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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.757 of 2008

K.Sekar

...Plaintiff/Appellant/Appellant

Vs.

1.Chinthamani Ammal
2.Durai
3.Kasthuri
4.Mala
5.Jayanthi
6.Muralidharan
7.Pandian
8.Sakthivel

...Defendants/Respondents/ Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 04.01.2008 passed in A.S.No.19 of 2007 on the file of the learned Subordinate Judge, Panruti, confirming the Judgment and Decree dated 29.01.2007 passed in O.S.No.111 of 1999 on the file of the learned District Munsif, Panruti.

For Appellant : Mr.S.Kingston Jerald
For Respondents : Mr.R. Sunil Kumar
for R6 to R8
R1 to R5 - ex parte

JUDGMENT

The plaintiff in a suit for Partition is the appellant before this Court. The Original Suit and the Appeal Suit filed by the plaintiff were dismissed and consequently, he is before this Court. The parties are referred to in the same rank as before the trial Court.

2.The plaintiff and the 2nd defendant are the sons of the 1st defendant, defendants 3 to 5 are the daughters of the 1st defendant and the defendants 6 to 8 are the sons of the 2nd defendant.



3.The plaintiff would contend that the suit property was purchased by his father Krishnasamy Padayachi @ Krishna Padayachi in the year 1960 from out of the sale proceeds from the properties in Cuddalore Town. Therefore, the suit property has to be considered as a joint family property. The said Krishnasamy Padayachi @ Krishna Padayachi died intestate at the suit Village and being the son, the plaintiff has 1/5th share in the properties. Despite his repeated demands, the defendants had not come forward to effect the partition.

4.The defendants 6 to 8 who alone contested the suit filed a Written Statement inter alia admitting that the suit property was purchased from out of the sale proceeds from the properties in Cuddalore Town. The properties in Cuddalore was purchased by their grandfather Krishnasamy Padayachi @ Krishna Padayachi from out of his self acquired funds and therefore, the property is the self-acquired property of Krishnasamy Padayachi @ Krishna Padayachi. Krishnasamy Padayachi @ Krishna Padayachi has executed a registered Will dated 24.11.1995 in and by which he had bequeathed the property in favour of his grandson, namely, the 6th defendant. Therefore, the plaintiff has no right or title interest over the same. The property which stood in the name of the 1st defendant was allotted to the plaintiff. In fact, the 1st defendant had executed a Settlement Deed in respect of the landed property in favour of the plaintiff's wife. Likewise, another property which stood in the name of Krishnasamy Padayachi @ Krishna Padayachi was allotted to the 2nd defendant and the suit property is bequeathed to the defendants 6 to 8. The plaintiff had not come to the Court with clean hands and he has no right over the suit property.

5.The learned District Munsif before whom the suit O.S.No.111 of 1999 was filed had on considering the evidence on record come to the conclusion that the property in question is the self-acquired property of Krishnasamy Padayachi @ Krishna Padayachi and the Will dated 24.11.1995 marked as Ex.B.4 has been proved to be true and valid and consequently, dismissed the suit.

6.Challenging the same, the plaintiff had filed A.S.No.19 of 2007 on the file of the learned Subordinate Judge, Panruti. The learned Subordinate Judge has also confirmed the Judgment and Decree of the learned District Munsif, Panruti. Challenging the said Judgment and Decree, the plaintiff is before this Court.

7.The Note Sheet would show that the suit has not been admitted and has been adjourned.

8.Heard the learned counsels appearing on either side and perused the papers.



9. The two grounds on which the plaintiff has staked a claim to the suit property is that (a) the suit property is an ancestral property, the same having been purchased from and out of the ancestral funds and (b) The Will dated 24.11.1995 is shrouded in suspicious circumstances, as no reference has been made to the 1st defendant, the widow, his daughters and the defendants 3 and 5 and no reasons have been given for not making the provision for them.

10. It is the case of the plaintiff that under Ex.A.1 - Sale Deed the ancestral properties had been sold and the income generated therefrom had been utilised to purchase the suit properties. Ex.A.1 - Sale Deed is dated 18.03.1953. A perusal of the same, would show that the family of Krishnasamy Padayachi @ Krishna Padayachi had sold their property for a sum of Rs.500/- to one Govindasamy Padayachi. Out of this Rs.500/-, Rs.370/- was adjusted towards the mortgage debt and it was the balance of Rs.130/- that was shared amongst the sharers. This property had been sold in the year 1953. The suit property was purchased on 24.09.1966 nearly 13 years thereafter for a total consideration of Rs.700/- under two Sale Deeds marked as Ex.B.2 and Ex.B.3. Therefore, by no stretch of imagination, can it be concluded that the suit property has been purchased out of the ancestral nucleus and therefore, it is not a joint family property and therefore, the claim of the plaintiff that it is an ancestral property is without any basis. The

next argument is that the Will dated 24.11.1995 is shrouded in suspicious circumstances as no provisions has been made for the 1st defendant's wife and the defendants 3 and 5, who are the daughters of Krishnasamy Padayachi @ Krishna Padayachi. However, one of the daughters, namely, 5th defendant has deposed as DW3 and she would vouchsafe the execution of the Will. The properties standing in the name of the 1st defendant, mother has been settled in favour of the plaintiff's wife and the 5th defendant. Likewise, the suit property was allotted to the defendants 6 to 8 and no property has been allotted to their father, the 2nd defendant.

11. The Will has also been proved in the manner known to Law by examining the attesting witness and the plaintiff has not been able to elicit any contra statement from them or discredit their evidence. I do not find any questions of Law much less the Substantial Question of Law warranting interference in the above Second Appeal and the Second Appeal fails.



In the result, the Second Appeal is dismissed, however, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(Commercial cases)

//True Copy//

Sub Assistant Registrar

mps

To

1.The Subordinate Judge,
Panruti.

2.The District Munsif,
Panruti.

Copy to:

The Section Officer,
VR Section,
High Court, Madras

S.A.No.757 of 2008

PM(CO)
A.SK(25.11.2021)