

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.04.2019

Delivered on: 14.06.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.191 of 2013
and
M.P.Nos.1 and 2 of 2013

1.Neelakandan

2.Latha ... Appellants/Defendant 5 & 6

Vs.

1.E.Balakrishnan1st Respondent/Plaintiff

2.E.Kuppammal (Deceased)

3.Vedavalli

4.Lakshmi ...Respondents 2 to 4/ Defendant 2 to 4

(R2 died memo dated 14.03.2019 is recorded. Appellants 1 and 2 and 3 and 4 are recorded as LR's of the deceased R2 Viz., E.Kuppammal vide order of Court dated 14.03.2019 made in S.A.No.191/2013)

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 03.11.2009 made in A.S.No.112 of 2006 on the file of the Additional District Judge, (Fast Track Court No.II) Kancheepuram confirmed the judgment and decree dated 28.06.2005 made in O.S.No.343 of 1994 on the file of the Sub-Court, Kancheepuram.

For Appellants : Mr.R.Subramanian
for M/s.Gupta and Ravi

For Respondents: Mr.Kanchi G.V.Mathiazhagan for R1
: R3 and R4 - set exparte

JUDGMENT

This Second Appeal has been filed by the defendants 5 and 6 against the judgment and decree passed by the Additional District Judge, (Fast Track Court No.II), Kancheepuram in

A.S.No.112 of 2006 dated 03.11.2009 confirming the judgment and decree passed by the Sub-Judge, Kancheepuram in O.S.No.343 of 1994 dated 28.06.2005.

2. The first respondent herein had filed a suit in O.S.No.343 of 1994 on the file of the Sub-Judge, Kancheepuram for specific performance of the sale agreement dated 10.08.1994 directing the first defendant to execute a sale deed in respect of the suit property after receiving the balance sale consideration of Rs.2,40,000/- and deliver vacant possession of the suit property to the plaintiff and in the alternative for recovery of Rs.4,00,000/- as damages. The learned Sub-Judge, Kancheepuram by the judgment dated 28.06.2005 had decreed the suit for specific performance directing the defendants to receive the balance sale consideration of Rs.2,40,000/- and execute the sale deed in favour of the plaintiff within three months and also directed the defendants to pay the cost of the suit to the plaintiff. Aggrieved by the same, the defendants 5 and 6 had filed an appeal in A.S.No.112 of 2006 on the file of the Additional District Judge, (Fast Track Court No.II), Kancheepuram. The learned Additional District Judge, by the judgment dated 03.11.2009 had dismissed the said appeal confirming the judgment and decree passed by the trial Court. Feeling aggrieved, the defendants 5 and 6 have filed the present Second Appeal.

3. For the sake of convenience, the parties are referred to as described before the trial Court.

4. The averments made in the amended plaint are, in brief, as follows:-

The suit property belonged to the first defendant. The first defendant was employed in Kancheepuram Municipality and he was earning. He was also doing Real Estate business. With these funds, the first defendant had purchased the suit property under two separate sale deeds dated 16.11.1987 and 17.12.1987. Thus, the suit property is a self acquired property of the first defendant. The first defendant executed a sale agreement on 10.08.1994 in favour of the plaintiff, agreeing to sell the suit property for Rs.4,00,000/- and received an advance of Rs.1,60,000/- on that date. A period of three months time was fixed for the performance of the contract. The plaintiff has always been ready and willing to perform his part of the contract. Hence, the plaintiff requested the first defendant to complete the contract, but he was evading and went to North India. Further, he instigated his son and daughter to issue a

notice to the plaintiff on 07.09.1994 claiming a partition and also questioning the sale agreement, for which the plaintiff has sent a suitable reply. Further, the plaintiff has issued a separate notice to the first defendant calling upon him to complete the contract and execute the sale deed, but the first defendant evaded to receive the notice. In view of the conduct of the first defendant, the plaintiff was constrained to file the above suit for specific performance.

5. During pendency of the suit, the first defendant died and hence, his legal representatives have been impleaded as defendants 2 to 6.

