

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Second Appeal No.1013 of 2013

Devaraj

... Appellant

Vs.

1. Kamalam

2. Maragatham

3. Murugesan

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 4.7.2013 passed in A.S.No.17/2013 on the file of the Principal District and Sessions Judge, Erode District confirming the decree and judgment dated 28.3.2012 passed in O.S.No.77 of 2011 by the II Additional Subordinate Judge, Erode District.

For Appellant : Mr. Titus Enocla
for M/s.I.C.Vasudevan

For Respondents : Mr.M.N.Kathur, for RR 1 and 2

No appearance, for R3

JUDGMENT

The Second defendant is the appellant in the Second Appeal.

2. The first and second respondents who are the plaintiffs filed a suit seeking for the relief of partition and for allotment of 1/4th share to each of the plaintiff.

3. The case of the plaintiffs is that their grandfather had purchased a portion of the suit property through three Sale Deeds dated 27.06.1946, 30.03.1949 and 22.06.1964. The remaining portion of the suit property was purchased by the father of the plaintiffs by virtue of a registered Sale Deed dated 02.04.1959. The further case of the plaintiffs is that their grandfather Perumal Mudaliyar, bequeathed the entire property that was purchased by him in favour of his son Periyasamy, through a Will dated 17.03.1988 (Ex.A2). It is stated that the father of the plaintiffs Periyasamy, was enjoying the entire suit property as the absolute owner.

4. The first and second defendants are the brothers of the plaintiffs. According to the plaintiffs, their father died intestate and hence they are entitled for 1/4th share each. Since the defendants were not coming forward to effect the partition, the suit came to be filed seeking for the reliefs stated supra.

5. The second defendant filed a written statement to the effect that the properties in question are joint family properties and that the plaintiffs were already married long back and they are living in their matrimonial home. The further defence that was taken was that the plaintiffs were asking for a share in the properties and hence, a Panchayat was convened. As per the advice of the Panchayat, the plaintiffs relinquished their share in the property and each of them was paid a sum of Rs.1,000/- towards relinquishment. The second defendant has thereby sought for the dismissal of the suit on the ground that the plaintiffs are not entitled for any share in the property. It is worth mentioning here that the plea regarding joint family property was taken by the second defendant only by filing an additional written statement and that too after the examination of P.W.1 during trial.

6. Both the Courts below after considering the oral and documentary evidence and after taking into consideration the facts and circumstances of the case, concurrently held in favour of the plaintiffs and passed the preliminary decree. Aggrieved by the same, the second defendant has filed the Second Appeal before this Court.

7. The learned counsel for the appellant submitted that both the Courts below failed to see that the properties in question are joint family properties and the plaintiffs who got married even prior to the State Amendment in the year 1989, are not entitled for any share in the property. The learned counsel submitted that even if the 2005 Amendment is applied to the facts of the present case, the plaintiffs will not be entitled for any share since the succession opened immediately on the death of the grandfather and the father of the plaintiffs and this happened prior to the coming into force of the 2005 Amendment Act. The learned counsel further submitted that the plaintiffs having relinquished their share in the suit properties and are ousted from claiming any share in the property and hence he submitted that the findings of both the Courts below warrants the

interference of this Court.

8. This Court carefully considered the submissions made on either side and the materials available on record. This Court also carefully considered the findings of both the Courts below.

9. Both the Courts below on appreciation of the evidence available on record came to a categorical conclusion that the defendants have not proved that the properties in question are ancestral properties. It is the defendants who had taken the plea that the properties are ancestral properties and therefore, the burden of proof is upon them to prove the said fact and they have failed to discharge that burden. That apart both the Courts below also took into consideration the fact that the plea of joint family property was brought in for the first time only by filing an additional written statement after the oral evidence of P.W.1. Therefore, both the Courts below rejected the defence of the defendants with respect to the plea of joint family property.

10. The Courts below also took into consideration the defence taken by the defendants with regard to the plea of ouster. Both the Courts found that there was absolutely no proof to substantiate the stand taken by the defendants as if there was a Panchayat and that the plaintiffs had relinquished their share after accepting a sum of Rs.1,000/-. There were two witnesses examined on the side of the defendants and D.W.1 was the second defendant and D.W.2 was his son. If at all there was a Panchayat convened, there was not a single witness who was examined to prove the alleged Panchayat wherein the plaintiffs are said to have relinquished their share in the suit property.

11. In the considered view of this Court, the findings of both the Courts below are based on evidence available on record and this Court does not find any perversity in the said findings. In any case, no substantial questions of law are involved in this Second Appeal.

12. In the result, the Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs.

01.03.2022

Index : Yes/No
Internet : Yes/No
Speaking Order / Non Speaking Order

jv

To

- 1.The Principal District and Sessions Judge,
Erode District
- 2.The II Additional Subordinate Judge,
Erode District.
3. The Section Officer
VR Section,
High Court Madras.

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N. ANAND VENKATESH, J.

jv

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