

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.04.2019

PRONOUNCED ON : 27.04.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.568 of 2007

Parvathi

...Appellant/Respondent/
Plaintiff

Vs.

1.Muthusamy

2.Muthusamy Moopar

...Respondents /Appellants/
Defendants

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 04.07.2006 made in A.S.No.13 of 2006 on the file of the Principal District Judge, Salem, modifying the judgment and decree dated 26.07.2005 made in O.S.No.5 of 2003 on the file of the Subordinate Judge, Attur.

For Appellant : M/s.K.Ponmani
for M/s.V.Rajesh

For RR2 : Mr.S.Kamadevan

For RR1 : No appearance
Set exparte
vide order dated 02.04.2019

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 04.07.2006 passed in A.S.No.13 of 2006 on the file of the Principal District Court, Salem, modifying the judgment and decree dated 26.07.2005 passed in O.S.No.5 of 2003 on the file of the Subordinate Court, Attur.

2. The second appeal has been admitted on the following substantial question of law.

Whether the findings of the lower appellate Court that the alienation under Ex.B1 is for family necessity to discharge the family debt is erroneous since one of the joint family members had been driven out of the house and did not benefit out of the debt so incurred.

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. For the sake of convenience, the parties are referred to as per the rankings in the trial court.

5. Suffice to state that the suit has been laid by the plaintiff for partition and permanent injunction.

6. The first defendant is the father of the plaintiff. Claiming that the suit properties are the ancestral joint family properties of the first defendant and his daughter, the plaintiff, accordingly the plaintiff has laid the suit seeking half share in the suit properties. The second defendant has been impleaded in the suit on the footing that despite knowing the nature of the suit properties, he had purchased the same, with a view to defeat the lawful share to which the plaintiff is entitled to the same and accordingly contending that the acquisition of the suit property on the part of the second defendant from the first defendant not having been validly effected and the same is not binding upon the plaintiff and also putting forth that the second defendant is not the bonafide purchaser, accordingly sought for the reliefs as claimed in the suit against the second defendant.

7. The defendants have not disputed the character of the suit properties as such. It is found that the suit properties are the joint family ancestral properties of the first defendant and accordingly the plaintiff as the daughter of the first defendant is also entitled to obtain her due share in the same. In fact, the first defendant in the written statement had averred that if the plaintiff had approached him for partition by way of Panchayath, he would have given her due share in the properties as well as the debts which are required to be discharged by her with reference to her share in the suit properties.

8. It is found that certain properties involved in the suit had come to be alienated by the first defendant in favour of the second defendant by way of a sale deed dated 09.01.2003 marked as Ex.B1. The suit has come to be laid by the plaintiff on 08.01.2003, ie., one day prior to Ex.B1 sale deed. Summons in the suit was issued to the defendants for the hearing on 07.02.2003. Be that as it may, considering the materials placed on record, it is found that the first defendant was highly indebted and the same could be gathered from the award passed against him dated 12.10.2002 marked as Ex.B2 and accordingly it

is found that with a view to discharge the said debt as well as the other debts incurred by him for the upkeep of the family and considering the documents projected as Exs.B3 to B6 being the receipts issued in the name of the first defendant by the Society concerned and others for the discharge of the debts, in all, as rightly determined by the first appellate court, it is found that the first defendant's family had been burdened with various institutional debts and accordingly to clear the said debts, the first defendant had been necessitated to alienate certain joint family properties and accordingly it is found that he had alienated certain properties in favour of the second defendant by way of Ex.B1 sale deed and in turn, it is also noted that the second defendant had discharged the debts of the first defendant as could be gathered from the materials placed on record. In this connection, the witness examined on behalf of the defendants would depose about the various debts incurred by the first defendant from the banks and accordingly it is found that only to discharge the various debts, the first defendant had been necessitated to alienate certain properties belonging to his family to the second defendant. As rightly determined by the first appellate court based on the evidence adduced by the defendants in toto, it is found that if the properties not been sold by the first defendant to the second defendant and if the debts incurred by the first defendant not been discharged by the second defendant, it is seen that the properties belonging to the family of the first defendant would have been brought for sale and accordingly only to avoid the same, it is noted, as determined by the first appellate court, the first defendant had alienated the joint family properties to the second defendant and accordingly the debts incurred by him had been discharged.

