

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.425 of 2015

and

M.P.No.1 of 2015

1. Suresh
2. Karthikeyan ...Appellants/ Plaintiffs

Vs.

1. Thangavel
2. Jothi Anandhar
3. Kaliappa Gounder ...Respondents/ Defendants

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 20.09.2013 passed in A.S.No.16 of 2012 on the file of the Subordinate Judge, Pollachi confirming the judgment and decree dated 09.11.2009 made in O.S.No.244 of 2004 on the file of District Munsif, Pollachi.

For Appellants : Mr.R.Kannan

J U D G M E N T

The plaintiffs, who lost their case before the Courts below, have come forward with the present second appeal.

2. The case of the plaintiffs is that in 1997, the 1st defendant who is the father of the plaintiffs, had borrowed loan from one Arukkaniammal through a promissory note. In the recovery process, the suit property was brought to sale and the second defendant had purchased the same. According to the plaintiffs, at the time of sale, the plaintiffs were minors and the sale in favour of the second defendant is not binding on them.

3. It was further contended by the plaintiffs that Ex.A.1 sale deed relates to a sale of joint family property on 13.03.1989 and the sale proceeds were used for the purchase of property in Ex.A2 sale deed dated 21.03.1989. As the joint family proceeds were used for the purchase of property in Ex.A2 sale deed, the

plaintiffs claimed that the properties should be treated as joint family properties and the plaintiffs have share over the same. The Courts below have held that the property was sold only for the purpose of discharging family debts and the property was sold by the first defendant in the capacity of the manager of a joint family.

4. It is not the case of the plaintiffs that the first defendant was leading a wayward life or not taking care of the family. The sale was only for the benefit of the family. In the absence of pleadings that the father was leading a wayward life, the allegation that the sale by him was not for the benefit of the family, cannot be proved.

5. The only person who can speak about the transactions is the first defendant, who is the father of the plaintiffs. Both the courts below have concurrently held that the borrowal of the first defendant was only for the benefit of the family and the property was sold in discharge of the same. Even presuming for a moment that the plaintiffs have got right over the property equally, they have to discharge the liabilities also. The Lower Appellate Court has rightly come to the conclusion that the father namely, the first defendant having parted with the property has filed a suit for partition through his successor at his own instance. This is very clear from the fact that the father, the first defendant, has remained exparte. In the above factual matrix, there is no question of law arising for consideration in the second appeal.

6. Accordingly, the Second Appeal is dismissed and the judgment and decree dated 09.11.2009 made in O.S.No.244 of 2004 on the file of District Munsif, Pollachi, as confirmed by the judgment and decree dated 20.09.2013 passed in A.S.No.16 of 2012 on the file of the Subordinate Judge, Pollachi are affirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Asst.Registrar (CO)

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Sub Asst. Registrar

srn

To

1.The District Munsif, Pollachi

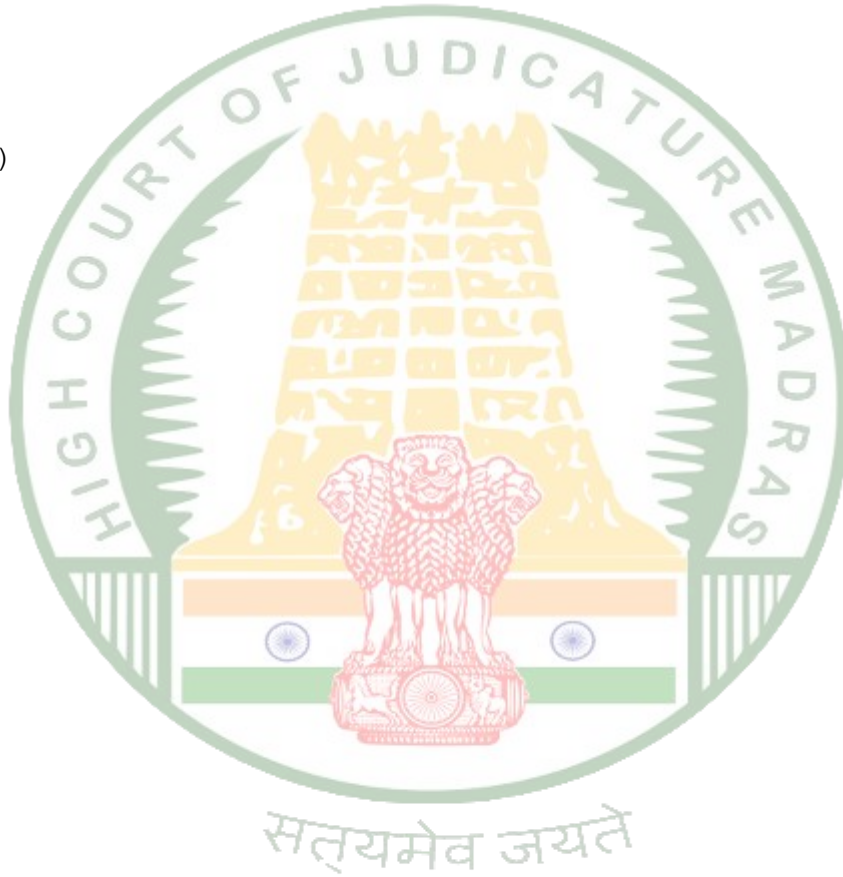
2.The Subordinate Judge, Pollachi.

1 cc to Mr.R. Kannan, Advocate, Sr. 31431

1 cc to Mr.R. Nandhakumar, Advocate, Sr. 31355

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