



S.A.No.297 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.297 of 2021

and

C.M.P.No.5970 of 2021

1. A.Deepak Kumar
2. A. Naveenraja
3. Deivarani

... Appellants

Vs

1. Harpreet Singh Anand
2. LS.Harish
3. Sub Registrar,
Office of the Sub Registrar,
Madukkarai,
Coimbatore 641 105.
4. District Collector,
Coimbatore District,
Coimbatore 641 018

... Respondents

Prayer: Second Appeal is filed under Section 100 of C.P.C to aside the decree and the judgment dated 20.12.20119 rendered in A.S.No.92 of



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2018 on the file of the I Additional District Judge, Coimbatore, reversing the decree and the judgment dated 04.07.2018 rendered in O.S.No.909 of 2010 on the file of the Principal Subordinate Judge, Coimbatore.

For Appellants : Mr.Subbiah, senior counsel
for M/s.Elizabeth Ravi

For Respondent-2 : Mr.R.Bharath Kumar

JUDGMENT

The plaintiffs are the appellants before this Court. The facts which has given rise to the above second appeal are herein below set out and the parties are referred to in the same ranking as before the trial Court.

2. The plaintiffs had filed the suit O.S.No.909 of 2010 on the file of the Principal Subordinate Court, Coimbatore for partition and separate possession of their 2/3rd share in the suit schedule property, for



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an injunction restraining the second defendant from registering any deed that would be presented by the first defendant in his office without their consent, for a declaration to declare the document registered as Document No.2093 of 2012 dated 04.04.2012 at the second defendant's office as null and void and for a permanent injunction restraining the defendants 4 and 5, their men and agents from disturbing the plaintiffs' peaceful possession and enjoyment of the suit schedule property.

3. It is the case of the plaintiffs that they are brothers and sons of the first defendant. Their father, the first defendant and mother Deivarani, due to differences of opinion, are living separately. The suit property is a residential house with a building situate on a land measuring an extent of 2400 sq.ft or 5 cents 222 sq.ft in Madukkarai Village. The plaintiffs would submit that the defendants 2 and 3 are formal parties.



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4. It is the contention of the plaintiffs that the suit property was purchased from out of the joint family funds comprising of plaintiffs and the first defendant. As the first defendant is the Kartha of the joint family, the suit property was purchased in the name of the first defendant on 12.11.2007. As members of the family, the plaintiffs have a 1/3rd share each in this property. The plaintiffs would submit that they are in joint possession of the property along with the first defendant. During the pendency of the suit, the fourth defendant purchased the property under a Sale Deed dated 04.04.2012, which is now sought to be declared as null and void. Hence, the suit had been amended to include the additional reliefs of declaration and permanent injunction. Since the first defendant was not coming forward to partition the properties, the suit came to be filed.

5. The first defendant had filed a written statement denying the



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case of the plaintiffs and submitting that the first item of the property was purchased from out of his own income and is therefore his absolute property. As owner of the property, the first defendant had also mortgaged the property with the Central Cooperative Bank and obtained a loan. Since he was unable to remit the loan to the Bank, he had sold the property to defendants 4 and 5. The first defendant would submit that the suit lacked merits as there was no cause of action and proper court fee had not been paid. Therefore, he sought for dismissal of the suit.

6.The second defendant had filed a written statement, which was adopted by the third defendant. It is their contention that the suit is based on false allegations. The dispute is between the plaintiffs and the first defendant and the plaintiffs are in no way connected with the suit property. The defendants would submit that they are neither necessary nor proper parties to the proceedings. Further, they would



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submit that no notice, as contemplated under Section 80 of C.P.C, had been issued and therefore, the suit has to be dismissed.

7. The fifth defendant had filed a written statement, which was adopted by the fourth defendant, in which they would submit that the entire case was without a cause of action and purely speculative in nature. The defendants 2 and 3 were not necessary parties in the suit for partition. The suit property is the absolute property of the first defendant and he does not own only a 1/3rd share as contended by the plaintiffs. The first defendant, being the absolute owner of the property, had sold the suit property to the defendants 4 and 5. The fourth defendant has thereafter relinquished his undivided share in favour of the fifth defendant, who is in possession and enjoyment of the suit property as its absolute owner.

8. The trial Court had framed the following issues:



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1. தாவா சொத்தில் வாதிக்கு பாக பாத்தியம் கிடைக்கத்தக்கதா?
2. தாவா சொத்தில் வாதிக்கு 2/3 பாகம் கிடைக்கத்தக்கதா?
3. தாவா சொத்தை பொறுத்து வாதி கேட்டுள்ள நிரந்தர உறுத்துக்கட்டளை பரிகாரம் கிடைக்கத்தக்கதா?
4. வாதிக்கு கிடைக்கும் இதர பரிகாரம் என்ன?

