

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.NO.1166 OF 2019

AND

CMP.NO.25443 OF 2019

K.Ayyavu (died)
1. Sarojini
2. Jeeva

... Appellants/Appellants 2 & 3/
LRs of the Deceased sole Plaintiff

Versus

1.K.Periasamy
R.Parameswari (died)
2.R.Vijayalakshmi
3.R.Kumaravel
4.V.P.Periasamy

... Respondents/Respondents/
Defendants 1,3,4 & 5

Prayer:-

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 26.03.2019 made in A.S.No.8 of 2012 on the file of Additional District Court, Namakkal confirming the judgment and decree dated 14.09.2011 made in O.S.No.59 of 2009 on the file of Sub Court, Rasipuram.

For Appellants : Mr.M.V.Venkataseshan

JUDGMENT

The suit in O.S.No.59 of 2009 was instituted by K.Ayyavu, the father of the second appellant for partition claiming 1/3rd share in the suit properties and for declaration declaring that the decree passed in O.S.No.43 of 1984, dated 15.07.1985 is void.

2. The case of the plaintiff is that the suit properties belong to the Hindu Joint Family consisting of the plaintiff, first defendant and their father / Kali Gounder. The properties were purchased in the name of the plaintiff's father vide sale deed dated 04.07.1983 and he died intestate on 29.12.2001,

hence, the plaintiff is entitled for 1/3rd share in the suit properties. It is further stated that the fifth defendant and Ramasamy, husband of the second defendant and the father of the defendants 3 and 4 filed a suit O.S.No.43 of 1984 for specific performance and got decree in their favour. In E.P.No.57 of 2001, the plaintiff and the first defendant were added as parties as legal heirs of Kali Gounder. Since the properties are joint family properties, the father of the plaintiff has no right to sell the entire properties in favour of the defendants.

3. In the written statement filed by the fifth defendant and adopted by the defendants 2 to 4, the averments made in the plaint were denied as false. It is stated that the father of the plaintiff purchased the suit properties out of his own funds. Therefore, they are his self acquired properties and not the Hindu Joint Family properties as alleged in the plaint.

4. It is their further case that on 10.06.1983, the father of the plaintiff entered into an agreement with one Ramasamy, husband of the second defendant and father of the defendants 3 and 4. Further, he did not come forward to execute the sale deed, so the suit in O.S.No.43 of 1984 was filed for specific performance and after contest the suit was decreed. The appeal filed by the father of the plaintiff in A.S.No.862 of 1985 was dismissed by the High Court. Thereafter, E.P.No.57 of 2001 was filed for execution of the sale deed. In the meanwhile, the father of the plaintiff filed the suit in O.S.No.544 of 2001 (transferred and renumbered as O.S.No.199 of 2004) against these defendants and it was dismissed after trial on 27.04.2004. According to the defendants, the present suit is vexatious and it was filed in order to prevent the defendants from enjoying the fruits of the decree in O.S.No.43 of 1984. Hence, it is liable to be dismissed with compensatory cost.

5. On the basis of the above pleadings, the Trial Court framed necessary issues. To substantiate the case of the plaintiff, PW1 and PW2 were examined and Exs.A1 to A6 were marked. On the side of the defendants, DW1 was examined and Exs.B1 to B10 were produced. The Trial Court after considering the evidence, dismissed the suit. Aggrieved over the same, the plaintiff preferred an appeal in A.S.No.8 of 2012, but in vain. Challenging the concurrent findings, the present appeal has been filed.

6. Mr.M.V.Venkataseshan, learned counsel for the appellants would urge that the decree in a suit for specific performance as against the father of the plaintiff / grand father of the second appellant and the consequent execution of sale deed would not debar the appellants from claiming their share in the suit properties. It is further submitted that Exs.A6 and A7 would

show that when the father of the plaintiff alienated the joint family properties and the plaintiff also joined as eo nomine party in the sale deeds, which would show that even though the properties were purchased in the name of the plaintiff's father, they were ancestral joint family properties. But these vital aspects were not taken note of nor considered by the Courts below.

7. In the case on hand, the plaintiff filed the suit against the defendants contending that the suit properties belonged to joint family properties consisting of the plaintiff, the first defendant and his father. Therefore, the father of the plaintiff had no right to enter into a sale agreement dated 10.06.1983 and the decree obtained in O.S.No.43 of 1984 would not bind the plaintiff. Hence, he is entitled for 1/3rd share in the suit properties.

