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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2021

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.105 of 2012

and

M.P.No.1 of 2012

Ramalingam .. Appellant

Versus

Devaki .. Respondent

PRAYER: This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 25.08.2011 made in A.S.No.19 of 2011 on the file of the Principal Sub-Court Erode District, confirming the judgment and decree dated 23.02.2011 made in O.S.No.708 of 2008 on the file of the IInd Additional District Munsif Court, Erode District.

For Appellant :: Mr.I.C.Vasudevan

For Respondent :: Mr.M.Guruprasad

#### J U D G M E N T

Notice of motion was ordered by this Court, on 30.01.2012.

2. The respondent/plaintiff and the appellant/defendant are husband and wife. During the subsistence of marriage, they purchased the suit property as joint owner. Subsequently, due to the difference of opinion that arose between them, wife filed H.M.O.P.No.172 of 2005 before the Principal Sub Court, Erode. After contest, O.P was decreed and divorce was granted on 12.12.2006. Hence, the divorced wife filed suit for partition of her undivided share and the same was decreed.



On appeal, in A.S.No.19 of 2021, the said appeal was dismissed. Hence, the Second Appeal.

3. Learned counsel for the respondent contended that pending second appeal, in the absence of final decree, proceedings have been initiated and Advocate Commissioner was appointed who also filed report after inspecting the site. Since in Miscellaneous Petition, the stay of passing of final decree has been granted, no final decree has been passed so far.

4. The respondent/plaintiff wife filed the above suit in O.S.No.17/2008 claiming partition on the strength Ex.A1 sale deed dated 26.02.2000 wherein, both the plaintiff and the defendant have purchased the property.

5. The case of the plaintiff is that the respondent/plaintiff and appellant/defendant are husband and wife and they purchased the property in the joint name and got married on 01.12.1988 and separated on 26.02.2000. Subsequently, wife has filed H.M.O.P.No.172/2005 for divorce and the same was allowed. During the subsistence of the marriage, the first petitioner purchased property under Ex.A1 and now he seeks partition of the same.

6. The relief of partition was resisted by the appellant/defendant on the ground that sale consideration has been paid by the husband. No document has been adduced or produced before the Court, except the oral evidence of D.W.1 and D.W.2. Both the Courts below, applying the principles of Section 19 of the Indian Evidence Act, the oral evidence cannot be accepted against the terms of the documentary evidence. In the absence of any explanation to show that the sale consideration in respect of the suit property, was exclusively made by the appellant-husband, and allowed the relief.

7. After perusing the evidence of D.W.1 and D.W.2, I find that the oral evidence of D.W.1 runs contrary to the plea. Furthermore, in Ex.A1, it is a joint purchase and hence the respondent/plaintiff is entitled for half share and hence the preliminary decree granted by both the Courts below does not warrant interference.

8. In the result,

(i) This Second Appeal is dismissed. No costs.



(ii) The judgment and decree of the First Appellate Court are confirmed. Consequently, connected M.P is closed.

Sd/-

Assistant Registrar(I)

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// True Copy //

Sub Assistant Registrar

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To

1. The Principal Sub-Court Erode District
2. The Additional District Munsif Court,  
Erode District.

+1cc to Mr.M.Guruprasad, Advocate SR.No.65911

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VSN II(CO)  
CB(04/01/2022)