

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2018

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.218 of 2018

Vasanthi ...Appellant/Appellant / first defendant

Vs

1. Sornavalli ...Respondent/1st respondent/plaintiff

2. Thangam ...Respondent/2nd respondent/2nd defendant

Second Appeal filed under Section 100 C.P.C. against the decree and judgement dated 07.10.2017 made in A.S.No.7 of 2014 on the file of District Court at Nagapattinam confirming the Decree and Judgement dated 10.02.2014 made in O.S.No.64 of 2011 on the file of the Additional Sub Court at Mayiladuthurai.

For Petitioner : Mr.A.Swaminathan

For Respondent-1: Mr.S.Sounthar

J U D G M E N T

The first defendant, who has lost before both the Courts below in a suit for partition, has preferred the above second appeal. The plaintiff and the second defendant are the sisters-in-law of the first defendant. The plaintiff's father and mother had died before 1993. It is claimed by the plaintiff that the suit properties were purchased out of the self-acquired income of the father. Thereafter, the plaintiff, the second defendant and the first defendant's husband were enjoying the suit properties as legal heirs of the Govindasami Pillai. The first defendant's husband also died and the first defendant has been in possession of the suit properties. It is stated by the plaintiff that the first defendant was allowed to be in permissive occupation of the house and now she is refusing to give the legitimate share of the plaintiff. Hence the suit has been filed.

2. The suit was resisted by the appellant / first defendant stating that the same was not maintainable, as the suit was filed 18 years after the death of the father. It is contented by the first defendant that the properties were

purchased by her husband out of his physical exertion. After his death, she is continuing to live in the suit property. It is also contended that the first defendant had spent about Rs. 3,00,000/- and renovated the house and the lands are also in possession of the first defendant's father, as a lessee. Therefore, he prayed for dismissal of the suit.

3. Before the trial Court, on the side of the plaintiff, the plaintiff examined herself as PW-1 and marked Exs-A1 to A3. On the side of the defendants, the first defendant was examined herself as D.W.1 and no documents were marked.

4. The Courts below had decreed the suit by passing preliminary decree of 1/3 share of the plaintiff. Item Nos.1 to 3 of the suit properties were purchased by the father-Mr.Govindasamy under Ex.A3 dated 14.08.1979 from one Jagadeesa Iyer. The 4th item of the suit property is also said to have been purchased by the father of the plaintiff in the year 1981. However, there is no document produced in support of the same. Even the appellant/defendant is also not able to produce the document. Nevertheless, the first defendant/appellant has admitted that the properties were purchased in the year 1981 in the name of her father. Though it is claimed by the appellant that the fourth item of the suit properties was purchased by her husband out of his own income, but in the name of the father, there is no evidence adduced to prove the same. Even presuming that the suit properties were purchased out of the income earned by the first defendant's husband, if the properties were purchased in the name of the father, the presumption is that the properties are owned only by the father.

5. The lower appellate Court has found that the first defendant's husband was born in the year 1956 and the suit properties were purchased in the year 1979-1980. During the relevant period, the first defendant's husband should have been hardly 25 years old at that time when he had joined in a Private Company at Coimbatore for employment. Therefore, it is categorically found that in the absence of any evidence to prove that out of sufficient income, the first defendant's husband purchased the suit properties, the contention of the first defendant was rightly rejected. The plaintiff was living in the first item of the suit properties from the year 1982 till 2010 and the same was admitted by the first defendant. The plaintiff is continuing to live in the suit properties even after the death of her husband and father-in-law. There is absolutely no evidence to prove that the fourth item of the suit properties was purchased by the first defendant husband. Excepting the ipse dixit of the first defendant, there is no evidence to show that it is the separate property of the first defendant. In such circumstances, the Courts below have rightly held that the

plaintiff is also entitled to 1/3rd share from the self-acquired property of the father, in the absence of any contra evidence. There is no substantial question of law arising out of the said facts, and there is no necessity for interfering with judgment and decree of the Courts below.

6. It is argued by the learned counsel for the appellant in item No.1 of the suit properties, the kitchen portion was put up by the first defendant out of her own income, which is also admitted by the plaintiff. Hence, she prayed that atleast the said portion has to go to her. It is open to the parties to agitate this issue also in the final decree proceedings.

7. It is open to the parties to seek appropriate remedy at the time of allotment by metes and bounds in the final decree proceedings.

8. In the result, the Second Appeal is dismissed confirming the judgment and decree of the Courts below. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The District Court, Nagapattinam
2. The Additional Sub Court, Mayiladuthurai.
3. The Section Officer, V.R.Section, High Court, Madras (2 copies)

+1cc to Mr.S.SOUNTHAR, Advocate, S.R.No.22553

+1cc to Mr.A.SWAMINATHAN, Advocate, S.R.No. 22953

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PVS (CO)
TR(10/05/2018)

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