8. On the other hand, the defendants contended that the suit properties are self acquired properties of the father of the plaintiff. During the cross-examination, PW1 admitted that he does not know, who are entitled to the suit properties; when the suit properties were purchased and from whom they were purchased. PW1 further admitted that under the sale deed dated 29.12.1955, his father purchased a part of the suit properties and thereafter, sold some of the properties to one Kandasamy, Selvaraj, Palaniappan in the year 1994. Ex.B1 sale deed dated 07.12.1994, was relied upon by the defendants to show that those properties were described as self acquired properties and the plaintiff also signed as attesting witness. Ex.A6 was produced to establish that the suit properties are joint family properties and they were sold to one Vellappan. It is also seen that Ex.A7 sale deed was produced in the Appellate Court for the same purpose. However, the recitals in Ex.A6 and Ex.A7 as observed by the First Appellate Court that in both the documents, the properties are mentioned as self acquired properties of the plaintiff's father. Likewise, under Ex.A1 sale deed dated 04.07.1983, the father of the plaintiff purchased a portion of the suit properties from one Muthammal and he alone has paid the sale consideration to his vendor. PW1 further admitted that after his father passed away, he was impleaded as respondent in the Execution Petition and claimed 1/3rd share in the Execution petition. However, the possession was ordered in favour of the defendants.

9. The Courts below after considering the entire evidence adduced by the parties in detail come to the factual findings that the suit properties are the self acquired properties of Kali Gounder, the father of the plaintiff and the first defendant. Hence, I do not find any merit in the contentions of the learned counsel for the appellants.

10. In my considered opinion, there is no illegality or irregularity in the findings of the Courts below. No question of law arises for consideration in this appeal. In that view, the Second Appeal stands dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

pvs

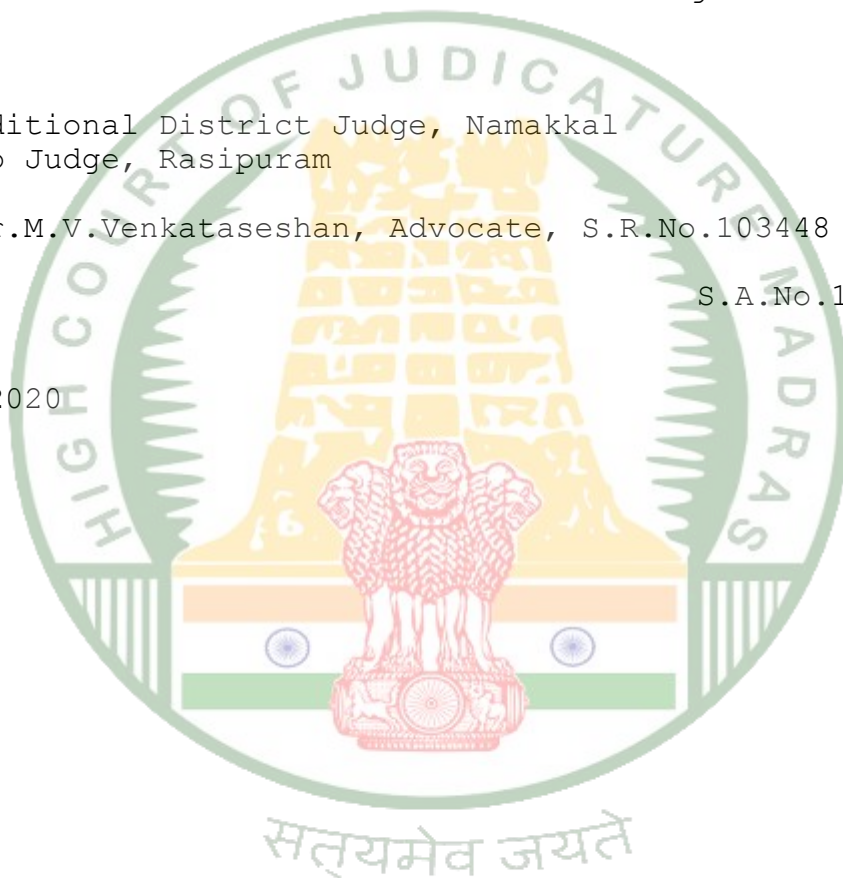
To

1. The Additional District Judge, Namakkal
2. The Sub Judge, Rasipuram

+1cc to Mr.M.V.Venkateshan, Advocate, S.R.No.103448

S.A.No.1166 of 2019

PM(CO)
CS/10/09/2020



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