

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2016

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.503 of 2016
&
CMP Nos.11473 of 2016 & 14067 of 2016

1. S.Munuswamy
2. M.Sathya
3. M.Udayakumar ... Appellants/Plaintiff

Vs

M.Rajendran ... Respondent/Defendant

Prayer:- Appeal suit filed under Section 96 of CPC against the judgment and decree, dated 26.2.2016, passed in O.S.No.4897 of 2012 by the XVI Additional Judge, City Civil Court, Chennai.

For Appellants : Mr.V.Manisekaran

For Respondent : Mr.R.Venkatesan

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

This appeal suit is directed against the judgment and decree dated 26.2.2016, passed in O.S.No.4897 of 2012, by XVI Additional City Civil Court, Chennai.

2. The appellants herein, as plaintiffs, have instituted O.S.No.4897 of 2012 on the file of the trial court for the reliefs of partition and separate possession of their 3/4 share in the suit property and for permanent injunction, wherein the present respondent has been shown as sole defendant.

3. The material averments made in the plaint are that the first plaintiff is the father of the plaintiffs 2 and 3 and defendant. The plaintiffs and defendant are joint family members and for the benefit of joint family, the suit property has been purchased in the name of the defendant, by virtue of the Sale Deed dated 18.8.2004 and since then, the plaintiffs are in possession and enjoyment of the same. The defendant is

not having exclusive right, title and interest over the suit property. Now the defendant has been acting against the interest of the plaintiffs. Further, the defendant has refused to have amicable partition. Under the said circumstances, the present suit has been instituted for the reliefs sought therein.

4. The material averments made in the written statement filed by the defendant may be stated like thus:

The relationship mentioned in the plaint between the parties is correct. It is false to aver that the suit property has been purchased for the benefit of Hindu joint family in the name of the defendant. The defendant is an employee of Indian Railway and by way of getting loan from State Bank of India, he purchased the suit property by virtue of Sale Deed dated 18.8.2004 and before execution of sale deed, an agreement of sale has come into existence on 12.7.2004. Therefore, the suit property is the absolute property of the defendant and in which the plaintiffs are not having any partible interest. Under the said circumstances, the present suit deserves to be dismissed.

5. On the basis of rival pleadings raised on either side, the trial court has framed necessary issues and after analyzing both the oral and documentary evidence, has dismissed the suit. Against the judgment and decree passed by the trial court, the present appeal suit has been preferred at the instance of the plaintiffs as appellants.

6. The consistent case put forth on the side of the plaintiffs is that the plaintiffs and defendant are nothing but the joint family members and the first plaintiff being the father of the remaining plaintiffs and defendant, has acted as Manager of Hindu joint family. For the benefit of Hindu joint family, the suit property has been purchased by virtue of Sale Deed dated 18.8.2004 in the name of the defendant. Now the defendant has been acting against the interest of the plaintiffs and also refused to concede the demand of partition made by the plaintiffs. Under the said circumstances, the present suit has been instituted for the reliefs sought therein.

7. The main defence put forth on the side of the defendant is that the defendant has been doing service in Indian Railway and prior to purchase, an agreement of sale has come into existence on 12.7.2004 and the defendant has obtained loan from State Bank of India so as to purchase the suit property and subsequently he purchased the same on 18.8.2004 and therefore, the suit property is the separate property of the defendant and in which, the plaintiffs are not having any semblance of right and therefore, the present suit deserves to be dismissed.

8. As adverted to earlier, the trial court, after considering the overall evidence available on record, has dismissed the suit.

9. The only point that comes up for consideration in the present appeal suit is as to whether the suit property is a joint family property or separate property of the defendant?

10. The learned counsel appearing for the appellants/plaintiffs has strenuously contended that the defendant being an employee of Indian Railway, the suit property has been purchased by the defendant for the benefit of Hindu joint family and even though the sale deed stands in the name of the defendant, in the suit property the plaintiffs and defendant are having equal rights. Under the said circumstances, the present suit has been instituted for the reliefs sought therein, but the trial court, without considering the overwhelming evidence available on record on the side of the plaintiffs, has erroneously dismissed the suit and therefore, the judgment and decree passed by the trial court are liable to be set aside and the suit is liable to be decreed as prayed for.

