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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

S.A.NO.444 OF 2014

1. Tmt.Santhakumari
2. Tmt.Vathani

.. Appellants/Plaintiffs

.Vs.

1. Tmt.Kuppammal
2. S.Vijayakumar
3. Tmt.Vimala

.. Respondents/Defendants

Prayer: Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree in A.S.No.198 of 2011 and dated 30.10.2013 on the file of the VI Additional Judge, City Civil Court, Madras preferred against the judgment and decree in O.S.No.8512 of 2008 dated 02.08.2010, on the file of XIII Asst. Judge, City Civil Court, Madras.

For Appellants : Mr.S.C.Vishwanth

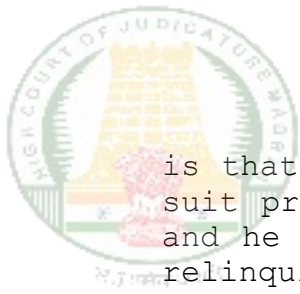
For Respondents : Mr.R.Radha Pandian
for R 2

JUDGMENT

The plaintiffs are the appellants in this Second Appeal.

2.The plaintiffs filed the suit seeking for the relief of partition and for allotment of 2/5th share in the suit property and for other consequential reliefs.

3.The case of the plaintiffs is that the 1st defendant and late Sadagopal are the parents of the plaintiffs, 2nd and 3rd defendants. It is stated that the father of the plaintiffs acquired movable and immovable properties out of the income earned by him in business. The further case of the plaintiffs



is that their father Sadagopal out of his earnings purchased the suit properties in his name and in the name of his wife jointly and he also spent money to put up additional constructions. He relinquished his rights in favour of the 1st defendant by executing a release deed. Subsequently, there was some misunderstanding between the 1st defendant and Sadagopal and legal proceedings were initiated by the 1st defendant against her husband in order to save the property for the benefit of the family. The litigation also ended in favour of the 1st defendant and Sadagopal was restrained from interfering with the possession and enjoyment of the 1st defendant in the properties.

4.The plaintiffs took a further stand that the 1st defendant did not have any independent income and the properties actually belonged to their father. Hence, they are entitled for a share in the property. Accordingly, the suit came to be filed seeking for the relief of partition.

5.The 1st defendant filed a written statement and took a stand that the suit property was purchased by selling her jeweleries and the 1st defendant had spent her money for the improvement of the property. That apart, Sadagopal also received consideration for the execution of the release deed in favour of the 1st defendant. The 1st defendant took a further defence that she had spent her money in settling the dues to the Society and saved the property. The 1st defendant took a specific stand that the plaintiffs are not entitled for any share in the suit property and accordingly, sought for the dismissal of the suit.

6.Both the Courts below on considering the facts and circumstances of the case and after appreciating the oral and documentary evidence, concurrently held against the plaintiffs and dismissed the suit. Aggrieved by the same, the plaintiffs have filed the present Second Appeal.

7.Heard Mr.S.C.Vishwanth, learned counsel for the appellants and M/s.R.Radha Pandian, learned counsel for the 2nd respondent. This Court carefully perused the materials available on record and also the findings rendered by both the Courts below.

8.The Courts below found that the suit property was purchased in the name of the Sadagopal and the 1st defendant under Ex.A-1 and later the said Sadagopal executed a release deed in favour of his wife viz., the 1st defendant through Ex.B-3. Accordingly, the 1st defendant became entitled for the entire suit property. The main plea that was raised by the plaintiffs was that the 1st defendant never had an independent income and the property actually belongs to their father Sadagopal.



9. Both the Courts below took into consideration the earlier suit filed by the 1st defendant and the judgments marked as exhibits B-4 and B-5. On appreciating the findings given in favour of the 1st defendant, both the Courts held that the right of the 1st defendant in the suit property was confirmed and Sadagopal never sought for declaration of title over the suit property, if really he was the owner of the property. Accordingly, the same logic was applied to the plaintiffs also. The Courts below also took into consideration the prima facie title of the 1st defendant in the suit property.

10. The plaintiffs had come forward with a specific case that the 1st defendant is only a name lender and the actual owner is their father. According to them, Ex.B-3 release deed was a sham and nominal document. The burden of proof to prove these facts was on the shoulders of the plaintiffs. They failed to prove the stand taken by them and both the Courts below concurrently held that the 1st defendant is the absolute owner of the property and that the plaintiffs are not entitled for any share in the property.

11. The findings rendered by both the Courts below does not suffer from any perversity and it does not require the interference of this Court. In any event, no substantial questions of law are involved in this Second Appeal.

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

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

KP

To

1. The VI Additional Judge, City Civil Court, Madras.
2. The XIII Asst. Judge,
City Civil Court, Madras.
3. The Section Officer
V.R.Section, High Court, Madras.

+1cc to Mr.S.C.Vishwanth, Advocate, S.R.No.25807

+1cc to Mr.R.Radha Pandian, Advocate, S.R.No.25909

S.A.No.444 of 2014

GPL(CO)

RLP(09/05/2022)