6. The averments made in the written statement filed by the first defendant are in brief as follows:-

(a) The allegations that the suit property is the self acquired property of the first defendant is false. It is also false to say that the first defendant entered into a sale agreement with the plaintiff agreeing to sell the suit property. It is also false to say that the first defendant instigated his son and daughter to issue a notice claiming partition. The first defendant is living away from his son Neelakandan for the past 10 years and he has not been showing any interest in the family. The first defendant was hard pressed for money to pay maintenance to his wife, to pay other debts and to provide for the marriage expenses of his daughter. The first defendant's son was not willing and co-operating for the same. The plaintiff and the first defendant's son are friends. The plaintiff suggested for executing a sale agreement for the entire property for Rs.4,00,000/- though the market value was more than 6 lakhs and he represented that he would take care of the first defendant's son and would get necessary release deed from him separately. Hence, the first defendant executed the said sale agreement by making the time as essence of the contract.

(b) The plaintiff paid only Rs.1,60,000/- and promised to complete his arrangement with Neelakandan and complete the sale transaction within the time. But later on the plaintiff was not at all ready and willing to complete the transaction and in order to cause loss and get over the agreement he had instigated the first defendant's son to claim shares in the suit property and made the agreement impossible of performance. In spite of repeated demands made by the first defendant, the plaintiff has evaded and caused general and special damage and loss to the first defendant to the tune of Rs.1,00,000/-. The present suit in essence was filed only for return of the advance amount. The

plaintiff himself is guilty of breach of contract and he has caused loss and damage to the first defendant to the tune of Rs.1,00,000/- and hence, the plaintiff is not entitled for any relief. Further, the suit is barred by limitation and therefore, he prayed to dismiss the suit.

7. The averments made in the written statement filed by the fifth defendant are in brief as follows:-

a) It is false to state that the suit property is the self acquired property of the first defendant. The first defendant and defendants 5 and 6 constituted an Hindu Undivided family and the suit property is the joint family property. Originally, the first defendant got the share in the joint family house property bearing Door No.34/B/C in Aladi Pillaiyar Koil Street, Kancheepuram as per the registered partition deed dated 17.12.1959 and the said house is an ancestral property. Out of the ancestral cash and the earnings of the first defendant some other portion which has fallen to the share of the first defendant's eldest brother Pachaiyappa Mudaliar was also purchased by the joint family. The aforesaid joint family house property was sold by the joint family members to the first defendant's brother namely Chandra Banu Mudaliar and out of the sale consideration of the above said ancestral house and also from and out of the earnings of the joint family members suit house property was purchased by the joint family from the same Chandra Banu Mudaliar as per the registered sale deed dated 17.12.1987. The fifth defendant was doing pawn broking and grocery business and his sister (sixth defendant) was doing Silk Weaving work and contributed equally for the purchase of the suit house property along with the first defendant. The first defendant happens to be the Kartha of the joint family, hence the sale deeds have been taken in his name. The defendants 1, 5 and 6 have jointly mortgaged the suit house property in favour of the Little Kancheepuram Co-operative Urban Bank Limited, on 14.11.1988, 24.04.1991 and 18.12.1992 and it will prove that the suit property was treated as joint family property. Hence, the defendants 5 and 6 are entitled to 1/3rd share each in the suit property.

(b) Few years before filing of the suit, the first defendant had been leading a way ward life and immoral life and he kept a mistress namely Santhammal at Thayarkulam and he had been secreted the joint family jewels worth Rs.50,000/-. Therefore, due to misunderstandings, the fifth defendant shifted his residence to Pallavan Silk Weavers Colony, Thadithoppu, Kancheepuram Taluk in January 1994. As an apex of his unlawful activities, the first defendant tried to sell the suit property

to the plaintiff at low price as if he is the absolute owner of the suit property. After knowing the activities of the first defendant, the fifth defendant and his sister (sixth defendant) have issued a notice dated 07.09.1994 to the first defendant and the plaintiff and expressed their intention to convert the joint possession of the suit property and separate possession by way of partition. Though the first defendant had received the said notice, he has not sent any reply. The plaintiff alone sent a reply with false averments. Hence, the defendants 5 and 6 were constrained to file a partition suit in O.S.No.341 of 1994 on the file of the Additional District Judge, (Fast Track Court No.II), Kancheepuram and the same is pending. Since the first defendant is entitled to 1/3rd share alone, he cannot enter into a sale agreement in respect of the entire property. The first defendant colluded with the plaintiff with a view to defraud the defendants 5 and 6. The entire sale agreement is null and void and not binding upon the defendants 5 and 6. Therefore, the fifth defendant prayed to dismiss the suit.

