



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved On:01.02.2018
Delivered On:27.03.2018

CORAM

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THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

S.A.(MD).No.1213 of 2008

M.Sivakumar

.. Appellant/2nd Appellant/2nd Defendant

Vs.

1.M.Kamaladevi .. Respondent/Respondent/Plaintiff

2.G.Madhanagopal (died) .. Respondent/1st Appellant/1st Defendant

(2nd respondent died and recorded vide USR.No.45/2013 dated 04.01.2013 and Appellant & 1st respondent are recorded as the legal heirs of the deceased 2nd respondent vide USR.No.315/2013, dated 07.02.2013)

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 31.01.2008, made in A.S.No.43 of 2007, on the file of the Principal District Judge, Madurai, confirming the judgment and decree, dated 18.01.2007, in O.S.No.18 of 2004, on the file of I Additional Sub Court, Madurai.

For Appellant : Mr.V.Sitharanjandass

For Respondent 1 : Mr.T.Antony Arulraj

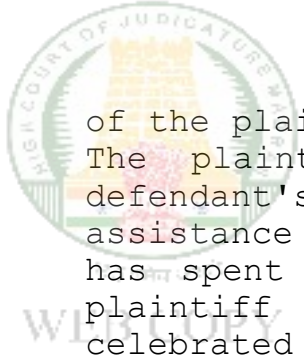
J U D G M E N T

The Second Appeal has been preferred against the judgment and decree, dated 31.01.2008, made in A.S.No.43 of 2007 on the file of the Principal District Judge, Madurai, confirming the judgment and decree, dated 18.01.2007, in O.S.No.18 of 2004 on the file of I Additional Sub Court, Madurai.

2.For the sake of convenience, both the parties will be referred to as they were before the trial court.

3.The suit in O.S.No.18/2004 was filed by the plaintiff seeking a decree for partition of 1/3 share in the movable and immovable suit schedule properties. The plaintiff herein stated that the suit properties belong to one Tmt.Late Renuka Devi, who is the plaintiff's mother and also the 1st defendant's wife and the 2nd defendant's mother and the property was given as Srithana by her father namely Tr.G.A.Naidu and some of the properties were obtained by way of the suit that has been preferred against her own brother Muthanandam. The plaintiff and defendants are the legal heirs of Renuka Devi and they are entitled for 1/3 share in the suit property.

3.(i) It is an averment made by the plaintiff that even at the time of her marriage she was not given srithana by the defendants and only with a cordial atmosphere and also good conduct



of the plaintiff's husband's family she was running a peaceful life. The plaintiff also stated that she spent money for the 2nd defendant's educational expenses. She also provided financial assistance for the house where the defendants are residing and she has spent about Rs.15,000/- to the first defendant. Further the plaintiff has stated that the marriage of the 2nd defendant was celebrated in a very grand manner by spending lavishly by the first defendant. The jewels which belongs to the plaintiff were also given in the custody of the 2nd defendant's wife. On the same day it was objected by the relatives. But, in spite of that the jewels were not given to the plaintiff. In the meantime, as the defendants joined together and tried to sell the house property, the plaintiff issued legal notice to the defendants and reply has been sent by the 1st defendant stating false details. Hence, the plaintiff has filed the suit claiming 1/3rd share in the suit schedule properties.

4. On the other hand, the first defendant has filed written statement by stating that the suit has been filed by the plaintiff suppressing the truth and making a false claim. The first defendant stated that the 1st item of the suit property is not available with the defendants and the same was sold away by Renuka Devi, the wife of 1st defendant and mother of the plaintiff and 2nd defendant. Regarding the 4th schedule property, the plaintiff is making vague allegations without any particulars and the said claim was denied by the defendants in their reply notice, dated 08.09.2003. The jewels which belonged to her mother were handed over to the plaintiff, as she is the only daughter. The 2nd and 3rd schedule property form a single house property and present door number is 50-A and the market value will be not less than Rs.17.00 lakhs and the property should have been under valued for the purpose of jurisdiction. He has also stated that the first item of the suit properties is not a vacant site, but a pucca building was constructed by the purchaser after purchasing the land from his wife Renuka Devi. Thus, for all the items of suit properties the defendant has given explanation.

