

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 254 of 2020

1.Chandramohan

2.Ammu

3.Anandmohan

4.Archana

...Appellants/Plaintiffs

Vs.

1.K.Marimuthu

2.The Industrial Investment Corporation Limited,
Rep.by the General Manager,
No.23/A, Ranganathan Road,
Chennai - Trichy Trunk Road,
Villupuram.

...Respondent/Defendants

Prayer: Memorandum of Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree dated 28.06.2018 made in A.S.No.42 of 2013 on the file of the Additional District Judge (Fast Track Court), Villupuram confirming the judgement and decree dated 27.09.2010 made in O.S.No.97 of 2007 on the file of the I Additional Subordinate Judge, Villupuram.

For Appellant : Mr.V.Perumal
for T.Danyakumar

J U D G M E N T

The plaintiffs in O.S.No. 97 of 2007 whose suit for partition and separate possession on her 4/5th share was dismissed by the Courts below has come up with this second appeal.

2. The suit was laid by the plaintiff contending that the suit properties are ancestral properties belonging to the joint family consisting of the first defendant and the plaintiffs. According to the plaintiffs, the first defendant purchased the

suit property from and out of the sale proceeds of his ancestral lands which were sold by him under sale deed on 18.06.2001. Therefore, according to the plaintiffs, the suit property possessed the character of ancestral in the hands of the first defendant. It was further claimed that the second defendant is attempting to bring the suit property to sale on the ground that it has been offered as security by one Meganathan for the loan obtained by him from the second defendant. In order to prevent the second defendant from exercising power of sale available to it under the State Financial Corporation Act, 1939, the plaintiffs had come up with the suit, seeking partition and separate possession of the 4/5th share. It was their further contention that the first defendant as Manager and Karta of the family had no power to offer the property as security for the loan taken by Meganathan.

3. Expectedly, the first defendant remained exparte. The suit was resisted by the second defendant contending that the suit property is the self-acquired property of the first defendant. The first defendant stood as a Guarantor for the borrowings of one Meganathan and since the said Meganathan did not repay the amounts due to the Corporation, the Corporation exercised its power of sale and brought the suit property for sale. According to the second defendant, it is only with a view to prevent sale of the property, the plaintiffs have come up with the suit at the instance of the first defendant. The fact that the first defendant and the plaintiffs were residing in the same house was also projected as a defence by the second defendant.

4. At trial, the first plaintiff was examined as P.W.1 and one Sivamoorthy was examined as P.W.2. Exs.A1 to A5 were marked. On the side of the defendants, one Kursith Alibaiq, officer of the second defendant was examined as D.W.1 and Exs.B1 to B6 were marked. Upon a consideration of the evidence on record, the Additional Sub-Ordinate judge, dismissed the suit concluding that the plaintiffs have not established that the purchase under Ex.A2 was made from and out of the sale proceeds ancestral property or ancestral income that was available with the first defendant. As regards the claim that the purchase under Ex.A2 was made from and out of the sale consideration received under Ex.A1, the Trial Court found that Ex.A1 dated 18.06.2001 was for the consideration of Rs.33,000/- whereas Ex.A2 sale deed dated 04.04.2002 was for a consideration of Rs.2,50,000/-. The source of the balance amount of Rs.2,17,000/- was not proved to be from the ancestral income / nucleus.

5. On the said findings, the Trial Court concluded that the plaintiffs have not established that the entire sale consideration paid under Ex.A2 sale deed was from the ancestral income. The time gap between the sale under Ex.A1 and the purchase under Ex.A2 was also taken into account to buttress the conclusion. On the above findings, the Trial Court dismissed the suit. Aggrieved, the plaintiff preferred an appeal in A.S.No. 42 of 2013 on the file of the District Court, Villupuram. The learned Additional District Judge, upon a reconsideration of the evidence concurred with the findings of the Trial Court and dismissed the appeal. Aggrieved, the plaintiffs have come up with this second appeal.

