



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.09.2021

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

S.A(MD)No.516 of 2015

and

M.P. (MD) No.1 of 2015

K.Subramani

... Appellant/Appellant/2nd defendant
Vs.

1.Vellaiyammal

2.Kaliammal

3.Lakshmi

4.Nalluchamy

5.Veeramalai

... Respondents 1 to 5/Respondents 1 to 5
/Plaintiffs 1 to 5

6.Karuppanan @ Karuppana Goundar

7.Pappathi

8.Arasayi

... Respondents 6 to 8/Respondents 6 to 8
/Defendants 1, 3 & 4

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, 1908, against the judgment and decree dated 28.04.2015 passed in A.S.No.6 of 2013 on the file of the Additional District and Sessions Judge, Dindigul, confirming the judgment and decree dated 04.12.2012 passed in O.S.No.26 of 2012 on the file of the Sub Court, Vedasanthur Taluk, Dindigul District.

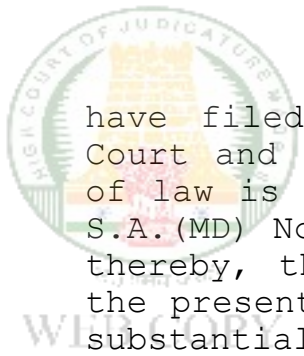
For Appellant : No Appearance

For Respondents : Mr.A.Shajahan for RR-1 to 5

JUDGMENT

There is no representation for the appellant on the earlier hearing i.e. on 01.09.2021 and thereby, this Court posted the matter under the caption "for orders" today i.e. on 03.09.2021. Even today, there is no representation for the appellant.

2.Mr.A.Shajahan, learned counsel for the respondents 1 to 5 would submit that the appellant herein is the second defendant in the suit in O.S.No.26 of 2012, on the file of the Subordinate Court, Vedasanthur, filed by the respondents 1 to 5/ plaintiffs for the relief of partition. The trial Court by judgment and decree, dated 04.12.2012, decreed the suit. Against the judgment and decree made in O.S.No.26 of 2012, the defendants 1, 3 and 4 have filed separate appeal which was numbered as A.S.No.2 of 2012 and the second defendant also filed an appeal which was numbered as A.S.No.6 of 2013 before the Additional District and Sessions Judge, Dindigul. The First Appellate Court concurred with the findings of the Trial Court and dismissed both the appeals by a common judgment, dated 28.04.2015. Against the common judgment, the defendants 1, 3 and 4



have filed Second Appeal in S.A.(MD) No.431 of 2015 before this Court and this Court finding that there is no substantial question of law is involved in the case, had dismissed the second appeal in S.A.(MD) No.431 of 2015 by judgment and decree dated 27.09.2019 and thereby, the order of both the Courts have been confirmed. Since the present second appeal also arises out of the same appeal and no substantial question of law is involved in this appeal, the present second appeal is also liable to be dismissed.

3. There is no representation for the appellant. Heard the learned counsel for the respondents 1 to 5 and perused the materials available on record.

4. The respondents 1 to 5 herein are the plaintiffs in O.S. No.26 of 2012 on the file of the Subordinate Court, Vedsanthur. The said suit had been filed for partition. The present appellant is the second defendant in the said suit. The trial Court by judgment and decree dated 04.12.2012, decreed the suit. Against the judgment and decree, the defendants 1, 3 and 4 have filed an appeal in A.S.No.2 of 2012 and the present appellant / second defendant has also filed separate appeal in A.S.No.6 of 2013 before the Additional District and Sessions Judge, Dindigul. The Appellate Court by common judgment, dated 28.04.2015 dismissed both the appeals. Against the dismissal of the appeal in A.S.No.2 of 2012, the appellants / defendants 1, 3 and 4 has filed Second Appeal in S.A.(MD) No.431 of 2015 before this Court. This Court finding that there is no substantial question of law involved in the said appeal, had dismissed the Second Appeal in S.A.(MD) No.431 of 2015 by judgment and decree, dated 27.09.2019. The relevant portion of the judgment in S.A.(MD) No.431 of 2015 is extracted hereunder :

"9. Admittedly, the suit A schedule properties are joint family properties of the first defendant and his brother Palaniappan, through whom, the plaintiffs are claiming their right. The first defendant, admittedly is the eldest member of their family, who was exclusively in charge of the management and administration of the joint family property. Even as late as in the year 2008, the parties have jointly executed a sale deed with reference to one item of the suit A schedule property. The defendants who have come forward with a case that the first defendant possessed sufficient funds, have not let in any evidence whatsoever to prove the same and except for their pleadings and oral deposition, there is nothing on record to substantiate the same. Considering the fact that the plaintiffs have let in evidence to show that the parties were possessed of joint family property, which yielded income, the presumption that the B schedule properties have been purchased from out of this income has not been countenanced by the defendants by letting in any independent evidence."



5.In the said Second Appeal, this Court finding that there is no substantial question of law involved, had dismissed the earlier Second Appeal in S.A.(MD) No.431 of 2015. Further, this Court has found that the defendants have not let in any evidence whatsoever to prove that the first defendant possessed sufficient funds and this Court finding that the plaintiffs have let in evidence to show that the parties were possessed of joint family property, which yielded income, the presumption that the 'B' schedule properties have been purchased from and out of this income has not been countenanced by the defendants by letting in any independent evidence.

6.In view of the aforesaid position, this Court finds that there is no substantial question of law involved in the present Second Appeal and the same also deserves to be dismissed.

7.Accordingly, this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 Additional District and Sessions Judge,
Dindigul.

2.The Subordinate Court,
Vedasanthur Taluk,
Dindigul District.

Copy to:

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

+1 CC to M/s.A.SHAJAHAN, Advocate (SR-28098[F] dated 03/09/2021)

S.A(MD)No.516 of 2015

03.09.2021

SRR(CO)/RS (25.10.2021) 3P 6C