

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.107 of 2015 and
M.P.No.1 of 2015

Indian Bank,
Represented herein by its
Manager, Main Branch,
Court Street, Tiruppur.

... Appellant/
3rd Defendant

Vs.

1.K.Sarulatha
2.S.Sangeetha
3.V.Madhumitha
4.P.Velusamy gounder
5.A.K.Kathirvelu

... Respondents/
Plaintiffs 1 to 3/
Defendants 1 and 2

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree dated 29.11.2013 passed in A.S.No.11 of 2013 on the file of the learned Subordinate Judge at Pollachi confirming decree and judgement dated 29.01.2013 passed in O.S.No.406 of 2006 on the file of the learned District Munsif at Pollachi.

For Appellant : Mr.K.S.Vasan
for Mr.Murthi and Vasan

JUDGEMENT

The third defendant in O.S.No.406 of 2006 on the file of the learned District Munsif, Pollachi is the appellant herein. The second defendant in the suit Mr.A.K.Kathirvelu, secured loan from the third defendant/appellant Bank, for which, the first defendant, Mr.P.Velusamy Gounder, stood as a guarantor. The plaintiffs in the suit are the sons of the first defendant. The suit properties are the ancestral properties belonging to the co-parcenery consisting of the plaintiffs and the first defendnat. The suit properties have been given as a guarantee by the first defendant in favour of the appellant Bank.

2.Now, the plaintiffs have filed the above suit for partition and for allotment of their 1/4th share each. The suit was decreed. As against the same, the appellant Bank filed an appeal in A.S.No.11 of 2013 on the file of the learned Subordinte Judge, Pollachi. By decree and judgement dated 29.11.2013, the First Appellate Court

dismissed the appeal thereby confirming the decree and judgement of the trial Court. Challenging the same, the third defendant/appellant Bank is before this Court with this second appeal.

3.This second appeal has come up today for admission. I have heard the learned counsel for the appellant and I have also perused the records carefully.

4.At the outset, it needs to be mentioned that, I find absolutely, there is no substantial question of law involved in this second appeal warranting admission. My reasons are as follows:-

(i) The first reason is that, there is no dispute that the plaintiffs are the sons of the first defendant. It is not as though the first defendant had secured loan for the benefit of the entire family consisting of the plaintiffs. On the contrary, admittedly, the first defendant stood only as a guarantor. Guarantee is a personal covenant. At the most, as the Guarantor, he can give his absolute property as a guarantee or he can confine his guarantee only to the limited extent of his share i.e., 1/4th share.

(ii)Now, it appears that the third defendant has taken some action to bring the entire property for sale. From Ex.A.2, it has been clearly established that the suit properties were inherited by the first defendant in a family partition. Therefore, as per the Hindu Succession Act, the plaintiffs by birth, are entitled for 1/4th share. The third defendant has got no evidence at all to deny the same. To safeguard the interest of the third defendant/appellant Bank, the Courts below have held that the third defendant can proceed against the undivided 1/4th share of the first defendant alone to recover the loan amount secured by the second defendant. Thus, the Courts below have correctly appreciated the evidence and have held that the suit properties are ancestral properties and therefore, the plaintiffs are entitled for 1/4th share each. In this finding, I do not find any perversity.

(iii).Above all, as I have already stated, there is no substantial question of law at all involved in this second appeal warranting admission.

5.In the result, the second appeal fails and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

To

1.The Subordinate Judge,
Pollachi.

2.The District Musnif,
Pollachi.

1 cc to M/s. Murthi and Vasan, Advocate, sr. 12080

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