9. In the light of the abovesaid factual matrix, when the alienation made by the first defendant is found to be made only for the interest of the family and not for any unlawful activities or for the personal needs of the first defendant and furthermore, when the debts abovementioned incurred by the first defendant are not shown to be tainted with any legality, on the other hand, when the debts are found to be incurred for the benefit of the family and they are also found to be institutional debts, in such view of the matter, only with a view to safeguard the joint family properties from being brought to sale in entirety, the first defendant had been necessitated to alienate certain joint family properties in favour of the second defendant and the sale proceeds have also been utilised for the discharge of the debts, in all, it is found that the plaintiff being a co-sharer is also bound to discharge the debts of the family and accordingly the alienation made by the first defendant in favour of the second defendant is found to be binding upon the plaintiff as determined by the first appellate

court and accordingly the second defendant had also purchased the properties from the second defendant bonafidely without notice or without any intention to defeat the share of the plaintiff in the properties acquired by him. In such view of the matter, the first appellate court is right in holding that the sale deed executed by the first defendant in favour of the second defendant marked as Ex.B1 is binding upon the plaintiff and accordingly right in determining that the plaintiff is not entitled to seek the partition in respect of the properties covered under Ex.B1 sale deed and would only be entitled to claim her share in the remaining properties available with the family and on that score, it is found that the first appellate court, has rightly modified the judgment and decree of the trial court by determining that the plaintiff is entitled to her share in the properties detailed in the plaint excluding the properties covered under Ex.B1 sale deed.

10. In the light of the abovesaid factual matrix, there is no warrant to interfere with the abovesaid determination of the first appellate court, and in such view of the matter, when the sale deed Ex.B1 had been made only for family necessity to discharge the debts incurred by the first defendant, which is also found to be incurred by the first defendant only for the benefit of the family and the sale proceeds are also found to be utilised only to discharge the institutional debts, in all, the substantial question of law formulated in the second appeal is accordingly answered against the plaintiff and in favour of the defendants.

11. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

mfa
To

1. The Principal District Judge,
Principal District Court,
Salem,

2. The Subordinate Judge,
Subordinate Court,
Attur.

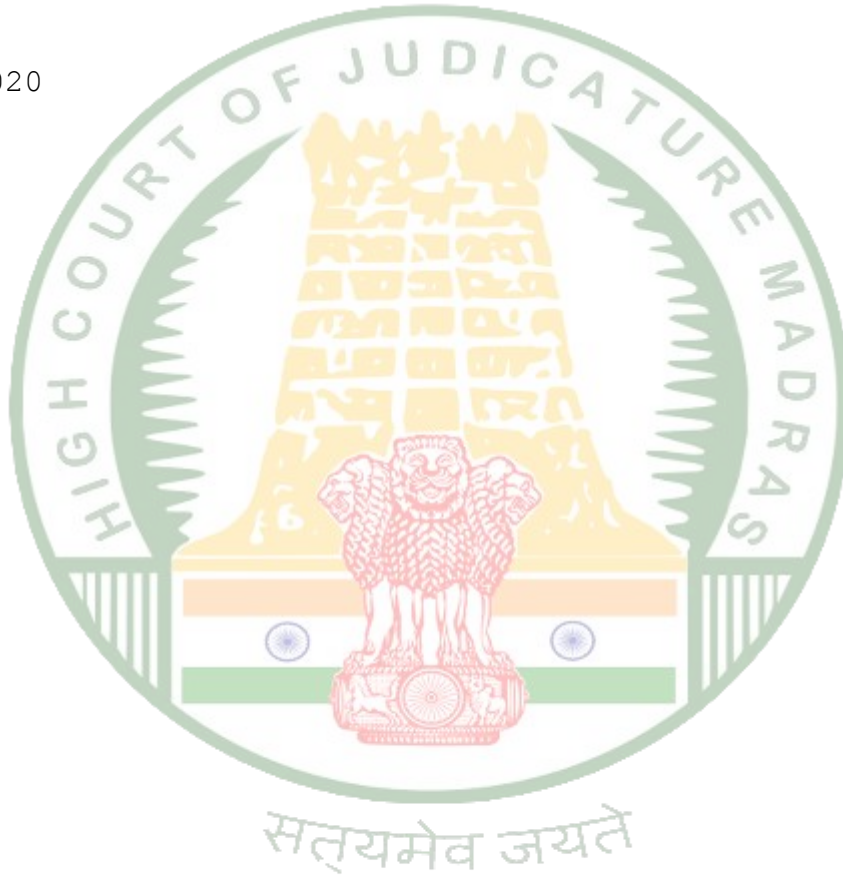
Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

+1 cc to M/s.V.Rajesh Advocate sr41837

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