4.(i) It is also the averment of the defendants that the plaintiff has filed the suit at the instigation of her husband and father-in-law. The 1st defendant arranged employment for the plaintiff in a college and also subsequently in M/s Kothari Chemicals, Madurai and he has also taken all efforts for the early marriage of the plaintiff by visiting several religious places and doing poojas. At the time of marriage, the first defendant gave Rs.25,000/- as dowry and gold stud, 25 soverigns of jewels, iron store well, silver articles and utensils as srithana and the marriage was celebrated in a very grand manner at the request of the in-laws of the plaintiff. The betrothal ceremony was also celebrated in the defendants' house and on that day, the dowry demanded by the in-laws for Rs.25,000/- was given by way of demand draft drawn in favour of Mr.D.Gopalsamy, father-in-law of the plaintiff. In total, ever since the marriage, the plaintiff was leading family life with her husband and she has been utilizing her income for her family and whenever she needed monitory help, the



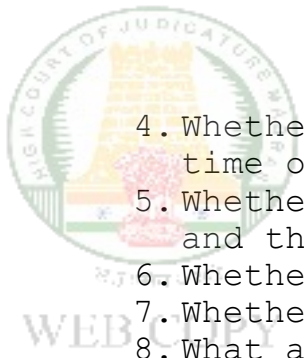
first defendant, as father of the plaintiff, obliged her demands.

4.(ii) After the demise of his wife, the first defendant expressed his view that he wanted to relieve himself of any interest and responsibility regarding the suit house and that the 2nd defendant, being the only son, should become the owner of the suit house and take over the responsibilities including maintenance, payment of tax etc, for which, the plaintiff also expressed her concurrence. Hence, an arrangement among the three family members, namely the first defendant, plaintiff and the second defendant was reached and it was decided to implement it. As per the arrangement, since the house tax receipt stands in the name of Renuka Devi, the first defendant and the plaintiff jointly applied to the Madurai Corporation on 11.09.1996, for change of the name in the house tax register in the name of the 2nd defendant and that was so implemented. There was also a solemn affirmation by the plaintiff. Only in that way, the plaintiff had voluntarily and willingly accepted the family arrangement and the second defendant became the full owner of the suit property and is liable to make payment of house tax, other taxes and carry out repairs and relieved the plaintiff and 1st defendant from the burden relating to the building. Even in the lawyer's notice, dated 01.07.2003, the plaintiff had admitted the family arrangement.

4.(iii) When the plaintiff was in the family way, "Valaikapu" ceremony was celebrated in the bride groom's place and first defendant had required the plaintiff to make all arrangements and paid for the same. The medical expenses of the plaintiff's delivery was also borne by the first defendant and further payment of Rs.11,649/- was also paid by him. When the second defendant was employed in USA during the period of September 2000 to December 2001, he sent money to the 1st defendant and the same was credited in the NRI account. The first defendant was utilising the same for carrying out repair works in the suit house and for maintaining the house and payment of taxes etc., The plaintiff knew all these facts. Further, no portion in door No.50A was let out for rent. On the whole, the first defendant denied the details that had been stated by the plaintiff as false and baseless. Further, the plaintiff is also estopped to file the suit claiming share in the suit house situated at door No.50A and the 1st item of suit property was sold by their mother Renuka Devi and the same is not available for partition. Hence, the defendants prayed for dismissal of the suit.

5. On the above said pleadings, the Trial Court has framed the following issues.

1. Whether the plaintiff is entitled to 1/3 share in the suit property?
2. Whether the suit items 2 & 3 were acquired by G.A.Naidu for the benefit of the plaintiff's mother?
3. Whether the marriage expenses of the plaintiff were met by her husband family?



4. Whether the plaintiff was not given Sreedhanam by D1 at the time of her marriage?
5. Whether there is any family arrangement between the plaintiff and the defendants?
6. Whether this Court has jurisdiction to entertain this suit?
7. Whether the Court fees paid is correct?
8. What are other reliefs the plaintiff is entitled for?

6. In order to prove the case of the plaintiff, on the side of the plaintiff, she herself was examined as PW.1 and Exs.A1 to A23 have been marked. On the side of the defendants, the 1st and 2nd defendants themselves were examined as DWs.1 and 2 and Exs.B1 to B37 have been marked. An Advocate commissioner was also appointed and examined as CW.1 and his report and plan were marked as Exs.C1 & C2.

