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AS.No.170 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MRS.JUSTICE A.A.NAKKIRAN

AS.No.170 of 2016

V.Govindan

Appellant

Vs

1. V.Shanmugham
2. V.Kesavan
3. M.Kumar

4. The Sub Registrar, Bargur
Krishnagiri

Respondents

Prayer:- This Appeal Suit has been filed, under Section 96 of CPC, against the judgement and decree, dated, 01.10.2015 , passed in OS.No.49 of 2014, by the Principal District Court , Krishnagiri.

For Appellant : Mr.S.Kanniah

For Respondents : Mr.J.Hariharan for M/s.V.Nicholas-R1
Mr.V.Karthikeyan-R2



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JUDGEMENT

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(Judgement of the Court was made by S.S.SUNDAR, J.)

1. The Plaintiff in OS.No.49 of 2014, on the file of the Principal District Court, Krishnagiri, is the Appellant in this appeal.
2. The brief facts, which are necessary for disposal of this appeal, are as follows:-
 - a) The Appellant filed the suit in OS.No.49 of 2014 on the file of the Principal District Court, Krishnagiri for partition of his 1/3rd share in all the suit properties, which are described in the schedule as items (1) to (4).
 - b) The case of the Plaintiff is that the suit properties are the joint family properties of the Plaintiff and Defendants 1 and 2, who are the sons of late Sri.Venkatappa Naidu @ Peddappan. The 3rd Defendant is a stranger. It is alleged that a portion of the property in S.No.426/3 had been sold by the Defendants 1 and 2 to the 3rd Defendant and hence, he was impleaded as a necessary party in the suit.
 - c) It is the specific case of the Appellant in the plaint that a small extent of 3 cents in S.No.426/3 was sold in favour of a third party by the Plaintiff and Defendants 1 and 2 jointly and that the Defendants



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1 and 2, who have admitted the joint enjoyment of all the properties by the Plaintiff and the Defendants 1 and 2, have sold an extent of 4 ½ cents in the same survey number in favour of the 3rd Defendant, by a registered sale deed, dated 13.03.2014 and that such an unlawful sale was made to defeat the right of the Plaintiff in the suit property. Since the properties are the properties of the Plaintiff's father, by name, Venkadappa Naidu @ Bedhappan, it is contended by the Plaintiff that all the properties are the ancestral properties of the Plaintiff and the Defendants 1 and 2 and that the Plaintiff is entitled to 1/3rd share.

- d) The suit was resisted by the 1st Defendant, by filing a written statement. Though the sale in respect of an extent of 3 cents in one of the items in the suit properties is not disputed by the Defendants, it is contended by the Defendants 1 and 2 that there was a partition in the family in respect of the item (1) of the suit properties, that in the said partition, the Plaintiff and the Defendants were given separate portions of the property in item (1) of the suit properties, about 40 years back and that the suit for partition is, therefore, not maintainable. It was then contended by the 1st Defendant that the



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other items of the suit properties were purchased by the 1st Defendant in his name and that they are the separate properties of the 1st Defendant. In view of the fact that there was a partition in respect of the joint family properties, the Defendants contended that the suit is not maintainable several decades after the death of his father.

e) On the pleadings of the parties, the Trial Court framed as many as four issues and four additional issues. On the side of the Plaintiff, the Plaintiff examined himself as PW.1 and marked Ex.A1 to Ex.A12. On behalf of the Defendants, the wife of the 1st Defendant was examined as DW.1 and the 2nd Defendant was examined as DW.2 and Ex.B1 and Ex.B2, which are the sale deeds, by which the suit properties, except the first item, were purchased in the name of the 1st Defendant, were marked. The Trial Court found that items (2) to (4) are the separate properties of the 1st Defendant. The Trial Court found that DW.1 and DW.2 have given evidence to support their case about the partition in respect of item (1) of the suit properties long back and that they were not cross examined by the Plaintiff. Stating that item (1) of the suit properties was divided



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long back and that such a division and enjoyment of the specific portion allotted to the Plaintiff, was even admitted by the Plaintiff in the cross examination, the Trial Court found that the case of the Plaintiff for partition is not maintainable. Finding that the parties are in enjoyment of the specific portion, which was allotted to the brothers in the earlier partition and such separate enjoyment is supported by modification of the revenue records, the Trial Court dismissed the suit. Aggrieved by the same, the above appeal is preferred by the Plaintiff.

3. This Court heard the submissions of the learned counsel on either side.
4. The learned counsel for the Appellant submitted that the Trial Court has not looked into the evidence properly and rendered a finding on an erroneous appreciation of facts and law. He further submitted that the Defendants have failed to prove that they had independent source of income for purchasing the properties and that the Trial Court misdirected itself by considering the evidence which are not supported by specific pleadings. The learned counsel further pointed out that the item (1) of the suit properties is the property of the joint family and that the partition pleaded by the Defendants is not supported by any



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document. The learned counsel then submitted that unless the partition pleaded by the Plaintiff is proved in a manner known to law, the findings of the Trial Court are erroneous and perverse and that the documents filed by the Defendants do not support their case. It is brought to the notice of this Court that the Defendants 1 and 2 have admitted that the revenue records, namely, Ex.A4 and Ex.A5 are standing in the name of the Defendants 1 and 2. When the suit properties, except item (1) of the suit properties, were stated to be purchased by the 1st Defendant, the learned counsel for the Appellant pointed out that the Respondents have not explained why the properties are standing in the name of both Defendants 1 and 2. The learned counsel also submitted that item (1) of the suit properties is admitted as the joint family property. The learned counsel then submitted that the Trial Court has failed to consider the probable income from the suit first item and other relevant circumstances.

