

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2016

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal No.426 of 2016

and

C.M.P.No.7440 of 2016

Marusamy ... Appellant/Defendant

Vs

Sivagami ... Respondent/Plaintiff

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 10.02.2014 passed in A.S.No.43 of 2012 on the file of the Subordinate Court, Bhavani, Erode District, confirming the judgment and decree passed in O.S.No.343 of 2010 dated 14.06.2012 by the District Munsif, Bhavani, Erode District.

For Appellant ... Mr.I.C.Vasudevan

For Respondent ... No appearance

JUDGMENT

This second appeal is preferred against the judgment and decree dated 10.02.2014 made in A.S.No.43 of 2012 on the file of the Subordinate Court, Bhavani, Erode District.

2.The appellant and the respondent are the brother and sister. The suit property admittedly stood in the name of the father of the parties, since deceased. The mother of the parties also is not alive. Seeking partition of half share in the suit property, the respondent, being the plaintiff, filed the suit for partition and separate possession.

3.The appellant took a stand that the suit property, though stands in the name of the father, has been purchased by him. The Courts below, on a consideration of the evidence, were pleased to hold that the suit property was the self-acquired property of the father. Challenging the said concurrent finding rendered by the Courts below, the present appeal has been filed, by framing the following substantial question of law:

(i)Whether the Courts below were justified in granting the relief of partition and permanent injunction in favour of the respondent with regard to the suit property?

(ii)Whether the findings of the Court below are sustainable in holding that the suit property was the separate property of the father of the appellant and the respondent for the reasons that the sale deed stands in his name especially when he has no capacity to pay the sale consideration?

(iii)Whether the property stands in the name of the kartha of the joint family is the separate property of him especially when the sale consideration was paid by the member of the joint family?

(iv)Whether injunction can be granted against the co-sharers of the property?

4.Learned counsel appearing for the appellant submits that the mere fact that the suit property stands in the name of the kartha of the family would not show that it is the self acquired property and therefore, the judgment and decree of the Courts below will have to be reversed.

5.This Court is unable to accept the said contention. Admittedly, the suit property stands in the name of the father of the parties. Such a contention may merit acceptance to decide as to whether the suit property is a joint family property or self-acquired property. In this case, it is the specific case of the appellant that it is his own property. As narrated earlier, the father of the parties died. Therefore, it is for the appellant to substantiate his case. The Courts below, on evidence, concurrently held that the suit property is the self acquired property of the father of the parties. There is no material to discredit the said finding rendered on facts. Therefore, this Court does not find any question of law much less substantial question of law.

6.In the result, the second appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

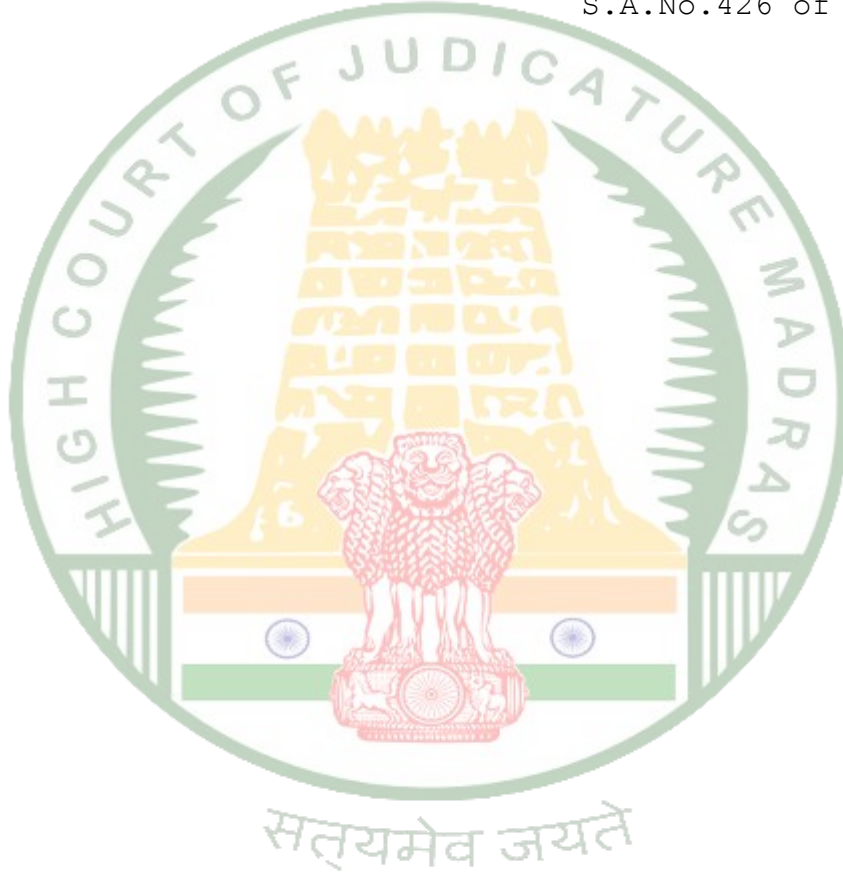
To

1.The Subordinate Judge,
Bhavani, Erode District.

2.The District Munsif,
Bhavani, Erode District.

sv(co)
krd 24/1

S.A.No.426 of 2016



WEB COPY