7. After the trial and on perusal of documents available on record, the trial Court partly decreed the suit with regard to the 2nd and 3rd item of the suit schedule properties and dismissed the suit with regard to the 1st and 4th items. Aggrieved over the same, the defendants have filed the appeal suit in A.S.No.43 of 2007 before the Principal District Court, Madurai. After hearing the appeal, the first Appellate Court has confirmed the decree and judgment passed by the trial Court by dismissing first appeal. Against which the 2nd defendant has come forward with this Second Appeal.

8. Though the Second Appeal was filed in the year 2008, it was not admitted by this Court. The Appellant who filed this Second Appeal in his Memorandum of Grounds has raised the following substantial questions of law for consideration:-

1. Is not the duty of the plaintiff to prove that she is entitled to claim a share in the plaint schedule properties especially when the defendants disputed the same?
2. Whether the question of joint possession in respect of the suit properties is existing, once a letter or consent given for change of Assessment of Taxes and transfers were effected long time back?
3. Whether the Court fee paid under Section 37(2) of the Court Fees Act is correct once there is no evidence of possession or joint possession of the properties alleged for partition?
4. Is not the duty of the person who has alleged the fraud about the existence of family arrangement against the defendants?
5. Is not the initial burden of a person who has filed a particular document discharged, once the signature in that document is admitted by the opponent and it is for him to disprove the same?
6. Is not the duty of the plaintiff to prove her share in the suit properties when the said claim was made on a specific averment that she is entitled from a particular person and



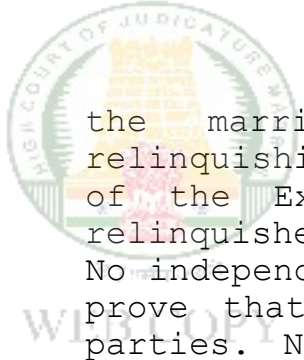
that person was having sufficient funds to procure the same?

9. The plaintiff has filed the suit for partition claiming 1/3rd share in the suit schedule properties. From the evidence of both parties the 2nd and 3rd item of suit properties which were purchased in the name of the plaintiff's mother are considered as the properties of the mother of the plaintiff. Hence, the defendants cannot say that the plaintiff is not entitled to claim a share in the laid properties.

10. The argument of the plaintiff is that the 2nd and 3rd item of suit schedule properties, which were purchased in the name of the mother as per Ex.A2 and A3, are the properties of the mother. But, the defendants have stated that the properties were purchased by the first defendant in the name of his wife. Further, in view of the abolition of Benami Act, the argument of the plaintiff cannot be considered that the suit 2nd and 3rd item belonged to the plaintiff's mother. Since, the first defendant could not prove before the trial Court that the property was purchased in the name of his wife Renuka Devi and that the property stands in the name of Renuka Devi, it has to be considered as the property of Renuka Devi. Further, the 1st defendant has not placed any evidence that he had sufficient fund for purchasing the said property in the name of Renuka Devi. His oral evidence is that he has obtained loan from third party to the tune of Rs.40,000/- by executing Ex.B27 pronote and also disposing of his mother's jewels. But, in the written statement, the first defendant has stated that he has obtained loan from the NDCC Bank, which is contradictory to the evidence that he placed before the Court.

11. Further, it is also seen that Renuka Devi already filed a suit against her brother for partition and in that suit, a settlement was arrived at and her brother given her share and out of the said share amount, the 2nd and 3rd item of suit properties were purchased by Renuka Devi. Further, it is also to be seen that if the properties were purchased in the name of Renuka Devi as Benami, then there would not have been a family arrangement and she would not have purchased 2nd and 3rd item of suit properties out of her share amount. From the evidence of both sides and also the documents, it is clearly proved that the 2nd and 3rd item of suit properties were purchased by Renuka Devi and they belong to her.

12. It is the contention of the defendants that the plaintiff has stated that she has no objection to transfer the house tax assessment for the houst at Door No.50-A, in the name of the second defendant. But, from the said document nothing could be observed with regard to any family arrangement. There is no such mention about the factum of the family arrangement in the said document. Further, the defendants mentioned in the written statement that at the time of marriage the plaintiff has relinquished her right over the suit 2nd and 3rd schedule properties to the defendants for all



the marriage, expenses, but nothing mentioned about the relinquishing her right in the suit property. Hence, from perusal of the Ex.C1, it cannot be presumed that the plaintiff has relinquished her right in the suit 2nd and 3rd schedule properties. No independent witness was examined on the side of the defendants to prove that there was a family arrangement arrived at among the parties. No such document was also filed before the trial Court regarding the expenses incurred by the defendants for the marriage of the plaintiff and for the performance of the valaikappu ceremony.

