



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: **15.09.2016**

C O R A M

WEB COPY

THE HONOURABLE MR. JUSTICE S.S.SUNDARSecond Appeal (MD) No.580 of 2016ANDC.M.P(MD)No.8482 of 2016

1.Palanisamy
2.Palaniyammal
3.Malaiyammal
4.Arukkaniammal

: Appellants/Appellants/Defendants

Vs.

Nachammal

: Respondent/Respondent/Plaintiff

Prayer: - Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908, against the judgment and decree dated 03.03.2016 in A.S.No.13 of 2015 on the file of the learned Principal District Judge, Karur, in confirming the judgment and decree dated 30.04.2014 passed in O.S.No.215 of 2010 on the file of the learned Principal Subordinate Judge, Karur.

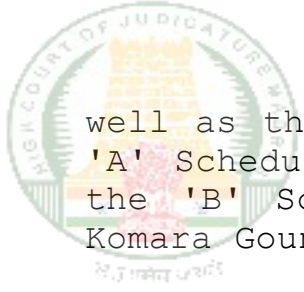
For Appellant

: Mr.S.Muthukrishnan

J U D G M E N T

This Second Appeal is filed by the defendants in the suit in O.S.No.215 of 2010 on the file of the Principal Sub-Court, Karur. The suit is filed for partition of plaintiff's 1/4 share in the 'A' Schedule properties and 1/2 share in the 'B' Schedule properties.

2. The case of the plaintiff is that the suit 'A' Schedule properties belong to the plaintiff's father and it was his ancestral properties. All the properties described in 'A' Schedule are dry lands and had not yielded any income. The suit 'B' Schedule properties, according to the plaintiff's, are the self-acquired properties of her father Late Komara Gounder. The properties referred to in 'B' Schedule properties were purchased by her father between the year 1928 and 1972. Since the 'B' Schedule properties were the self-acquired properties of plaintiff's father, namely, Komara Gounder, she claimed 1/2 share in respect of the 'B' Schedule properties. The trial Court as



well as the appellate Court have categorically held that the suit 'A' Schedule properties alone are the joint family properties and the 'B' Schedule properties are the self-acquired properties of Komara Gounder, the father of the plaintiff's.

3. As against the concurrent findings of the Courts below, the defendants have filed the present second appeal. In the Second Appeal, the appellants have raised the following questions of law:

a) *"Whether the partition suit is maintainable without including all the family properties?"*

b) *Whether the oral relinquishment of share in the family property is legally valid?*

c) *Whether the self acquired properties can be treated as joint family property without any documentary evidence?."*

4. Having regard to the specific findings rendered by the Courts below with regard to the characters of suit properties, this Court does not find any merit in the second appeal. The properties referred to in the plaint as 'B' Schedule properties appear to have been purchased under five different sale deeds between 1928 and 1972 in the name of Komara Gounder. Though it is admitted that the said Komara Gounder, the father of the plaintiff was holding 'A' Schedule properties as joint family properties, 'B' Schedule properties can not always be presumed to have been acquired out of the joint family properties. The existence of surplus or income from the joint family properties is not proved and even before this Court no argument is advanced on this issue. Curiously, the third question of law is raised in support of the judgment of Courts below. The learned Counsel for appellants submitted that death of mother of plaintiff would alter the share. It is not in dispute that mother is no more. Hence, there is no scope for reduction of share to the plaintiff who is the daughter of Komara Gounder.

5. In this case, the specific case of the plaintiff is that the 'A' Schedule properties do not yield any income and that they are dry lands. When the specific case of the plaintiff has been accepted by the Courts below, this Court cannot interfere with the findings of fact, especially, when the findings of the Courts below are not demonstrated to be perverse or not substantiated by any evidence.

6. In that view of the matter, the concurrent findings of the Courts below as to the character of the 'B' Schedule properties is upheld and this Court has found that there is no infirmity or illegality in the findings of the Courts below. Accordingly, this Court holds that no question of law much less a substantial question of law arises for consideration in this second appeal.



7. In the result, this Second Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(Writ)

WEB COPY

/True Copy/

Sub Assistant Registrar

gsr

To

1.The Principal District Judge,
Karur.

2.The Principal Subordinate Judge,
Karur.

JAM/03.11.16/CK/3p-3c

Second Appeal (MD) No.580 of 2016

AND

C.M.P (MD) No.8482 of 2016

15.09.2016