

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16 - 07 - 2015

CORAM:

THE HON'BLE TMT. JUSTICE PUSHPA SATHYANARAYANA

S.A. NO. 558 OF 2015

AND

M.P. NO. 1 OF 2015

1. Santhi

2. Minor Archana  
(rep. by next friend mother santhi) .. Appellants/plaintiff

Vs.

1. Lakshmi

2. Madhaiyan .. Respondents/Defendants

Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree dated 31.10.2014 passed by the Principal District Judge, Krishnagiri, in A.S. No. 37 of 2013 confirming the judgment and decree passed by the Principal Subordinate Judge, Krishnagiri, in O.S. No. 14 of 2010 on 02.11.2012.

For Appellants : Mr. V. Nicholas

JUDGMENT

The unsuccessful plaintiffs before the Courts below in a suit for partition, are the appellants in the present Second Appeal.

2. The suit was filed for partition claiming that the suit properties are joint family properties. The first defendant is the grand mother of the first plaintiff Santhi, who had married her maternal uncle Durai and the second defendant is the brother of the said Durai. There are two items of properties of which the first item was purchased on 31.3.1980 by the husband of the first defendant. The second item was purchased on 09.7.1993 which is in the name of the first defendant. While so, the husband of the first plaintiff died on 30.8.2004. According to the first plaintiff, the defendants, taking advantage of the fact that her husband died and she was living in Chennai, are trying to create sham and nominal documents. Hence, filed the suit for partition.

3. The suit was resisted by the defendants contending that the suit properties were not the self-earned properties of Chinnaraj but they were given to the first defendant by her father as she is the only daughter. It was further contended that the said Chinnaraj did not have much income for purchasing the suit properties. Hence, the defendants prayed that the plaintiffs cannot have any claim over the said properties and that the claim for partition is not maintainable.

4. The trial Court, before which the parties examined themselves and marked the documents, on consideration of the evidence adduced by the parties and the submissions made, by judgment and decree dated 02.11.2012, finding that the suit properties are not the joint family properties of the husband of the first plaintiff, dismissed the suit for partition O.S. No. 14 of 2010. The appeal filed by them in A.S. No. 37 of 2013 before the Lower Appellate Court / Principal District Judge, Krishnagiri, also met the same fate by judgment and decree dated 31.10.2014. Aggrieved by the same, the plaintiffs filed the instant Second Appeal before this Court.

5. Heard the learned counsel appearing for the appellants and perused the records.

6. The only question that has to be seen in this Second Appeal is whether the plaintiffs are entitled to any right over the suit properties.

7. To decide the said question, the character of the properties has to be determined. The first plaintiff herself has alleged that the suit properties are the joint family properties. Hence, the burden is on her to prove the same.

8. Admittedly, Chinnaraj was owning only a bullock cart with which he was eking out his livelihood and his wife, the first defendant was running a tea shop and a petty shop. It is also not in dispute that the first defendant had come from an affluent family and her brothers were all owning large extent of lands. The first defendant being the only daughter, the properties were given to her by her father. The first plaintiff also had admitted that she was not aware of the purchase of the suit items as she was a minor at the relevant time. Though the first plaintiff had examined P.W.2 to support her case, the same is not very useful as in the cross-examination, he had specifically admitted that he was not aware of the purchase of the properties personally and it was only on hearsay, he could gather information. Though the original document of the suit items was produced by the plaintiffs as Ex. A.1 dated 31.3.1980, a perusal of the same does not indicate that the properties were purchased by Chinnaraj out of his income in favour of his wife.

9. Insofar as Ex. A.2 dated 09.7.1993 is concerned, the same has been executed by one Krishnan Chettiyar in favour of the first defendant. From a reading of the said document also, it cannot be decided that the sale consideration was paid by Chinnaraj for purchase of the same. The other documents produced by the plaintiffs are Exs. A.3 and Ex. A.4 pattas.

10. From the above documents, it is clear that the suit items were purchased in the name of the first defendant not from the income from the joint family properties but they were purchased in her favour by her father. As it is settled law that the burden is on the person who alleges that the properties are joint family properties and in the instant case, the first plaintiff who averred that the suit properties are joint family properties, had miserably failed to establish the same to make claim over the same.

11. The other line of argument advanced by the learned counsel for the appellant that the properties were purchased in the name of the first defendant by her husband only for the joint family necessity, was also not established by the plaintiffs.

12. As the plaintiffs / appellants failed to establish the above legal aspects, the Courts below have rightly declined the relief of partition in favour of the plaintiffs. Since the courts below have clearly recorded a finding on the claim of the plaintiffs, in this Second Appeal filed under Section 100, C.P.C., I do not find any reason to differ from the concurrent finding rendered. The point is answered accordingly.

For the foregoing reasons, the judgments and decrees of the Courts below are confirmed and the Second Appeal is dismissed. However, there will be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Asst.Registrar (CS II )

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Sub Asst. Registrar

To

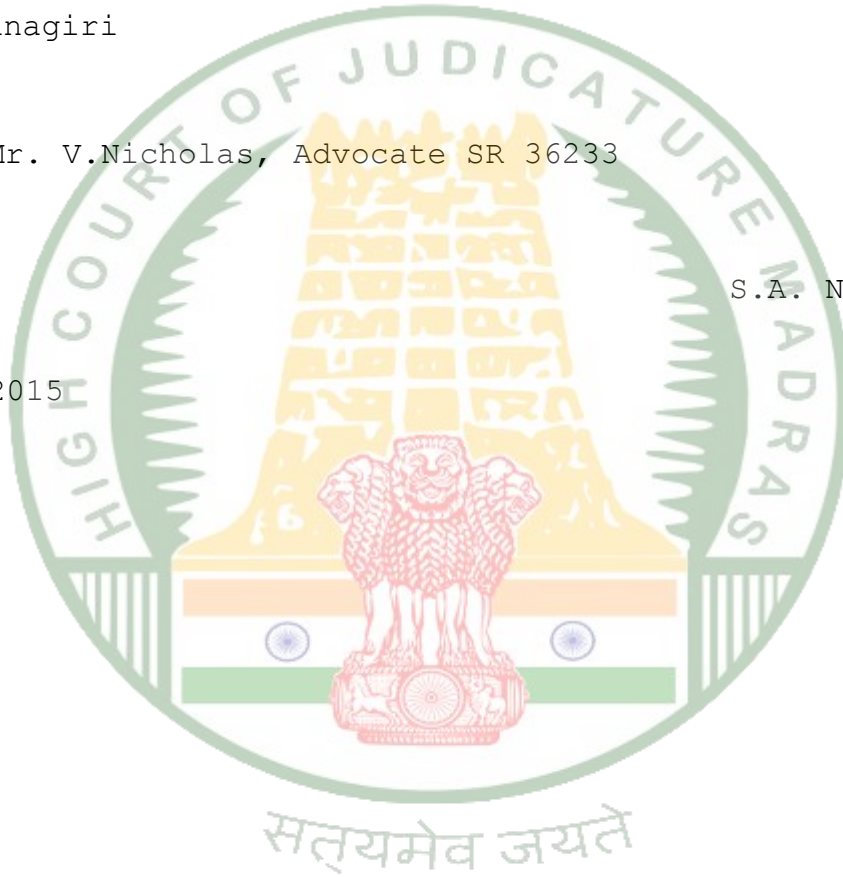
1. The Principal District Judge,  
Krishnagiri

2. The Principal Subordinate Judge,  
Krishnagiri

+1 cc to Mr. V.Nicholas, Advocate SR 36233

S.A. No. 558 of 2015

AK (CO)  
Rs 12.08.2015



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