Subsequently, the following additional issue was framed:

“Whether the plaintiffs are entitled for declaration to declare the sale deed dated 04.04.2012 as null and void and not binding on the plaintiff as cancelled due to the” Doctrine of Lis pendency”



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9. The first plaintiff had examined himself as P.W1 and Naveen Raja/second plaintiff and Nagarajan as P.Ws.2 and 3 and marked Exs.A1 to A14. The first defendant had examined himself as D.W1 and no documents were marked on the side of the defendants.

10. The Principal Subordinate Judge, Coimbatore, held that the plaintiffs have clearly established that Ex.A5-Sale Deed is only a sham and nominal document and is hit by “doctrine of *lis pendens*”. The learned Judge further held that since 1/3rd share of the property belonged to the first defendant, the father of the plaintiffs and on his death, the plaintiffs are entitled to a ½ share each. The learned Judge held that the plaintiffs are entitled to ½ share in the suit property, for which they have to pay the Court fees. The learned Judge, however, dismissed the suit with reference to the decree for permanent injunction. Ultimately, the suit was partly allowed. Challenging the same, the defendants 4 and 5 had filed A.S.No.92 of 2018 on the file of

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the District Court, Coimbatore. Along with the appeal, the defendants had filed an application under Order 41 Rule 27 of C.P.C for receiving the additional documents. The said application was dismissed. The I Additional District Judge, Coimbatore held that the suit property had been purchased on 12.11.2007 by the first defendant. The first plaintiff was born on 10.01.1992 and the second plaintiff was born on 29.07.1993. The learned Judge observed that the plaintiffs have not let in any evidence whatsoever to show that the property had been purchased from out of the joint family funds or that there is a joint family in existence. The 6th defendant, who is the mother of the plaintiffs has been living separately in the house of P.W3, Nagarajan, who is the maternal grandfather of the plaintiffs. The learned Judge had also observed that the plaintiffs' case is that they had earned money and contributed the same to their father and from out of this income, the property had been purchased, whereas P.Ws.1 and 2 have fairly conceded that when the property was purchased, they were only



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students. Contrary to the plea taken by the plaintiffs, P.W3 would submit that the property was purchased from out of the family funds and the amounts derived from the sale of the 6th defendant's jewellery. P.Ws 1 to 3 have contradicted each other. That apart, even before the property was purchased, the defendants 1 and 6 had started living separately and therefore, there is no question of the 6th defendant contributing any money for the purchase of the property. The first defendant had adduced evidence in chief, but however the plaintiffs have not chosen to cross examine him despite several opportunities being granted to them and thereafter, the first defendant had passed away. Therefore, the rejection of his evidence in toto by the trial Court was questioned by the lower appellate Court. The lower appellate Court held that the suit property was the self-acquired property of the defendants and consequently, the sale of the property to defendants 4 and 5 was valid. Therefore, the appeal was allowed. Challenging the said judgment and decree, the appellants are before this Court.



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10. This second appeal has not been admitted, however the respondents have entered appearance through counsel.

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

12. The plaintiffs had sought the declaratory relief and partition on the ground that the suit property was purchased from out of the joint family funds comprising of the plaintiffs and the first defendant. Since the first defendant was the Kartha of the family, the suit property was purchased in his name. The plaintiffs have also pleaded that they are in joint possession of the same. Their claim was refuted by the first defendant who had stated that the plaintiff's mother, the 6th defendant



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and the first defendant had been living separately for over 13 years prior to the date of the suit, which meant that 10 years prior to the purchase of the property, the 6th defendant had left him and the plaintiffs were living with her. Therefore, there is no question of the property being enjoyed jointly. That apart, the property was purchased by the first defendant by borrowing money and since he was unable to repay the mortgage loan, he was constrained to sell the property to defendants 4 and 5. This fact has not been refuted by the defendants. Therefore, it is crystal clear that the property does not belong to the joint family and is the exclusive property of the first defendant. The lower appellate Court has rightly held so and I see no reason to interfere with the finding of the trial Court. Once it is declared that the property belongs to the first defendant, the other declaratory reliefs should also be denied. The defendants 4 and 5 had taken possession of the property on their purchase. As regards the prayer for injunction, the same has been denied by the trial Court and the plaintiffs had not



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challenged the same. Accordingly, the second appeal is dismissed as no substantial questions of law deserving the attention and orders of this Court has been made out. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Speaking order/non-speaking order

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To

1. The I Additional District Judge, Coimbatore,
2. The Principal Subordinate Judge, Coimbatore.
3. The Section Officer, V.R.Section, High Court, Madras.



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P.T.ASHA, J.,

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