8. Based on the aforesaid pleadings, the learned Sub-Judge, Kancheepuram had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined himself as PW1 and examined one more witness as PW2. He also marked Exs.A1 to Ex.A9 as exhibits. On the side of the defendants, the fifth defendant examined himself as DW1 and examined one more witness as DW2. They have marked Exs.B1 to Ex.B9 as exhibits.

9. The learned Sub-Judge, Kancheepuram, after considering the materials placed before him, found that the suit property is the self acquired property of the first defendant in which, the other defendants cannot have any right. He further found that the plaintiff was always ready and willing to perform his part of the contract and it was only the defendants, who are evading to perform the contract. Accordingly, he decreed the suit, directing the defendants to receive the balance sale consideration of Rs.2,40,000/- within three months and execute the sale deed. Aggrieved by the same, the defendants 5 and 6 have filed an appeal in A.S.No.112 of 2006 on the file of the Additional District Judge, (Fast Track Court No.II), Kancheepuram. The learned Additional District Judge, had dismissed the said appeal and thereby confirmed the judgment and decree passed by the trial Court. Feeling aggrieved, the defendants 5 and 6 have filed the present Second Appeal.

10. This Court, at the time of admitting the second appeal, has formulated the following substantial questions of law:-

"1.Whether both the Courts below failed to take into account the recitals in Ex.B1 dated 17.12.1959 as well as in Ex.B7 dated 24.05.1985 in conjunction with the recitals in Ex.A1 dated 10.08.1994 and consequently failed to hold that the suit property is a Hindu Joint Family property?

2.Whether the trial Court erroneously decided placing reliance on Ex.A1 and Ex.A8, the Will, that Ekambaram Mudaliar happened to be the absolute owner of the suit property?

3.Whether the plaintiff was duty bound to prove Ex.A8 the Will strictly in accordance with Section 68 of the Indian Evidence Act, in the facts and circumstances of the case?

4.Whether the first Appellate Court failed to adhere to Order 41 Rule 31 of the Code of Civil Procedure in deciding the appeal?

5.Whether there is any perversity or illegality in the judgments of both the Courts below?"

11. Heard, Mr.R.Subramanian, for M/s.Gupta and Ravi, the learned counsel for the appellants and Mr.Kanchi G.V.Mathiazhagan, the learned counsel for the first respondent.

12. Substantial Questions of law 1 to 5 :

The learned counsel for the appellants has submitted that the Courts below failed to consider that the suit property is the joint family property in which the first defendant is entitled to only 1/3rd share and as such, he is not entitled to enter into a sale agreement with the plaintiff in respect of the entire suit property. He further submitted that the Courts below failed to consider that the first defendant got the share under Ex.B1 partition deed dated 17.12.1959 in the ancestral house bearing door No.34/B and only after selling his share in the said house, he purchased the suit house under Ex.A6 and Ex.A7 and hence, the suit property is also a joint family property.

13. He further submitted that the Courts below failed to consider that Ex.A8 Will was not proved in accordance with law and the same was brought out collusively by the plaintiff and the first defendant. He further submitted that the Courts below failed to consider that already the defendants 5 and 6 had filed a suit in O.S.No.341 of 1994 against the first defendant and got a Preliminary decree for partition of their share. He further submitted that the Courts below failed to consider that the defendants 1, 5 and 6 have always treated the suit property as joint family property by mortgaging them jointly in favour of Co-operative Bank and obtained loan. He further submitted that the Courts below failed to consider the admission made by PW1 that he is not having sufficient funds in his bank account and that itself would show that he is not ready for performing his part of the contract.

14. He further submitted that the Courts below failed to consider that the first defendant was leading a way ward life and he did not take care of the family and hence, the fifth defendant was living away from the first defendant. He further submitted that the first Appellate Court has not properly formulated and answered the points for consideration as contemplated under Order 41 Rule 31 of CPC. Therefore, he prayed to allow the Second Appeal and set aside the judgment and decree passed by the Courts below and dismiss the suit. The learned counsel for the appellants also filed written arguments.

15. The learned counsel for the appellants in support of the aforesaid contentions, relied upon the following decisions:-

1) Madina Begum and another Vs. Shiv Murti Prasad Pandey and others, 2017 (4) CTC 99.

2) Kanailal and others Vs. Ram Chandra Singh and others, (2018) 13 SCC 715.

