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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.04.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.1292 of 2009

1. Chandrasekaran
2. Janakiraman
3. Sivakami
4. Saradha

...Appellants /
Defendants 1, 2 , 5 & 6

Vs

1. Veeramani
2. Kuppammal
3. Vijaya

...Respondents / Plaintiff and
Defendants 3 and 4

PRAYER: Second Appeal filed under section 100 of the Civil Procedure Code against the judgement and decree dated 20.07.2009 passed in A.S.No.23/2008 on the file of the Principal Sub Court, Cuddalore modified the judgment and the decree dated 28.01.2008 passed in O.S.No.358/2003 before the Principal District Munsif's Court, Cuddalore.

For Appellants : M/s. R. Meenal

For Respondents : M/s. P. Srividhya for R1
R2- served- No appearance
R3- Not ready in notice

JUDGEMENT

The defendants 1,2,5 and 6 have filed the above Second Appeal challenging the judgment and decree dated 20.7.2009 in A.S.No.23 of 2008 on the file of the Principal Subordinate Court, Cuddalore modifying the judgment and decree dated 28.1.2008 in O.S. No. 358 of 2003 on the file of the Principal District Munsif, Cuddalore.



2. The first respondent herein had filed the suit O.S.No.358 of 2003 on the file of the Principal District Munsif, Cuddalore for a partition and separate possession of his 7/6th share in the suit properties.

3. The case of the first respondent was that he is the son of the first appellant herein through his first wife Lakshmi. The plaintiff was born on 03.07.1986. The first appellant had married the first respondent's mother at the Nellikuppam Police Station and after the marriage, his mother and the first-appellant resided in the first appellant's house.

4. The case of the first respondent is that the first appellant's father Naryanasamy had purchased the suit properties from out of the sale proceeds of the ancestral properties. The 4th-appellant is the wife of Narayanasamy and appellants 2 and 3 are the son and daughter of the said Narayanasamy and the fourth-appellant. Respondents 2 and 3 are also the children of Narayanasamy and the fourth-appellant. The first respondent would submit that in the month of October 1986 his mother passed away and he has been living with his maternal grand parents. After the death of the plaintiff's mother Lakshmi, the first appellant did not take care of the first respondent and on the contrary had remarried one Sumathi.

5. In the year 1993, the said Narayanasamy died intestate and since the properties were joint family properties, purchased out of the sale proceeds of the ancestral properties, the plaintiff had a share in the said properties. On account of the fact that the first-appellant was not taking care of the first respondent, a Panchayat was held in the village and the first respondent was directed to provide some property for the maintenance and upkeep of the first respondent. In the Panchayat it was also directed that necessary documents should be prepared after Pongal and till such time the first-appellant had to pay a sum of Rs.1000/- to the first-respondent for maintenance. However, the first-appellant did not abide by the said decision of the Panchayat. The first respondent's maternal grandfather then met the first appellant and asked him to abide by the decision of the panchayat; however the first respondent refused to do so. Hence the suit.



6. The second appellant herein, who is the second defendant in the suit, had filed a written statement, which was adopted by appellants 1, 3 and 4 herein.

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7. The appellants at the outset would deny the paternity of the first respondent. They would further contend that the properties are the self-acquired properties of their father Narayanasamy Naidu. They would further contend that Narayanasamy had a brother Nagappan and they were children of Duraisamy Naidu and Andalammal. Duraisamy Naidu only had a residential house and no other landed property.

8. They would further contend that Narayanaswamy Naidu and Nagappan were brought up by their maternal grandfather, maternal grandmother and maternal uncle and that they used to help their uncle and grandfather in their milk vending business. It is also their further case that their marriage was performed by their maternal uncle. His maternal grandmother owned 10 acres of landed property and on the instructions of their grandmother, their maternal uncle gave them 2 ½ cawnies of land which they partitioned in the year 1956. Thereafter they have been in separate possession and enjoyment of their respective shares. The said Narayanasamy, after the partition, had purchased the properties in his name, which would not come within the category of joint family properties. The sum and substance of the case of the defendants was that there was no ancestral nucleus and that the properties were the self-acquired properties of Narayanasamy.

9. The Additional District Munsif, Cuddalore by her judgment and decree dated 28.01.2008 was pleased to decree the suit as prayed for in respect of 7/60th share of the first-respondent/plaintiff.

10. The learned Judge has drawn an adverse inference against the first appellant for not submitting himself for cross examination. As regards paternity of the first respondent, the Additional District Munsif has relied on the admission of the second appellant herein as D.W.1 that the marriage had taken place between the first-respondent's mother and the first appellant.

11. The learned Judge has also relied upon the evidence of P.W.1 to P.W.5 who have spoken about the marriage between the first respondent's mother Lakshmi and the first appellant. The



learned Judge has also taken note of the fact that there has been no contrary evidence with reference to the nature of the suit property.

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12. The said judgment and decree was taken on appeal by defendants 1, 2, 5 and 6 to the Principal Sub Court, Cuddalore. The Subordinate Judge after going into the evidence, both oral and documentary, has held that the first item of the suit property stood in the name of the 4th appellant herein as self-acquired property and therefore not available for partition. With reference to items 2 to 7, the Lower Appellate Court held that since the said Narayanasamy had died intestate, the property would be devolved on his Legal representatives under section 8 of the Indian Succession Act and accordingly the first-respondent/plaintiff is entitled to only 1/12th share in items 2 to 7. The Trial Court held that the plaintiff can only claim a 7/60th share in the suit-properties, as a coparcener. However, the Lower Appellate Court had modified the said decree and granted 1/12th share in the suit items 2 to 7 alone and with reference to 1st item the lower Appellate Court had set aside the judgment and decree in O.S.No.358 of 2003. Challenging the said judgment and decree, the defendants 1, 2, 5 and 6 alone had preferred the present Second Appeal and the first respondent/plaintiff had not preferred any appeal.

13. The learned counsel on either side reiterated the contentions raised by them in the suit as well as in the appeal.

14. Heard the counsels and perused the papers.

15. Admittedly the suit property items Nos.2 to 7 belongs to the parental grandfather Narayanasamy, who died intestate in the year 1993. The plaintiff/first respondent had come forward with a case that there was an ancestral nucleus out of which the suit-properties had been purchased. The lower Appellate Court has rightly held that the appellant is entitled to a half share in the share of his father, the first appellant, that is the plaintiff/first respondent would be entitled to a 1/12th share in the properties which stand in the name of Narayanasamy. The Courts below have also held that there was no rebuttal evidence on the side of the appellant. The documents would further show that the first item of property belongs to the 4th appellant and accordingly the lower Appellate Court has rightly dismissed the



suit in respect of the first item of the suit-property.

16. Considering the above factors, I do not find any question of law warranting interference at the hands of this Court. In fine, the judgment and decree of the lower Appellate Court is confirmed. The Second Appeal is dismissed and the judgment and decree dated 20.7.2009 in A.S.No.23 of 2008 of the Lower Appellate Court is confirmed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrn

To,

1. The Principal Sub Court, Cuddalore
2. The Principal District Munsif's Court, Cuddalore.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras-104.

+1cc to M/s.R.Meenal, Advocate, S.R.No.26244
+1cc to M/s.P.Srividhya, Advocate, S.R.No.26821

S.A.No.1292 of 2009

SS(CO)
SB(16/09/2021)