

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.08.2019

PRONOUNCED ON : 07.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.601 of 2018

Anjalai ... Appellant/5th defendant

Vs.

1.Latha

2.Uma

3.Manimegalai Ammal ...1 to 3 Respondents/Plaintiffs

4.Ranganathan

5.Kolanji Ammal

6.Chellaprakash

7.Iswaria

Minor rep.by next friend and
her father, 4th respondent

... Respondents/ 1 to 4 defendants

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 05.01.2018 passed in A.S.No.32 of 2008 on the file of the III Additional District and Sessions Judge, Cuddalore, Vridhachalam, confirming the Judgment and Decree dated 05.11.2004 passed in O.S.No.273 of 2000 on the file of the Principal Subordinate Court, Vridhachalam.

For Appellant : Mr.S.N.Subramani

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 05.01.2018 passed in A.S.No.32 of 2008 on the file of the III Additional District and Sessions Court, Cuddalore, Vridhachalam, confirming the Judgment and Decree dated 05.11.2004 passed in O.S.No.273 of 2000 on the file of the Principal Subordinate Court, Vridhachalam.

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

3.The suit has been laid by the plaintiffs against the defendants for maintenance in favour of the plaintiffs 2 & 3 from the first defendant as well as for the claim of past

maintenance for the period of three years prior to the institution of the suit and also for marriage expenses for the first plaintiff in a sum of Rs.30,000/- from the first defendant and also sought for the relief of partition in respect of the suit properties.

4.It is found that the defendants 1 & 2 had not contested the suit and the defendants 3 & 4 had been represented by the Court guardian and in fact, it is only the 5th defendant, who had resisted the plaintiff's suit.

5.Based on the materials placed on record and the submissions made, the Courts below were pleased to grant the relief of maintenance in favour of the plaintiffs 2 & 3 as prayed for from the first defendant at the rate of Rs.12,400/- per annum as well as their claim of past maintenance from the first defendant in a sum of Rs.37,200/- and also upheld the claim of marriage expenses for the first plaintiff from the first defendant in a sum of Rs.30,000/- and further also held that the plaintiffs 1 & 2 are entitled to obtain 2/3 share in the suit properties and created charge in respect of 1/3 share of the first defendant in respect of the suit properties qua the claim of maintenance granted in favour of the plaintiffs as abovestated and accordingly, disposed of the plaintiff's suit. Impugning the same, the present second appeal has been preferred.

6.It is found that the main defence that had been taken by the 5th defendant/appellant is that he had acquired title to the suit first item of the plaint A schedule properties from the defendants 1 & 2 and therefore, the plaintiffs are not entitled to claim any share in respect of the abovesaid item of the suit properties. However, the plaintiffs would contend that the abovesaid sale transaction is not true, valid and binding on them and according to them, the abovesaid sale transaction is a sham and nominal document created by the defendants 1 & 2 in favour of the 5th defendant with a view to deprive their claim of partition in the suit properties and accordingly, prayed for the grant of reliefs as put forth in the plaint.

7.Despite the abovesaid case of the plaintiffs, inasmuch as the 5th defendant has put forth the claim that he had purchased the first item of the plaint A schedule properties from the defendants 1 & 2 and the same had been challenged by the plaintiffs, in toto, as rightly determined by the Courts below, to sustain that the abovesaid sale transaction is a true and valid one and binding upon the plaintiffs, the first defendant had not endeavoured to produce either the original sale deed or the copy of the same in support of his case. Therefore, when from the materials placed on record, the suit properties are found to be the joint family properties belonging to the plaintiffs 1 & 2 and the first defendant and the defendants 1 & 2 are not entitled to alienate the same to

the third parties including the 5th defendant detrimental to the interest of the plaintiffs with reference to the same and when the 5th defendant has failed to establish that he has validly obtained the transfer of the first item of the plaint A schedule properties from the defendants 1 & 2 for adequate consideration and the same is binding upon the plaintiffs and when the defendants 1 & 2 had not contested the plaintiffs' case and as abovestated, the 5th defendant has also not endeavoured to place the title deed based on which she claims title to the first item of the plaint A schedule properties, in such view of the matter, the Courts below are found to be wholly justified in determining that the alleged sale transaction projected by the 5th defendant is not true and the same is invalid and not binding upon the plaintiffs in any manner.

