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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.06.2019

PRONOUNCED ON: 19.06.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No. 613 of 2019

and

C.M.P. No.10554 of 2019

Jayanthi

...Appellant/3rd Defendant

Vs.

1. Mythili

...R1/Plaintiff

2. R.Jenbagalakshmi

3. P.Padma

...RR2 & 3 /Defendant 1 &2

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 31.08.2018 made in A.S.No.19 of 2015 on the file of the Principal District Judge at Thiruvarur confirming the judgment and decree dated 20.01.2015 made in O.S. No.32 of 2009 on the file of the Subordinate Judge at Mannargudi.

For Appellant : S.Arivazhagan

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 31.08.2018, passed in A.S.No.19 of 2015, on the file of the Principal District Court, Thiruvarur, confirming the judgment and decree dated 20.01.2015, passed in O.S. No.32 of 2009, on the file of the Subordinate Court, Mannargudi.

2. For the sake of convenience, parties are referred to as per their rankings in the trial Court.

3. The suit has been laid by the plaintiff claiming partition.

4. The plaintiff claims 1/4th share in the suit property based on the sale deed dated 13.04.1995, the copy of which document has been marked as Ex.A1 and the original sale deed has been marked as Ex.A5. On a perusal of the sale deed dated 13.04.1995, it is found that, as rightly put forth by the plaintiff, the suit property had come to be acquired in the names of the plaintiff and the defendants jointly from the vendors and accordingly, it is further seen that pursuant to the abovesaid sale transaction, the revenue records in respect of the suit property had also come to be mutated in favour of the



plaintiff and the defendants which could be evidenced from the document marked as Ex.A2 and the demand notice also stands in the name of two persons who had acquired the suit property by virtue of Ex.A5 sale deed. Owing to misunderstanding between the parties concerned and as they are unable to enjoy the suit property jointly, it is found that the plaintiff had levied the suit seeking partition of her share in the same.

5. It is found that the suit has been mainly resisted by the third defendant. According to the third defendant, though the suit property had been acquired jointly in the names of the plaintiff and the defendants by virtue of the sale deed dated 13.04.1995, according to her, for the passing of sale consideration under the said document, it is her case that, it is only her husband who had contributed the said amount by acquiring income from abroad and accordingly, it is her case that the suit property absolutely belongs to the third defendant.

6. In the light of the abovesaid defence version projected by the third defendant that the suit property had been acquired only out of the amounts contributed by her husband and when on factual matrix, it is found that the suit property had been acquired jointly in the names of the plaintiff and the defendants, the third defendant, to sustain the abovesaid claim, should place reliable and acceptable materials to hold that it is only her husband who had contributed the amount for the sale consideration recited in the sale deed marked as Ex.A5. In other words, as rightly found and determined by the Courts below, the third defendant had taken the plea of Benami in respect of the sale transaction dated 13.04.1995 for claiming absolute title to the suit property.

7. However, considering the materials placed on record, particularly, when it has been admitted by the third defendant during the course of evidence that the suit property had been acquired only in the names of the plaintiff and the defendants jointly and when there is no acceptable and reliable material on the part of the third defendant that her husband had contributed the amount towards the sale consideration recited therein and furthermore, when there is no recital contained in Ex.A5 that the sale consideration recited therein had been contributed exclusively by the third defendant or her husband and the said fact also been admitted by the third defendant during the course of evidence and sans any other material on the part of the third defendant to hold that it is only her husband who had contributed the said amount, in such view of the matter, the Courts below are fully justified in not accepting the defence version projected by the third defendant, particularly, her plea being barred under Section 92 of the Indian Evidence Act.

8. In support of her contentions, the third defendant appears to have mainly relied upon Exs.B8 and B9 and considering



the nature of the abovesaid documents, when it is found that the statement of accounts marked as Ex.B9 has not been audited by the Tax Authorities and when on the basis of Ex.B8 alone, we cannot infer that it is only the third defendant who had contributed the amount for the sale consideration recited in Ex.B5, in such view of the matter, the Courts below are found to be correct in not placing acceptance on Exs.B8 and B9 for accepting the defence version projected by the third defendant.

9. In the light of the abovesaid factors, when admittedly the title deed under which the suit property had been acquired stands in the names of the plaintiff as well as the defendants and when the said document recites that the sale consideration stated therein had been parted by the plaintiff and the defendants jointly to the vendors concerned and when there is no material to hold that it is only the third defendant's husband who had contributed the amount for the passing of the sale consideration recited in Ex.A5, in such view of the matter, the Courts below are found to be correct in holding that the plaintiff is entitled to seek and obtain 1/4th share in the suit property and accordingly, rightly granted the decree in favour of the plaintiff as prayed for.

10. Considering the abovesaid factors, in toto, I do not find any valid reason to interfere with the concurrent judgment and decree of the Courts below. The Courts below are found to have assessed and analyzed the materials in the right perspective and accordingly, determined that the plaintiff is entitled to obtain 1/4th share in the suit property. In such view of the matter, as no substantial question of law is found to be involved, the second appeal fails and is accordingly dismissed. Consequently, connected miscellaneous petition, if any, is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Principal District Judge,
Thiruvarur.
2. The Subordinate Judge
Mannargudi.



3. The Section Officer,
VR Section,
High Court, Madras.

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