

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.2074 of 2000

Najunda Reddy ... Appellant/1st Defendant

Vs.

1.Mallamma ... 1st Respondent/Plaintiff

2.Ramasamy Reddy ... 2nd Respondents/2nd Defendant

Prayer:Second Appeal filed under Section 100 of C.P.C. against the judgment and decree in A.S.No.15 of 1999, dated 25.10.2000 on the file of Subordinate Judge, Hosur, in confirming the judgment and decree in O.S.No.322 of 1989 dated 26.02.1999 on the file of District Munsif Court, Hosur.

For Appellant : Mr.V.Ragavachari

For Respondents : R1 - Mr.SubbaReddy
R2-No appearance

J U D G M E N T

The plaintiff mother filed a suit against her sons for declaration and permanent injunction. The first defendant, who is the appellant before this court, filed the present second appeal. For the sake of convenience, the parties are referred as stated in the plaint.

2. The case of the Plaintiff is as follows:

The Plaintiffs mother purchased the property on 29.07.1968, for the sale consideration of Rs.4,000/- from one Anumandha Reddy. The said property was purchased from the father's money of the plaintiff. After purchase, the plaintiff paid kist to the Revenue Authorities. Accordingly, the Revenue Authorities assessed the patta and property tax in the name of the plaintiff. Before filing the present suit, there was a partition suit filed by the defendant and his father in O.S.No.45 of 1989 which are pending on the file of Krishnagiri, Sub Court. While settling the portion, the defendants are interfering with the peaceful possession and enjoyment of the plaintiff's property. Thereby, the plaintiff filed a suit before

the lower court. Aggrieved by the interference of her sons, the plaintiff, filed a suit for declaration and permanent injunction.

3. Since, the second and third defendants were not appeared before the lower court, they were set exparte. However, the lower court passed the decree in favour of the first defendant. Aggrieved over the same, the first defendant filed a appeal before the lower appellate court. The lower appellate court also confirmed the judgment and decree passed by the lower court as against the concurrent findings of both the courts. Hence, the present second appeal is filed.

4. The case of the Defendants are as follows:-

The plaintiff purchased the property out of the nucleus fund of the joint family property of the defendants. The third defendant parted with joint family money in order to purchase the property from Anumantha Reddy. The partition suit has nothing to do with this property and the partition suit is pending in between the defendants. It does not mean that the property of the plaintiff is a self acquired property since, the property tax and other Revenue Receipts are assessed in the name of the plaintiff, it does not mean that the plaintiff is enjoying the property. In order to protect the welfare of the Joint family and out of the Joint family fund, all the property taxes were paid by the third defendant kartha of the family in the name of plaintiff and all the taxes were paid from the fund of the Joint family property.

5. The substantial questions of law framed at the time of admission of the second appeal is as follows:

"1. Whether the property purchased in the name of the female member cannot be treated as a joint family property.

2. Whether the Courts below ought not have applied the Doctrine of blending and held that the suit property is joint family property?"

6. The learned counsel appearing for the appellant/1st defendant would submit that the said property was purchased by his father/3rd defendant in the name of plaintiff's mother on 29.07.1968 out of the fund of the Joint family property. Thereafter, the property is blended with the joint family property and the joint family members enjoyed the property. However, he fairly conceded that there was a partition suit in between the defendants and he has also fairly conceded that the disputed property is not included in the partition suit. Merely,

because of the disputed property not included in the partition, it does not mean that the respondent/plaintiff have absolute right over the property. For the purpose of convenience, the property is not included in the partition suit. However, there are oral evidence adduced by the appellant/defendant before the lower court in order to prove that the properties are purchased from the fund of the joint family property.

7. However, the lower court without considering the evidence as well as the documents, erroneously decreed the suit in favour of the mother of the defendant/appellant. The lower appellate court also confirmed the lower court order, against which, the present second appeal is filed.

8. Per contra, the learned counsel appearing for the plaintiff relied upon the Ex.A1. On perusal of Ex.A1, it is made clear that the plaintiff purchased the property, after paying Rs.4,000/- to the vendor namely Anumandha Reddy and his sons. From the date of purchase of property, the petitioner independently enjoying the property and paying the taxes to the Revenue Authorities and obtained the patta in her name.

