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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VEKATESH

SECOND APPEAL NO.53 OF 2014

1.Kamalam

2.Kalaiarasi

3.Suguna

...Appellants / Plaintiffs

Vs

1.Selvaraj

2.S.Prakash

3.Jayanthi

...Respondents / Defendants

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree made in A.S.No.110/2010 dated 21.9.2012 on the file of the First Additional District Court, Erode, Erode District confirming the judgment and decree as made in O.S.No.295 of 2005, dated 31.8.2009 on the file of the Principle Subordinate Court, Erode.

For Appellant : Mr.V.Balamurugane

For Respondents : Mr.P.Vadivel
for R2 & R3

Not ready in notice
for R1

JUDGMENT

The plaintiffs are the appellants in this Second Appeal.

2.The 1st plaintiff is the mother and the 2nd and 3rd plaintiffs are her daughters. The 1st plaintiff married the 1st defendant after the demise of the 1st wife. The 2nd and 3rd defendants are the children of the 1st defendant born through the 1st wife.

3.The case of the plaintiffs is that the suit property is a joint family property and that the plaintiffs are entitled for a



share in the suit property and hence, sought for the relief of partition and for allotment of 2/5th share in the suit property. In the alternative, the plaintiffs also sought for the relief of maintenance of Rs.1500/- per month to the 2nd and 3rd plaintiffs to be paid by the 1st defendant.

4.The 1st defendant filed a written statement and took a stand that the 1st plaintiff is his 2nd wife and the 2nd and 3rd plaintiffs were born through the 1st plaintiff. The 1st defendant also took a stand that he is maintaining the plaintiffs and he is always ready and willing to take care of the plaintiffs. Insofar as the property is concerned, the 1st defendant has taken a stand to the effect that the 2nd defendant had managed to get a settlement deed by misrepresentation and fraud and it has also been cancelled through a cancellation deed dated 18.10.2004.

5.The 2nd defendant filed a written statement and took a stand that the suit property is the exclusive property of the 1st defendant and it has already been settled in his favour and it has been acted upon. Thereafter, tenants have been inducted in the properties and he receiving the rents from them as absolute owner of the property. Thus, the 2nd defendant has denied the right of the plaintiffs in the suit property and sought for the dismissal of the suit.

6.Both the Courts below concurrently held against the plaintiffs and aggrieved by the same, the present Second Appeal has been filed before this Court.

7.Heard Mr.V.Balamurugane, learned counsel for the appellants. This Court has carefully considered the materials available on record and also the findings of both the Courts below.

8.Insofar as the relief of partition and allotment of share is concerned, both the Courts concurrently found that the property in question is not an ancestral property and it is the separate property of the 1st defendant. This property was also settled by the 1st defendant in favour of the 2nd defendant. Thereafter, the settlement was also cancelled. In view of the same, both the Courts held that the plaintiffs will not get a share in the property till the life time of the 1st defendant since it is his exclusive property.

9.Insofar as the relief of maintenance is concerned, both the Courts below found that the 1st defendant was in fact living with the 1st plaintiff and he had provided for the education of both the children and both the children have also become major during the pendency of the suit. Therefore, both the Courts held that there is no question of granting maintenance since the



plaintiffs are already taken care by the 1st defendant. The Courts below also took into consideration the fact that the 1st plaintiff was also running a hotel business and some property was already settled in her favour.

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10. The Courts below analysed the oral and documentary evidence and found that the plaintiffs are not entitled for any of the reliefs sought for in the suit. This Court does not find any perversity in the findings of both the Courts below. There are no substantial questions of law involved in this Second Appeal.

11. 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(CO)

// True Copy //

Sub Assistant Registrar

KP

To

1. Principle Subordinate Judge,
Erode.

2. First Additional District Judge,
Erode.

Copy To

The Section Officer
V.R. Section,
High Court, Madras.

+1cc to Mr.V.Balamurugane, Advocate Sr.No.14071

Second Appeal No.53 of 2014

AJB(CO)
RVM(23/05/2022)