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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.06.2019

PRONOUNCED ON : 27.06.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.552 of 2019
and
CMP No.9274 of 2019

J. Jayakumaran ...Appellant/Plaintiff
Vs.

T.K. Jayabal (died)
1. J. Jayaselvan
2. J.U.Ramalingam ...Respondents/ Defendants

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.84 of 2016 dated 30.10.2018 on the file of the Additional District (Fast Track) Court at Mettur, confirming the judgment and decree passed in O.S.No.85 of 2007 dated 30.03.2016 on the file of the Sub Court, Mettur.

For Appellant : Mr.A.Sundaravadhanan

JUDGMENT

Challenge in this Second Appeal is made to the judgment and decree dated 30.10.2018 passed in A.S.No.84 of 2016 on the file of the Additional District (Fast Track) Court, Mettur, confirming the judgment and decree dated 30.03.2016 passed in O.S.No.85 of 2007 on the file of the Subordinate Court, Mettur.

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

3. Suit for partition, declaration and permanent injunction.

4. The plaintiff and the second defendant are the sons of the first defendant. Claiming that the suit properties are the ancestral properties belonging to the plaintiff and the defendants 1 and 2, the plaintiff has come forward with the suit seeking for the partition and separate possession of his 1/3 share in the suit



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according to the plaintiff, inasmuch as he is entitled to obtain his share in the suit properties and as the decree obtained by the third defendant in O.S.No.206 of 1999 is not valid and binding upon the plaintiff and the third defendant is not entitled to disturb his possession and enjoyment of the suit properties and hence, he has been necessitated to lay the suit against the defendants for appropriate reliefs.

5. The third defendant resisted the plaintiff's suit contending that the plaintiff has to establish that the suit properties are the ancestral properties belonging to his grand father and his father as put forth in the plaint and according to the third defendant, the claim of the plaintiff that the suit properties are the ancestral properties obtained by his father by way of the partition is not sustainable in the eyes of law and the properties derived by the plaintiff's father in the partition would only assume the character of separate and independent properties and in such view of the matter, according to the third defendant, the plaintiff cannot lay any claim of share in the suit properties on the footing that they are the ancestral joint family properties consisting of himself and the defendants 1 and 2 and further according to the third defendant, the first defendant for legal necessity entered into an agreement of sale with reference to the suit properties with him and inasmuch as the first defendant had failed to comply with the terms of the sale agreement, according to the third defendant, he has been necessitated to institute the suit against him for specific performance in O.S.No.206 of 1999 and based on the decree obtained in the abovesaid suit, the third defendant has also levied an execution proceeding and obtained the sale deed through the process of the court and in all the abovesaid proceedings, the first defendant had taken part and aware of the same and the plaintiff and the second defendant are also aware of the abovesaid proceedings and with a view to deprive the third defendant from obtaining the possession of the suit properties through court process, the plaintiff, according to the third defendant, has levied the false suit without any basis and cause of action and hence, according to the third defendant, the plaintiff is not entitled to obtain any of the reliefs prayed for in the suit and therefore, prayed for the dismissal of the plaintiff's suit.

6. In support of the plaintiff's case, P.W.1 was examined and Exs.A1 to A16 were marked. On the side of the defendants, D.W.1 was examined and Exs.B1 to B6 were marked. On a consideration of the oral and documentary evidence adduced by the respective parties and the



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submissions made, the courts below were pleased to dismiss the plaintiff's suit. Aggrieved over the same, the present second appeal has been preferred by the plaintiff.

