

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.775 of 2013

M/s.Vijaya

.. Appellant/Plaintiff

-Vs-

1.Veerapathiran
2.Mrs.Thangarasu
3.Mrs.Saravanan

.. Respondents/Defendants

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 30.11.2012 in A.S.No.40 of 2012 on the file of the learned Principal Subordinate Judge, Salem confirming the judgement and decree dated 31.01.2012 in O.S.No.352 of 2008 on the file of the learned II Additional District Munsif Court, Salem.

For Appellant : Ms.P.Venna Suresh

J U D G M E N T

The plaintiff in O.S.No.352 of 2008 on the file of the learned II Additional District Munsif, Salem is the appellant herein. The respondents are the defendants in the suit. It was a suit for partition filed by the plaintiff. The trial Court by decree and judgement dated 31.01.2012, dismissed the suit. As against the same, the appellant filed an appeal in A.S.No.40 of 2012 on the file of the learned Principal Subordinate Judge, Salem. The First Appellate Court by decree and judgement dated 30.11.2012 dismissed the appeal thereby confirming the decree and judgement of the trial Court. Challenging the same, the appellant is before this Court with this second appeal.

2.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.

3.The case of the plaintiff is that, she is the daughter of the first defendant Mr.Veerapathiran. According to her, the suit properties are ancestral properties. Therefore, according to her, she is entitled for half share in the suit properties. According to her,

earlier, she filed a suit in O.S.No.231 of 2007 on the file of the learned Principal District Munsif, Salem for partition of the suit properties herein. After examination of witnesses, it was noticed that there were some technical discrepancies in the suit. Therefore, according to the plaintiff, she filed an Interlocutory Application in I.A.No.1660 of 2007 before the said Court seeking to withdraw the said suit with liberty to her to file a fresh suit for partition. The said Interlocutory Application was allowed on 19.12.2007. Thereafter, the present suit in O.S.No.352 of 2008 was filed.

4.It is the further case of the plaintiff that on 29.04.2002, the first defendant sold away the suit properties to the second defendant and the second defendant, in turn, has sold away the same to the third defendant. The sale said to have been made by the first defendant in favour of the second defendant would not deprive the plaintiff from having her half share, it is contended. Similarly, sale deed dated 01.06.2006 executed by the second defendant in favour of the third defendant also would not deprive the plaintiff from having her half share, it is further contended.

5.The first defendant filed a written statement in which, he contended that the suit properties are his self-acquired properties. According to him, these properties were originally owned by one Mrs.Veeraye. Mrs.Veerayee is his paternal grand mother. Mrs.Veerayee sold the suit properties along with her sons and daughters on 11.12.1961 for valuable consideration to the first defendant. At the time of sale, since, the first defendant was a minor, his mother's father namely the maternal grand father purchased the suit properties in the name of the first defendant as his guardian. Thus, according to the first defendant, the suit properties are not the ancestral properties and therefore, the plaintiff is not entitled for any share. It was also contended by the first defendant that for a valuable consideration, he has sold away the suit properties to the second defendant.

6.The third defendant filed a separate written statement wherein, he has reiterated the same and he has further stated that he has purchased the suit properties from the second defendant for valuable consideration. Thus, according to the defendants, the plaintiff is not entitled for any share in the suit properties.

7.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, she was examined as P.W.1 and ten documents were exhibited. On the side of the defendants, the defendants were examined as D.Ws.1 to 3 and nine documents were exhibited.

8.Having considered the above, the trial Court dismissed the suit, and which was confirmed by the First Appellate Court. That is how the appellants are before this Court with this second appeal.

9. In this second appeal, it is contended that the Courts below were not right in holding that the suit properties are the self-acquired properties of the first defendant. The learned counsel for the appellant would submit that there was joint family nexus and from out of the same, the suit properties were purchased in the name of the first defendant. It is also stated that at the time when the suit properties were purchased, the first defendant was a minor and therefore, he could not have purchased the said properties out of his own income. It is also stated that, in evidence, D.W.1 has admitted that the suit properties were enjoyed as a joint family properties.

10. The learned counsel for the appellant would further point out that the sale made by Mrs. Veeraye is only in respect of Item Nos. 1 and 3 of the suit properties. Regarding the other Items of the suit properties, absolutely, there is no material to show that they are the self-acquired properties of the first defendant, it is contended.

11. I have considered the above submissions.

12. At the outset, I should say that in this second appeal, there is no question of law much less a substantial question of law warranting admission of this second appeal. The only question raised by the learned counsel for the appellant is that, the suit properties are not the self-acquired properties of the first defendant. This question, in my considered opinion, is based on facts and not on law. The Courts below have accepted that Item Nos. 1 and 3 of the suit properties were purchased from Mrs. Veeraye by the first defendant under the sale deed dated 11.12.1961.

13. Admittedly, the first defendant was a minor when the suit properties were purchased by the maternal grand father of the first defendant. Having considered all these facts, the Courts below have held that Item Nos. 1 and 3 of the suit properties are the self-acquired properties of the first defendant. So far as the other Items of the suit properties are concerned, there is no evidence that the same are the joint family properties.

14. In my considered opinion, the burden is upon the plaintiff to prove that the suit properties are joint family properties, in which, the plaintiff has got half share. The plaintiff miserably has failed to do so. On the conclusion arrived at by the Courts below, that all the suit properties are self-acquired properties of the first defendant, I have no reason to interfere with. It is in evidence that, the suit properties were purchased by the second defendant from the first defendant for valuable consideration, who in turn, has sold away the same to the third defendant and thus, the third defendant has become the absolute owner of the suit properties and therefore,

the suit properties are not available for partition, as claimed by the plaintiff.

15.Though, it is contended by the learned counsel for the appellant that the suit properties were all along treated as joint family properties and thus, brought into the joint family hotch-potch, absolutely, there is no evidence for the same. This is again a question of fact. I only reiterate that all the grounds raised by the learned counsel for the appellant before this Court are only on facts and there is no substantial question of law much less a substantial question of law warranting admission of the second appeal at all. In view of all the above, the second appeal deserves to be dismissed.

16.In the result, the second appeal fails and accordingly, the same is dismissed. No costs.

Sd/-
Deputy Registrar
Dated:3.3.15

True Copy

Sub Assistant Registrar

To

1.The Principal Subordinate Judge,
Salem.

2.The Principal District Munsif,
Salem.

+1 cc to Mr.T.R.Rajaraman, Advocate,SR.10181.

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krd 18/3

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