

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2020

CORAM: THE HONOURABLE Mr.JUSTICE R.SUBRAMANIAN

S.A.No.593 of 2016

Kannan

... Appellant / Appellant / Plaintiff

Vs.

1.Ammasi

2.Mayakrishnan

3.Jeyalakshmi

... Respondents / Respondents / Defendants

Prayer : Second Appeal filed under Section 100 of Cr.P.C., praying set aside the judgment and decree dated 27.3.2014 passed in A.S.No.21/2012 on the file of the Principal District Court, Namakkal, confirming the judgment and decree dated 28.2.2012 passed in O.S.No.321/2008 on the file of the Subordinate Judge, Rasipuram, by allowing the present second appeal.

For Appellant : Mr.Karthik Marimuthu
for Mr.I.C.Vasudevan

For Respondents : Mr.Gautham [R1 & R2]

ORDER

The plaintiff in O.S.No.321 of 2008, whose suit for partition was dismissed by the trial Court upon its affirmation by the Appellate Court viz., the Principal District Court, Namakkal, has come up with this second appeal.

2. The plaintiff sued for partition claiming 1/3rd share in the suit properties. According to the plaintiff, he and the second defendant are the children of the first defendant born to his first wife viz., Pachaiyammal, and the third defendant is the second wife of the first defendant. The first item of the suit properties was purchased on 02.9.1982 in the name of the third defendant out of the earnings of the plaintiff, first defendant and second defendant. It is the contention of the plaintiff that the third defendant, who is his father, is a lorry driver by profession. The plaintiff and the second defendant started their avocation as cleaners in the lorry and now they are also in the same profession, as his father. According to the plaintiff, he and the second defendant have contributed their earnings towards purchase of the first item of

suit property in the name of the third defendant. It is his further contention that the second item of the suit property which was purchased out of the income derived from the first item on 31.05.1993. Hence, the second item of property is also a joint family property.

3. The suit was resisted by the defendants 1 and 3. It is the contention of the first defendant that neither the plaintiff nor the second defendant had contributed anything for the purchase of the suit properties. He denied the allegation that it is a joint family property. According to first defendant, the plaintiff who was born sometime in 1969 could not have contributed anything for the purchase of the first item of the property in 1982, as he was only 13 at that time. The second defendant is the second son of the first defendant, and was younger to the plaintiff. Therefore, the plea that the second defendant too had contributed towards purchase of first item, could not be accepted. It is the further claim that the suit property was solely purchased by the third defendant and hence, the entire foundation of the suit for partition was not non-existent. While the second defendant remained exparte, the third defendant filed written statement contending that the suit first item was purchased out of the income derived by her alone and as such, neither the plaintiff nor the defendants 1 and 2 have no right in the first item of the suit property.

4. The plaintiff was examined as P.W.1 and one Arumugam was examined as P.W.2. The third defendant was examined as D.W.1 and the first defendant was examined as D.W.2. Exhibits A1 and A2 were marked by the plaintiff and Ext.B1 to Ext.B3 were marked by the defendants.

5. The trial Court upon consideration of evidence on record, concluded that the theory of contribution pleaded by the plaintiff has not been established. Once the plea of contribution fails, the plaintiff cannot claim a share in the suit properties as it has not pleaded that the suit properties were purchased out of joint family nucleus. On the said finding, the learned trial Judge has dismissed the suit.

6. Aggrieved, the plaintiff preferred an appeal in A.S.No.21/2012. The Appellate Court viz., the Principal District Court, Namakkal, on re-appreciation of the evidence, concurred with the findings of the trial Court. The Appellate Court took notice of the evidence of the plaintiff as P.W.1, wherein he has clearly admitted that he is not aware of any ancestral property owned by his family members, other than the suit property. The Appellate Court also adverted to the admission of the plaintiff that he was of very tender age when Ext.A1 came into existence. On the above findings, the Appellate Court dismissed the appeal. Aggrieved, the plaintiff has come up with this second appeal.

7. I have heard Mr.Karthick Marimuthu, counsel appearing on behalf of Mr.I.C.Vasudevan, learned counsel for the appellant, and Mr.Gautham, learned counsel appearing for the respondents 1 and 2.

