



S.A.(MD)No.812 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.06.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

S.A.(MD)No.812 of 2022

and

C.M.P.(MD)No.12442 of 2022

1.M.Subramanian
2.Jothimani
3.Praveena
4.Mathavan
5.Aravind

... Appellants

(cause title amended vide Court order dated 10.08.2017 made in C.M.P.
(MD)No.1966 of 2017 in S.A.(MD)No.SR40649 of 2015.)

/Vs./

1.Karuppayee
2.Jeyalakshmi
3.Periathambi

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to call for the records in the Judgment and Decree dated 27.10.2014 made in A.S.No.4 of 2014 on the file of the District Court, Sivagangai, confirming the judgment and decree dated 07.10.2013 made in O.S.No.25 of 2009 on the file of the Sub Court, Devakottai, and set aside the same.



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For Appellants : Mr.P.Muthusamy

For Respondents : Mr.S.Sivathilakar

For M/s.B.Muruganandam (R1 & R2)

Mr.V.Muthuvelan (R3)

JUDGMENT

This second appeal has been filed challenging the concurrent findings of the Courts below. The plaintiffs in the suit in O.S.No.25 of 2009 on the file of the Sub Court, Devakottai are the appellants herein. The respondents are the defendants in the said suit. The plaintiffs are the children of the first respondent / first defendant.

2. The plaintiffs have filed the suit for partition claiming that the suit schedule property is a joint family property and that they are entitled for 2/3rd share therein. However, the contentions of the plaintiffs were disputed by the first respondent / first defendant, as she has contended that the suit schedule property is her self acquired property. The first respondent / first defendant has also sold the property to the second



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respondent / second defendant under a registered sale deed and the second respondent / second defendant has subsequently agreed to sell the suit schedule property to the third respondent / third defendant. Based on the pleadings of the respective parties, the trial Court, namely the Sub Court, Devakottai, framed issues. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

3. Before the trial Court, the plaintiffs filed 9 documents, which were marked as Exs.A1 to A9 and four witnesses were examined on the side of the plaintiffs, namely Subramanian as P.W.1, Backiyam as P.W.2 and Kasinathan as P.W.3 and Allimuthu as P.W.4. On the side of the defendants, eight documents were filed, which were marked as Exs.B1 to B8 and three witnesses were also examined on the side of the defendants, namely, Karuppayee as D.W.1, Jeyalakshmi as D.W.2 and Valli as D.W.3. Apart from the documents marked through the defendants, two documents were marked as exhibits as Exs.X1 and X2.

4. The trial Court, namely, the Sub Court, Devakottai, by its judgment and decree dated 07.10.2013 passed in O.S.No.25 of 2009



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dismissed the suit filed by the plaintiffs by rendering the following findings:-

(a) The first plaintiff, who was examined as P.W.1 has categorically admitted as follows:

“தாவா சொத்து என் தாயார் பெயரில் அசைன்மென்ட் மட்டா போடப்பட்டுள்ளது என்றால் சரிதான் என்று ஒப்புக் கொள்வது தெரிய வருகின்றது. உதையாச்சி என்ற கிராமத்தில் 1 – ம் பிரதிவாதியின் தகப்பனார் பெயரில் சொத்து உள்ளது என்றால் சரிதான் என்றும், அது 1 – ம் பிரதிவாதியின் தகப்பனாரான சோலையின் பூர்வீக சொத்து உதையாச்சி கிராமத்தில் உள்ளது என்றும் வா.சா.1 அவரது சாட்சியத்தின் போது ஒப்புக் கொள்கிறார். வா.சா.ஆ 1 முதல் 5 வரையான ஆவணங்கள் அனைத்தும் 1 – ம் பிரதிவாதியின் பெயரில் உள்ள ரசீதுகள் என்றால் சரிதான் என்றும் ஒப்புக் கொள்கிறார். அசைன்மென்ட் வாங்கிய காலத்தில் ஒலை குடிசை இருந்தது என்றும் தாவா சொத்திலுள்ள வீடு 1976 – ல் கட்டப்பட்டது என்றும், அந்த வீடு கட்டுவதற்கு வா.சா.1ன் தாயாரான கருப்பாமி கூட்டுறவு வங்கியில் கடன் வாங்கி கட்டினார் என்றால் வா.சா.1க்கு தெரியாது என்று சாட்சியம் அளித்துள்ளாரே தவிர அதனை மறுக்கவில்லை என்பது தெரியவருகின்றது. எல்லா காலத்திலும் 1 – ம் பிரதிவாதியின் பெயரில் தான் மட்டா வழங்கப்பட்டது என்றால் சரிதான் என்றும் அவரது சாட்சியத்தின் போது ஒத்துக் கொள்கிறார்.”

