

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.08.2019

PRONOUNCED ON : 28.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.844 of 2019

R.Ranganathan

...
Vs.

Appellant

1.Kanagam @ Kanaga

2.Jayanthi @ Kalpana

...

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 22.01.2019 passed in A.S.No.95 of 2015 on the file of the I Additional District Court, Coimbatore, confirming the Judgment and Decree dated 09.10.2015 passed in O.S.No.496 of 2013 on the file of the Principal Subordinate Court, Coimbatore.

For Appellant : Mr.V.Sivakumar

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 22.01.2019 passed in A.S.No.95 of 2015 on the file of the I Additional District Court, Coimbatore, confirming the Judgment and Decree dated 09.10.2015 passed in O.S.No.496 of 2013 on the file of the Principal Subordinate Court, Coimbatore.

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

3.The plaintiff has laid the suit for partition.

4.The plaintiff is the mother of the defendants. According to the plaintiff, the suit property had been jointly purchased by her and her husband Rangasamy by way of a sale deed dated 19.11.1986 marked as Ex.A9. As rightly contended by the plaintiff as well as the recitals found in the sale deed Ex.A9, it is found that the suit property had been jointly purchased both by the plaintiff and her husband Rangasamy. In addition to that, from the evidence of PW2 and the documents marked as Exs.A11 to A14, it is found that the plaintiff and her husband had jointly obtained loan from the LIC Housing Finance Ltd., and put up the construction in the suit property and therefore, inasmuch as both the plaintiff and her husband are the joint owners of the suit property, consequently, both had obtained loan jointly and also discharged the same and utilising the loan, they had put up a construction in the suit property. The documents i.e. property tax receipts, water tax receipts marked on the side of the plaintiff as well as marked on the side of the defendants go to show that the property had been assessed both in the name of the plaintiff and her

husband and accordingly, it is found that the plaintiff along with her husband had been enjoying the suit property by paying tax, water charges, current charges, etc and accordingly, the Courts below are found to be justified in declaring that the suit property had been jointly acquired by the plaintiff and her husband Rangasamy.

5.The main defence put forth by the defendants is that though the sale deed Ex.A9 stands in the name of the plaintiff and Rangasamy, according to them, it is only Rengasamy, who had acquired the suit property and out of sentiment, he had also added the name of the plaintiff in the sale deed and therefore, according to them, the plaintiff has no means to purchase the suit property along with Rangasamy and hence, it is only Rangasamy, who is the absolute owner of the suit property. However, with reference to the abovesaid defence put forth by the defendants, absolutely there is no convincing material available on record to hold that Rangasamy alone had contributed the amount for the acquisition of the suit property as abovestated. When the sale deed Ex.A9 itself go to show that the suit property had been acquired both by the plaintiff and her husband and furthermore, when both had obtained loan and put up the construction therein and also enjoying the property jointly as above pointed out and in such view of the matter, the contention of the defendants that the plaintiff has no independent source to acquire the

suit property along with her husband cannot at all be believed and accepted.

6.In the light of the above position, the Courts below are found to be justified in not relying upon the evidence of DWs1 to 4 and furthermore, when the case of the first defendant that his wife had contributed the amount for the construction put up in the suit property is not fortified and when Exs.B6 to B8 do not lend support to the abovesaid case, particularly, when there is no proof on the part of the defendants that the first defendant's wife had spent the amount derived from the abvoesaid sale transactions towards the construction put up in the suit property and as above noted, when the suit property had been assessed jointly in the name of the plaintiff and her husband and the suit property had been jointly enjoyed by the plaintiff and her husband, in such view of the matter, the Courts below are justified in declaring that the plaintiff is the joint owner of the suit property along with her husband and accordingly, after the demise of her husband, the plaintiff is also entitled to obtain her lawful share in her husband's share in the suit property and thereby, the Courts below had rightly determined that the plaintiff is entitled to 4/6 share in the suit property.

7.The reasonings and conclusions of the Courts below for upholding the plaintiff's case being based on the proper appreciation of the materials available on record and also the principles of law governing the issues involved between the parties and not suffering from any perversity or infirmity, in such view of the matter, the second appeal does not merit acceptance.

For the reasons aforesaid, no substantial question of law is found to be involved in the matter and resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No
Internet : Yes / No
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28.08.2019

To

- 1.The I Additional District Court, Coimbatore.
- 2.The Principal Subordinate Court, Coimbatore.

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The Section Officer, V.R.Section, High Court, Madras.

S.A.No.844 of 2019

T.RAVINDRAN, J.

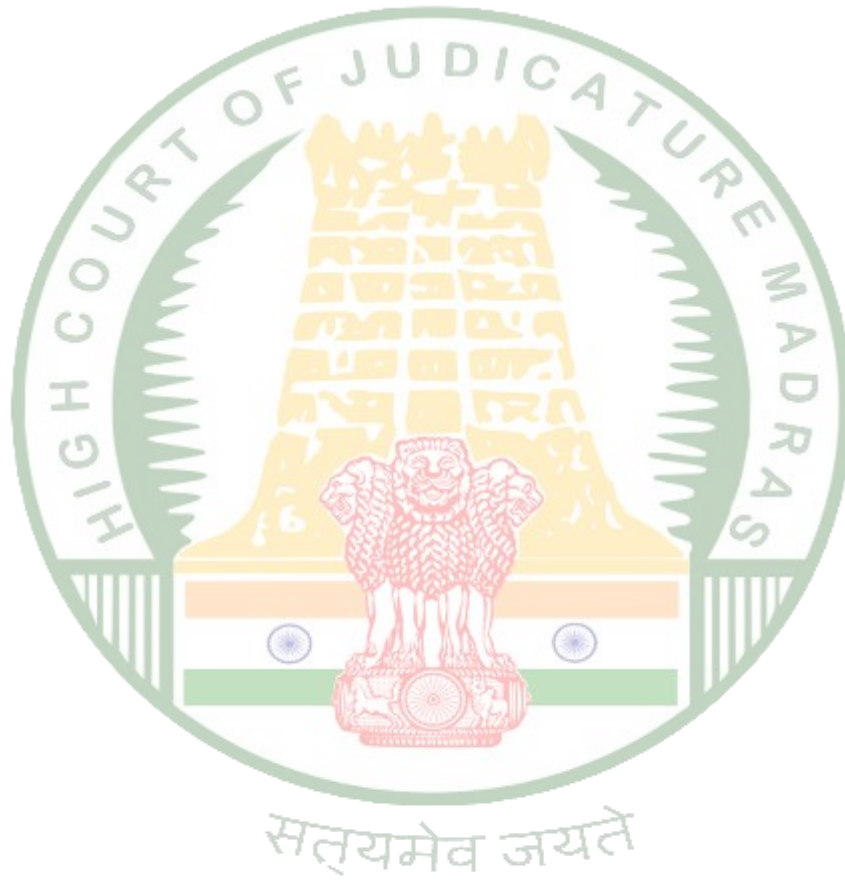
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**Pre-delivery Judgment made
in S.A.No.844 of 2019**

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