8.As regards the judgment and decree of the Courts below granting the relief of maintenance as well as past maintenance, marriage expenses in favour of the plaintiffs, the first defendant or for the matter the second defendant has not challenged the same. Similarly, the first defendant has also not challenged the charge created in respect of his 1/3 share in the suit properties for the maintenance claim granted in favour of the plaintiffs.

9.In the light of the abovesaid discussions, when the contesting defendant i.e. the 5th defendant had failed to establish her claim of title to the first item of the plaint A schedule properties in any manner and not even endeavoured to produce her title deed to sustain her case and furthermore, not even tendered evidence in support of her case, in all, it is found that the Courts below are found to be totally justified in not accepting the sale transaction projected by the 5th defendant and the reasonings and conclusions of the Courts below with reference to the same do not warrant any interference.

10.In the light of the abovesaid discussions, the reasonings and conclusions of the Courts below for upholding the plaintiffs' case being based on the proper appreciation of the materials placed on record both oral and documentary and not suffering from any perversity or irrationality in any manner, in all, the same do not warrant any interference.

In conclusion, no substantial question of law is found to be involved in the second appeal. Resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS-V)

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Sub Assistant Registrar

To

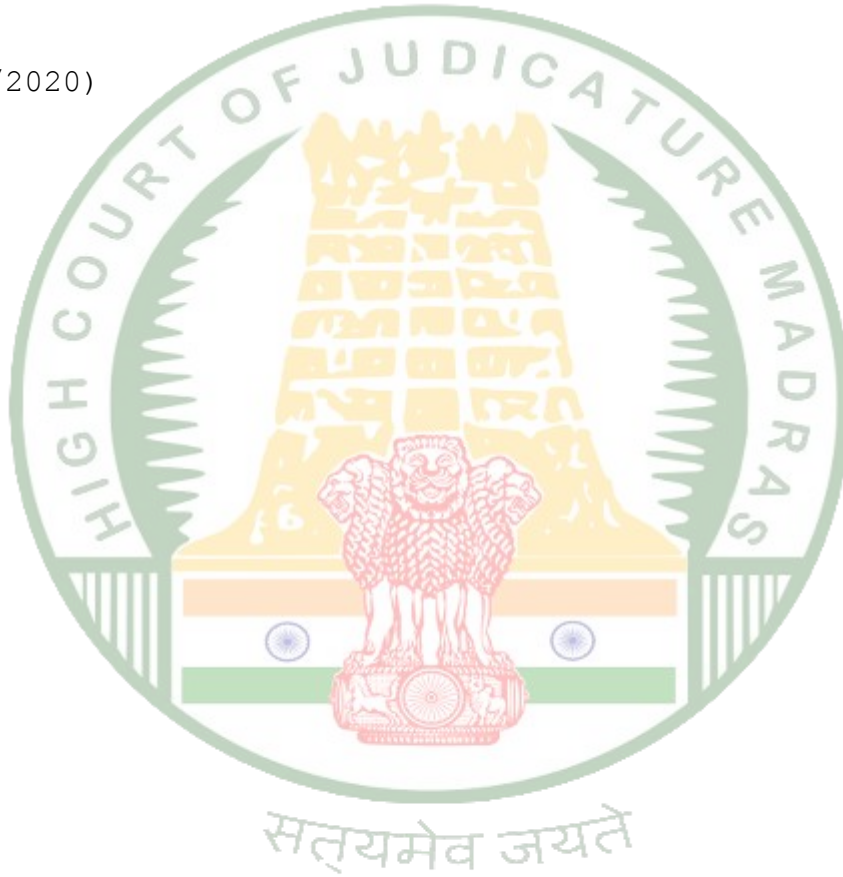
1.The III Additional Judge,
District and Sessions Court,
Cuddalore, Vridhachalam.

2.The Principal Subordinate Court, Vridhachalam.

+lcc to Mr.S.N.Subramani, Advocate SR.No.67461

S.A.No.601 of 2018

VG I (CO)
GMY (10/02/2020)



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