13.The 2nd defendant/ brother has deposed before the trial Court. But, the argument by the plaintiff that only for using the income of plaintiff she was not given early marriage at the right time is not a very good argument for the sake of claiming partition in the suit property. Since the first defendant has clearly deposed that as a responsible and affectionate father he did all the religious performance for the plaintiff's marriage. The argument of the plaintiff that for the purpose of retaining the salary of the plaintiff she was not given early marriage is a baseless argument since no parents will have that attitude.

14.At the same time, the defendants cannot disown the responsibility and liability of giving his daughter in marriage by providing necessary jewels and spending reasonable sum according to their capacity. Getting marriage for the plaintiff and spending money for the same cannot disown the liability of the defendants to give her share in the house property. These type of expenses incurred by the first defendant will not deny the right of the plaintiff's share in the suit property.

15.Among the four schedule properties the 1st schedule property was sold by the mother of the plaintiff Renuka Devi while she was alive and the same is also admitted by the plaintiff. Hence, the plaintiff cannot claim any share in the 1st schedule of property which was already sold by the said Renuka Devi during her life time.

16.Hence, from the evidence of both sides and the arguments, the plaintiff is entitled to share in the 2nd and 3rd schedule property and she is also a legal heir of Renuka Devi, after her demise. Regarding the 4th item of the property, there is no evidence or any related document that there was nearly 60 sovereigns. The plaintiff has not made any clear evidence or documents before the trial court that these properties were available at the time of life of the plaintiff's mother and also the same was in the custody of the 2nd defendant. Fourth item of the property is the jewels which would be in the possession of the plaintiff's mother. Hence, in the absence of any such evidence and documents, she cannot claim any right over the property which was not clearly proved by the plaintiff. From analysing the oral evidence and also the documents filed by both parties before the trial Court, the 3rd and 4th item of the properties were purchased by



the 1st defendant in the name of Renuka Devi is not clearly proved and that the 2nd and 3rd item of properties which belonged to the plaintiff's mother, in which, the plaintiff is also entitled to 1/3rd share.

17.The learned counsel for the appellant / second defendant would mainly argue that the first respondent / plaintiff was not in possession of the property and therefore, the Court fee paid under Section 37(2) of Court Fees Act is illegal. He would further submit that the Courts below had not considered the documents, which were marked as Ex.B26 and Ex.B27 to prove that the Second respondent/ first defendant had purchased the properties in his wife's name.

18.The learned counsel for the first respondent/plaintiff would submit that the Courts below have rightly dealt with the issue and there is no error in the judgments of the Courts below and he prayed for dismissal of this appeal.

19.Heard both sides.

20.On hearing both sides and on perusing materials, it is seen that the Courts below have perused the documents and also the evidences let in by both parties. The Ex.C1 is only hearsay evidence that she was given in marriage with all expenses. The name of the second defendant has to be assessed in the house tax which stands in the name of Renuka Devi and she is relinquishing her right in the suit property is not sufficient and there is also no sufficient oral or documentary evidence for the claim of the defendant that there was a family arrangement. If there is a family arrangement, then the plaintiff should have allotted something in the family arrangement. But, that has not been proved by the defendant. Hence, the decision arrived at the trial Court, which was also analysed and decided by the 1st Appellate Court regarding the nature of the property and also the right of the plaintiff confirming the decree and judgment of the trial Court does not require any interference. The substantial questions of law raised in this Second Appeal are answered against the appellant.

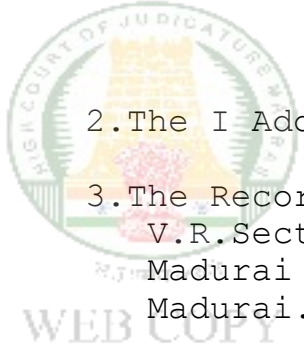
21.In the result, this Second Appeal is dismissed and the judgment and decree, dated 31.01.2008, made in A.S.No.43 of 2007 on the file of the Principal District Court, Madurai, is confirmed. No costs.

Sd/
Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To



2.The I Additional Subordinate Judge, Madurai.

3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. **(2 Copies)**

+1cc to Mr.T.Antony Arul raj, Advocate, SR.No. 58785

+1cc to Mr.V.Sitharanjandas, Advocate, SR.No. 58494

S.A (MD) .No.1213 of 2008
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