



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

WEB COPY

S.A.No.328 of 2013

in

M.P.No.1 of 2013

Govindaraj

...Appellant/Appellant/5th Defendant

Vs.

1.K.Gopal

....Respondent/Respondent/Plaintiff

2.Mohanasundaram

3.Sornam

...Respondents 2 & 3/Respondents 5 & 6/
Defendants 4 & 6

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 30.08.2012 made in A.S.No.58 of 2010 on the file of the Court of the I Additional District Judge, Tiruppur, confirming the judgment and decree dated 21.11.2009 made in O.S.No.49 of 2003 on the file of the Court of the Subordinate Judge, Tiruppur.

For Appellant : Mr.P.Anbarasan

For Respondents : Mr.K.Rajendra Prasad for R1

R2 - Dismissed vide Court Order
dated 17.10.2019

R3 - Ex-parte vide Court Order
dated 21.03.2019

JUDGMENT

The 5th defendant is the appellant in the present Second Appeal.

2.The 1st respondent/plaintiff filed a suit seeking for the relief of partition and for allotment of 1/3rd share in the suit property.

3.The case of the plaintiff is that the 1st defendant and the husband of the 2nd defendant namely Govindasamy Gounder and the father of the plaintiff are brothers. They constituted a joint family. The further case of the plaintiff is that the husband of the 2nd defendant namely Govindasamy Gounder was the



kartha of the family and he purchased property in his name in the year 1946. It is the specific case of the plaintiff that these properties were always treated as joint family properties. It is further stated that the said Govindasamy Gounder dealt with certain properties and executed Sale Deeds and a Will. However, the said Govindasamy Gounder never dealt with the properties that were purchased in the year 1946.

4. With the above background, the plaintiff had sought for 1/3rd share in the suit property.

5. Both the Courts below found that the plaintiff is entitled for 1/3rd share in the suit property. Aggrieved by the same, only the 5th defendant has filed the present Second Appeal.

6. Heard the learned counsel for the appellant and carefully perused the findings rendered by both the Courts below.

7. The main ground of the defendants that was taken before both the Courts below is that the suit properties were the self-acquired properties of Govindasamy Gounder. While dealing with this issue, the Courts below took into consideration the written statement filed in O.S.No.324 of 1996 by Pattathal and Arumuga Gounder. In the said written statement, at Paragraph Nos.7 and 8, they themselves have accepted that the properties are joint family properties. In view of this admission made in the written statement, both the Courts below rightly held that no further proof is required as per Section 58 of the Indian Evidence Act. Both the Courts also took into consideration the fact that there was no proof that Govindasamy Gounder had the wherewithal to independently purchase the suit property.

8. Both the Courts below have appreciated the oral and documentary evidence and have given their findings. This Court does not find any perversity in those findings. In any case, no substantial questions of law are involved in the second appeal.

9. In the result, the Second Appeal stands dismissed. Considering the facts and circumstances of the case, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar



ssr

To

1.The I Additional District Judge,
Tiruppur.

2.The Principal Subordinate Judge,
Tiruppur.

Copy To

The Section Officer,
VR Section, High Court,
Madras.

+lcc to Mr.P.Anbarasan, Advocate SR.No.10881

+lcc to Mr.K.Rajendraprasad, Advocate SR.No.10604

S.A.No.328 of 2013
in M.P.No.1 of 2013

SJ(CO)
GN(24/03/2022)