9. Accordingly, he prayed for dismissal of the second appeal. He further submitted that it is purely a question of fact and there is no question of Law involved in this case. So, in the absence of question of Law, the factual findings cannot be interfered by exercising power under Section 100 of C.P.C, and this court would not interfere with the concurrent findings rendered by both the courts.

10. On perusal of the judgment of the lower court as well as the lower appellate court, the defendants had already filed a partition suit in O.S.No.449 of 1996 to include the family property. However, the plaintiff properties are not included in the above said suit. The specific case of the defendants is that the scheduled property was purchased in the name of plaintiff is only a benami transaction. The scheduled property was purchased by kartha of the family i.e., Badra Reddy and the said scheduled property was purchased through the plaintiff's father and he categorically denied, that the said properties are not purchased through nucleus fund of the joint family.

11. In the present case the defendants did not establish in cogent nature of evidence, that the property was purchased from the income of Joint family property. In the absence of such evidence, the court presumes that the property was purchased by the individuals with their own means. In the present case, admittedly the father and other sons remained absent and they were set exparte.

12. However, the present appellant/1st defendant contested the case as against his mother. In the absence of positive evidence to prove that the properties are purchased out of Joint

family fund, this court does not find any merits. Accordingly, substantial question of Law answered against the appellant/defendant.

13. In view of the disputed question of facts, it cannot be re-appreciated by this appeal. So, this court did not find any error to interfere with the order of both the courts and also the concurrent findings cannot be interfered. Accordingly, second appeal is dismissed. No costs.

Sd/-
Assistant Registrar (CS VI)

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Sub Assistant Registrar

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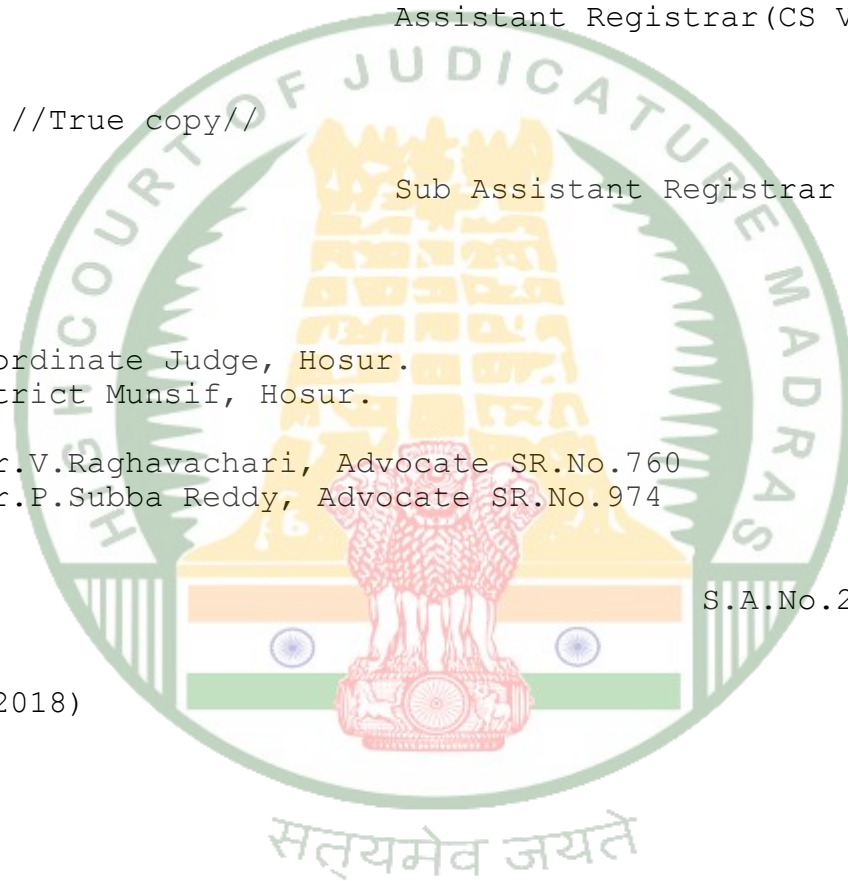
- 1.The Subordinate Judge, Hosur.
- 2.The District Munsif, Hosur.

+1cc to Mr.V.Raghavachari, Advocate SR.No.760

+1cc to Mr.P.Subba Reddy, Advocate SR.No.974

S.A.No.2074 of 2000

GP (CO)
GN (28/02/2018)



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