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S.A.No.736 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.10.2022

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.No.736 of 2014
and M.P.No.1 of 2014

1.Rajagopal Naidu (died)
2.Saraswathi
3.Bama
4.Dhanraj

...Appellants

[A1 died, Memo recorded. Appellants
2 to 4 legal heirs of the deceased 1st
appellant viz., Rajagopal Naidu vide
Court order dated 23.03.2022 made in
S.A.No.736 of 2014 and M.P.No.1 of
2014 (NAVJ)]

Vs.

1.P.R.Babu
2.V.Shanthi

...Respondents

PRAYER : Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 28.10.2013 made in A.S.No.7 of 2012 on the file of the II Additional District & Sessions Judge, Ranipet, Vellore District confirming the Judgment and Decree dated 28.07.2010 made in O.S.No.289 of 2003 on the file of the Subordinate Judge, Ranipet, Vellore District.

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For Appellant : Mr.J.R.K.Bhavanantham

For R1 : Mr.Ashok Menon
for Mr.K.Venkatesan

For R2 : Mr.R.Mubarak Basha

JUDGEMENT

This Second Appeal is preferred as against the Judgment and Decree dated 28.10.2013 made in A.S.No.7 of 2012 on the file of the II Additional District & Sessions Judge, Ranipet, Vellore District confirming the Judgment and Decree dated 28.07.2010 made in O.S.No.289 of 2003 on the file of the Subordinate Judge, Ranipet, Vellore District.

2.The suit was filed by the 1st respondent/plaintiff seeking for partition and the suit was decreed by the Trial Court. Against which, the appellants/defendants 1, 3 to 5 preferred an appeal in A.S.No.7 of 2012 and the First Appellate Court confirmed the judgment and decree passed by the Trial Court.



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3. Aggrieved over the same, the appellants/defendants 1, 3 to 5 filed

the present Second Appeal, suggesting the following substantial questions of law:

“(a) Whether the suit filed by the first Respondent without including all the properties is not bad for partial partition?

(b) Whether the Court below is right in holding that Items 2 to 6 of the 'c' schedule properties is also properties available for division ignoring the oral and documentary evidence adduced in the case and in the absence of the necessary pleadings?

(c) Whether the Courts below is right in holding that since there is no evidence to show that the first Appellant financed for purchase of items 2 to 6 of 'C' schedule property when the plea of the first Respondent is that the said Items was purchased with the income derived from 'B' schedule property, which contention was negatived by the courts below?

(d) In view of the admitted facts and circumstances of the case that when the first wife of the appellant and



respondents 1 and 2 had no financial resources to purchase Items 2 to 6 of the 'C' schedule properties whether the Courts below is right in holding that the first respondent is entitled to 1/6th share in those items?

(e) Whether the properties purchased under Ex.B3 sale deed in name of deceased Suseela is proved to be holding in trust in fiduciary capacity attracting bar under Section 3(1) and 4 of Benami Transaction prohibition Act was not applicable to the facts of the case?

(f) Whether even when the purchase under Ex.B3 in the name of Suseela deceased wife is not proved to be his benefit, the bar under Section 3(1) and (4) of Benami Transaction Prohibition Act would apply?

(g) Whether the finding that the item 2 to 6 covered under sale deed in Ex.B3 is not proved be Benami even in the absence of pleading and evidence source of income, motive possession of property and title deed?"

4.By referring to the above substantial questions of law, the learned counsel appearing for the appellants/defendants 1, 3 to 5 submitted that as



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far as the judgments and decrees passed by the Trial Court as well as the First Appellate Court are concerned, he agrees the manner in which the partition was made with respect to the schedule of property mentioned in the suit i.e schedule A to C.

5.In the written statement, the appellant/1st defendant has taken a stand that the suit is bad for partial partition for the reasons that all the properties which were purchased by him, have not been included in the plaint schedule. By virtue of Ex.B4, the 1st defendant had purchased a property situated in Chennai in the name of the plaintiff and the 2nd defendant, who are the son and daughter born through his first wife Suseela and this property was not shown in the partition suit.

6.The learned counsel appearing for the appellant/1st defendant would submit that in Ex.B4/sale deed it has been clearly mentioned that the property was purchased by the plaintiff and the 2nd defendant for a sum of Rs.1,10,000/-, which was provided by their father/1st defendant herein Therefore, he would contend that this aspect was not considered by the Trial



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Court as well as the First Appellate Court and if the same was considered, the suit would have been dismissed for not including the said property.

7.The learned counsel appearing for the plaintiff/respondent would submit that the Trial Court as well as the First Appellate Court having taken into consideration Ex.B4/sale deed executed in favour of the plaintiff and 2nd defendant, have concurrently held that for the purchase of property under Ex.B4, the 1st defendant/father had provided funds, however, both the Courts have come to the conclusion that the amount lent by the 1st defendant was not quantified. The plaintiff and the 2nd defendant mortgaged the said property and put up construction therein. The 1st defendant has not contributed any amount for the construction and no evidence has been let in as regards 1st defendant's contribution towards the construction put up in the said property. The property was purchased in the name 1st defendant's married daughter and his son. It will not give any right to the 1st defendant/father to claim any share in the property as substantial amount was contributed by the plaintiff and the 2nd defendant for the purpose of further development of the said property. At any costs, this property cannot



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be considered as benami property of the family.

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8.Heard the learned counsel appearing for the 1st appellant/1st defendant as well as the respondent/plaintiff and perused the judgments and decrees passed by the Trial Court as well as the First Appellate Court.

9.Upon perusal, it is seen that both the Courts below have concurrently come to the conclusion that the contribution of sum of Rs.1,10,000/- by 1st appellant/1st defendant/father for purchasing the said property has not been quantified. That apart, the amount spent by the 1st appellant might be meager, but, the plaintiff and 2nd defendant have borrowed several lakhs and developed the property. Admittedly, for the purpose of development, the 1st appellant father did not contribute any amount. Under such circumstances, both the Courts below have rightly come to the conclusion that the said property need not be included in the suit for partition and therefore, the suit is not bad for partial partition.

10.This Court is also of the view that this property cannot be considered as joint family property as the substantial contribution was made



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by the plaintiff and the 2nd defendant. No evidence was adduced by the 1st defendant to prove his father's contribution for the development of the B schedule. In such circumstances, this Court does not find any substantial questions of law that arise for consideration as suggested by the appellants.

11.In fine, the Second Appeal is dismissed confirming the judgments and decrees passed by the Trial Court as well as the First Appellate Court. No costs.

20.10.2022

Index : Yes / No
Internet : Yes / No
Speaking Order/Non-Speaking Order

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To

1. The II Additional District & Sessions Judge,

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2. The Subordinate Judge, Ranipet,
Vellore District.

KRISHNAN RAMASAMY, J.

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