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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.908 of 2014

Mani

... Appellant/Plaintiff

Vs.

1.Baby
2.Sasikala
3.Baskaran @ Nagarajan
4.Govindammal
5.Sanjala
6.Lalitha

.. Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 28.03.2013 made in A.S.No.39 of 2012 on the file of the I Additional District and Sessions Court, Vellore confirming the Judgment and Decree dated 04.01.2011 made in O.S.No.122 of 2001 on the file of the Subordinate Court, Vellore.

For Appellant : Mr.C.Jagadish

For Respondents : Mr.W.M.Abdul Majeed for R1 to R4
No appearance for R5 & R6

J U D G M E N T

The plaintiff is the appellant in this Second Appeal.

2. The plaintiff filed the suit seeking for the relief of partition and for allotment of 8/35th share in the suit property.

3. The plaintiff and the 2nd defendant were born to the 1st defendant through the first wife. The 3rd and 4th defendants were born to the 1st defendant through the second wife. The 5th defendant is the second wife of the 1st defendant. The 6th and 7th defendants are the daughters of the 1st defendant through the first wife.



4. The case of the plaintiff is that the suit properties are ancestral properties and were allotted to the 1st defendant through the oral partition that took place between the 1st defendant and his brother. The further case of the plaintiff is that all the suit properties were purchased from the income derived from the joint family properties. The further case of the plaintiff is that he had approached the 1st defendant and sought for partition and for allotment of share in the property. Since, the same was denied, the present suit came to be filed.

5. The 1st defendant filed the written statement and took a stand that the suit properties are his exclusive properties and took a stand that item Nos.2, 3, 4 and 12 of the suit properties does not belong to the 1st defendant and they are neither ancestral nor joint family properties. Insofar as the other items of the properties are concerned, the 1st defendant took a specific stand that they are his exclusive properties over which he has absolute right and title. The 1st defendant further stated that those properties were acquired by him out of his own income and he has every right to convey the same to whoever he likes. Accordingly, the 1st defendant sought for dismissal of the suit.

6. Both the Courts below on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, concurrently held against the plaintiff and dismissed the suit. Aggrieved by the same, the plaintiff has approached this Court and filed the second appeal.

7. Heard Mr.C.Jagadish, learned counsel for the appellant. This Court also perused the materials available on record and the findings of both the Courts.

8. In the present case, the plaintiff has taken a stand that the suit properties that stood in the name of the 1st defendant was purchased out of the income derived from the joint family properties. Once this stand is taken by the plaintiff, the burden of the proof is upon the plaintiff to prove that there was a joint family nucleus and the said joint family property yielded income and the income that was yielded from the joint family property was sufficient enough to purchase the properties that stood in the name of the 1st defendant after meeting the family expenses. Unless this burden is discharged by the plaintiff, the Court has to presume that the properties are the exclusive properties of the 1st defendant. The burden cannot be proved by mere assumptions and it requires proof through letting in evidence.



9. Both the Courts below on considering the oral and documentary evidence came to a categorical conclusion that the plaintiff has not proved that the properties that stood in the name of the 1st defendant was purchased out of the surplus income from the joint family properties. This finding was rendered on appreciation of facts and this Court does not find any perversity in the said findings. In any event, no substantial questions of law are involved in this case.

10. In the result, the second appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

dsa

To

1.The Subordinate Judge,
Subordinate Court, Vellore.

2.The I Additional District and Sessions Judge,
Vellore.

Copy to: The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.Abdul Majeed, Advocate SR.No.17719
+1cc to Mr.Jagadish, Advocate SR.No.18085

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MG(CO)
CB(07/04/2022)