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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

S.A. No.1142 of 2019

and

C.M.P. No.25006 of 2019

Ramesh .. Appellant/Respondent/Defendant

Vs.

1. Hema Bhaskar

2. Leena Sathyanarayanan
Represented by her Power of Attorney
HemaBhaskar,
Deepam, Railway Station Road, Mahe.

3. Lathiya
Represented by Power of attorney holder,
HemaBhaskar,
Deepam, Railway station Road, Mahe.

4. C.M.Srikala

5. Resitha C.E. .. Respondents

Second Appeal filed is under Section 100 of Civil Procedure Code, 1908, against the judgment and decree dated 11.02.2019 made in A.S. No.52 of 2018 on the file of the II Additional District Court, Puducherry confirming the judgment and decree dated 29.01.2018 made in I.A.No.365 of 2010 in O.S. No.9 of 2008 on the file of Sub-Court, Mahe.

For Appellants : Mr. T.Sathiyamoorthy

For Respondents : Mr. R.Natarajan

JUDGMENT

The defendant in the suit in O.S. No.09 of 2008 on the file of Sub-Court, Mahe, is the appellant in this appeal. The respondents in this appeal as plaintiffs filed a suit O.S. No.09 of 2008, for partition of their 5/6 share in the suit property which is a residential house and for separate possession.



2. It is the case of the plaintiffs that the suit property is a dwelling house which belonged to their mother by name Tmt. Sathyavathy. It is admitted that the mother Sathyavathy purchased the property by way of a registered sale deed dated 06.05.1958. Since the said Sathyavathy died intestate on 23.10.1989, stating that the plaintiffs who are all the daughters of Sathyavathy are entitled to 5/6 share in the property as legal heirs of Sathyavadi, the suit came to be filed. The plaintiffs contented that they are in joint possession of the suit property as co-owners and that the defendant is now residing in the house which is described as suit property.

3. The suit was contested by the defendant on the ground that the mother had no independent funds to purchase the property. It is further stated that the father of plaintiffs purchased the property in the name of Sathyavathy. Though it is admitted that the mother Sathyavathy died intestate on 23.10.1989, it is contended by the appellant that the third plaintiff has no right to claim right over the ancestral properties of a Hindu as the third plaintiff has converted to Christianity by marrying a Christian Pastor who is doing missionary work at Mumbai. It was also contended by the defendant that the other plaintiffs were given substantial properties as his Shidhana during their marriage by their father by spending a huge amount of money. It is stated in the written statement that the defendant is not against the partition of plaint schedule property in five shares and allotting one such share to each of the plaintiff except third plaintiff if the house is allotted to the defendant.

4. The trial Court and the lower appellate Court, after going into the pleadings and evidence, held that the suit property is the absolute property of plaintiffs' mother Tmt. Sathyavathy and the plaintiffs are entitled to inherit the suit property after the demise of Sathyavathy. The trial Court as well as the lower appellate Court also found that the third plaintiff will not lose her right over the property by conversion as the disqualification will be only to the children of Convent as it has been decided in several precedents. Since the defendant was claiming certain privileges in the written statement, it was held by the trial Court that the defendant cannot claim any right or preference than the other co-owners. Ultimately the suit for partition of 5/6 shares in favour of plaintiffs was decreed by the trial Court and confirmed by the lower appellate Court by concurrent findings on all facts and issues against the defendant. Aggrieved by the concurrent findings of the Courts below, the above second appeal is filed by the defendant.



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5. Learned counsel appearing for the appellant submitted that the appellant is the only male member of the family and is entitled to have some preference particularly when it is admitted that the appellant is residing in the suit property. Except the unsustainable claim on the ground of being a male member and a person being in possession of the property, this Court is unable to find any valid reasons to resist the suit for partition filed by the sisters of the appellant in respect of the properties owned by their mother. Both the Courts have also found that the property is the absolute property of the mother and the case of the appellant that it was purchased by the father in the name of plaintiffs' mother, is not correct. This Court is unable to find any substance in the substantial questions of law raised in the memorandum of grounds of the appeal.

6. First of all, the only defense that was taken by the defendant / appellant in the written statement disputing the title of Tmt. Sathyavathy is invalid. Even if the contention that property was purchased out of the funds provided by the plaintiffs' father is accepted, the presumption is that the father purchased the property for the benefit of his wife Sathyavathy and not for himself. In the absence of any evidence forthcoming from the appellant during the course of trial, both the Courts have concurrently held against the defendant.

7. The learned counsel for the respondents submitted that the appellant, being a male member of family, is not entitled to any special privilege or right than the sisters, the respondents in this appeal. After the death of their mother Sathyavathy, the plaintiffs are entitled to equal share along with the son and the plaintiffs' suit has been rightly decreed by the Courts below. The appellant was allowed to enjoy the property for several decades after the death of mother. Since the defendant was residing in the property, the defendant might have spent some money towards repairing the suit property. However, the defendant has made an attempt to make other sharers liable to share the expenses the defendant / appellant had incurred in maintaining the property. The defendant / appellant is a sole person living in the suit property without paying any amount to any of the co-owners. In such circumstances, the plaintiffs who are entitled to equal share in the suit property and who have been deprived on their legitimate share for a long time since the death of mother, this Court has no hesitation to hold that Second Appeal is liable to be dismissed for want of merits. Having regard to Section 100 C.P.C., this Court finds no valid point to warrant interference.

8. During the course of argument, the learned counsel for



the appellant stated that the appellant has recently undergone a major treatment and is unable to move around due to major surgery whereby one of his limb is amputated. In such circumstances, learned counsel for the respondents has no serious objections to grant two months of time to vacate the property from today, provided the appellant should file an affidavit of undertaking before this Court specifically agreeing to hand over the property. Learned counsel for the appellant agreed to file an affidavit of undertaking specifically agreeing to hand over the suit property to the plaintiffs by the end of April 2022.

9. In fine, this Second Appeal is dismissed with costs, giving two months to the appellant to vacate if an affidavit of undertaking is filed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To:

1. The II Additional District Judge,
Puducherry.
2. The Sub Judge,
Mahe.
3. The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to M/s.T.Sathiyamoorthy, Advocate, S.R.No.16201

+1cc to M/s.R.Natarajan, Advocate, S.R.No.16155

S.A. No. 1142 of 2019

SSN (CO)
UMA (15/06/2022)