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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2021

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THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.NOS.776 & 777 OF 2008

S.A.No.776 of 2008

Vasanthamma

... Appellant/
1st Appellant/2nd Defendant

Vs

1.Vasanthamma

2.Natesa Gounder

... Respondents/
Respondents/Plaintiff

Prayer:

Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree passed in A.S.No.121 of 2003 on the file of the Additional Sub-Court, Tindivanam dated 08.11.2004 in confirming the Judgement and Decree in O.S.No.510 of 2000 on the file of the District Munsif Court, Gingee dated 23.09.2003.

S.A.No.777 of 2008:

Vasanthamma

... Appellant/
1st Appellant/2nd Defendant

Vs

1.Kasiamma @ Pachaiamma

2.Vasanthamma

... Respondents/
Respondents/Plaintiffs

3.Natesa Gounder

... Respondent/
2nd Appellant/1st Defendant



Prayer:

Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree passed in A.S.No.120 of 2003 on the file of the Additional Sub-Court, Tindivanam dated 08.11.2004 in confirming the Judgement and Decree in O.S.No.36 of 1999 on the file of the District Munsif Court, Gingee dated 23.09.2003.

For Appellant : Mr. Joseph Stalin
for Mr. V. Raghavachari

C O M M O N J U D G E M E N T

The 2nd defendant in the suit O.S.No.36 of 1999 and 510 of 2000 is the appellant before this Court. The above appeals which have been filed in the year 2008 have not been admitted to date. The matter has been adjourned on 03.06.2008 as there was no representation and the matter got adjourned and thereafter listed on 20.06.2008. On the said date the learned counsel had submitted that they are taking steps to file an appeal with reference to the connected appeal and sought time by four weeks. This matter was adjourned from 18.06.2021. As a final chance it was adjourned to 22.06.2021 i.e., yesterday. Once again request was made and it is adjourned to 23.06.2021 i.e., today.

2. Today, when the matter came up once again the appellant would make the very same submission that was made as early as in the year 2008. The learned counsel was not ready to argue the matter. Therefore, this Court proceeds to pass a Judgement. The parties are arrayed as in the suit.

3. The 2nd defendant in the suit O.S.No.36 of 1999 and 510 of 2000 is the appellant herein. The suit O.S.No.36 of 1999 is filed by the respondent, the minor daughter represented by her mother for maintenance. O.S.No.510 of 2000 has been filed by the minor for partition of her half share in the suit schedule property. Both the suits have been filed in forma pauperis.

4. The case of the plaintiffs in both the suits are more or less the same. The 1st defendant Natesa Gounder is the father of the minor and husband of the 2nd plaintiff in O.S.No.36 of 1999. The 2nd defendant is the wife of the 1st defendant's brother Kannan. It is the case of the plaintiffs that the 1st defendant had two brothers, Kannan and Ganesan and they had constituted an Hindu Undivided Family. The three brothers had partitioned the properties. The 1st defendant is none other than the maternal uncle of the minor's mother.



5. It is the case of the plaintiffs that the 2nd plaintiff was tortured in her matrimonial home and she had to leave her matrimonial home on account of the improper behaviour by the 2nd defendant's husband, which the 1st defendant had refused to question. Thereafter, it appears that on 14.05.1996, the 2nd defendant had managed to obtain a sham and nominal sale deed in respect of the properties that had been allotted in the name of the 1st defendant under the partition. The plaintiff would submit that the 2nd defendant did not have the necessary wherewithal to purchase the said property.

6. The case of the plaintiffs is that the 1st defendant had refused to maintain the minor and her mother and therefore they had sought for maintenance with partition on the suit properties. The minor sought for a partition of her share in the suit properties. The 2nd defendant who is the main contesting defendant filed a written statement disputing the very paternity of the minor and contended that the mother, the 2nd plaintiff was in relationship with another person and that the minor was born to him. Similar defense was taken by the 1st defendant.