3) Lakkireddi Chinna Venkata Reddi and other Vs. Lakkireddi Lakshmama, AIR 1963 SC 1601.

4) Pachiammal and another Vs. Sidheswaran and others, 2017 (3) TLNJ 122 (Civil).

5) Hbert P.James Vs. Gulam Hussain Pakseem, ILR 1949 Privy Council 284.

16. Per contra, the learned counsel for the first respondent/plaintiff has submitted that Ex.A6 and Ex.A7 would clearly show that the suit property was purchased by the first defendant and hence, the said property is the self acquired

property of the first defendant. He further submitted that during the pendency of the proceedings the first defendant had executed Ex.A8 Will in favour of his son (fifth defendant) stating that the suit property is his self acquired property. He further submitted that since the fifth defendant while examining himself as DW1 has categorically admitted in the cross examination about Ex.A8, it need not be proved by examining the attestors. He further submitted that absolutely there is no evidence that the joint family property was earning any income and in the said circumstances, it cannot be presumed that the suit property was purchased from the income derived from the joint family property.

17. He further submitted that there is no evidence as to what was the amount contributed by the defendants 5 and 6 to purchase the suit property. He further submitted that admittedly the first defendant was working as a Plumper in a Municipality and as such, he would get a sufficient income and from the said income, he would have purchased the suit property. He further submitted that merely because, the first defendant included the defendants 5 and 6 for mortgaging the property that would not confer any right on the defendants 5 and 6. He further submitted that evidence on record would show that the defendants were living jointly in the suit property only and there is no evidence that the first defendant was acting against the interest of the family. He further submitted that the defendants discharged the mortgage debt from the advance amount received from the plaintiff and therefore, it cannot be said that the first defendant had spent the money for any illegal purposes. He further submitted that the sale agreement was entered into on 10.08.1994 and at that time Rs.1,60,000/- was paid as advance and three months time has been fixed for completing the sale transaction and within the said period, the plaintiff has issued a notice calling upon the first defendant to receive the balance sale consideration and execute the sale deed, but he purposely evaded the said notice and hence, the plaintiff had filed the suit within the time fixed in the sale agreement and hence, the Courts below have rightly held that the plaintiff has always been ready and willing to perform his part of the contract.

18. He further submitted that even though the defendants 5 and 6 had sent a lawyer's notice to the plaintiff, claiming partition but while filing a suit in O.S.No.341 of 1994 for partition, they purposely omitted to implead the plaintiff as the defendant and hence, the decree passed in the said suit will not bind upon the plaintiff. He further submitted that even assuming that the first defendant got ancestral property under

Ex.B1 partition deed, since the first defendant got the said property as his share, the same cannot be treated as joint family property. He further submitted that the Courts below taking into consideration of the aforesaid facts have concurrently held that the suit property is the self acquired property of the first defendant and the plaintiff is always ready and willing to perform his part of the contract and there is no latches on his part and accordingly, decreed the suit for specific performance and in the said concurrent factual findings, this Court cannot interfere and therefore, he prayed to dismiss the Second Appeal.

19. The suit property is a house property situated in Door No.60-C and 60-C.1 Aladi Pillaiyar Koil Street, Kancheepuram Town. According to the plaintiff, the said property was purchased by the first defendant Ekambara Mudaliar under Ex.A6 and Ex.A7 sale deeds dated 16.11.1987 and 17.12.1987 and hence, the said property is his self acquired property. His further case is that on 10.08.1994, the said Ekambara Mudaliar entered into a sale agreement with him for selling the suit property for Rs.4,00,000/- and received a sum of Rs.1,60,000/- as advance. His further case is that it was agreed that the sale transaction has to be completed within three months from the date of the said sale agreement. Originally, the said suit was filed against the first defendant alone. The first defendant entered into appearance and filed a written statement.

20. In the said written statement he had admitted that he entered into a sale agreement for Rs.4,00,000/- with the plaintiff and also receipt of Rs.1,60,000/- as advance. However, he stated that he was living away from Neelakandan (fifth defendant) for the past 10 years and his son is not interested in taking care of the family. He further stated that since he was in need to pay maintenance to his wife and to pay other debts and to provide marriage expenses of his daughter he entered into a sale agreement with the plaintiff to sell the suit property for Rs.4,00,000/-, though it was worth more than Rs.6,00,000/-. He further stated that the plaintiff is the friend of the fifth defendant and he undertook to get necessary release deed from the fifth defendant, but subsequently he did not come forward to perform his part of the contract.

