



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2022

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

SA.No.472 of 2015

and

MP No.1 of 2015

1. Arjun Gounder
2. Paranthaman
3. Ramu
4. K.Govindan

... Appellants/Defendants
Vs.

Swaminathan

... Respondent/Plaintiff

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure to set aside the decree dated 12.09.2014 made in A.S.No.79 of 2011 on the file of Sub ordinate Judge, Gudiyattam, against the judgement and decree dated 26.09.2011 made in O.S.No.161 of 2008 on the file of the District Munsif Court, Gudiyattam, Vellore District.

For Appellants : Mr.D.Pradeepkumar

For Respondent : Mr.K.Govi Ganesan
for Mr.C.Vinoth Kumar

JUDGMENT

The defendants are the appellants in this second appeal.

2. The respondent / plaintiff filed a suit seeking for the relief of declaration of title with respect to Item Nos.2 and 3 of the suit properties or in the alternative for the relief of partition and for allotment of $\frac{1}{4}$ share in Item Nos.2 and 3 of the suit properties.

3. The case of the plaintiff is that the 1st defendant is his father and the 2nd and 3rd defendant are his brother and sister and the 4th defendant is his brother-in-law. According to the plaintiff, item No.1 of the suit property belonged to his grand father and this property was bequeathed in favour of the plaintiff and the 2nd defendant. On the demise of the grand



4. The further case of the plaintiff is that he was working in CISF and he retired from service in the year 2003. According to him, he was sending money to the 1st defendant regularly and the 1st defendant had purchased item 2 of the suit property in his name through six sale deeds. Similarly, the money sent by the plaintiff was also utilized by the 2nd defendant and he had purchased the property mentioned in Item 3 of the suit property in his name. The plaintiff took a stand that the earnings from the 1st item of the suit property was also utilized while purchasing the properties mentioned in Item 2 and 3 of the suit properties.

6. The 1st defendant filed a written statement and took a stand that item 2 and 3 of the suit properties was not purchased from the earnings of the plaintiff. He took a stand that the 2nd item of the suit property was purchased from his own earnings and it is the exclusive property of the 1st defendant. Similarly, item 3 of the suit property was purchased exclusively out of the earnings of the 2nd defendant. Therefore, the 1st defendant completely denied the right of the plaintiff in item 2 and 3 of the suit properties and took a stand that the plaintiff is not entitled for any share in the suit property. Accordingly, the 1st defendant sought for the dismissal of the suit.

8. Aggrieved by the judgement of the Trial Court, the defendants filed an appeal before the Sub Court, Vellore in A.S.No.79 of 2011. The Lower Appellate Court through judgment and decree dated 12.09.2014 modified the decree passed by the Trial Court and granted the relief of partition and allotment of



adopted by both the Courts below is against the principles of law. That apart, the lower appellate Court went into irrelevant facts and rendered a finding as if items 2 and 3 of the property were purchased from the income derived from the 1st item of the suit property and this finding is not based on any evidence and it is based on surmises.

13. Both the Courts below erred in finding that item 2 and 3 of the suit properties were purchased from the income derived from the 1st item of the suit property. The 1st substantial question of law is answered accordingly in favour of the appellants.

14. The relief that was granted by both the Courts below in favour of the plaintiff based on surmises and improper appreciation of evidence and hence, those findings must be held to be perverse. The 2nd and 3rd substantial questions of law are accordingly answered in favour of the appellants.

15. In view of the above discussion, this Court has no hesitation to interfere with the judgment and decree passed by both the Courts below and the same is hereby set-aside. Consequently, the suit filed by the respondent is dismissed.

16. In the result, this second appeal is allowed. Considering the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

rka

To

1. The Sub ordinate Judge, Gudiyattam
Vellore District.
2. The District Munsif , Gudiyattam,
Vellore District

Copy To:-

The Section Officer
VR Section, High Court
Madras.



+1cc to Mr.T.Dhanyakumar, Advocate, S.R.No.21969
+1cc to Mr.K.Govi Ganesan, Advocate, S.R.No.21987
+1cc to Mr.G.Vinodh Kumar, Advocate, S.R.No.22061

WEB COPY

SA.No.472 of 2015

NRJK(CO)
SB(18/05/2022)