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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

A.S.No.520 of 2018

1.Dhanabal
2.Ravichandran
3.Rajendran
P.R. Narayanaswamy (deceased)
4.N.Nagalakshmi ...Appellant/Defendants 1 to 3 and 5

Vs

Srinivasan ...Respondent/Plaintiff

PRAYER Appeal Suit filed under Section 96 of the Code of Civil Procedure to set aside the Judgement and decree dated 16.11.2017 passed by the learned III Additional District Judge, Salem in O.S.No.185 of 2014 partially decreeing the suit for partition in respect of Item No.1 of the Suit Schedule Property.

For Appellant : Mr.M.Devaraj
For Respondents : Mr.P.Hari babu
for sole respondent

JUDGMENT

The defendants have filed this appeal challenging the judgment and decree passed by the learned III Additional District Judge, Salem in OS.No.185 of 2014. Parties are being referred to in the same rank as before the Trial Court for an ease of understanding.

2.The said suit is filed by the 1st respondent herein seeking a partition and separate possession of his 1/4th share in the suit 1st item of property and 1/5th share in the items 2nd and 3rd of the suit schedule properties. The suit has been decreed only with reference to the 1st item of suit property and dismissed with reference to the items 2nd and 3rd of the suit schedule properties.

3.The facts which has culminated in the filing of the above appeal is herein below narrated and parties are referred to the same litigative status as before the District Court.



4.The plaintiff and defendants 1 to 3 are siblings. The 4th and 5th defendants are their father and mother respectively. The 5th defendant was added as a party to the proceedings on the death of the 4th defendant. It is the case of the plaintiff that the suit 1st item of the property has been purchased jointly in the name of the plaintiff and defendants 1 to 3 herein and they have been in joint possession and enjoyment of the same. The plaintiff and the defendants were running a power loom jointly and out of the said business, they have purchased the 2nd and 3rd items of the suit scheduled properties in the name of the 4th defendant.

5.It is the case of the plaintiff that the 4th defendant who was aged 81 years had no independent occupation or separate business income and he had not earned any amount separately to purchase the 2nd and 3rd items of the schedule properties. The plaintiff would therefore submit that he is entitled to a share in all the properties. Since the defendants were not coming forward to partition the property, he was constrained to issue a legal notice on 28.07.2014 which, though received by defendants, was not responded to nor the partition effected.

6.Pending the suit the 4th defendant had died leaving behind him surviving the plaintiff and defendants 1 to 5. Since, the defendants were not coming forward for a partition, the plaintiff filed the above suit.

7.The 1st defendant filed a written statement which has been adopted by the 2nd and 3rd defendants wherein they contented that, as regards the 1st item of the suit property it was purchased out of the loan borrowed from the bank, financial institution and private parties by the defendants 1 to 3 who had spent huge amounts to develop the property and to settle the debts. It is therefore their specific case that although the property was purchased in the name of the plaintiff as well, the plaintiff had not contributed any amount towards this purchase nor towards its development. Hence, they would contend that the plaintiff is not entitled to any share in the 1st item of the suit property.

8.As regards the other items, their contention is that the father/4th defendant was a textile manufacturer and merchant engaged in huge textile business and out of his own earnings, he had purchased 2nd item of the suit property under a registered sale deed dated 04.05.1994 and constructed 24 houses in the 2nd item of the suit property by obtaining loan from the LIC Housing finance Ltd. Though the plaintiff and defendants 1 to 3 and



their respective wives stood as guarantors to the loan, it is the 1st defendant who was paying the monthly instalments to the LIC Housing finance Ltd out of his own income. Since, the 1st defendant was paying the loan, the 4th defendant had bequeathed the 2nd item of the suit property in favour of this defendant under a registered will dated 24.12.2012 which came into effect on the demise of the 4th defendant. The 4th defendant had purchased the 3rd item of the suit property out of his own earnings under the registered Sale deed dated 08.02.2006 in which he constructed houses in the said property by borrowing loans from financial institution and private parties. The 3rd item of the property was also settled on the 1st defendant under registered Gift Settlement deed dated 04.08.2014 and the possession was also handedover to the 1st defendant. Therefore the 3rd item of the property is also not available for partition. Hence, the plaintiff is not entitled to any share in the same.

9.The 1st defendant is running three power loom factories in his own properties and the 3rd defendant is running a power loom factory in the land standing in his name. Therefore it only the 1st and 3rd defendant who are running power loom in their respective properties. The plaintiff had never run the power loom factory along with the defendants 1 and 3. It is also the case of the defendants that they and the plaintiff were living separately in separate houses and have acquired properties separately and hence, there is no joint status between the parties. Therefore they sought to have the suit dismissed.