21. After filing of the written statement, the first defendant died and hence, his legal representatives have been impleaded as defendants 2 to 6. The fifth defendant, who is the son of the first defendant alone filed a written statement. In

the said written statement he has taken a plea that the suit property is the joint family property and hence, his father is not entitled to enter into a sale agreement in respect of the entire property. According to him, his father got a share in the joint family house bearing Door No.34/B/C in Aladi Pillaiyar Kovil Street, Kancheepuram as per Ex.B1 partition deed dated 17.12.1959. His further case is that after disposing of the said property and also with the contribution made by him and his sister (sixth defendant), the first defendant had purchased the suit property and hence, the first defendant himself and the sixth defendant are entitled to 1/3rd share each in the suit property.

22. A perusal of Ex.B1 shows that on 17.12.1959, the first defendant and his three brothers had partitioned their joint family property bearing Door No.34/B in Aladi Pillaiyar Kovil Street, Kancheepuram and in the said partition, a portion of the said house was allotted to his share. Ex.B7 shows that on 24.05.1985, the first defendant Ekambara Mudaliar and his son Neelakandan (fifth defendant) had sold the share which was allotted to the first defendant under Ex.B1 in D.No.34/B to one Padmavathi wife of Boopathy for Rs.15,000/-. In the said document they have clearly stated that the property covered under the said document is their ancestral property and they are selling the said property only to purchase some other property.

23. Further, they also stated in the said document that they already purchased another portion in the said property on 27.06.1960 from one Duraisamy Mudaliar and they also sold the said portion to one Vasanthammal. So, it is clear that apart from the property which was obtained by the first defendant under Ex.B1 partition deed, subsequently his family purchased a portion of the property on 27.06.1960 from Duraisamy Mudaliar and the first defendant and his son fifth defendant had jointly sold the said portion to one Vasanthammal.

24. Ex.B8 would show that on 13.09.1985 the first defendant alone purchased a portion of the property in Door No.34/B which was sold by the first defendant and his son (fifth defendant) to Padmavathi under Ex.B7, for the same amount i.e., for Rs.15,000/-.

25. Ex.B9 would show that the first defendant and his son fifth defendant had jointly sold the property in Door No.34/B which was purchased by the first defendant under Ex.B8 to one Chandra Banu Mudaliar on 16.11.1997. The first defendant had purchased a portion of the property in Door No.60/C from his brother Chandra Banu Mudaliar and a copy of the said document was marked as Ex.A6. Ex.A7 would show that subsequently the

first defendant had purchased a portion of the property situated in Door No.60/C for Rs.5,700/- from one Ponnambalam Mudaliar.

26. Ex.B2 and Ex.B3 would show that the defendants 1, 5 and 6 had mortgaged the suit property with the Little Kancheepuram Co-operative Urban Bank Limited on 22.04.1991 and 18.12.1992. The aforesaid facts also would show that the defendants 1, 5 and 6 had treated the suit property as joint family property.

27. In Lakkireddi Chinna Venkata Reddi and other Vs.Lakkireddi Lakshmam, (cited supra) the Hon'ble Supreme Court has held that the law relating to blending of separate property with joint family property is well settled. Property separate or self-acquired of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning separate claim therein.

28. In this case, as already pointed out that the first defendant sold the ancestral property which was acquired by him under Ex.B1 partition deed along with his son (fifth defendant) and also the property which was acquired by him separately. He further mortgaged the suit property along with his son and daughter (defendants 5 and 6). So, it is clear that he always treated the suit property as a joint family property. Though he purchased a portion of the property in the year 1960, subsequently, he treated the said property also as joint family property and therefore, the defendants 5 and 6 also will get share in the suit property.

29. In Pachiammal and another Vs. Sidheswaran and others, (cited supra), this Court has held that the property acquired by a divided Hindu Family son from the joint family shall become his absolute property insofar as no children are born. If the children are born to him, they become co-parceners and the properties would become joint family property.

30. In Hbert P.James, Vs. Gulam Hussain Pakseem, (cited supra) Privy Council has held that the Will of a living person can ever be relevant to support a legal claim. In this case, the plaintiff relied upon Ex.A8 Will only for the limited purpose i.e., to show that the first defendant himself has admitted that the suit property is the self acquired property. Further, at the time of producing Ex.A8 before the Court, the first defendant died and hence, the aforesaid decision will not

apply to the facts of this case.