8. Mr.Karthick Marimuthu would vehemently contend that the Courts below were not correct in disbelieving the deposition of P.W.1 and P.W.2. He also faults the Courts below for rejecting the evidence of P.W.2 on the ground that P.W.2 is the close relative of the plaintiff. The learned counsel for the appellant would contend that in order to prove the affairs in the family, only the close relatives could be examined. The learned counsel would further contend that it is not uncommon that persons working as cleaners in lorries would have started earning when they are minors.

9. I have considered the rival submissions of the learned counsel appearing for the appellant and the respondents.

10. Even ignoring the evidence of P.W.2, the evidence of P.W.1 is insufficient to prove the theory of contribution. P.W.1 himself has admitted that he was of tender age when Ext.A1 came into existence. It is the specific case of the plaintiff that he was born in 1969, and therefore he must have been 13 years old at the time when Ext.A1 came into existence. The claim of the plaintiff that he had started earning at the age of 13 and contributed for the purchase of the property under Ext.A1, cannot be accepted. Therefore, I am of the considered opinion that the Courts below are right in rejecting the claim made by the plaintiff. The learned counsel for the appellant is not able to demonstrate that the findings of the trial Court as well as the first Appellate Court are perverse. He is also not able to point out any evidence that has been omitted to be considered by the Courts below. Hence, I do not find any question of law, much less the substantial question of law, in order to entertain the appeal.

11. Accordingly, this appeal fails and it is dismissed. The judgment and decree dated 27.3.2014 passed in A.S.No.21/2012 on the file of the Principal District Court, Namakkal, confirming the judgment and decree dated 28.2.2012 passed in O.S.No.321/2008 on the file of the Subordinate Judge, Rasipuram, is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

1.The Principal District Judge
Namakkal.

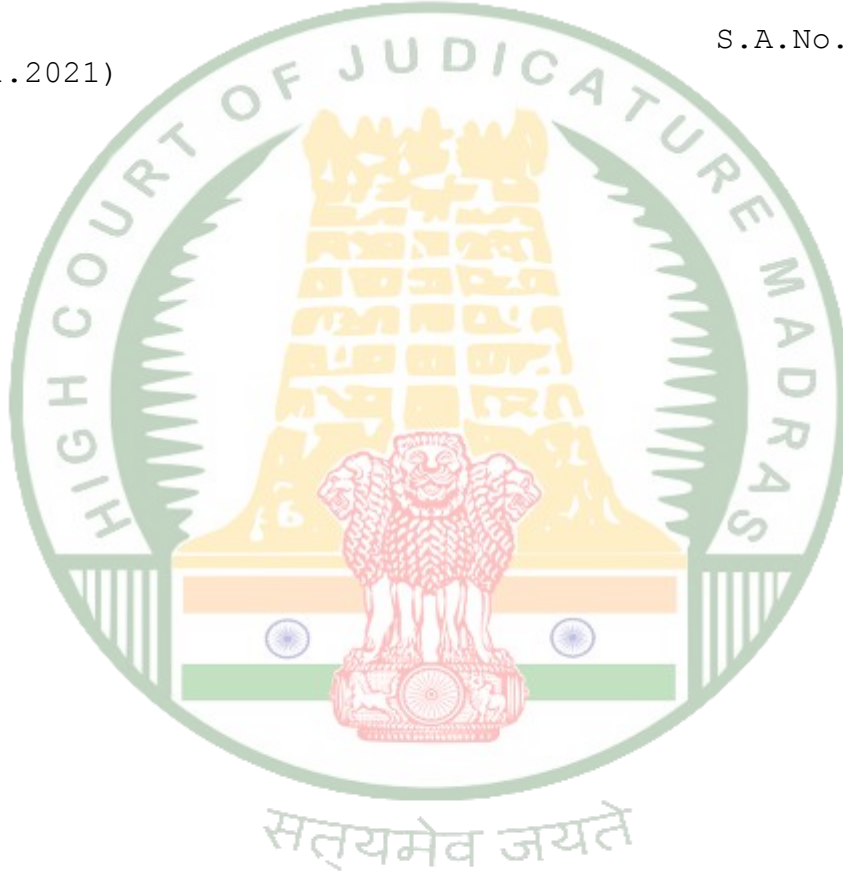
2.The Sub Judge
Rasipuram.

3.The Section Officer
VR Section
High Court, Madras.

spd co

A.SK(20.01.2021)

S.A.No.593 of 2016



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