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A.S.No.900 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 22.02.2022

Pronounced on:03.03.2022

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

A.S.No.900 of 2012

1.S.Meena

2.Minor S.Aravind

.. Appellants/Plaintiffs

Vs.

1.Sivakumar

2.Deivasigamani

3.Mahesh

4.Ramesh

5.Prakash

6.Umayal

7.Ranganathan

8.Thirumurugan

.. Respondents/Defendants

PRAYER: Appeal Suit is filed under Section 96 of C.P.C, to set aside the judgment and decree of the Principal District Judge, Cuddalore dated 19.04.2012 passed in O.S.No.5 of 2011.

For Appellants : Mr.R.Gururaj
For R1 to R6 : Mr.R.Rajavelavan
For R7 : died
For R8 : *Ex-parte*

J U D G M E N T



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The unsuccessful plaintiffs in their suit for partition and separate possession are before this court as appellants.

2. The long and short of the case is that, the appellants claim 1/7th share in the suit property on the premise that they are widow and son of one late Sakthivel. Defendants 1 to 5 are brothers of the said Sakthivel and defendants 6 and 7 are the mother and father of the said Sakthivel. The suit 'B' schedule properties were inherited by the 7th defendant from his father. Thus, the suit properties are an ancestral properties held by the family jointly and constitute a coparcenary. On the demise of Sakthivel 5 years prior to the suit, being one of the 7 coparceners, he is entitled for 1/7th share on notional partition and the plaintiffs as his legal heirs are entitled to get his share. The plaintiffs demanded for division of properties, but the defendants evading and the 6th defendant had entered into an agreement for sale on 20/12/2010 with the 8th defendant and got the sale agreement registered. Though the property, which is subject matter of the agreement, stands in the name of 6th defendant, it was purchased only from the surplus fund of joint family



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and the 6th defendant was only a name lender. The attempt to sell the property is to defeat the right of the plaintiffs. Hence the suit.

3. The claim of the appellants is denied by the 6th defendant as below:-

Sakthivel is her son, but he remained as a bachelor and died. He never married the first plaintiff as claimed. The suit property was purchased by her on 16/11/1990 from one Munusamy through registered sale deed for Rs.6,000/- from out of her independent savings and from sridhana. It is her self acquired property held absolutely and not as a member of the joint family constituting her sons and pre-deceased son Sakthivel. She has every right to deal with the 'B' schedule property and as its lawful owner entered into sale agreement with the 8th defendant, but the said agreement did not fructify since the 8th defendant failed to evince any interest to perform his part of contract. Therefore, the said agreement was cancelled through a cancellation deed dated 24/02/2011 duly registered. The plaintiffs have no right in the suit property and the suit is laid without any cause.



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4. Pending suit, 7th defendant- Ranganathan died. His legal heirs who were already been arrayed as parties in the suit, memo to that effect was filed and same recorded.

5. In the nut shell, while the plaintiffs claim that they are the widow and child of deceased Sakthivel. The suit property is ancestral property inherited by Ranganathan (7th defendant), the defendants case is that the plaintiffs are not the heirs of deceased Sakthivel and the property is not ancestral property inherited by Ranganathan, but absolute self earned property of Umayal, the 6th defendant who is the wife of Ranganathan and mother of defendants 1 to 5 and Sakthivel.

6. The trial court based on the pleadings, framed the following issues :-

“1.Whether the suit property is in the nature of the joint family property?

2.Whether the plaintiffs have acquired



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any right over the property of the deceased Sakthivel?

3. Whether the suit property is the exclusive property of the 6th defendant, she having purchased the same as on 16.11.1990?

4. Whether the plaintiffs are entitled to 1/7 share in the suit property?

5. Whether the agreement of sale dated 20.12.2010 is valid and binding upon the other parties?

6. Whether the Court fee is proper and correct?

7. To what reliefs the plaintiffs are entitled to?"

7. Testimony of four witnesses (PW-1 to PW-4) and contents of four documents (Ex A-1 to Ex A-4) were relied by the plaintiffs. To contradict, testimony of two witnesses (DW-1 and DW-2) and contents of 6 documents (Ex B-1 to Ex B-6) were relied by the defendants.

8. The trial Court on considering the evidence, dismissed the suit. It held that as per Ex.B-1, the title to the 'B' schedule property stands



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in the name of 6th defendant. She has purchased the property for a consideration of Rs.6000/- on 16/11/1990. To contradict the content of the registered document neither the plaintiffs nor the witnesses who have deposed in support of the plaintiffs have brought out any details, to consider 6th defendant was only a name lender and in fact the property was purchased out of joint family fund and possessed by the members of the family. Therefore the claim of the plaintiffs that the suit property is joint family property was held in negative.

