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S.A.(MD)No.850 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.08.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.850 of 2014

and

M.P. (MD)No.6 of 2014

Andiappan (Died)

1.Samboornam

2.Kalaiyarasi

... Appellants

Vs.

1.Varadharajan (Died)

2.Kanagaraj

3.Chinnamaruthan (Died)

4.Thulasiammal

5.Kumar

6.Veeramali

7.Kalaimani

(R4 to R7 are brought on record as LRs of the deceased 3rd respondent vide order dated 11.03.2014 in M.P. (MD)Nos.1 to 3 of 2013 in S.A. (MD)No.SR27546 of 2009 by PSNJ)

8.Valarmathi

9.Minor.Santhosh

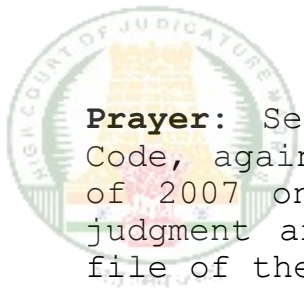
(Represented by his mother and natural guardian/8th respondent)

10.Abinaya

... Respondents

(R8 and R9 are brought on record as LRs of the deceased 1st respondent vide order dated 09.06.2014 in M.P. (MD)No.3 of 2014 in S.A. (MD)No.SR27546 of 2009 by PSNJ)

(R10 is brought on record as LR of the deceased 1st respondent vide order dated 10.09.2014 in M.P. (MD)No.5 of 2014 in S.A. (MD)No.SR27546 of 2009 by ASJ)



Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 28.09.2007 in A.S.No.13 of 2007 on the file of the District Court, Karur, reversing the judgment and decree in O.S.No.144 of 1997 dated 17.11.2006 on the file of the Subordinate Court, Karur.

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For Appellants : Mr.K.Govindarajan,
Mr.P.Muthusamy.
For Respondents : Mr.B.Prasanna Vinoth,
For Mr.M.Bindran for R2, R4 to R10

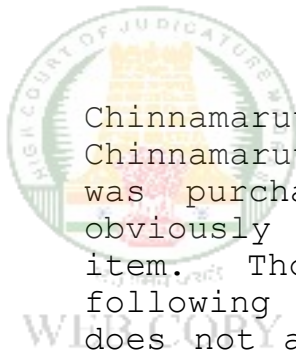
JUDGEMENT

This second appeal arises out of a suit for partition. The legal representatives of the original defendant are the appellants herein. O.S.No.144 of 1997 was filed by Varadharajan, Kanagaraj and Chinnamaruthan against Andiappan seeking partition of 2/3rd share in the suit properties. The case of the plaintiff was that the first suit item of the property was purchased in the joint names of Andiappan, Muniappan and Chinnamaruthan vide sale deed dated 22.07.1958. The second item of the suit property is a piece of assigned land, on which the parties herein have put up houses under a subsidy scheme floated by the Government. There is no dispute as regards the second item. The dispute is only as regards the first item. During the pendency of the suit, Andiappan passed away and the present appellants came on record as his legal representatives. The defendants pointed out that the suit property was under mortgage and it was Andiappan, who filed redemption suit in O.S.No.789 of 1973 before the District Munsif Court, Karur and got the property redeemed vide Ex.B2 dated 28.11.1977. He also filed E.P.No.265 of 1978 and secured possession under Ex.B3. Andiappan was thus in possession of the first suit item for more than the statutory period and therefore, he perfected his title. The said defence was accepted by the trial court, which dismissed the suit vide judgment and decree dated 17.11.2006.

2.The plaintiffs filed A.S.No.13 of 2007 before the District Court, Karur. They also filed I.A.No.88 of 2007 for adducing additional evidence. I.A.No.88 of 2007 was taken up and allowed and Ex.A2 dated 20.05.1964 came to be marked. The first appellate court after noticing the contents of Ex.A2 held that the third plaintiff/Chinnamaruthan would be entitled to half share in the first suit item. Challenging the said decision of the first appellate Court, the present second appeal came to be filed. During the pendency of this second appeal, Chinnamaruthan had passed away and his legal representatives came on record.

3.Heard the learned counsel on either side.

4.There is no dispute that the first suit item was purchased in the name of Andiappan and his two brothers namely., Muniappan and



Chinnamaruthan. It is true that during the year 1958, Chinnamaruthan was minor. But the fact remains that the property was purchased in his name also. Hence, Chinnamaruthan would obviously be entitled to 1/3rd undivided share in the first suit item. Though the first appellate court had marked Ex.A2 without following the procedure laid down in Order 41 Rule 27 of CPC, it does not appear to be a disputed document. Vide Ex.A2, Muniappan had sold his share in the property in favour of Andiappan and his younger brother namely., Chinnamaruthan. Thus, Andiappan and Chinnamaruthan became entitled to half share each. It is true that the property came to be mortgaged and it was Andiappan, who redeemed the mortgage. But then, Andiappan happens to be a co-sharer of the property. Therefore, limitation cannot run against Chinnamaruthan. At best, Chinnamaruthan can only be saddled with his liability to pay his share of the mortgage amount. Therefore, the decision of the first appellate court will have to be interfered with only to this limited extent. The first appellate court rightly came to be conclusion that in view of Ex.A2, the first and second plaintiffs, who are sons of Muniappan had lost their right in the first suit item. The first suit item will have to be equally divided between the sons of Andiappan and the legal representatives of Chinnamaruthan. Of course, when the final decree is passed, the legal representatives of Chinnamaruthan will have to be directed to pay their share of the mortgage amount covered under Ex.B2.

5.With this clarification, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1.The District Court,
Karur

2.The Sub Court,
Karur.



The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.P.MUTHUSAMY, Advocate (SR-26205[F] dated 12/08/2021)

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RS (13.09.2021) 4P 6C