



A.S. (MD) No.36 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :28.06.2022

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S(MD)No.36 of 2011

and

M.P(MD)No.1 of 2011

Jeyakumar

:Appellant/Defendant

.Vs.

Savithiri

: Respondent/Plaintiff

PRAYER: Appeal Suit filed under Section 96 and under Order 41 Rule 1 of the Civil Procedure Code, 1908 of against the judgment and decree made in O.S.No.30 of 2006, dated 27.09.2010, on the file of Additional District Judge, Fast Track Court No.I, Thoothukudi.

For Appellant : Mr.T.Selvan

For Respondent : Mr.V.Perumal



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JUDGMENT

The Appeal Suit is directed against the judgment and decree made in O.S.No.30 of 2006, dated 27.09.2010, on the file of Additional District Judge, Fast Track Court No.I, Thoothukudi.

2.The respondent is the plaintiff in O.S.No.30 of 2006, on the file of Additional District Judge, Thoothukudi, wherein, the appellant herein is the defendant. The respondent has filed a suit for partition of half share in the suit schedule property by metes and bounds. After trial, the trial Court has decreed the suit and a preliminary decree was passed to that effect stating that the plaintiff is entitled to half share in the suit schedule property. Challenging the said judgment and decree passed by the trial Court, the defendant in the suit has filed the present appeal suit.

3.The brief facts of the plaint reads as follows:



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The suit property is situated at Jothi Nagar, Kovilpatti. The marriage between the Plaintiff and the defendant was solemnized at Kabaleeswarar Temple, Chennai on 1.2.1998 and registered before the Sub Registrar Office, Mylapore. They lived together initially at Chennai and then at Singapore. The suit property was purchased on 28.6.1999 from one Jesumani in the name of both the plaintiff and defendant from the income of the plaintiff. It was enjoyed by both the parties and thereafter, a house was constructed by the plaintiff in the year 2001 and enjoyed together. As there was no issues, the defendant has ill-treated the plaintiff. In lieu of the same, the plaintiff has filed a divorce petition at Singapore and a decree of divorce was granted on 3.8.2008. After that, the defendant/husband came to Kovilpatti and is residing in Jothinagar. Due to misunderstanding between them, the plaintiff sent a legal notice claiming her half share in the suit property. On receipt of the same, the defendant sent a reply notice, dated 19.9.2005. Due to misunderstanding between them, there is no scope for living together and enjoying the property together. Now the defendant/husband is trying to dispose of the suit property to a third party



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including the half share of the plaintiff. Since the Plaintiff is working in Singapore, she has filed the above suit for the relief stated supra, through his Power of Agent.

4.The brief facts of the written statement filed by the defendant, which reads as under:

The marriage between the plaintiff and defendant and their joint living at Chennai and Singapore are admitted. As per the rules of Singapore, the defendant had purchased the suit property out of his own earnings in the joint names of both the plaintiff and defendant. Subsequently, the defendant came to know that he was cheated by the plaintiff. The Plaintiff had suppressed the age at the time of marriage and that she could not carry pregnancy and hence, both of them started living separately from 2000 onwards. It is false to state that the Plaintiff has filed a petition for divorce before the Singapore Court on the ground of cruelty and the same was granted on 3.8.2005. In fact, due to the misunderstanding between the plaintiff and defendant and as the plaintiff is getting monthly



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salary at Singapore, she wantonly got a decree of divorce and hence they are living separately from the year 2000 onwards. The defendant is working in Singapore and his monthly salary is Rs.50,000/-.After separation, the defendant came to Kovilpatti and started construction of a house in the suit property. After divorce, the defendant married one Anitha and had a daughter through the said marriage. The expenditure for the construction work was given by the defendant by way of Cheque to the tune of Rs. 10,38,591/- from 27.07.2001 to 24.08.2002. No amount was paid by the plaintiff towards the construction of the house. The defendant has applied for electricity connection and got the same in his name. The defendant has paid the property tax in his name from the year 2002 till today. The name of the plaintiff is added in the sale nominally and so she is not entitled for half share in the suit property as prayed for by her.

5.On the basis of the above pleadings, the trial Court has formulated the following issues for consideration:



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1. Whether the plaintiff is entitled to half share in the schedule properties?

2. What relief the plaintiff is entitled to?

6. In order to substantiate the case of the parties, during trial, on the side of the plaintiff, one witness was examined as P.W.1 and Ex.A1 to A7 were marked. On the side of the defendant, two witnesses were examined as D.W.1 and D.W.2 and Ex.B1 to Ex.B10 were marked. On conclusion of trial and upon hearing the arguments and considering both oral and documentary evidence, the trial Court has passed a preliminary decree for partition regarding the half share of the suit property as prayed for by the plaintiff. As against the same, the present appeal suit has been filed by the defendant before this Court.

