



S.A.No.403 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

**S.A.No.403 of 2020**  
**and**  
**C.M.P.No.8112 of 2020**

1.Jawahar  
2.Kumar

... Plaintiffs/Appellants/Appellants

Vs.

1.Lakshmikantham  
2.Kamaraj  
3.Sivagami

... Defendants/Respondents/ Respondents

**PRAYER:** Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and decree of the Principal District Judge's Court at Dharmapuri dated 20.02.2020 in A.S.No.26 of 2018 confirming the judgment and decree of the Subordinate Judge's Court at Harur, dated



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21.08.2018 passed in O.S.No.39 of 2016.

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For Appellants : Mr.P.Valliappan

For Respondents : M/s C.Prabhakaran [R.1 to R.3]

### **JUDGMENT**

The plaintiffs who lost in both the Courts below with reference to the Item no.6 of the suit schedule property are the appellants before this Court. The plaintiffs had filed a suit for partition of their 2/5th share in the suit schedule properties. The schedule property consist of 6 items of property. The plaintiffs had contended that the suit property and other properties belonged to their grand father Munusamy Pillai. Thereafter it was in the joint possession of Karuppan, Duraisamy and the 1st defendant who is none other than the father of the plaintiffs and defendants. 40 years prior to the filing of the suit an oral partition had taken place in which the suit schedule properties were allotted to the 1st defendant. The properties have been in the joint possession of the plaintiffs and the defendants. The 1st defendant was dealing with the properties as a Karta.



2. While so, the 6th schedule of property was fraudulently purchased in the name of the 3rd defendant out of the joint family funds. Despite demanding partition of the properties, the defendants were not coming forward to partition the properties. On 15.03.2016 the plaintiffs came to know that the defendants were trying to create fabricated documents for obtaining a loan from the bank, therefore they had filed the suit for partition and injunction.

3. The 1st defendant had filed a written statement which was adopted by the other defendants in which he had contended that the suit item nos.1, 2, 3 & 5 were available for partition whereas the 4th item of property was purchased in the individual name belonging of the 1st defendant and likewise, the 6th schedule property belonged to the 3rd defendant who had purchased the same utilizing the sale consideration received by her husband Periyasamy from the sale of his lands to one Puttu @ Govindasamy. After trial the suit was decreed in respect of Item Nos.1 to 3 and dismissed with reference to Item No.6.



4. The Trial Court had stated that since the 6th item of property stood in the name of the 3rd defendant by virtue of Section 14(1) of the Hindu Succession Act, 1956. The same has enlarged into the absolute estate (incidentally this was no one case and in fact Section 14(1) had not been pleaded by the defendants) of the 3rd defendant by virtue of Section 14 of the Hindu Succession Act. This order was taken up on challenge by the plaintiff in A.S.No.26 of 2018 on the file of the Principal District Judge Dharmapuri. The Principal District Judge Dharmapuri after extracting the pleadings and the arguments and by relying upon the stray admissions in evidence and also referring to the various judgments and extracting therefrom, dismissed the appeal. The entire discussion of the order is contained in paragraph nos.13 to 15 is extracted herein below:-

*"13. After the analysis, evidence and document perused by the trial court, the preliminary decree passed item 1 to 5 of the suit properties and dismissed for the 6th item of the schedule property.*

*14. In view of the foregoing reasons and discussions, this court holds that there are no valid merits and reasons to warrant interference and to set aside the decree and*





funds has not proved the same and therefore, the Judgement of the lower Appellate Court has to be confirmed.

7. Heard the counsels and perused the judgment in question. The following Substantial Question of law arises for consideration in this Second Appeal and counsels have addressed arguments in the same.

*"Whether the judgment and decree of the Lower Appellate Court is substantially erroneous in law in as much as the judgment does not reflect a conscious application of mind and does not contains reasons for arriving at the conclusion."*

8. The appeal has been filed only in respect of the 6th item of suit schedule property. Since a decree has been granted with reference to the other items of properties, extensive arguments have been made before the learned District Judge in respect of that portion of the judgement which denies the plaintiff their right to the 6th item of the property. A perusal of the judgement under appeal does not reflect this issue as a point for consideration and there is no discussion about the same.



9. The learned judge has in a very perfunctory fashion dealt with the sole point for consideration framed i.e; Whether the appeal deserves to be allowed or not. The judgment does not consider any of the grounds raised by the plaintiffs, particularly the plea raised by them that the 3rd defendant, the owner of the 6th item of the property has not entered the box to substantiate her case that she has purchased the properties utilizing the funds of her husband from the sale of the property. The entire discussions of the Lower Appellate Court in its judgement is extracted herein below:-

*"13. After the analysis, evidence and document perused by the trial court, the preliminary decree passed item 1 to 5 of the suit properties and dismissed for the 6th item of the schedule property.*

*14. In view of the foregoing reasons and discussions, this court holds that there are no valid merits and reasons to warrant interference and to set aside the decree and judgement of Subordinate Judge, Harur, in O.S.No.39/2016. Thus this point is answered.*

*15. In the result, this appeal is dismissed. The decree and judgement of the learned Subordinate Judge, Harur, in O.S.No.39/2016, is hereby confirmed. No costs."*



10. A reading of the above clearly shows that there is no application of mind on the part of the lower Appellate Court. Being the final Court of fact the Lower Appellate Court ought to have elaborately and independently considered the judgement on appeal before it and passed a reasoned judgement. The Hon'ble Supreme Court in the Judgement reported in **2001 (3) SCC 129 Santhosh Hazari Vs. Purushottam Tiwari (deceased) by LRs** has held as follows:-

*"The appellate Court has jurisdiction to reverse or affirm the findings of the Trial Court. First Appeal is a valuable right of the parties unless restricted by law, the whole case is therein open for rehearing both on the questions of fact and law. the Judgement of the Appellate Court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising alongwith the contentions put forth, and pressed by the parties for the decision of the Appellate Court"*

Unfortunately, this exercise has not been done by the Lower Appellate Court in the instant case.



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11. In these circumstances the appeal is allowed and the matter is remitted back to the Principal District Judge's Court at Dharmapuri who shall on receipt of the records from this Court proceed to dispose of the appeal within a period two months from the date of receipt of a copy of this Judgement after framing the relevant points for consideration. Since the matter is being remitted back to the Appellate Court the Substantial Questions of Law need not be considered at length. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

**05.07.2022**

Index : Yes/No  
Internet : Yes/No  
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To

1.The Principal District Judge's Court at Dharmapuri.

2.The Subordinate Judge's Court at Harur.

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**P.T. ASHA, J,**

shr

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