and declare that the appellant is entitled to $7/24$ share in the suit property and a preliminary decree in that behalf stands passed in favour of the appellant. Since the matter has been pending in the courts below since 1985, we may also observe that the execution proceedings be expedited. No costs.