As seen from the above admission of the first plaintiff, it is clear that the suit schedule property is the self acquired property of the first defendant;

(b) P.W.1 has also admitted in his cross examination that the first defendant has agreed to sell the suit schedule property for a sum of



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Rs.2,94,000/- and thereafter has executed a sale deed dated 05.02.2008 in favour of the second defendant (Ex.A8) and he cannot take advantage of the fact that the property was devolved upon through her husband;

(c) P.W.2 has also admitted that he knows about the suit schedule property, which was a thatched shed earlier and thereafter a tiled house was put up and patta was granted in favour of the first defendant, Karuppayee and he has also admitted that the suit schedule property situated at Udayachi Village is an ancestral property of Solai, father of the first defendant;

(d) P.W.3 has also admitted that he knows about the parties and the suit schedule property is situated next to the land of Solai in the locality and he has also admitted that during the settlement, patta was granted in favour of Solai and Karuppayee;

(e) P.W.4, Zonal Tahsildar in the Taluk Office has also categorically admitted that in the Adangal Register, Patta No.11 has been issued in the name of Karuppayee marked as Ex.X1 and A-Register for S.No.68/8 measuring to an extent of 27 cents is also in the name of Karuppayee, which is evident from Ex.X2. Thus, the first defendant (Karuppayee) is in possession and enjoyment of the suit schedule



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property of an extent of 27 cents, since the lands were classified as ryot punja lands;

(f) The first defendant has been examined as D.W.1 and she has categorically denied that the suit property belonged to her husband, namely, Munian who died 40 years back. She has deposed that she never resided with her husband in the house and she herself made improvement in the house 15 years back and the electricity service connection was also obtained in her name and the property tax was also being levied in her name and it is stoutly denied that the first plaintiff paid kist and electricity bills in the name of the first defendant. She has also admitted that in 1970, assignment patta was also granted in her name for the said survey number and subsequently, she availed loan from the Cooperative Housing Board Society in the year 1976 and constructed a tiled house. She has also deposed that a separate patta was granted in her name and the property was never treated as a joint family property, which is evident from Exs.B7 and B8, loan documents availed from Cooperative Housing Board Society;

(g) The first defendant has deposed that since she was unable to maintain herself, she sold the property to the second respondent by sale



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deed dated 05.02.2008 (Ex.A8);

(h) D.W.2 has also deposed that for the marriage of the first defendant's daughter, the suit schedule property was sold by the first defendant to the second defendant;

(i) D.W.3, sister of the first defendant, has also admitted in her deposition that the suit schedule property is situated next to the land of Solai in the locality and his father died, when they were children and she supported the case of the first defendant.

5. Based on the aforesaid findings, the Sub Court, Devakottai, (trial Court) dismissed the suit on the ground that on the date of the suit, the property was not vested with the first defendant as she had already sold the property and therefore, there was no cause of action for the plaintiffs to file a suit for partition and further, the trial Court has held that the suit property was not a joint family property, but was the absolute property of the first defendant, prior to the sale in favour of the second defendant. Aggrieved by the judgment and decree of the trial Court dated 07.10.2013 in O.S.No.25 of 2009, the plaintiffs in the suit filed the first appeal before the District Court, Sivagangai in A.S.No.4 of 2014.



