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S.A.No.270 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No. 270 of 2017
and C.M.P.No.6381 of 2017

1.Murugan @ Kumar
2.Amirthavalli

...Appellants

Vs.

Minor Anish
Son of Murugan @ Kumar,
Represented by his
Mother & Next friend Malliga

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the learned II Additional District Judge, Tindivanam in A.S.No.4 of 2015 dated 01.12.2016 in confirming the judgment and decree of the learned Principal Subordinate Judge, Tindivanam in O.S.No.189 of 2010 dated 24.04.2015.

For Appellants : Mr.M.R.Thangavel

For Respondent : Mr.P.Mathivanan



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4. The appellants herein filed the written statement and resisted the suit on the ground that the respondent was not a son born out of marriage between the 1st appellant and the respondent's mother Malliga. It is the specific case of the 1st appellant that the said Malliga was not a legally wedded wife. It was also pleaded by the 1st appellant that the suit properties in items 1 to 4 were purchased by Varadharaj Udayar by his own efforts and after his death, the properties were devolved on his only son Krishna Udayar under Section 8 of Hindu Succession Act, 1966. Therefore, the respondent is not entitled to claim share in the suit properties during the lifetime of his father namely the 1st appellant and grand father Krishna Udayar.

5. Before the Trial Court, the mother of respondent Malliga was examined as P.W.1 and two other witnesses were examined as P.W.2 and P.W.3. On behalf of the respondent, 10 documents were marked as Ex.A1 to Ex.A10. The 1st appellant was examined as D.W.1 and his father Krishna Udayar was examined as D.W.2. On behalf of the appellants, 4 documents were marked as Ex.B1 to Ex.B4.



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6. The Trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the mother of respondent Malliga was legally wedded wife of the 1st appellant and the suit properties were treated as hindu joint family properties by the parties and hence, the respondent was entitled to ½ share in the suit properties. Therefore, the Trial Court decreed the suit. Aggrieved by the same, the appellants preferred an appeal in A.S.No.4 of 2015 on the file of II Additional District Court, Tindivanam. The 1st Appellate Court confirmed the findings of the Trial Court. Aggrieved by the concurrent findings, the appellants are before this Court.

7. The learned counsel appearing for the appellants mainly submitted that the suit items 1 to 4 were self acquired properties of Varadharaj Udayar, on his death, the same were devolved on his only son Krishna Udayar under Section 8 of Hindu Succession Act, 1966 Therefore, both the Courts below erred in treating the suit properties as hindu joint family properties and granted a decree for partition.

8. Both the Courts below on appreciation of recital found in Ex.A2 Partition Deed between the 1st Appellant and his father Krishna Udayar, came



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to the conclusion that the suit properties in items 1 to 4 were treated as joint family properties by the parties. The recital in Ex.A2 was extracted by the 1st Appellate Court and the same reads as follows;

" பாக பத்திரம் 1984ம் ஆண்டு அக்டோபர் மாதம் 26-
இருபத்தாறு தேதி திண்டிவனம் தாலுக்கா பாதிராப்புலியூர்
கிராமத்திலிருக்கும் வரத உடையார் குமாரர் பயிர் கிருஷ்ண
உடையார்- 1, கிருஷ்ண உடையார் குமாரர் பயிர் குமார்- 2
ஆகிய நாம் எழுதிக்கொண்ட பாக பத்திரம், நாம் தந்தையும்
மகனும் என்ற உறவினர் இவ்வகையில் நாம் ஒரு இந்து
அவிபக்த குடும்பத்தினர் நாம் இதுவரை ஏக குடும்பமாய்
இருந்து வந்தோம், நமக்குள் ஒற்றுமை இல்லாததால் இனியும்
அப்படி இருக்க சரிபாடததாலும், நமது சவுகரியத்தை
உத்தேசித்தும் சில பஞ்சாயத்தார்கள் செய்த ஏற்பாட்டிற்கு நாமும்
சம்மதித்து இந்த பாகம் பிரித்துக்கொண்டோம். எனவே
இதனடியில் கண்ட நம் பூர்வீக பாத்தியமான ஸ்தாவர
சொத்துக்களை இதன்படி".

9. A reading of Ex.A2 would make it clear that the 1st appellant and his father Krishna Udayar treated items 1 to 4 of suit properties as hindu joint family properties and entered into a Partition Deed whereunder, items 1 to 4



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were allotted to the share of 1st appellant. Therefore, the Courts below were right in coming to the conclusion that the suit items 1 to 4 were hindu joint family properties and consequently, the respondent herein entitled to 1/2 share in the suit properties.

10. Both the Courts below on appreciation of evidence available on record came to the conclusion that items 5 & 6 were purchased out of joint family funds. It is pertinent to mention that there is no plea or evidence available on record to show that the 1st appellant had any source of income to purchase the suit properties in items 5 & 6. Having regard to the extent of the suit items 1 to 4, both the Courts below came to the conclusion that out of income earned from the joint family properties in items 1 to 4, the suit properties in items 5 & 6 were purchased and hence, those items should also be treated as joint family properties. In fact, when item 5 was purchased in the name of 1st appellant and his deceased brother, his deceased brother was a minor. Taking into consideration all these facts, the Courts below had given a factual finding that the suit properties in items 5 & 6 were purchased out of joint family funds. The said factual finding does not require any interference by this Court.



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11. As far as the plea raised by the 1st appellant that the mother of respondent was not a legally wedded wife is concerned, the 1st appellant, as D.W.1, clearly admitted in his evidence about the factum of marriage between him and Malliga. In such circumstances, the appellant cannot claim that the respondent is the illegitimate child of the 1st appellant. Therefore, the findings rendered by the Courts below that the respondent is the son born to the 1st appellant through legally wedded wife also require no interference by this Court.

12. Accordingly the second appeal stands dismissed

a) by affirming the judgment and decree dated 01.12.2016 made in A.S.No.4 of 2015 on the file of the II Additional District Court, Tindivanam, confirming the judgment and decree dated 24.04.2015 made in O.S.No.189 of 2010 on the file of the Principal Subordinate Court, Tindivanam; and

b) In the above facts and circumstances of the case, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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S.SOUNTHAR, J.

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To

1. The II Additional District Judge, Tindivanam.
2. The Principal Subordinate Judge, Tindivanam

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