9. The trial Court also negated the plaintiffs claim that they are widow and son of the deceased Sakthivel, since they failed to produce, marriage certificate of the first plaintiff with Sakthivel, birth certificate of Aravind to show the parentage and proof of residence to show the plaintiffs and Sakthivel along with other defendants lived jointly. Further the 4 documents relied by the plaintiffs such as photograph of the first plaintiff with the deceased Sakthivel (Ex A-1 and Ex A-2) and the transfer certificate issued by the school authorities in the name of Aravind/the second plaintiff mentions his initial as 'A' instead of



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‘S’. (Sakthivel). Therefore, these documents cannot be treated as proof of marriage or parentage.

10. In the appeal, the learned counsel for the appellants forcibly submitted that the trial Court erred in dismissing the suit, contrary to the evidence and ignoring the dictum of the Hon'ble Supreme Court, which has time and again reiterated that the Court should lean to legitimacy and frown to bastardy. To buttress his submission, he rely upon the oral evidence of the witnesses and the observation of the trial Court that the evidence prove only the living relationship between Sakthivel with the first plaintiff and not a valid marriage. He also rely upon the judgment of the Hon'ble Supreme Court in ***Badri Prasad –vs- Dy. Director of Consolidation and others*** reported in ***AIR 1978 SC 1557*** and few other judgments which has followed the dictum laid in Badri Prasad case.

11. Per contra, the learned counsel for the contesting



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respondents submitted that the plaintiffs who had averred that they are legal heirs of deceased Sakthivel and the suit property are ancestral properties held jointly by the family members ought to have adduced evidence to prove the said averments. The burden of proof is on the plaintiffs and the facts averred are not matter for presumption. The entire testimony of the plaintiff side witnesses and the exhibits, no way prove the plaintiffs claim. Contrarily, the defendants have established through Ex.B-1 and other exhibits that the suit property is not an ancestral property and it is the self acquired property of the 6th defendant. The plaintiffs therefore, whether they are legal heirs of Sakthivel or not, they are not entitled to claim share during the life time of 6th defendant.

12. Point for consideration:

Whether the trial court has erred in not appreciating the evidence of plaintiffs properly ?

13. The factum of marriage and long cohabitation are not



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matters, which can be inferred through a single photograph, where a male and female as seen together. More so, when only the positive is filed without negative and the person, who took the photograph not examined. The Ex.A-1, the photograph is in colour and new. Hence, this exhibits Ex.A-1-photograph and Ex.A-2-the CD, which contain this photograph are to be rejected as in admissible in evidence. Even otherwise not reliable for want of proof.

14. As rightly pointed out by the trial Court, the school certificate [Ex.A-3] issued in the name of A.Aravind without mentioning the father name cannot be taken as proof that the deceased Sakthivel as the father of the second plaintiff. More so, when the first plaintiff herself admits that prior to her marriage with Sakthivel, she got married to another person hailing from Thirunavallur, whose name she has forgotten. However the marriage got dissolved. There is no evidence to corroborate that the earlier marriage got legally dissolved. Even if the dictum of the Hon'ble Supreme Court that Court should lean towards legitimacy and frown upon bastardy is to be followed, in the instant case Court cannot



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hold responsible a deceased person for the birth of second plaintiff in the absence of reliable evidence. Attempt to claim parentage of a deceased person to get his property is also to be frowned equally. Recital Ex.B-1 clearly speak about the payment of consideration by the 6th defendant and transfer of title exclusively to 6th defendant. The plaintiffs who plead that it was a benami transaction should prove that fact which is contrary to a registered document. Neither the testimony of PW-1 to PW-4 nor Ex.A-1 to Ex.A-4, discharges the onus. Therefore, this Court finds no error or omission by the trial Court in appreciating the evidence placed before it.

15. The point of consideration is answered accordingly.

The memo filed on 15/12/2021 to record the appellants as legal heirs of 7th defendant who died nearly 10 years ago is rejected. This plea is unmerited and contrary to evidence. When the plaintiffs/appellants had not proved that they are legal heirs of Sakthivel, they cannot clandestinely seek the seal of recognition by this Court through this innocuous memo, that they are legal heirs of Ranganathan, the father of



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Sakthivel.

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16. In the result, the appeal suit is dismissed with exemplary costs of Rs 25,000/- in addition to the regular costs.

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Index : Yes/No

Internet: Yes/No

rpl

To

The Principal District Judge, Cuddalore.

DR.G.JAYACHANDRAN,J.

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Pre-delivery Judgment made in
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