

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2019

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.909 of 1999
and
C.M.P.Nos.8597 and 9168 of 1999

1.Thirumalaisamy
2.Arumugham
3.Ramalingam
4.Ammasai
(cause title of the appellants accepted
vide order dated 17.06.99 in C.M.P.No.
8597 of 1999) ...Appellants/Defendants 3 to 6

...Versus...

1.Ponnusamy ...1st Respondent/Plaintiff
2.Venkatachalam (Died) ...2nd Respondent/2nd Defendant
3.Muthayee
4.Eswari
5.Abimannan ...Respondents 3 to 5/LRS of 2nd Defendant
(RR3 to R5 are brought on record as
legal representatives of the deceased
2nd respondent vide order of Court dated
27.10.2006 made in C.M.P.Nos.
13424 to 13426 of 1999)

PRAYER:This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.2 of 1998 dated 30.06.1998 on the file of the Sub-Court, Bhavani confirming the judgment and decree made in O.S.No.704 of 1990 dated 11.04.1997 on the file of the Principal District Munsif, Bhavani.

For Appellants :: Mr.N.Manokaran

For R1 :: Mr.S.Kaithamalai Kumaran

For R2 :: Died

For R3 to R5 :: No appearance

J U D G M E N T

The Second Appeal is in the stage of 'Notice of Motion'.

2. Today, this matter is posted under the caption 'for final hearing'.

3. Heard the learned counsel for the appellants.

4. The first respondent herein is the son of Kasiappa Gounder, who is the first defendant in Original Suit. The first defendant died. The first respondent has filed a suit in O.S.No.704 of 1990 on the file of the learned Principal District Munsif Court, Bhavani against his father and other brothers for partition of the suit property, claiming 1/7th share.

5. The plaint proceeds on the basis that after selling the joint family property, the present suit property was purchased in the name of the first defendant, namely the father, as the Kartha of the family and now the other defendants are preventing him from enjoying the property and hence, he has filed a suit.

6. In the written statement, the nature character of the property as joint family property was disputed and it was claimed by the defendants that it is a self-acquired property of Kasiappa Gounder (since died) and also claimed that there was a settlement in favour of defendants No.3 and 4.

7. Before the Trial Court, the plaintiff has examined himself as P.W.1 and Exs.P1 to P15 are marked and the first defendant and fifth defendant were examined as D.W.1 and D.W.2 and marked Exs. D1 to D17.

8. The Trial Court, on consideration of the documentary evidence, Exhibits A1 to A4, has held that the property is an ancestral property and passed the preliminary decree for partition declaring the right of the plaintiff to 1/7th share. Challenging the same, defendants 1,3 to 6 preferred A.S.No.2 of 1998 and the same was dismissed and hence, the Second Appeal.

9. It appears that pending the Second Appeal, the first defendant/first appellant-father died. Since all the sons are already on record, they have been brought on record as appellants 1 to 4. The second respondent also died and his legal heirs have been brought on record as respondents 3 to 5.

10. After hearing the learned counsel for the appellants as well as the respondents and after going through the documentary evidence, it is seen that in Exhibit A1-mortgage deed, there is a specific recital describing the property as a joint family property having obtained from his father namely ancestral property and as per Exhibit A2, the first defendant-Kasiappa Gounder has sold the property and thereafter, has

purchased another property in his name.

11. It remains to be stated that the first defendant-Kasiappa Gounder in the cross-examination has admitted that they are all living in the joint family property and enjoying the suit property as a joint family property and the first defendant and his heirs purchased the property in Vellitiruppur village after selling the joint family property which they were enjoying for 25 years. They purchased another property within 20 days of the sale of the ancestral property. They purchased suit sale property under Exhibit A3 and based upon the sale proceeds, they have purchased his property and thereafter, in order to develop the property, they mortgaged the property in Bhavani Co-operative Land Development Bank and all the defendants have jointly signed as per Exhibit D13-mortgage deed.

12. Based upon the admission of D.W.1 in the cross-examination to the effect that the nature and character of the property being ancestral property and the property now standing in the name of the first defendant/Kasiappa Gounder is purchased from and out of the sale proceeds of the earlier property viz joint family property both the Courts below have rightly come to the conclusion that the suit property is a joint family property and as such, the plaintiff, being the one of the son of the first defendant, is entitled to 1/7th share. The said decision of the Courts below is well merited and well considered and does not warrant any interference by this Court and there is no substantial question of law involved in the Second Appeal.

13 . In the result, this Second Appeal is dismissed and the judgment and decree of the first appellate Court and the trial Court are confirmed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To

1.The Sub-Court, Bhavani

2.The Principal District Munsif's Court, Bhavani

+1cc to Mr.N.Manokaran, Advocate SR.No.60354

S.A.No.909 of 1999 and
C.M.P.Nos.8597 and 9168 of 1999

TM(CO)

GMV (19/11/2019)

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