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The lower appellate Court, namely, the District Court, Sivagangai, also confirmed the findings of the trial Court by dismissing the first appeal. Aggrieved by the concurrent findings of the Courts below, this second appeal has been filed by the plaintiffs in the suit.

6. Admittedly, as seen from the documents marked as exhibits both on the side of the plaintiffs as well as on the side of the defendants, it is clear that no iota of evidence has been produced by the plaintiffs to show that the suit schedule property is a joint family property and it is not a self acquired property of the first defendant, the mother of the plaintiffs. The Zonal Tahsildar in the Taluk Office, who was examined as one of the witnesses on the side of the plaintiffs as P.W.4 has also confirmed that the patta for the suit schedule property was exclusively standing in the name of the first defendant (Karuppayee) and the documents to that effect were marked as Court exhibits namely, Ex.X1 and X2. P.W.1, the first plaintiff in the suit has also categorically admitted during his cross examination, which has been extracted supra that the suit schedule property is the self acquired property of the first defendant (Karuppayee).



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7. Admittedly, the suit schedule property was also sold by the first defendant to the second defendant under a sale deed dated 05.02.2008 (Ex.A8). Subsequent to the sale deed dated 05.02.2008 (Ex.A8), the second defendant has also entered into the agreement for sale with the third defendant and the sale agreement was also marked as Ex.A9. The first defendant, prior to the sale in favour of the second defendant by the sale deed dated 05.02.2008 had also mortgaged the suit schedule property in favour of the Cooperative Housing Board Society under Exs.B7 and B8 and had availed loan in her individual capacity and the property was never treated as joint family property, as alleged by the plaintiffs. All the revenue records, which have been marked as exhibits both on the side of the plaintiffs as well as on the side of the defendants, prior to the sale by the first defendant in favour of the second defendant on 05.02.2008, stand in the name of the first defendant (Karuppayee).

8. D.W.1, Karuppayee has also deposed that the suit schedule property is her self acquired property and that she had sold the property to the second defendant under a sale deed dated 05.02.2008. Her sister, D.W.3 has also deposed that the suit schedule property was the self



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acquired property of the first defendant, who had sold the property to the second defendant under a sale deed dated 05.02.2008 (Ex.A8). The second defendant, who was examined as D.W.2, has deposed that since the first defendant was unable to maintain herself and was in need of money, she has sold the suit schedule property to the second defendant by a sale deed dated 05.02.2008.

9. The initial burden of proving the suit claim is on the plaintiffs as per Section 101 of the Indian Evidence Act, 1872. They claim that the suit schedule property is a joint family property. Therefore, it is for them to prove through oral and documentary evidence that the suit schedule property was purchased out of the joint family income.

10. However, as seen from the oral and documentary evidence available on record, they have miserably failed to prove their claim that the suit schedule property is a joint family property and the Courts below have rightly held that the suit schedule property was self acquired property of the first defendant and therefore, the plaintiffs are not entitled for the relief of partition as claimed in the plaint.



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11. Only based on the oral and documentary evidence available on record, both the Courts below have concurrently held that the plaintiffs are not entitled for partition as sought for in the plaint. The substantial questions of law raised by the appellants in the grounds of appeal have already been considered by the Courts below against the appellants, only in accordance with law based on the oral and documentary evidence available on record. There are no debatable issues of law or fact involved for further consideration by this Court under Section 100 of CPC and hence, there is no merit in this second appeal. Accordingly, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

07.06.2023

Index : Yes / No

NCC : Yes / No

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TO:

1.The District Court, Sivagangai.

2.The Sub Court, Devakottai.

3.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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ABDUL QUDDHOSE, J.

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Judgment made in
S.A.(MD)No.812 of 2022

Dated:
07.06.2023