

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.584 of 2018

1.Rajendran
2.Chandrasekaran
3.Anandayee
4.Lakshmi
5.Chinnathayee

... Appellants/Defendants 1,2, 5 to 7

Vs

1.R.Andiappan
2.Palani
3.Annadurai

... Respondents/Plaintiff&Defendants 3&4

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree passed in A.S.No.27 of 2015 on the file of the learned II Additional District Judge, Salem, dated 16.08.2017 confirming the Judgment and Decree made in O.S.No.295 of 2011 on the file of the I Additional subordinate Judge, Salem, dated 28.03.2014.

For Appellants : Mr.S.Balasubramanian

O R D E R

The defendants 1,2,5 to 7 are the appellants.

2.The Second Appeal is filed challenging the Judgment and Decree of the learned II Additional District Judge, Salem in A.S.No.27 of 2015 confirming the Judgment and Decree in O.S.No.295 of 2011 of the learned I Additional Subordinate Judge, Salem. The suit in question is a partition suit filed by the 1st respondent herein.

The facts in brief are as follows and parties are referred to in the same array as in the suit:

3.The suit property belonged to one Seerangan and his sons defendants 1 to 4 by virtue of a sale deed dated 29.09.1982. At the time of purchase the 3rd and 4th defendants were minor. After the death of the father the property was being jointly enjoyed

by defendants 1 to 4. On 14.01.2008 the 4th defendant sold his share of 10 cents to one Palanisamy who gifted the same to the plaintiff under a gift settlement deed dated 09.08.2010. The revenue records were also mutated jointly in the name of the plaintiff and defendants.

4.The defense was that the entire consideration for the purchase of the suit property was made by the 1st defendant and the father Seerangan and defendants 2 to 4 were only name lenders. Therefore, since the 4th defendant had no share any sale deed executed by him was not binding and valid.

5.The trial Court on a detailed consideration of the evidence came to the conclusion that the plaintiff had purchased from a co-owner his share of the suit property and was therefore entitled to the partition as prayed for. This Judgment and Decree has been challenged by defendants 1 to 3, 5 to 7 in A.S.No.27 of 2015 on the file of the II Additional district Court, Salem and the learned Judge confirmed the Judgment and Decree in O.S.No.295 of 2011. Challenging this concurrent Judgment and Decree the defendants 1,2, 5 to 7 are before this Court.

6.The above matter was posted today for admission. Heard, Mr.S.Balasubramanian, learned counsel for appellants. He would argue that the Courts below have failed to appreciate that the property has been purchased by the 1st Defendant from out of his funds and this fact has been admitted by the other defendants as they have adopted the written statement filed by the 1st defendant and once it is said that the other defendants are only name lenders the sale by the 4th defendant is not valid.

7.Heard the arguments. The defense appears to be a collusive one. The defendants have not let in any evidence whatsoever to prove that it was only the 1st defendant who had purchased the property it was therefore his absolute property. In the absence of this proof the defense fails. Both the Courts below have rightly decreed the suit.

The appellants/defendants 1, 2, 5 to 7 have not made out any Substantial Questions of law for admitting the Second Appeal. The Second Appeal is therefore dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The II Additional District Judge,
Salem.

2.The I Additional subordinate Judge,
Salem.

+1 cc to M/s.S.Balasubramanian, Advocate Sr.No.78925

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SAI (CO)
CSL/18.12.2018



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