

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.868 of 2016
and
CMP No.17241 of 2016

1.A.Natarajan
2.A.Soundirarajan
3.A.Bala Mohanraj
4.A.Mayandi
5.A.Venkat@Balakrishnan

Appellants

...

vs.

1.B.Appasamy
2.Bakkiyalakshmi
3.Muthumariammal
4.M.Srinivasan
5.Palaniammal
6.N.Anandh Kaniraj
7.R.Balakrishnan
8.A.Rajagopal
9.S.Rajalakshmi
Respondents

...

Prayer: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree passed by the learned Principal District Judge, Coimbatore dated 25.11.2011 in A.S.No.29 of 2008 confirming the judgment and decree passed by the learned III Additional Sub Judge, Coimbatore in O.S.No.267 of 2005 dated 05.07.2006.

For Appellants : Mr.N.Manokaran

For Respondents : Mr.A.Thiyagarajan for

R1

Mr.C.R.Prasanan for R2

J U D G M E N T

The appellants are the legal representatives of the second defendant in a suit for partition and separate possession. The first respondent herein is the plaintiff. Respondents 2 to 4 are the defendants 3 to 5. Respondents 5 to 9 are the legal representatives of the first defendant. For the sake of convenience, let me refer the parties herein as referred to in

the plaint.

2.The plaintiff, the first defendant, the second defendant and one Mariappan are brothers. The plaintiff claimed partition in the suit properties into four equal shares and for allotment of one such share to him by contending that the suit properties consisting of five items are the joint family properties belonging to all four brothers, even though the first item was purchased in the name of the first defendant, while the items 2 to 5 were purchased in the name of all four brothers. According to the plaintiff, the first defendant being the eldest brother in the family and as the Manager of the same, purchased the suit first item in his name, for the benefit of all the four brothers. The other items 2 to 5 are admittedly purchased in the name of all four brothers.

3.The suit was resisted by the second defendant alone while the other defendants remained exparte. The second defendant contested the suit. It is the contention of the second defendant that the plaintiff was only a school going boy at the time of purchase of the suit properties and did not contribute any money for the purchase of the properties and therefore, he cannot seek partition.

4.Both the courts below after considering the rival pleadings of the parties and the evidence let in by them, decreed the suit and granted the relief of partition by allotting 1/4th share to the plaintiff. Challenging such concurrent findings rendered by the courts below, the present appeal is filed before this court.

5.Mr.N.Manoharan, learned counsel for the appellant submitted that when the properties in item Nos.2 to 5 of the schedule were purchased, the plaintiff was only a school going boy and therefore, there cannot be any presumption that he would have contributed for the purchase of those items. Insofar as first item is concerned, it is the submission of the learned counsel that when admittedly the same stands in the name of the first defendant, the plaintiff is not entitled to any relief in respect of the said item as well. Therefore, he contended that both the courts below failed to consider these aspects while decreeing the suit.

6.On the other hand, the learned counsel appearing for the respondents supported the concurrent findings rendered by the courts below and submitted that there is no ground for interference as both the courts below have considered all the aspects in detail.

7.Today, the matter is listed before this court under the

adjourned admission stage. This court, therefore, has to see as to whether any substantial question of law arises for consideration in this appeal to entertain the same for further hearing.

8.It is seen that the first item of suit property was purchased in the name of the first defendant, who is admittedly the eldest brother among all the four brothers. The plaintiff is the youngest brother. Therefore, there cannot be any doubt about the status of the first defendant as the Manager of the joint family. The other vital factor in favour of the plaintiff is that items 2 to 5 of the suit properties were purchased in the name of all the four brothers. Purchasing those properties in the name of all the four brothers would certainly indicate that the same were purchased for the benefit of all the four brothers by treating it as a joint family property and therefore, the appellants herein cannot contend otherwise.

9.In so far as the first item of the suit properties is concerned, no doubt it is purchased by the first defendant. Needless to say that if a property is purchased by the Manager of the family, it is the bounden duty for the Manager to substantiate that such purchase was made out of his own income, if he claims exclusive right over such property. In this case, the first defendant did not file any written statement and contest the suit. He remained exparte. Therefore, it goes without saying that the first defendant has accepted the contention of the plaintiff indirectly. Neither the second defendant or his legal representatives viz., the appellants herein are competent to speak about the status of the first item, when the first defendant in whose name it was purchased did not contest the suit. All these facts have been considered by the courts below in detail for granting the relief in favour of the plaintiff. Therefore, I find no ground to interfere with such concurrent findings, as I also do not find any substantial question of law in favour of the appellants. Accordingly, the second appeal fails and the same is dismissed. No costs. The connected miscellaneous petition is closed.

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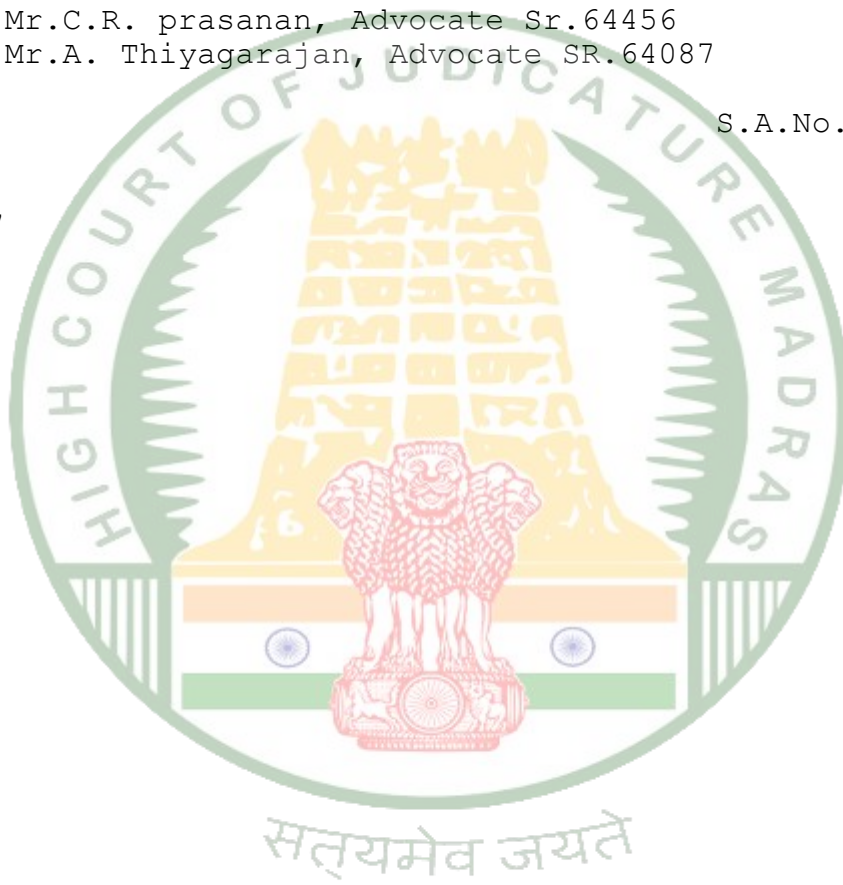
1.The Principal District Judge,
Coimbatore.

2.The III Additional Sub Judge,
Coimbatore.

+ 1 cc to Mr.N. Manokaran, Advocate Sr.64594
+ 1 cc to Mr.C.R. prasanan, Advocate Sr.64456
+ 1 cc to Mr.A. Thiyagarajan, Advocate SR.64087

S.A.No.868 of 2016

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