31. Insofar as the contention of the learned counsel for the appellants that Ex.A8 itself was executed only at the instance of the plaintiff, this Court is of the view that if the first defendant was under control of the plaintiff, the plaintiff would have obtained a sale deed directly even without approaching the Court and therefore, the aforesaid contention also is without any basis.

32. In *Madina Begum & another Vs. Shiv Murti Prasad Pandey & others* (cited supra) the Hon'ble Supreme Court has held that the first Appellate Court is bound to deal with all issues and evidence let in by parties before recording its findings. It has further held that dismissal of suit after deciding issue of limitation alone is erroneous. In this case, the first Appellate Court has not dismissed the appeal on the ground of any preliminary issue but it has gone through the entire evidence, discussed them and gave findings. Therefore, the aforesaid decision will not apply to the facts of this case.

33. In *Kanailal and others Vs. Ram Chandra Singh and others*, (cited supra) the Hon'ble Supreme Court has held that it is obligatory upon the first Appellate Court that under Order 41 Rule 31 CPC, the judgment of the Appellate Court shall be in writing and shall state the points for determination; the decision thereon; the reason for the decision and whether the decree is reversed or reason for allowing to which the appellant entitled.

34. In this case, though the first Appellate Court has formulated only one point i.e., whether the suit property is the Hindu Joint family property or self acquired property of the first defendant, while answering to the said point it has discussed the entire evidence and found that the suit property is the self acquired property of the first defendant. Further it has found that the execution of the sale agreement has been proved and the payment of advance amount also proved and the first defendant had delayed the execution of the sale deed. Accordingly, it held that the plaintiff is entitled for the relief of specific performance. Therefore, this Court is of the view that the first Appellate Court has complied with the provision of Order 41 Rule 31 CPC.

35. Though the fifth defendant has pleaded in his written

statement that his father (first defendant), few years before filing of the suit, had been leading a way ward life and immoral life and he kept a mistress Shanthammal at Thayarkulam, in order to substantiate the said plea he has not adduced any evidence. He further stated that due to misunderstandings, he shifted his residence to Pallavan Silk Weaving Colony, Thadithoppu, Kancheepuram District in January 1994. But Ex.B6 (certified copy of the decree passed in O.S.No.341 of 1994) would show that all of them were residing in the same house i.e., Door No.60-C/1 of Aladi Pillaiyar Koil Street, Kancheepuram.

36. In the said suit, the defendants 5 and 6 herein gave their residential address as Door No.60-C/1 of Aladi Pillaiyar Kovil Street, Kancheepuram and their parents' address also they have given the same address. Therefore, the contention of the fifth defendant that his father was leading a way ward life and hence, he is living in some other place cannot be accepted. It appears that the said defence has been taken only for the purpose of the suit. Further, the fifth defendant while examining himself as DW1, has admitted in his cross examination that during the last days, he was only looking after his father. Therefore, it is clear that the defendants 1, 5 and 6 have lived in the same address.

37. Ex.B3 would show that on 10.08.1994, the mortgage amount was paid and subsequently, an endorsement was made on 17.09.1994 by the Secretary to the said Bank as loan fully discharged. As per Ex.A1 sale agreement entered on 10.08.1994, on that date, the plaintiff gave a sum of Rs.1,60,000/- as advance. A combined reading of Ex.A1 and Ex.B3 would show that only from the advance amount received from the plaintiff, the mortgage loan was re-paid on the same date to the bank. So, it is clear that the entire family benefited by the advance amount which was received from the plaintiff. But since the suit property happened to be the joint family property unless all the members of the joint family agreed for selling their share, the plaintiff cannot get sale deed in respect of the entire property. Admittedly, the sixth defendant was married only in the year 1994 i.e., after coming into force of Tamil Nadu Amendment Act, 1989 of the Hindu Succession Act. So, she is also a co-parcener and hence, she is entitled to get 1/3rd share. The fifth defendant being a son, he is also entitled to get 1/3rd share. So, the remaining 1/3rd share alone is meant for the first defendant and he can sell the said share alone.