11. Per contra, the learned counsel appearing for the respondent has contended that prior to execution of Sale Deed dated 18.8.2004, an agreement of sale has come into existence between the defendant and vendor on 12.7.2004 and subsequently, the defendant has obtained a loan from State Bank of India and by utilizing the said amount, he purchased the suit property independently and therefore, the suit property is his absolute property and in which the plaintiffs are not having right of partition and the trial court, after considering the documents available on the side of the defendant, has rightly dismissed the suit and therefore, the judgment and decree passed by the trial court do not warrant interference.

12. On the side of the respondent/defendant, an application has been filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908 in C.M.P.No.14067 of 2016, praying to admit the documents mentioned therein as additional evidence.

13. Considering the nature of averments made in the application, this Court is of the view to allow C.M.P.No.14067 of 2016 and the same is allowed and the documents filed therein are marked as Ex.B.7 to B.9.

14. The specific case of the plaintiffs is that the suit property is a joint family property. But the specific defence put forth on the side of the defendant is that the suit property is the separate property of the defendant.

15. On the side of the plaintiffs, Ex.A.1, certified copy of Sale Deed, which stands in the name of the defendant has been filed. On the side of the defendant, Exs.B1 and B.2 have been filed. Ex.B.1 is an agreement of sale dated 12.7.2004 and the same has been in the name of the defendant. Likewise, after execution of Ex.B.1, the defendant has independently obtained a loan from the State Bank of India and the same is being evidenced in Ex.B.2.

16. Apart from the documentary evidence filed on the side of the defendant, it is an admitted fact that the defendant is an employee of Indian Railway. Since the defendant is an employee of Indian Railway and since he obtained loan from the State Bank of India by virtue of Ex.B.2, this Court is of the view that the defendant has had independent source to purchase the suit property in his name.

17. It is a settled principle of law that even a junior member of a Hindu joint family can acquire property in his name by using separate funds without using joint family funds.

18. In the instant case, even though the plaintiffs and defendant are joint family members, no acceptable/trustworthy reason has been given on the side of the plaintiffs as to why the suit property has been purchased in the name of the defendant. Further, as stated earlier, the defendant has shown his independent source for the purpose of purchasing the suit property.

19. Considering the fact that the suit property has been purchased in the name of the defendant and also considering that on the side of the defendant, acceptable evidence has been forthcoming for the purpose of showing the source of income to purchase the suit property, this Court is of the considered view that the suit property is an absolute property of the defendant.

20. The entire plaint proceeds on the basis that the suit property is nothing but a joint family property. Considering the fact that there is no evidence for the purpose of coming to a conclusion that the suit property is a joint family property, it is needless to say that the plaintiffs are not having right of partition.

21. The trial court, after considering the rival evidence available on record, has rightly dismissed the suit. In view of the discussions made earlier, this Court has not found any force in the contention put forth on the side of the appellants/plaintiffs and altogether the present appeal suit deserves to be dismissed.

In fine, this appeal suit is dismissed without cost. The judgment and decree dated 26.2.2016, passed in

O.S.No.4897 of 2012, by XVI Additional City Civil Court, Chennai are confirmed. Consequently, C.M.P.No.11473 of 2016 is closed and C.M.P.No.14067 of 2016 is allowed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ajr

To

The XVI Additional Judge,
City Civil Court,
Chennai.

(Exhibits marked on the side of the respondent/defendant:

Ex.B.7 : Statement of Account issued by the State Bank of India, Anna Nagar Branch

Ex.B.8 : Defendant's Savings Pass Book issued by the State Bank of India, Anna Nagar branch.

Ex.B.9 : Xerox Copy of Bank Pass Book (State Bank of India, Anna Nagar)

Appeal Suit No.503 of 2016

SCD(CO)
CA(28/11/2016)

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