

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.965 of 2019
and
CMP.No.20574 of 2019

M.Marudamuthu

..Appellant

Vs.

1.M.Palaniandi

2.Govindammal

3.Suresh

4.Sumath

5.Saravanan

6.Shanthi

7.Santhosham

..Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 12.04.2019 in A.S.No.4 of 2018 on the file of the Principal District Judge, Namakkal confirming the judgment and decree dated 27.10.2017 in O.S.No.272 of 2005 on the file of the Subordinate Court, Namakkal.

For Appellant : Mr.D.Shivakumaran

J U D G M E N T

The plaintiff in O.S.No.272 of 2005 who claimed partition and separate possession of his 1/3rd share in the suit properties, on his claim being negated by the courts below has come up with this Second Appeal.

2. According to the plaintiff, the suit items 1 and 2 were allotted to his father Mookka Gounder in a partition that took place on 16.04.1979. As regards items 3 and 4, it is the claim of the plaintiff that those properties were purchased by Mookka Gounder in the name of his wife late Thimmayiammal. It was also contended that the settlement deed executed by Thimmayiammal on 20.05.2005 is not valid since she had no power of disposal over the said properties. On the aforesaid contentions the plaintiff sought for partition and separate possession of his 1/3rd share.

3. The suit was resisted by the 2nd defendant brother of the plaintiff claiming that the properties that were allotted to Mookka Gounder in the partition dated 16.04.1979 were already divided between them and therefore the plaintiff cannot seek partition. As regards the properties that stood in the

name of Thimmayiammal, the 2nd defendant would contend that Thimmayiammal was the absolute owner of the property having purchased the same under the sale deed dated 14.09.1970 and the claim of the plaintiff that she was only a name lender and the property was purchased in the name of Thimmayiammal from and out of the funds of Mookka Gounder cannot be entertained in view of the provisions of Benami Property Transactions Prohibition Act, 1988.

4. The courts below concluded that as regards items 1 and 2, the plaintiff in his evidence has specifically admitted that the properties were allotted to Mookka Gounder in 1979. The properties were divided between him and his brother. It is also found that the revenue records have been mutated pursuant to the said partition. Therefore, the courts below accepted the claim of the defendants that the items 1 and 2 have already been divided.

5. On the second contention regarding items 3 and 4, the claim of the plaintiff was negated by the courts below in view of the provisions of the Benami Property Transactions Prohibition Act, 1988, since the evidence that was produced by the plaintiff was considered to be insufficient to prove that the purchase in the year 1970 in the name of Thimmayiammal was not intended

to be for her benefit.

6. The courts below found that the evidence on the side of the plaintiff was not enough to rebut the statutory presumption to the effect that the property purchased in the name of wife or unmarried daughter is presumed to be for their benefit. Aggrieved by the aforesaid finding of the courts below, the plaintiff has come forward with this appeal.

7. Mr.D.Shivakumaran, learned counsel appearing for the appellant would submit that the courts below had not adverted to the entire evidence on record to come to the conclusion that the plaintiff has not let in sufficient evidence which would have the effect of rebutting the presumption under Section 2(9) of the Benami Property Transactions Prohibition Act, 1988.

8. I have considered the submissions of the counsel. After the advent of the Benami Property Transactions Prohibition Act, 1988, while a person is permitted to purchase in the name of his wife or unmarried daughter, the said purchase is presumed to be for the benefit of the wife or the unmarried daughter as the case may be. It is for the person who claims that the property was purchased from and out of the income of the husband or the father as the case may be to prove that the purchase was not intended to be for the benefit

of the ostensible owner.

9. The plaintiff alone has been examined as PW1. There is no other evidence to support the case of the plaintiff. The courts below on a consideration of the evidence of the plaintiff have reached a factual conclusion that the evidence does not have the effect of rebutting the statutory presumption. I do not find any perversity in the factual conclusion reached by the courts below. I do not see any question of law or substantial question of law enabling me to entertain the Second Appeal.

10. Hence, the Second Appeal is dismissed without being admitted. No costs. Consequently, the connected miscellaneous petition is also closed.

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Index : Yes/ No

Internet : Yes/ No

Speaking order/ Non-Speaking order

To

1. The learned Principal District Judge, Namakkal.

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2. The learned Subordinate Judge, Namakkal.



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R.SUBRAMANIAN, J.

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