

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Appeal Suit No.524 of 2018

and

C.M.P.No.13285 of 2018

S.Palanimuthu ...Appellant/1st Defendant

Vs..

1.S.Appukkutty ...1st Respondent/Plaintiff

2.G.Palanimuthu Gounder ...2nd Respondent/2nd Defendant
(2nd Respondent is an innecessary
Party in the appeal and hence
he may be given up)

Appeal Suit filed under Section 96 C.P.C., r/w Order XLI
Rule 1, to set aside the Judgment and Decree of the I
Additional District and Sessions Judge, Tiruppur in O.S.No.100
of 2016 dated 04.04.2018 and allow this appeal and thus render
justice.

For Appellant : Mr.J.Franklin

For Respondents : Mr.V.P.Sengottuvel
[For R1]

R2 - Given up

JUDGMENT

The lis on hand is instituted, challenging the judgment and
decree dated 04.04.2018 passed in O.S.No.100 of 2016.

2. The first defendant is the appellant before this Court.
The plaintiff is the 1st respondent in the appeal suit. The suit
was instituted by the 1st respondent for partition. The main
contention of the appellant is that the suit schedule property
was purchased. However, the sale consideration was paid by the
appellant / 1st defendant. In other words, the appellant contends
that though the property was purchased in the joint name of the
plaintiff and the 1st defendant, he pledged the jewels belonged

to his wife and paid sale consideration for the purchase of the suit schedule property. Therefore, the plaintiff is not entitled for the relief of partition.

3. The appellant / 1st defendant rebutted the contention by stating that the property was purchased in the joint name. The suit schedule property was purchased in the joint name in the year 1973 itself and therefore, the pleadings of the plaintiff in the suit is false and frivolous. Once the property was purchased in the joint name of the plaintiff and the 1st defendant, then the properties being capable of partition and therefore, the decree passed by the trial Court is in consonance with the principles.

4. The trial Court framed the issues as to (1) Whether the plaintiff is entitled for half share in the suit property; (2) Whether the plaintiff entitled for declaration that sale deed dated 11.06.1991 will not bind the plaintiff.

5. On the side of the plaintiff PW1 was examined and marked as Ex.A1 to Ex.A13 and on the side of the defendants DW1 to DW3 were examined and Ex.B1 to Ex.B3 were marked. With reference to the Issue No.1, the trial Court examined the documents in respect of the suit schedule properties and made a finding that the plaintiff and the defendants admitted their relationship and the plaintiff states that the 1st item of the suit property was jointly purchased by him and the 1st defendant by sale deed dated 07.06.1973 under Ex.A1 and the property was partitioned between the sharer and the plaintiff and the 1st defendant were jointly allotted 'A' schedule property in the partition deed dated 23.01.1986 under Ex.A2. 'A' schedule property is described as 1st item of suit property. The 1st defendant states that Item No.1 of the suit property was purchased by himself by selling his wife jewels. The plaintiff is not in possession at any point of time. Therefore, the burden is only on the 1st defendant to prove that 1st defendant alone purchased the property. The 1st defendant denied that stamp papers under Ex.A1, Ex.A2 and Ex.A13 was purchased by the plaintiff. The 1st defendant has not produced any evidence that the said property was purchased by selling his wife's jewels. Patta in respect of 1st item of suit property stands in the name of plaintiff and 1st defendant. The 1st defendant states that he is residing in 1st item of the suit property as per Ex.B1 family card and Electricity Connection stands in the name as per Ex.B2. The trial Court considered the settled principles of law that the possession of Co-owner is deemed to be the possession of other co-owner. Accordingly, drawn an inference that the 1st defendant had not proved the plaintiff was only name lender in respect of the 1st item of suit property.

6. The 1st defendant has stated that he purchased the 2nd item of suit property out of his own funds. He leased out the 2nd item of suit property to his 1st son and that plaintiff is not in possession of 2nd item of suit property. The 1st defendant admitted that the sale deed in respect of 2nd item of suit property stands in the name of plaintiff and the 1st defendant as per Ex.A13. The sale deed in respect of 2nd item of property was presented only by the plaintiff Patta stands in the name of plaintiff and 1st defendant jointly.

7. When as per the document, both the plaintiff and the 1st defendant are the joint owners of the suit schedule property, then the trial Court found that both the plaintiff and the 1st defendant are equally entitled for their respective shares in the suit schedule property. Accordingly, the trial Court arrived a conclusion that the 1st defendant had not produced any source of income to establish that he purchased the 2nd item of suit property from and out of his own funds. Thus, the trial Court concluded the 1st issue, stating that the plaintiff is entitled for half share in the suit property.

8. With reference to the Issue No.2, it is not connected with the plaintiff and the 1st defendant and therefore, it became unnecessary to consider as the 2nd defendant was impleaded in the suit in view of the fact that there is some error regarding the Survey Numbers mentioned in the document pertains to the suit schedule property.

9. The core issue considered by the trial Court with reference to the documents and evidences produced by the respective parties to the suit are that the relationship between the plaintiff and the 1st defendant is not disputed. The 1st defendant is the younger brother and the plaintiff is the elder brother. Further, the documents with reference to the suit schedule property establishes that the property was purchased in the joint name of the plaintiff and the 1st defendant. The 1st defendant could not able to establish that Item No.2 in the suit schedule property was purchased from and out of the funds mobilized by him by pledging the jewels belonging to his wife. However, he could not be able to establish the said factum before the trial Court by producing documents or by adducing evidences. In the absence of any proof to establish that the suit schedule property was purchased from and out of his own income, the trial Court arrived a conclusion that the documents shows that the property was purchased jointly by the plaintiff and the 1st defendant and both of them are the owners of the suit

schedule property and therefore, they are entitled for equal share. Further, the trial Court considered that mere possession of the 1st defendant would not confer any right, so as to establish that he purchased the property from and out of his own funds.

10. At the outset, it was established before the trial Court that the suit schedule properties stand in the name of both the plaintiff and the 1st defendant and the purchase was made jointly in the year 1973 and 1980.

11. This being the factum established through the title documents marked before the trial Court, there is no error as such in respect of the appreciation of the documents by the trial Court in deciding the issues. Ultimately the decree was passed, granting half share each to the plaintiff as well as to the 1st defendant. Thus, the trial Court considered the documents and evidences in consonance with the legal principles and in accordance with the documents as well as the evidences.

12. Accordingly, the judgment and decree dated 04.04.2018 passed in O.S.No.100 of 2016 is confirmed. Consequently, A.S.No.524 of 2018 stands dismissed. No costs. Thus, the connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The I Additional District,
and Sessions Judge,
Tiruppur.

Copy to
The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.J.Franklin, Advocate Sr.3560
+2cc to Mr.V.P.Sengottuvel, Advocate Sr.3041

Appeal Suit No.524 of 2018

pm[co]
srg 28/08/2020