

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.895 of 2019
and
C.M.P.No.19074 of 2019

1.Anbalagan
2.Chinnammal

..Appellants 1 & 2/Appellants 1 & 2/
Defendants 1 & 2

Vs.

1.Ramesh
2.Chinnathal

... 1st Respondent/1st Respondent/
Plaintiff

3.Lakshmi

... 2nd & 3rd Respondents/Appellants 3 &
4/Defendants 3 & 4

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree in A.S.No.47 of 2013 on the file of Additional District Judge, Fast Track Court, Villupuram dated 10.08.2018 in modifying the judgment and decree in O.S.No.52 of 2011 on the file of Subordinate Judge, Gingee dated 26.04.2013.

For Appellants : Mr.G.Surya Narayanan

J U D G M E N T

The 1st and 2nd defendants in O.S.No.52 of 2011 have filed this appeal aggrieved by the judgment and decree of the lower appellate court made in A.S.No.47 of 2013, in and by which, the lower appellate court modified the decree of the trial court thereby restricting the decree only to items 1 to 3 and 5 to 7 of 'A' Schedule and 'B' Schedule properties.

2. According to the plaintiff, the items 1 to 3 of the 'A' Schedule properties were allotted to the 1st defendant at a partition that took place between him and his brothers on 17.06.1987. Therefore, they are ancestral properties. As regards Item No.4 of the property, it is claimed that the same was also ancestral in nature. As far as the other properties are concerned viz., Item 5, 6 and 7 of 'A' and 'B' Schedule properties, it is the case of the plaintiffs that the properties

were purchased from and out of the sale of the ancestral properties and out of the joint flower business that was carried on by the plaintiff and the 1st defendant. The plaintiff as the son of the legally wedded wife of the 1st defendant claim ½ share in the properties.

3. The suit was resisted by the defendants claiming that all the suit properties are absolute properties of the 1st defendant. As regards item 4 of Schedule 'A' it was claimed that the same was bequeathed to the 1st defendant by his father under a Will. The claim of the plaintiff regarding joint flower business was denied. It was also claimed that the 2nd defendant is the legally wedded wife and defendants 2 and 3 being daughters would be entitled to a share. The 1st defendant also claimed that he had executed a registered settlement deed settling all the properties in favour of the defendants.

4. The trial court found that the case of the plaintiff is substantially true. However, with regard to item 4 of the property, the trial court had found that the properties were bequeathed to 1st defendant under the Will of his father and therefore the plaintiff is not entitled to a share in the item 4 of the suit 'A' Schedule property. However, while granting a decree, the trial court granted a decree in favour of the plaintiff in respect of all the properties.

5. Aggrieved the defendants had filed an appeal before the Additional District Court, Villupuram in A.S.No.47 of 2013. The lower appellate court agreed with the findings of the trial court with reference to the source of consideration for purchase of item 5, 6 and 7 of 'A' and 'B' Schedule properties. However, the first appellate court modified the decree and excluded item 4 of the 'A' Schedule property. Aggrieved the 1st and 2nd defendants have come forward with this Second Appeal.

6. I have heard Mr.G.Suryanarayanan, learned counsel appearing for the appellants.

7. Though Mr.G.Suryanarayanan would vehemently contend that the ancestral properties were sold some time in 1998 but the suit items 5, 6 and 7 of the 'A' Schedule property and 'B' Schedule property were purchased some time in 1997. Therefore, according to him, the courts below were not right in decreeing the suit in respect of atleast item 5, 6 and 7 of 'A' Schedule properties which were purchased on 19.05.1997 under Ex.A2. He would also contend that the ancestral properties were sold in the year 1998 only and therefore the courts below were not right in concluding that the properties that were purchased under Ex.A2 sale deed are also the part of the ancestral estate.

8. The case of the plaintiff as already stated is that the properties were purchased from and out of the sale proceeds of ancestral properties that were sold in 1998 and income from the joint flower business that was carried on by the plaintiff and the 1st defendant.

9. On this question the courts below have analyzed the evidence and based on the answers given by the 1st defendant in cross examination, had come to the conclusion that the evidence of the 1st defendant is not trust worthy. The conclusion of the courts below is based on the oral evidence of the 1st defendant as DW1. The courts below have also found that the 1st defendant is burking the truth from the court.

10. In view of the said finding, I don't think there is a scope for interference with the said conclusion in the Second Appeal, particularly when the scope of the Second Appeal is restricted in view of Section 100 of the Code of Civil Procedure. I therefore don't find any question of law much less a substantial question of law arising in this Second Appeal.

11. Hence, this Second Appeal is dismissed without being admitted. There will be no order as to costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

dsa

TO

1. The Additional District Judge,
Fast Track Court, Villupuram.

2. The Subordinate Judge,
Gingee.

+1cc to Mr.Suryanarayanan, Advocate, S.R.No. 76388

S.A.No.895 of 2019

GP(CO)
GN(13/02/2020)