



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

S.A. 345 of 2019

D.Ilango

..Appellant/Appellant/Plaintif

Vs

1. Minor Valayapathi
2. Minor Mahendran
3. Minor Pavadiroyan
1 to 3 sons of Dayalaswami,
Minors 1 to 3 are represented
by their mother and natural guardian
Jayakodi.

4. Jayakodi
5. Dayalaswami
6. Narayanasamy Padayachi
7. Chinnadurai
8. Kadirvelu
9. Venugopal

..Respondents/Respondents/Defendants

Prayer: The Second Appeal is filed under Section 100 of CPC, against the Judgment and decree dated 25.11.1986 and made in A.S. No.35/1986 on the file of the Court of the Principal Subordinate Judge, Cuddalore, setting aside and modifying the decree and judgment dated 09.01.1986 and made in O.S.No.337/1983 on the file of the Court of District Munsif, Panruti.

For Appellants : Mr.C.R.Krishnamoorthy

JUDGEMENT

The plaintiff is the appellant in the present Second Appeal. He has filed a suit for partition seeking 1/5th share in the suit schedule property, in O.S.No. 337 of 1983 on the file of District Munsif, Panruti, and the Trial Court dismissed the suit. Against which, the plaintiff has filed an appeal in A.S. No. 35 of 1986 on the file of Principal Subordinate Judge, Cuddalore, and the lower Appellate Court has partly allowed the appeal, thereby giving 1/5th share in respect of item Nos.1 to 5, 8 and 12 of the suit schedule property. Now, aggrieved with the judgment and decree passed by the lower Appellate Court, the plaintiff has filed the present Second Appeal.



2. The case of the plaintiff is that, the suit schedule property is a joint family property consisting defendants 1 to 5. The 5th defendant is father of plaintiff, and the 4th defendant is the mother of the plaintiff. The Defendants 1 to 3 are his brothers. There are 13 items in the suit schedule property. The 6th defendant has obtained decree against the 5th defendant, and subsequently, in the execution proceedings, the 5th defendant sold item Nos.1, 6,9, 11 and 13 in favour of 7th and 8th defendants. Contending that the loan obtained by the 5th defendant is not binding upon the plaintiff, he has filed the suit seeking for partition claiming 1/5th share in the entire suit schedule property.

3. The Trial Court on considering the entire pleadings and evidences on record, dismissed the suit holding that both the plaintiff, and the 5th defendant living together, and the loan was obtained for the benefit of joint family, and hence, it is also binding on the plaintiff. Hence, he cannot dispute the sale made by the 5th defendant. Aggrieved over the same, the plaintiff has filed an appeal in A.S.No. 35 of 1986 on the file of Principal Subordinate Judge, Cuddalore, and the lower Appellate Court has concurred with the findings of the Trial Court in respect of item Nos.1, 6, 9, 11 and 13. However, the lower Appellate Court has held that in respect of remaining property, the plaintiff is entitled for 1/5th share in the suit schedule property and decreed the suit for the remaining property. Being aggrieved with the judgment and decree, the present Second Appeal has been filed.

4. I have considered the submissions made by the learned counsel appearing for the appellant/plaintiff and perused the materials available on record carefully.

5. The claim of the plaintiff is that, the loan obtained by the 5th defendant not for the benefit of joint family, and it is not binding upon him. Subsequently, the sale of item Nos.1,6,9,11 and 13 of the Suit schedule property is also not binding on the plaintiff. However, both the courts below have held that the loan has been obtained for the benefit the joint family, and as the plaintiff and the defendants are living jointly in a same house, it is not open to him to claim that the loan is not binding upon him. Apart from that, the 5th defendant has executed a sale deed only to satisfy the decree for recovery of the loan. However, the lower appellate court granted decree for the remaining properties. I have considered the findings of both the courts below, and I do not find any irregularity or



perversity in the judgment and decree passed by both the courts below, and I do not find any substantial question of law arises for consideration in the present Second Appeal. Accordingly, the present Second Appeal stands dismissed. No costs.

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Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

- 1) The Principal Subordinate Judge,
Cuddalore.
- 2) The District Munsif,
Panruti.

copy to: The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.C.R.Krishnamoorthy, Advocate, S.R.No.20695

S.A. 345 of 2019

SSV(CO)
SSM(20/09/2019) .
SSM(30/09/2019) .