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S.A.No.924 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2022

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.924 of 2022
and
C.M.P.No.19021 of 2022

P.K.Kalyani

... Appellant

Vs.

N.Murugan

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree dated 27.01.2022 made in A.S.No.43 of 2020 on the file of the III Additional District Judge, Coimbatore confirming the Judgement and decree dated 17.03.2020 made in O.S.No.212 of 2014 on the file of the I Additional Subordinate Judge, Coimbatore.

For Appellant : Mr.V.Anandhamoorthy



JUDGMENT

The unsuccessful defendant before the Courts below is the appellant before this Court challenging the Judgment and Decree passed in O.S.No.212 of 2014 by the I Additional Sub Court, Coimbatore which was confirmed by the III Additional District Judge, Coimbatore in A.S.No.43 of 2020.

2. The facts are briefly set out herein under and the parties are referred to in the same array as before the Trial Court.

3. The plaintiff and the respondent are husband and wife respectively. They jointly owned the suit schedule property. The case of the plaintiff is that he had entered into a sale agreement on 14.07.1994 with one V.V.Palanisamy to purchase the suit schedule property and had also paid an advance of a sum of Rs.3,000/- on the same day. It is a further case of the plaintiff that he had availed a housing loan from the LIC for the balance sale consideration and had purchased the property on 15.09.1994. Since the respondent was his wife and out of his love and affection for her, he had purchased the property in her name as well. However, the consideration comes only from the plaintiff's salary and it was he who had been paying the loan installments every month.



The plaintiff and the defendant had a son and a daughter. However, due to certain difference of opinion they started living separately and the property could no longer be enjoyed jointly. The plaintiff has offered his share to the defendant. Since he wants a partition, he had issued a notice to which the defendant and the defendant had sent a reply refusing the partition.

4. The defendant/ wife had filed a written statement inter alia denying the contentions raised by the plaintiff and would submit that she is a Government Servant from the year 1984 and prior to that she was working in a private company and the advance of Rs.3,000/- was paid by her. She would further submit that the Housing Loan was obtained jointly by the plaintiff and the defendant by mortgaging the property. She would also state that she had sold her jewels and she had also obtained a loan of a sum of Rs.30,000/- from the Staff Co-operative Thrift and Credit Society and from out of this had paid a sum of Rs.44,000/- towards the balance sale consideration on 10.09.1994. It was she who had met the registration charges which included stamp duty. Therefore, she would submit that though, the property stood in the name of both the plaintiff and the defendant it was she who had given money for the purchase.



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5. Before the Trial Court, the plaintiff had examined himself as P.W.1 and marked Ex.A.1 to Ex.A.5. On the side of the defendant, she had examined herself as D.W.1 and marked Ex.B.1 to Ex.B.11.

6. However, pending the Trial there was no representation on behalf of the plaintiff and on the perusal of the documents a preliminary decree for partition was granted. Challenging the same the appellant had filed A.S.No.43 of 2020 on the file of the III Additional District Judge, Coimbatore. The learned District Judge also agreed that the findings of the Trial Court and dismissed the appeal. Challenging the same the defendant is before this Court.

7. The defendant had claimed an exclusive right over the property by stating that she alone had contributed towards balance sale consideration as also the advance amount. In order to prove her claim she had relied upon the Ex.B.3, Ex.B.4 and Ex.B.5. The Lower Appellate Court had considered the above documents and observed as follows:-

“This court has considered the above three



WEB COPY



S.A.No.924 of 2022

documents.Ex.B3 is a copy of receipt issued by a weighing agency showing the weight of gold jewels. In the same the name of defendant is not shown. The same does not show that the jewels of defendant were sold on 27.08.1994. The defendant has neither produced the original of Ex.B.3. nor has given any explanation for non production of the same. Under this circumstance this court is of the view that Ex.B3 cannot be accepted as a proof of the claim of the defendant that she sold her gold jewels and paid a portion of sale consideration. Coming to Ex.P4 it is also a copy of requisition issued by Industries Department Staff Co-operative Thrift and Credit Society, Chennai to the General Manager of DIC, Coimbatore to recover the amount due from its members from their monthly salary. It bears a date seal of 27.12.2004. It shows the outstanding loan amount of the defendant as Rs.70,000/-. Again the same does not show that the loan was borrowed in the year 1994 to pay the part sale price to the vendor. Ex.B5 is an order showing sanction of Rs.7500/- as temporary advance from GPF account of the defendant. But, the same is dated 16.09.1993 and it shows that the said amount was received for her medical treatment. So Ex.B5 does not support the claim of the defendant. And further the temporary advance was received nearly one year before the purchase of the suit property. It is hard to believe that the said amount was utilized for the purchase of suit property. On the other hand Ex.A2 shows that the plaintiff entered in to a sale agreement with one V.V. Palanisamy on 14.07.1994 for purchase of the schedule property. If the defendant contributed the entire sale consideration



WEB COPY



S.A.No.924 of 2022

including the advance money then the sale agreement would have been entered by her. So the claim of the defendant that she alone paid the sale consideration which was not covered by the housing loan is not accepted."

8. As the sale deed, Ex.A.1 stands in the name of both the parties and the defendant has been unable to prove her exclusive right over the same, I do not see any reason to interfere with the well considered Judgement and Decree of the Courts below and consequently, the Second Appeal stands dismissed. Further, it also does not give rise to any substantial question of law. No costs. Consequently, the connected Miscellaneous Petition is closed.

16.11.2022

Index : Yes/No
Internet : Yes/No
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6/8



S.A.No.924 of 2022

1.The III Additional District Judge, Coimbatore

2.The I Additional Subordinate Judge, Coimbatore.

P.T. ASHA, J,

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WEB COPY



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