6. I have heard Mr.V.Ragavachari, learned counsel appearing for the appellant.

7. Mr.V.Raghavachari, would vehemently contend that once it is shown that the family was possessed of ancestral properties and in the absence of any evidence to show that the first defendant had any separate income the property purchased by the first defendant while he was manager of the family should be presumed to be ancestral property. Therefore, according to him, the Courts below were not right in concluding that the property purchased under Ex.A2 cannot be characterized as ancestral property of the family. I am unable to countenance the said statement of the learned counsel appearing for the appellant. The sale under Ex.A1 had occurred on 18.06.2001 and it was for a sum of Rs.33,000/-, while the purchase under Ex.A2 was on 04.04.2002 for a consideration of Rs.2,50,000/-. There is absolutely no evidence on the side of the plaintiffs to show as to how the difference of Rs.2,17,000/- came into the hands of the first defendant. While Ex.A1 sale deed shows that an extent of 66 cents out of 1.76 acres was sold, in the absence of any evidence on the side of the plaintiffs to show as to how the remaining 1.10 cents was dealt with would also militate against the plaintiffs.

8. Adverting to the submissions of the learned counsel appearing for the appellant. It is fundamental principle of law that mere existence of a joint family will not lead to the presumption that the properties owned by one of the members or the Karta are joint family properties. It is for the person who claims that the properties that stand in the name of the Manager or the members of the family are joint family properties to show that the property was purchased with the aid of ancestral nucleus that was available. In the absence of such positive evidence, the property cannot be characterized as ancestral

property. The fact that D1 did not contest the suit also militates against the claim of the plaintiffs. I do not see any perversity in the findings of the Courts below which are based on material evidence. I am also unable to find any question of law much less a substantial question of law in order to enable me to entertain this appeal. Hence, the appeal is dismissed without being admitted.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

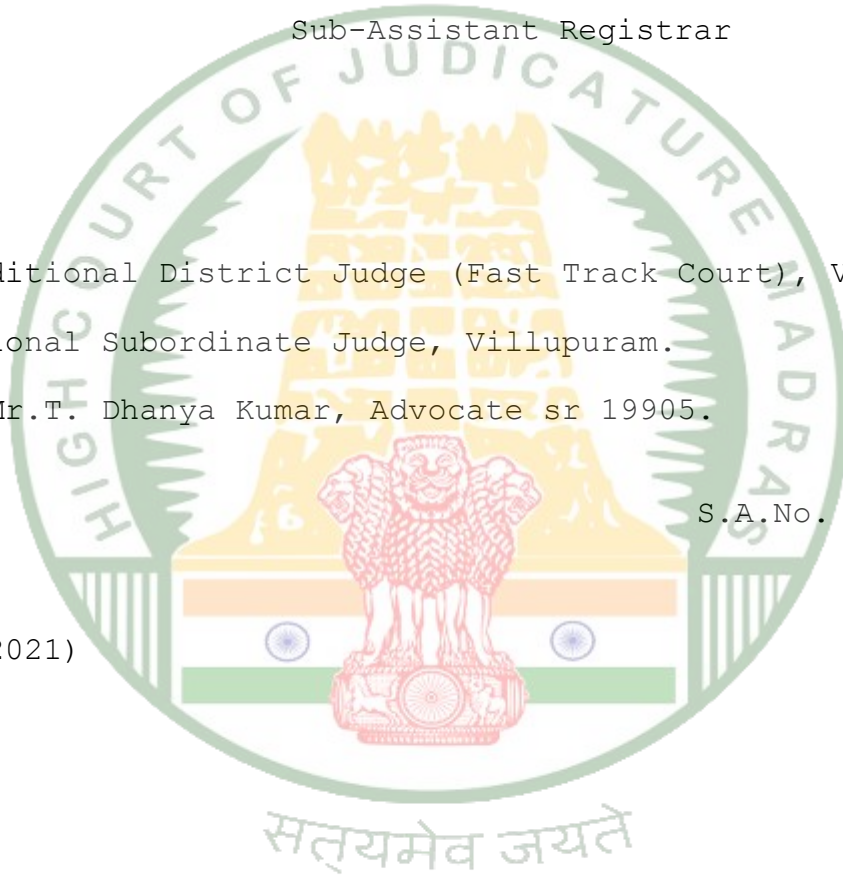
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To:-

1. The Additional District Judge (Fast Track Court), Villupuram
 2. I Additional Subordinate Judge, Villupuram.
- +1 CC to Mr.T. Dhanya Kumar, Advocate sr 19905.

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SAI (CO)
SP(03/02/2021)



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