IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.144 of 2014
and M.P.No.1 of 2014

1. Nagesh Babu
2. D.Guna Sekaran
3. Narendra Kumar ..Appellants/Plaintiff

Vs.

1. Sri Devi Enterprises,
Meenjur,
Rep. By Managing Partner,
R.Devadoss.

2. Deenadayalan

3. Lakshmi Thulasi ..Respondents/4^{th} Defendant & 2^{nd} & 3^{rd} Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the learned IV Additional District Court, Ponneri, Thiruvallur District, dated 23.10.2013 in A.S.No.44 of 2006, reversing the judgment and decree of the learned Principal District Munsif, Ponneri, Thiruvallur District dated 24.12.2003 in O.S.No.456 of 1985.

For Appellants : Mr.B.Ravi
For Respondents : Mr.S.Sivakumar

J U D G M E N T

The plaintiffs in O.S.No.456 of 1985 are the appellants herein. The suit was laid by the plaintiffs who were minors for partition and separate possession of their $3/4^{th}$ share claiming that the suit properties are the ancestral properties belonging to the family and as such they have $1/4^{th}$ share each in the suit properties along with the second defendant Deenadayalan, their father.

2. Notice of motion was ordered on 21.02.2014, pursuant to which, the respondents have entered appearance.

3. According to the plaintiffs, their grandfather Ethirajulu Naidu was in possession of extensive agricultural lands in Vallur Village as its owner. An extent of 3.70 acres in survey number 1344 of Vallulr Village was allotted to the share of the first defendant Venkatapathi Naidu in the partition. The same was sold to one Masilamani Naicker under a Sale Deed dated 25.02.1973. The sale proceeds were used for the purchase of item No.1 suit schedule property in the name of the 3rd defendant Lakshmi Thulasi, wife of Deenadayalan and mother of the plaintiffs. It is also the contention of the plaintiffs that item no 2 of the suit schedule properties was purchased from and out of the sale proceeds of the ancestral properties on 17.11.1976 in the name of their father Deenadayalan, the second defendant .

4. According to the plaintiffs, neither Deenadayalan nor Lakshmi Thulasi had any source of income to purchase the property in their names. Therefore, the properties that were purchased under Exs.A2 and A3 are ancestral properties in which the plaintiffs would get a right by birth. The plaintiffs also averred that defendants 2 and 3 had entered into an agreement of sale with the 4th defendant for sale of the property.

5. Expectedly, defendants 2 and 3 remained ex-parte. The first defendant died pending suit. The 4th defendant, the agreement holder, was left to defend himself in the suit. The 4th defendant filed a written statement contending that the 2nd defendant Deenadayalan was working in Ashok Leyland and with his own funds and efforts, he purchased the item no.2 of the suit property. As regards the item no.1, it was the contention of the 4th defendant that the 3rd defendant lakshmi Thulasi's his parents were affluent and they had given her money as streedhana and the 1st item was purchased in her name from and out of her Streedhana. According to the 4th defendant, the properties purchased under Exs.A2 and A3 were absolute properties of 2nd and 3rd defendants and, hence, the plaintiffs have no right by birth in the suit properties.

6. The trial Court framed necessary issues and concluded that the suit properties were purchased from out of the sale proceeds from the ancestral properties, which were sold under Ex.A1 dated 25.02.1973. In coming to the said conclusion, the learned trial Judge relied upon the evidence of the the second plaintiff as P.W.1. The trial Court despite a long gap of 3 1/2 years between the sale under Ex.A1 and purchase under Ex.A3, came to the conclusion that in the absence of any other contra evidence, it should have been purchased by using family funds, obtained from the sale of ancestral properties under Ex.A1 dated 25.02.1973. Based on the above said findings, the trial Court

decreed the suit by granting 3/4th share in the suit property in favour of the plaintiffs.

7. Aggrieved, the 4th defendant preferred an appeal.

8. The lower appellate Court concluded that regarding the purchase of item no. 2 of the suit properties on 17.11.1976, there is no evidence available on record to show that the sale proceeds of Ex.A1 Sale Deed dated 25.02.1973 were used for the said purchase. The lower Appellate Court rejected the evidence of the 2nd plaintiff (P.W 1) regarding the source of consideration, since he would not have even been born on the date, when Ex.A1 sale and Ex.A2 purchase occurred. As far as Ex.A3 purchase is concerned, the 2nd plaintiff was one year old at the said time of purchase. The purchases under Exs.A2 and A3 are in the names of the junior and female member of the joint family. Even assuming that there was some joint family nucleus, the plaintiff will have to prove beyond reasonable doubt that the sale consideration was used for the purchase of the suit properties. In the case on hand, the purchases were of the year 1973 and Exs.A2 and A3 are in the names of a female member and a junior member of the joint family. There is no evidence, much less substantial and acceptable evidence to show that the properties were purchased with the sale consideration of the sale of ancestral properties. Even on the question as to whether the properties sold under Ex.A1 were ancestral properties, there is not enough evidence, as recital in Ex.A1 which would show that the patta for the properties stood in the name of the step mother of Venkatapathy Naidu and mother of Kuppammal namely Andalammal. The recital in the Sale Deed itself would show that the sale Ex.A1 was for the purpose of family expenses to perform the marriage of Kuppammal who is the sister of Venkatapathy Naidu.

9. From these recitals, the lower Court concluded that the claim of the plaintiffs that the suit properties were purchased out of the sale proceeds of the ancestral properties under Ex.A1 cannot be accepted. There is no presumption under law that a joint family possesses joint family properties. It is for the plaintiffs who claim that the suit properties were purchased within the aid of joint family nucleus to prove the same.

10. In the light of the evidence that is available on record, the lower Court has come to the just conclusion that the plaintiffs have miserably failed to prove that the properties were purchased out of the sale proceeds of the properties sold under Ex.A1. Being the factual findings, I do not think that the same can be interfered with, particularly in a second appeal, in view of the restricted scope of second appeal, which should be confined to the four corners of Section 100 of Code of

Civil Procedure. Hence, I do not find any question of law, much less a substantial question of law, to enable this court to entertain this Second Appeal.

11. Hence, this Second Appeal is dismissed without being admitted. Consequently, connected miscellaneous petition is closed. There will be no order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vum

To

1. The IV Additional District Judge
   Ponneri, Thiruvallur District.

2. The Principal District Munsif,
   Ponneri, Thiruvallur District.

+1 CC to Mr.S.Sivakumar, Advocate sr 78796.
+1 CC to Mr.R. Subramanian, Advocate sr 79098.

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SSI(CO)
SP(18/12/2020)