7. Both the Courts below disbelieved the case of the appellant and have clearly held that the minor is the daughter of the 1st defendant. The Courts below have considered various documents which would show that the 2nd plaintiff continued to live with her husband for over 12 years and that the minor was born in the year 1981. The School leaving certificate also shows the 1st defendant as the father. That apart, the sale deed marked as Ex.A.20 in favour of the 2nd plaintiff would describe her as the 1st defendant's wife and the address given is that of the 1st defendant. Ex.A.20 is of the year 21.02.1989 nearly 8 years after the minor was born. Therefore, the Courts have concluded that the 1st plaintiff was born to the 1st defendant and that the 1st defendant is not maintaining the minor as well as her mother and had decreed the suit filed by them.

8. The 2nd defendant had filed a suit for declaration and injunction in O.S.No.248 of 1996. However, there is no appeal filed against the same though the suit and the appeal had been dismissed. The grounds on which the Judgement of the Courts below are sought to be challenged are:

(i) The property has been purchased by the 2nd defendant for valuable consideration and this fact has not been disputed by the 1st defendant. On the contrary he has affirmed the same.

(ii) The payment of consideration was irrelevant and what has to be looked into is only the sale deed.

(iii) That the 1st plaintiff has not established her lawful birth and legal entitlement.



9. Both the Courts below on perusing the records found that the sale deed had been created with the sole view of depriving the plaintiffs' off their rightful due. The 2nd plaintiff had been chased out to her maternal home along with the minor child and the 1st defendant has not been spending even a single penny for the maintenance of the plaintiffs. It is an admitted fact that the 1st defendant and his brothers were living together. The Courts below have found that the appellant / 2nd defendant has not let in any evidence to show the payment of the sale consideration.

10. The Courts below have noted the contradiction in the evidence of the witness examined on the side of the 2nd defendant / appellant to show that she had the wherewithal to purchase the property. Though in a chief examination the 2nd defendant would submit that the amounts came from the sale of the jewels however in a cross examination she would submit that the money came from the sale of lands given by her parents. However, there is no proof to show the settlement of these lands on the 2nd defendant. P.W.2 would state that an acre of land had been sold to purchase suit property and P.W.3 would state that one acre of land was sold at Rs.75,000/-. The sale deed in respect of this has not been produced.

11. There is no proof whatsoever to substantiate the payment of sale consideration particularly when the plaintiffs have questioned the sale on the ground that it was collusive and that the 2nd defendant did not have wherewithal to purchase the property. There are also contradictions with reference to the place of the payment of the consideration and the recitals in the sale deed. It is stated that the property was being sold to help the 1st defendant clear his outstanding loan. No details whatsoever about such outstanding loans has been produced.

12. Therefore, it is crystal clear that the sale deed had come into existence only to ensure that the minor and her mother does not receive their rightful due and the said deed is nothing but a sham and nominal document. The 2nd defendant has once again questioned the paternity of the minor. The Courts below have elaborately considered the evidence which would prove that the 1st plaintiff is none other than the daughter of the 1st defendant and that the 2nd plaintiff and the 1st defendant had lived together as husband and wife for well over 12 to 13 years. The minor has been admitted into School showing the 1st defendant as the father. The 2nd plaintiff has purchased property in the year 1989 under Ex.A.20 in which she has been described as wife of Natesa Gounder and her address is that of the 1st defendant.



13. In the written statement filed by them the defendants would state that the 2nd plaintiff had only lived at her matrimonial home for six months, a perusal of the documents falsifies this contention. That apart there has been no challenge to the suit O.S.No.248 of 1996 which was dismissed against which the appellant had filed A.S.No.119 of 2003 which was also dismissed. That was a suit filed by the appellant / 2nd defendant to declare her right and title to the property. By a common Judgement the said suit has been dismissed and there is no challenge to the same. There is no question of law involved in the Second Appeals and consequently the Second Appeals stand dismissed. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Sub-Judge,
The Additional Sub-Court, Tindivanam.
2. The District Munsif Judge,
The District Munsif Court, Gingee

+2ccs to Mr.V.Raghavachari, Advocate, S.R.No.29208,29210

S.A.Nos.776 & 777 of 2008

SRA (CO)
PM/18/11/2021