

HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2017

CORAM:

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.565 of 2017

and C.M.P.No.13951 of 2017

Chinnappan

... Appellant/2nd respondent
/2nd defendant

Vs.

1. Meenatchi
2. Vanisri
3. Sudha

... Respondents/Appellants
2 & 3/Plaintiffs 2 & 3

Prayer: The Second Appeal filed under Section 100 of Code of Civil Procedure to set aside the judgment and decree dated 29.03.2011 made in A.S.No.10 of 2010 on the file of the Sub Court, Gudiyattam confirming the judgment and decree dated 27.08.2009 made in O.S.No.12 of 1991 on the file of the District Munsif Court, Gudiyattam by allowing this Second Appeal before this Hon'ble Court.

For Appellant : Mr.N.Manokaran

J U D G M E N T

The second defendant is the appellant in the above appeal and he challenges the decree dated 29.03.2011 passed in A.S.No.10 of 2010 on the file of the Sub Court, Gudiyattam setting aside/reversing the judgment and decree dated 27.08.2009 made in O.S.No.12 of 1991 on the file of the District Munsif Court, Gudiyattam.

2. The suit in O.S.No.12 of 1991 was filed by the plaintiffs for partition. The said suit was dismissed by the Trial Court and on appeal it was decreed. The first plaintiff viz. Subramani (died) and the appellant herein/second defendant are sons of the first defendant. There are two items of suit property. It is stated that the first item of the suit property originally belongs to one Krishna Mandiri, who is the father of the first defendant and paternal grand father of the first plaintiff and the second defendant. After oral partition among the family members, the first item of the suit property was allotted to the first defendant viz. Venkatasamy Mandiri (died). The second item of property was purchased by the first defendant, out of the

cash which he got in the said oral partition.

3. It is contended that the first plaintiff viz. Subramani (died) and the defendants 1 and 2 are in joint possession of the above said properties. As the first plaintiff and defendants 1 and 2 are the joint owners, the suit has been laid for partition of 1/3 share of the plaintiffs. The plaintiffs 2 to 4 are the legal heirs of the first plaintiff. As the first defendant also died pending suit, the second defendant is recorded as his legal heir. The second defendant has contested the suit. The trial Court had dismissed the suit and on appeal, it was reversed by decreeing the suit. It is categorically found by the Lower Appellate Court that the second item was purchased out of the joint family income that came to be the share of the first defendant and the first item of property was purchased by the first defendant on various dates, marked as Ex.B8 to Ex.B10. The first defendant/the father was examined as D.W.1 and he has deposed that all the properties were purchased by him out of his own earnings. After the death of his father, the first plaintiff viz. Subramani (died) and second defendant/legal heirs of the first defendant who are the sons, admittedly became the legal heirs. The second defendant has also admitted in his evidence that the properties purchased by his father/the first defendant were individual properties and not joint family properties and he also admitted that the first plaintiff is entitled to half share in the suit properties. The second item of suit property was purchased by the first defendant and during his life time he executed a gift deed in favour of one Janakiraman, who is the son of second defendant on 16.12.2005. The plaintiffs have also admitted the execution of gift deed by the first defendant in favour of his grand son. After the death of the first defendant/the father, properties were automatically devolved on the sons, namely, the first plaintiff viz. Subramani (died) and the second defendant and they are entitled to equal share. What was gifted to the grand son was half share in the second item. The first plaintiff is therefore entitled to half share in the remaining half in the second item i.e. 1/4th share. As the second defendant also admitted that the first plaintiff is entitled for equal share and placing reliance on the deposition of D.W.1, the father who had admitted that the properties were purchased by him, the first plaintiff cannot be denied of his share. Accordingly, the plaintiff was granted a decree for half share in item No.1 and 3 and in the second item of the suit property, the plaintiffs are entitled to 1/4th share. The Lower Appellate Court also had decreed the suit in the above terms.

4. There is no infirmity in the judgment of Court below and no question of law arising for consideration in the said facts.

5. In the result, the Second Appeal is dismissed, confirming the judgment and decree dated 29.03.2011 passed by the Lower Appellate Court in A.S.No.10 of 2010. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rsi

To

1. The Sub Judge,
Gudiyattam.
2. The District Munsif Judge,
Gudiyattam.

copy to

- 1.The Section Officer
VR Section
High Court, Madras

+1 cc to Mr.N.Manokaran Advocate sr 74046

S.A.No.565 of 2017
and C.M.P.No.13951 of 2017

svl(co)
aa11/12/2017

सत्यमेव जयते
WEB COPY