38. Though the defendants 1 and 5 in their written statement have taken a stand that the suit property is worth

more than Rs.4,00,000/-, in Ex.B6, in the partition suit filed by the defendants 5 and 6 they have admitted that the value of suit property is Rs.3,00,000/- only. Therefore, it cannot be said that the sale agreement was entered for low price.

39. As per Ex.A1 sale agreement the total value of the suit property is Rs.4,00,000/-. The first defendant is entitled for 1/3rd share and as such, the value of the said 1/3rd share would come Rs.1,33,333/-, but already the defendants have received more than the said amount i.e., Rs.1,60,000/- and used for discharging mortgage. Therefore, the defendants are bound to execute the sale deed for the proportionate extent in the suit property, for the amount received already. Accordingly, the substantial questions of law are answered.

40. In the result, the Second Appeal is partly allowed. The judgments and decrees passed by the Courts below are modified as follows:-

1) That the defendants 2 to 6 being the legal representatives of the first defendant, they are bound to execute the sale deed for the proportionate extent of the suit property for the amount which was already received by them under Ex.A1 as advance i.e., Rs.1,60,000/- Since the 2nd defendant/2nd respondent died during the pendency of this second appeal and her LRs are the defendants 3 to 6, the defendants 3 to 6 are directed to execute the sale deed for the proportionate extent of the suit property for the amount which was already received by them under Ex.A1 as an advance i.e., Rs.1,60,000/- in favour of the plaintiff within a period of one month from the date of receipt of copy of this judgment, failing which, the plaintiff is entitled to get the sale deed executed through the Court.

2) that the suit is dismissed in respect of the remaining extent.

3) that considering the facts and circumstances of the case, the parties are directed to bear their respective cost. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

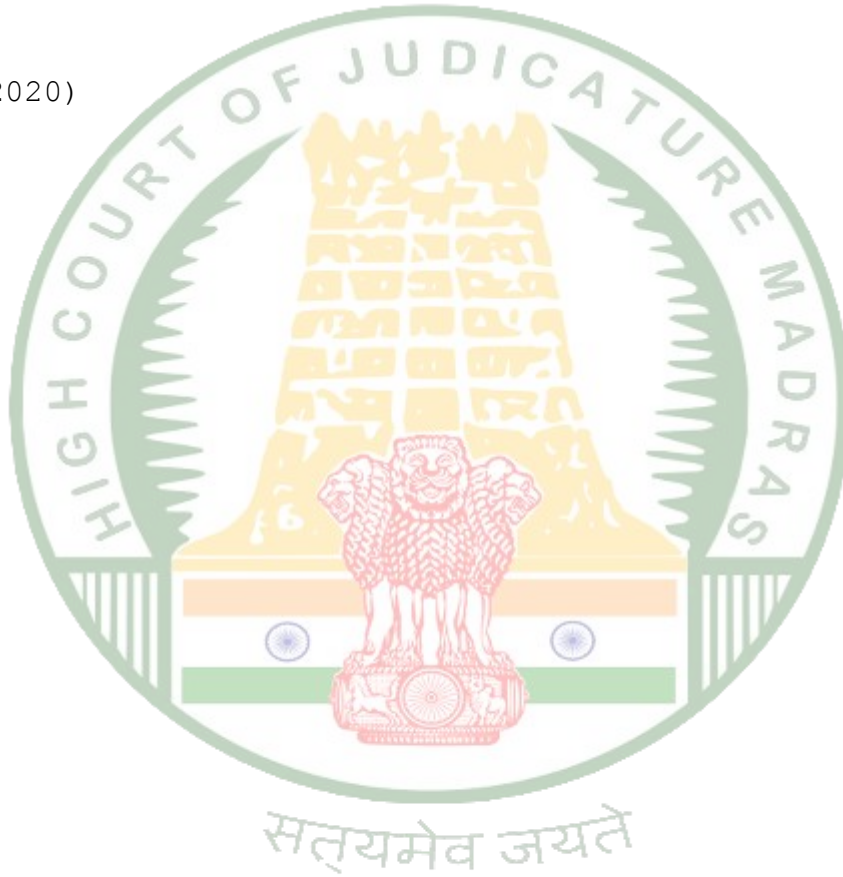
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To

- 1.The Sub-Court, Kancheepuram.
- 2.The Additional District Judge,
(Fast Track Court No.II)
Kancheepuram.

S.A.No.191 of 2013
and
M.P.Nos.1 and 2 of 2013

RSI (CO)
CB(04/03/2020)



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