



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Second Appeal No.866 of 2013

P.Senthilkumar alias Marappan

...Appellant / Plaintiff

Vs.

1. Pongiammal
2. Jothimani
3. Kannammal

...Respondents / Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree of the learned Subordinate Judge, Gobichettipalayam in A.S.No.69 of 2010 dated 23.06.2011 confirming the Judgment and Decree of the learned District Munsif, Gobichettipalayam in O.S.No.105 of 2006 dated 21.10.2010.

For Appellant : Ms.J.Prithivi
for M/s.S.Kaithamalai Kumaran

For Respondents: Mr.A.Aruneshe
for Mr.A.V.Arun

JUDGMENT

The plaintiff is the appellant in the Second Appeal.

2. The plaintiff filed a suit seeking for the relief of declaration of title insofar as the 'B' Schedule property is concerned and for a permanent injunction and in the alternative sought for partition of the 'A' Schedule property and for allotment of 4/6th share in the property. The Trial Court dismissed the suit insofar as the relief of declaration of title and permanent injunction is concerned and decreed the suit with respect to the relief of partition claimed by the plaintiff.



3. Aggrieved by the judgment and decree of the Trial Court, the plaintiff filed an Appeal before the Sub Court, Gobichettipalayam, and the Lower Appellate Court by judgment and decree dated 23.06.2011 dismissed the Appeal and confirmed the judgment and decree of the Trial Court. Aggrieved by the same, the present Second Appeal has been filed before this Court.

4. Heard Ms.J.Prithivi, learned counsel appearing for the appellant and carefully perused the materials available on record and also the judgments of both the Courts below.

5. The case of the appellant/plaintiff is that his father Palanisamy by selling a joint family property, had purchased the suit properties. The said Palanisamy married one Mylathal in the year 1973. The plaintiff was born out of the said wedlock. The further case of the plaintiff is that his mother died in the year 1985. The father of the plaintiff had a concubine by name Pongiammal and the second and third defendants were born out of the said relationship. According to the plaintiff, the entire suit properties were enjoyed by the plaintiff and his father as joint family properties and the father of the plaintiff died in the year 2000. By pleading these facts, the plaintiff had sought for the reliefs that have been stated herein above.

6. Both the Courts below found that the plaintiff had failed to prove that the suit properties were purchased out of the income derived from selling the joint family property. The plaintiff relied upon Exs.A1 to A3 and according to the plaintiff these properties were purchased in the year 1988, 1991 and 1992 and the plaintiff never proved that these properties were purchased from the income derived from the property that was allotted under Ex.A21. Both the Courts found that the value of the properties that were purchased under Exs.A1 to A3 were much more than the value of the property that is covered under Ex.A22. There is a factual finding to the effect that the consideration that was received under the relinquishment deed is not proved to be the nucleus for the purchase of the properties under Exs.A1 to A3. In view of the said finding, both the Courts below proceeded to grant the relief of partition by treating the properties as the self acquired properties of the father of the plaintiff and allotted 1/3rd share to the plaintiff and defendants 2 and 3.

7. In the considered view of this Court, there is no perversity in the findings of both the Courts below which warrants the interference of this Court. This Court exercising its jurisdiction under Section 100 of the Code of Civil Procedure, cannot re-appreciate the evidence. There are no substantial questions of law involved in the present Second Appeal.



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

WEB COPY

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Subordinate Judge,
Gobichettipalayam.
2. The District Munsif,
Gobichettipalayam.
3. The Section Officer,
V.R.Section,
High Court of Madras.

+1cc to M/s.S.Kaithamalai Kumaran, Advocate, S.R.No.9923

Second Appeal No.866 of 2013

EV[co]
NSK 07/03/2022