5. Per contra, the learned counsel for the contesting Respondents referred to the findings of the Trial Court, which are based on material documents and evidence, particularly the admission of the Plaintiff himself during his cross examination. The learned counsel then pointed



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out the evidence of DW.1 and DW.2 and that their specific case in chief was not controverted to by cross examining the two witnesses examined by the Defendants. The learned counsel then relied upon the revenue records and other documents to show that the Plaintiff was never in enjoyment of the suit properties. It is submitted that item (1) of the suit properties, though belonged to the family, was divided long back and that the other properties were purchased by the 1st Defendant out of his own income.

6. This Court, having considered the submissions of the learned counsel on either side and the pleadings of the parties, formulates the following issues for consideration in this appeal:-

- (1) Whether there was a partition in the family consisting of the Plaintiff and the Defendants 1 and 2 in respect of first item of the suit properties about 40 years back?
- (2) Whether specific portion of item (1) of the suit properties is enjoyed by the Defendants 1 and 2 as contended by the Defendants?
- (3) Whether items (2) to (4) of the suit properties were purchased by the 1st Defendant in his name and they are his self acquired properties?
- (4) To what other relief, the Plaintiff is entitled?

7. The Plaintiff, in his evidence during the course of trial, admitted the



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facts that the 2nd Defendant has put up a moulding house in S.No.453 (item (1)) and that the 2nd Defendant is in enjoyment of the said house for a long time. He also admitted the position that the parties are in enjoyment of the property that was allotted to them and that their enjoyment is in conformity with their right as members of the family. The Trial Court specifically held that the Plaintiff has not proved his case of joint enjoyment and that the Defendants have proved the partition of the properties as alleged by them in the written statement.

8. It is admitted before this Court that DW.1 is the wife of the 1st Defendant and DW.2 is the 2nd Defendant. In the chief examination, both of them, DW.1 and DW.2, have specifically stated as to how the other properties were purchased by the 1st Defendant and the fact that the property is in enjoyment of the 1st Defendant. However, the Plaintiff has not chosen to cross examine both the witnesses. This has been pointed out by the Trial Court to give a definite finding as to the character of the properties and the enjoyment of the properties exclusively by the 1st Defendant.

9. In the course of the evidence, the Plaintiff has categorically admitted the fact that the item (1) of the suit properties, which was admittedly the



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joint family property, was divided among the Plaintiff and Defendants 1 and 2 long back and that specific portion in item (1) of the suit properties comprised in S.No.453 is in his separate possession. The Plaintiff's admission that he is in possession of the portion allotted to him along with the building is evident by his failure to cross examine DW.1 and DW.2. The Plaintiff has no explanation as to how he could disown his specific case regarding the joint enjoyment. Admittedly, the other properties described in the schedule were all purchased by the 1st Defendant as seen from Ex.B1 and Ex.B2. Unless the Plaintiff proves that the family was joint and that the joint family had sufficient nucleus to purchase the other properties, the properties, which are standing in the name of the individual member of family cannot be treated, as the joint family property. When the 1st Defendant purchased the property about 40 years back, as his self-acquired property, the Court cannot ignore the presumption under Section 90 of the Evidence Act. Apart from the positive evidence, the Plaintiff has not produced any scrap of paper to show that the suit properties, except item (1) were enjoyed in common or treated as the property of the joint family.

10.This Court has seen that the name of the 2nd Defendant was included



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in the joint patta. Merely because some of the properties are in the name of the Defendants 1 and 2, this Court cannot ignore the facts, which are established before this Court with reference to the character of other properties.

11.The Plaintiff has also admitted that the 1st Defendant was given separate patta during UDR. It is also admitted that the UDR patta was given to the Defendants about 30 years back. Having regard to the specific admission of the Plaintiff during evidence, this Court is unable to countenance the arguments of the learned counsel for the Appellant that the suit properties are all joint family properties of the Plaintiff and the Defendants 1 and 2. Except the document, by which a portion of the item (1) of the suit properties was sold jointly by the Plaintiff and the Defendants 1 and 2, the Appellant has not produced any document suggesting that the suit properties except item (1) of the suit properties were acquired by the 1st Defendant on behalf of the family or out of the joint family income. An oral partition is valid and binding. Hence, the prior partition pleaded by the Defendants is held to be true. The properties purchased by the 1st Defendant are his separate properties and the Plaintiff/ Appellant is not entitled to any relief.



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12. For the conclusions reached above, this Court is unable to find any

merit in this appeal and hence, this appeal deserves to be dismissed.

13. In fine, this Appeal Suit is dismissed. No costs.

(S.S.S.R.J.) &
(A.A..N.J.)
12.12.2022

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Web: Yes/No
Speaking/Non Speaking
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To

1. Principal District Court , Krishnagiri
2. The Sub Registrar, Bargur, Krishnagiri Taluk and District
3. The Record Keeper, VR Section, Madras High Court

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S.S.SUNDAR, J.
and
A.A.NAKKIRAN, J.

Srsm

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