7. Considering the pleas put forth by the respective parties, it is found that the plaintiff has come forward with the suit mainly on the footing that the suit properties belong to him and the defendants 1 and 2 and that they are the ancestral joint family properties. The abovesaid case of the plaintiff has been challenged by the third defendant. As could be seen from the partition deed dated 09.06.1946, it is found that certain properties had been allotted to the plaintiff's grand father Kandasamy Chettiar and according to the plaintiff, Kandasamy Chettiar had enjoyed the properties allotted to him by way of the abovesaid partition deed and out of the earnings received therefrom, purchased the other properties by way of the sale deed dated 20.04.1970 marked as Ex.A2 and further according to the plaintiff, in the partition effected between Kandasamy Chettiar and his sons, the suit properties had been allotted to his father, namely, the first defendant and therefore, according to the plaintiff, the suit properties are the ancestral properties belonging to the first defendant and his two sons, namely, the plaintiff and the second defendant. However, considering the nature of the properties derived by the plaintiff's father through Ex.A3 partition deed and when the recitals contained in Ex.A3 clearly point out that the ancestral and the self acquired properties had been the subject matter of the partition and accordingly, the first defendant had been allotted the suit properties, in such view of the matter, as rightly determined by the courts below, the first defendant had been allotted the suit properties only acquired by Kandasamy Chettiar through his own earnings and in all, it is found that the suit properties not having been established to have been acquired by Kandasamy Chettiar with the aid of the ancestral nucleus and the plaintiff having not established that his father had been allotted any share in the ancestral properties and accordingly, the courts below are found to be justified in determining that the suit properties derived by the first defendant by way of Ex.A3 partition deed would only assume the character of his separate and independent properties and not the ancestral joint family properties consisting of the first defendant and his two sons, namely, the plaintiff and the second defendant and accordingly, the abovesaid determination of the courts below, in my considered opinion, do not warrant any interference.



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8. Considering the position that the suit properties are the separate and independent properties of the first defendant, it is found that he is entitled to deal with the suit properties as he desires and from the materials placed on record when it is seen that the first defendant had entered into an agreement of sale with the third defendant for legal necessity for alienating the suit properties and as the first defendant had failed to honour the sale agreement, the third defendant having levied the suit against him in O.S.No.206 of 1999 and considering the materials available on record, when it is found that the third defendant had obtained a valid decree in the abovesaid suit and also put the said decree in execution and also obtained the sale deed in respect of the suit properties through courts process, in such view of the matter, when the first defendant is fully aware of the abovesaid proceedings, as determined by the courts below, the plaintiff and the second defendant were also aware of the proceedings in O.S.No.206 of 1999, despite the same, they having not evinced any interest to participate in the abovesaid proceedings one way or the other, in such view of the matter, it is found that inasmuch as the plaintiff and the second defendant have no interest, as such, in the suit properties and the suit properties are the separate and independent properties of the first defendant, in all, it is found that the plaintiff and the second defendant had not evinced interest to throw any challenge to the proceedings laid by the third defendant in O.S.No.206 of 1999 including the execution proceeding and after the third defendant had secured the sale deed in respect of the suit properties through court process, as rightly found by the courts below, with a view to deprive the third defendant from taking the possession of the suit properties pursuant to the decree obtained by him, it is found that the plaintiff and the second defendant have joined together and had come forward with the suit at the instance of the first defendant and in such view of the matter, as rightly determined by the courts below, the plaintiff has levied the suit without any basis and cause of action and hence not entitled to secure the reliefs as prayed for.

9. In the light of the abovesaid discussions, the courts below having assessed and analysed the materials, both oral and documentary, in the right perspective and finding that the plaintiff has no right or interest in the suit properties in any manner and that it is only the third defendant, who is entitled to the suit properties based on the decree obtained by him in O.S.No.206 of 1999 and the sale deed executed in his favour in the abovesaid proceeding, in all, rightly rejected the plaintiff's case



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and in my considered opinion, no valid reason is put forth warranting any interference to the abovesaid concurrent judgment and decree of the courts below. In all, it is found that no substantial question of law is involved in the second appeal.

10. Resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

bga

Copy to

1.The Additional District Judge,
Additional District (Fast Track) Court, Mettur

2.The Subordinate Judge,Sub Court, Mettur.

+1cc to Mr.A.Sundaravadhanan , Advocate SR.No. 54141
S.A.No.552 of 2019

A.SK(13/11/2019)