

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.477 of 2015

and

M.P.No.1 of 2015

P.Subramani

... Appellant/Plaintiff.

Vs.

1. Jamuna
2. Chakkaravarthy
3. Balaji
4. Chinnachellammal
5. The Sub Registrar,
Katpadi
6. Vasantha
7. Sundara
8. Jamuna

... Respondents/Defendants.

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 16.09.2014 made in A.S.No.46 of 2012 on the file of the Principal District Judge, Vellore, confirming the judgment and decree dated 20.06.2012 made in O.S.No.79 of 2004 on the file of the Subordinate Judge, Vellore.

For Appellant : Mr.C.Prabakaran

For Respondents : Mr.R.Kannadasan

J U D G M E N T

The plaintiff is the appellant herein. The suit has been filed to to set aside the sale deed executed by his father on 12.02.2004.

2. The case of the plaintiff is that the defendants 4 and 5 are parents and the defendants 2 and 3 are his brothers and the first defendant is the purchaser of the property from the father. According to the plaintiff, his father was not in a sound state of mind on the date of sale and hence the same is invalid. Besides, it is also contended that the suit property was a joint family property, having purchased the same, out of joint family income, wherein, he had also contributed to purchase the same.

3. The suit was resisted by the defendants contending that it was not a joint family property and that it was a self acquired property of their father, having purchased the same under Ex.A.4 dated 06.09.1983. Admittedly, there was no document to show that the properties belonged to the joint family and the plaintiff had not established as to how the property was purchased with the joint family income.

4. Before the Trial Court, the plaintiff examined himself as PW-1 and one more witness was examined as PW-2 and Exhibits A1 and A2 were marked. On the side of the defendants, one witness was examined as DW-1 and the first defendant was examined as DW-2 and Exhibits B1 to B5 were marked on the side of the Defendants.

5. Based on the above pleadings, the trial Court had dismissed the suit.

6. On appeal by the plaintiff in A.S.No.46 of 2012, the judgment and decree of the trial Court was confirmed by dismissing the appeal. Aggrieved by the same, the above second appeal has been filed by the plaintiff.

7. The Courts below had found that the plaintiff was only 23 years of age on the date of purchase of the property under Ex.B4. It is also not established by the plaintiff that he was employed on the said date and he had contributed to the purchase of the property. Hence the Courts below had come to the conclusion that the suit property was not purchased from the joint family income.

8. The next contention of the learned counsel for the plaintiff that his father was not in a sound and disposing state of mind on the date of sale is concerned and to substantiate the same, he had examined P.W.2, who is a Doctor. The doctor has deposed that the father of the plaintiff was paralyzed on the left side and he could not stand or walk. The doctor had specifically deposed that he was not physically stable but he was mentally steady and sound. Hence the evidence of P.W.2 would not go to help the case of the plaintiff.

9. The sale deed dated 12.02.2004 was executed not only by the father but also his mother. In such circumstances, the Courts below have come to a conclusion that the relief sought for itself is incomplete. In the above factual matrix, the challenge made by the Plaintiff/Appellant, in the absence of any question of law, the second appeal cannot be admitted and the same is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

srn

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1.The Subordinate Judge, Vellore

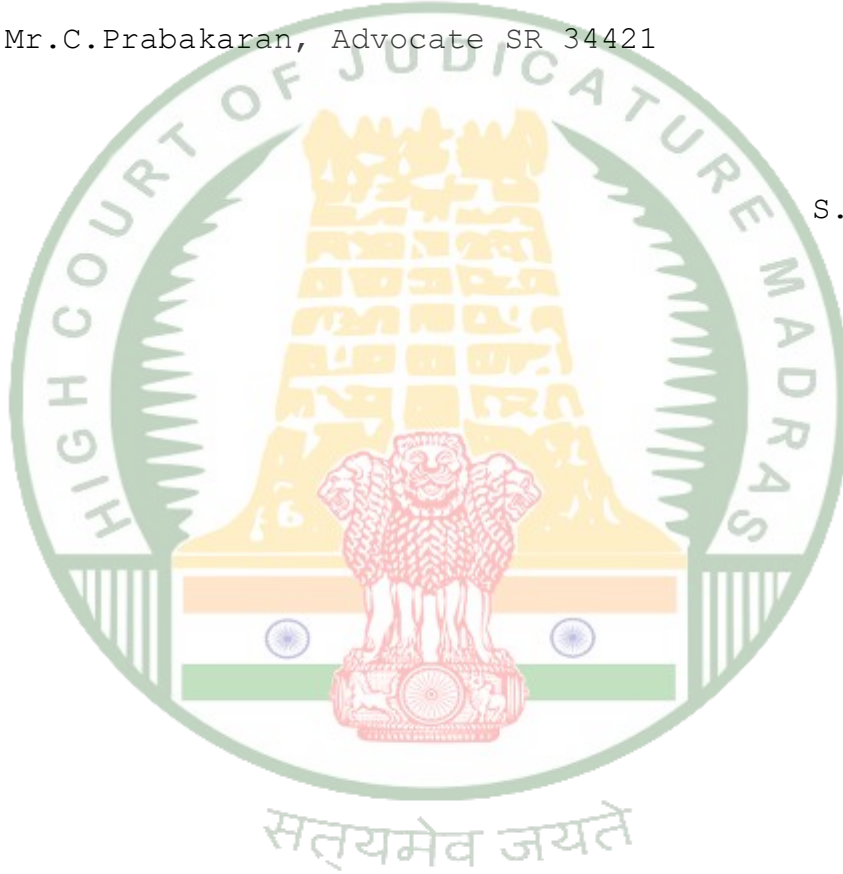
2.The Principal District Judge, Vellore

copy to:
The Section Officer,
V.R.Section,
High Court, Madras.

+ 1 cc to M/s.E.Kannadasan, Advocate SR 34296

+ 1 cc to Mr.C.Prabakaran, Advocate SR 34421

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