

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2017

Coram

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

Second Appeal No.142 of 2016

Thakkatal .. Appellant/Plaintiffs

Vs

P.Ramachandran .. Respondent/1st Defendant

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 16.11.2015 made in A.S.No.7 of 2015 on the file of the Principal District Judge, Thiruvallur, modifying the judgment and decree passed in O.S.No.182 of 2007 dated 17.12.2014 by the Subordinate Judge, Thiruvallur.

For Appellant .. Mr.P.B.Ramanujam

For Respondent .. Mr.M.R.Khapali

JUDGMENT

The plaintiff is the appellant and she has filed the present second appeal, challenging the judgment and decree of the lower appellate Court, which in turn reversed the one granted by the trial Court in a suit for partition and separate possession against the defendants, who are none other than her brother and mother (since deceased). The lower appellate Court, in fact confirmed the decree of the trial Court in so far as Item No.3 of the suit schedule property, which admittedly stood in the name of the father.

2.At the time of admission, the following substantial questions of law have been framed:

(i)Whether the lower appellate Court was right in modifying the decree of the trial Court and thereby declining a decree in respect of all items of the schedule properties except Item No.3 in the absence of any proof of self-acquisition of the same by the first defendant?

(ii)Whether the lower appellate Court was right in holding that the documentary evidence would not weigh the oral evidence of the first defendant?

(iii)Whether the lower appellate Court erred in placing the burden of proof on the plaintiff instead of the first defendant in the light of Exs.A8 to 12 sale deeds?

3.Learned counsel appearing for the appellant submits that Item Nos.1 and 2 of the suit properties have been purchased from the sale effected with respect to the joint family property under Exs.A8 to A12 by the father and grandfather from the very same vendor. The sale under Ex.A6 has been effected on the very same day as in the case of Ex.A5. Thus the reasoning of the trial Court has to be accepted and therefore, the lower appellate Court has committed an error in reversing it.

4.Learned counsel appearing for the respondent submits that though there is no dispute on the documents filed, the fact remains that Item Nos.1, 2 and 5 of the suit properties have been purchased after a period of seven years from the date of the sale under Exs.A8 to A12. Thus, in the absence of any material to hold that there is joint family nucleus, no interference is required.

5.Law is quite settled in fixing onus on a party while deciding whether the property is a self-acquired or joint family one. In a joint family property, if the property stands in the name of the co-parcener, the onus is on him to prove that there exists a joint family nucleus out of which the property has been purchased. Admittedly, in the case on hand, the properties, which are the subject matter of the present appeal stand in the name of the respondent/first defendant. The earlier sale of the joint family properties was effected seven years ago prior to the partition of the suit properties and there is no material to hold, as rightly held by the lower appellate Court, that the income derived from the sales effected are kept back for the subsequent purchase made in the name of the first respondent.

6.In such view of the matter, this Court does not find any perversity in the judgment and decree rendered by the Courts below. Accordingly, this Court finds no substantial question of law involved in the appeal, warranting any interference. The second appeal is therefore dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Principal District Judge,
Thiruvallur.

2.The Subordinate Judge,
Thiruvallur.

copy to

The Section Officer
VR Section
High Court Madras

+1 cc to M/s.P.B.Ramanujam Advocate sr 4841

+1 cc to M/s.M.R.Khapali Advocate sr 4667

S.A.No.142 of 2016

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