

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.572 of 2015

and

M.P.No.1 of 2015

1. S.Rathinam
2. Nirmala

... Appellants/Plaintiffs

Vs.

V.Doss

... Respondent/defendant

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 18.03.2015 made in A.S.No.51 of 2014 on the file of the Subordinate Judge, Poonamallee, reversing the judgment and decree dated 31.01.2014 made in O.S.No.164 of 2005 on the file of the Additional District Munsif, Poonamallee.

For Appellants : A.Rajesh Kanna

J U D G M E N T

The Second Appeal is filed by the unsuccessful plaintiffs, who had filed a suit for partition of 1/4th share to each plaintiff and for separate possession of the same.

2. The first defendant is the father of the plaintiffs / appellants and also the second defendant / respondent herein. The suit property was purchased by one Tmt.Murugammal, who is the grand mother of the plaintiffs, by way of a registered sale deed on 09.04.1934. After her death, the property devolved on her heirs, namely, the first defendant, his sisters and brothers. The sisters had executed a release deed in favour of the first defendant on 08.03.2004, releasing their shares, thereafter, the first defendant became the absolute owner of the entire property. According to the plaintiffs, the suit property is an ancestral property and they have also got share in the same. The plaintiffs also challenged the settlement deed dated 11.03.2004, executed by the first defendant in favour of the second defendant, contending that the first defendant had no right to alienate the ancestral property. Hence the suit was filed.

3. The second defendant contended that he became the absolute owner of the property by virtue of the settlement deed executed by the first defendant, who is the father. The second defendant has also put up construction in the suit property and he has got right and title over the same.

4. The trial Court decreed the suit on the erroneous ground, based on the admission made by the second defendant that the suit property is the ancestral property. However, on appeal, it was reversed by the lower Appellate Court, Poonamallee in A.S.No.51 of 2014. Being aggrieved by the same, the above Second Appeal is filed by the plaintiffs.

5. From the above facts, it is clear that the suit property belongs to a female Hindu, viz., the grand mother of the parties. After coming into force of the Hindu Succession Act 1956, even if a woman had a pre-existing right in a property, it would have become her absolute property. In this case, the very property is purchased in her individual name and she has been dealing with the same in her own right. Hence, the property cannot be coloured as ancestral property in character. In these circumstances, the property in the hands of the first defendant, along with the shares released by his sisters, is his self-acquired property and the plaintiffs cannot have any right over the same. Therefore, the finding of the lower appellate Court is correct and this Court is not inclined to interfere with the same. In such circumstances, there is no question of law that arises for consideration in the Second Appeal.

6. Accordingly, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

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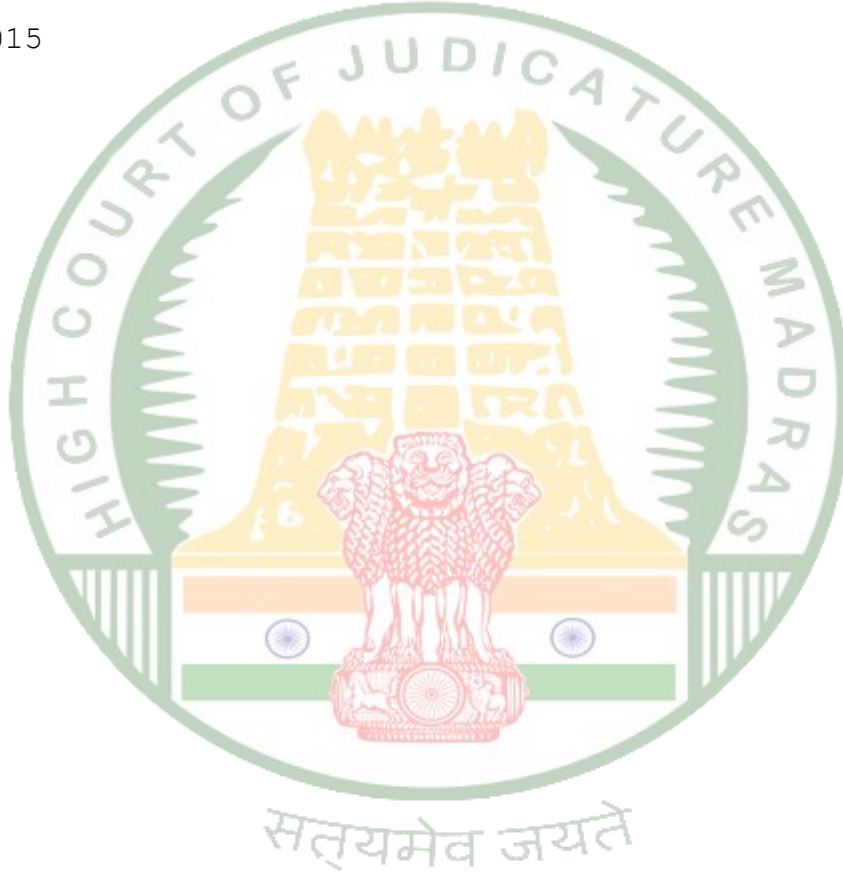
1. The Subordinate Judge, Poonamallee,
2. The Additional District Munsif, Poonamallee

3. The Section Officer, V.R. Section, High Court, Madras.

+1 cc to M/S.M.V.Muralidaran Advocate sr.41378

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