10.After the 5th defendant was impleaded, an additional written statement came to be filed reiterating the contentions in the original written statement.

11.The III Additional District Judge, Salem had framed the following issues:-

- 1.Whether the plaintiff is entitled for 1/4th share in the 1st item of suit property as prayed for ?
- 2.Whether the plaintiff is entitled for partition as 1/5th share in the 3rd item of the suit property as prayed for ?
- 3.Whether the plaintiff is entitled for permanent injunction as prayed for ?
- 4.To what other relief ?
- 5.Whether the 3rd item of the suit property absolutely belong to the 1st defendant by way of settlement deed dated 04.08.2014 ?
- 6.Whether the 2nd item of the suit property absolutely belongs to 1st defendant by way of registered Will dated 24.12.2012 ?



The learned III Additional District Judge on perusing both the documentary and oral evidence came to the conclusion that 2nd and 3rd items were the exclusive properties of the 4th defendant and considering the Will settlement deed held that the 1st defendant was entitled to the 2nd item of the property exclusively and the plaintiff had no right to the same. Likewise in respect of the 3rd item of the property the learned District Judge had considered the settlement deed Exhibit B8 executed by 4th defendant in favour of the 1st defendant held that the 2nd item of the property also belonged to the 1st defendant and therefore rejected the claim of the plaintiff with reference to the suit items 2 and 3. However, as regards the suit 1st item of the property, the learned Judge held that since, the property had been purchased in the name of the plaintiff and defendants 1 to 3, the plaintiff was entitled to 1/4th share in respect of the suit property.

12.The plaintiff has not challenged the disallowed portion of the decree and therefore the suit attained finality with regard to items 2 and 3. The defendants have challenged the decree only in respect of the 1st item of the suit property.

13.Mr.M.Devaraj, the learned Counsel who appeared on behalf of the appellant would submit that though the land in the 1st item of the suit property has purchased in the name of the plaintiff, however, the defendants have borrowed the loan for putting up construction and for the development of the said property. This loan has been incurred only by the defendants and the plaintiff had not contributed a single penny to the same. Therefore, the plaintiff is not entitled to any share in the said properties.

14.He would further argue that the plaintiff has not established his contention that he has contributed for the purchase of the land in the 1st item of the suit property and therefore not entitled to any share in the same. That apart, he was never in enjoyment of item 1 of the suit property and only the defendants are in the enjoyment and possession of the said properties.

15.The learned Counsel appearing for the plaintiff /respondent would submit that the document under which the property had been purchased namely Exhibit A1 clearly shows that the plaintiff is also not entitled to any share in the properties and according to him, the decree passed is right in respect of the 1st item of the suit property.



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16. On hearing the Counsels, the only point for consideration in the appeal is that,

'Whether the findings of the Court below regarding suit 1st item of property is correct?'

17. In the Written statement filed by the 1st defendant which has been adopted by the defendants 2 and 3, the defendants have stated as follows,

"The 1st item of the suit properties was purchased out of the loan borrowed from bank, financial institutions and private parties by the defendants 1 to 3. The defendants 1 to 3 spent huge money to develop the said property and settled the debts received for purchasing it. Though the sale deed stands in the name of the defendants 1 to 3 and the plaintiff, the plaintiff has not contributed any amount during the purchase of the said property and he has not spent any amount to improve the said property. Hence the plaintiff is not entitled to any share in the 1st item of the suit property."

Therefore, a reading of the above would clearly prove that suit 1st item of the property is also purchased in the name of the plaintiff and therefore the plaintiff is entitled to a share in the said property. Exhibit A1 is the document under which the property has been purchased and a perusal of the same, would clearly prove that the said property has been purchased in joint name of the plaintiff and defendants 1 to 3.

18. In the above circumstances, there cannot be any quarrel in the findings of the Court below and accordingly the appeal stands dismissed. The Judgment and decree passed by the learned III Additional District Judge, Salem in OS.No.185 of 2014 is therefore confirmed. However, considering the circumstances, there shall be no order to cost. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar



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To

1. The III Additional District Judge,
Salem

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.M.Devaraj, Advocate sr 54412

+1 Cc to Mr.R.Tholkappiyan, Advocate sr 54174

A.S.No.520 of 2018

PA (CO)
SP (06/01/2022)