7. Challenging the same, the defendant has failed the present appeal suit on the following grounds:



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The trial Court has failed to appreciate the pleadings and evidence in a proper perspective and had also erred in granting a decree for preliminary decree adverting to the specific pleading and evidence of the plaintiff. The trial Court has failed to take note of the fact that the plaintiff is not entitled to partition, especially, when she failed to enter into the witness box to substantiate her claim for partition. The trial Court failed to take note of the fact that prevailing laws in India does not apply to a citizen of Singapore. Though the suit property was purchased jointly, as a citizen of Singapore, the plaintiff has no right to purchase property in India and hence she is entitled for any partition as sought for. The trial Court has failed to appreciate the fact that since her right to purchase property in India is barred, the entire right over the schedule property will fall in the hands of the appellant only and that at her instance only, the respondent was granted a decree of divorce by the Singapore Court. Further the trial Court failed to take note of the evidence of D.W.2-Engineer who constructed the house which would show that the entire money was spent by the appellant for construction. Further the trial Court failed to take note of the fact that as per



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Singapore law, the husband cannot purchase property in his name alone and it should be purchased in the name of wife also. Further, the trial Court has failed to take note that when the plaintiff wife does not come forward to conduct the case by getting into the witness box, an inference can be drawn that the Plaintiff had failed to prove her case. Considering the above facts, the trial Court ought to have dismissed the suit, however, erred in decreeing the suit as prayed for, especially, when there is no evidence adduced on her side to substantiate her claim for partition and hence the judgement of the trial Court is invalid in law and un-sustainable.

8.The learned counsel for the appellant would submit that the property stands in the name of both the appellant and respondent and actually the appellant had purchased the property in the name of the wife since both were working in Singapore. Since the wife is a Singapore citizen and the appellant is an Indian Citizen, the appellant cannot purchase the property in Singapore. Therefore he invested his income in India and purchased the property in his native place and out of his own income, the



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said property was purchased in the name of both. But no amount of the respondent was spent for purchasing the vacant site and subsequently due to misunderstanding arose between the appellant and respondent, the respondent got divorce in Singapore Court and subsequently the appellant came to India and he constructed the house spending his own source of income. The appellant never used the money of the respondent/wife for constructing the house in the said site. Even the appellant/defendant was examined as D.W.1 and he has categorically stated and denied all the averments in the plaint. Further, he would submit that the plaintiff/respondent did not come to the witness-box and made his denial and she did not give an opportunity to the appellant for cross examination. The Power of attorney cannot be examined on behalf of the plaintiff regarding personal knowledge between appellant and respondent and therefore, since non-examination of the plaintiff is fatal to the case of the respondent. The learned Trial Judge failed to appreciate the same. The respondent/Plaintiff has not come to the witness-box and adduce her evidence and not subjected herself to cross-examination. Therefore the



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evidence of P.W.1 cannot be taken into consideration and a decree cannot be granted on the basis of the evidence of P.W.1. Further he would submit that the Contractor, who constructed the building was examined as D.W.2 and the evidence of both D.W.1 and D.W.2 goes to show that naturally the appellant alone has spent the money for the construction of the house and D.W.1 also stated that only the appellant alone spent for construction. Therefore considering the facts and circumstances, the appellant proved his defence, however, the respondent plaintiff has not proved her case. Further he would submit that it is settled proposition of law that the plaintiff has to prove her case and she has to stand on her own legs and she cannot take advantage of the loop-holes left by the appellant/defendant and therefore, the trial Court failed to appreciate both oral and documentary evidence or the legal proposition. Therefore the judgment of the trial Court warrant interference.

9.The learned counsel for the respondent would submit that admittedly the respondent is working in Petroleum Corporation in



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Singapore and getting a monthly salary of Rs.80,000/-. This fact has not been denied by the appellant and also the appellant had admitted the fact that she used to send money to the appellant during the relevant point of time and also the appellant has admitted the bank transaction between him and the respondent. Though the appellant has stated that she got divorce in the year 2000, whereas, the divorce was granted by the Singapore Court only in the year 2005. The marriage took place in the year 1998, the vacant site was purchased in the name of both in the year 1999 and the appellant started construction in the year 2001-2002. During the relevant point of time, the respondent sent money several times from her account to the appellant's account. This fact has been admitted and it has not been specifically denied. It is settled proposition of law that the property purchased in the name of the female, is a self acquired property of the female, unless it is contrarily proved. Though in this case Ex.B2-sale deed stands in the name of both the appellant and respondent, unless there is specific averments in the recital of the documents, it is the presumption that both the purchasers have contributed sale consideration equally and both the



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purchasers are having half share each in the vacant site. Further the respondent has proved that she had sent money from her account to the appellant's account during the relevant point of time between 2001-2002 and construction was done. In these circumstances, presumption can be drawn that since the respondent is a working woman, being a woman of means and source of income and that the transaction between the appellant and respondent was also admitted. Therefore, the respondent had also contributed funds not only for purchasing the vacant site but also for the construction of the house. Therefore the respondent is entitled to half share in the suit property. The trial Court has rightly appreciated the pleadings and evidence both oral and documentary and granted a preliminary decree for half share in the suit property. Therefore there is no merit in the appeal and the same is liable to be dismissed.

10. Heard the learned counsel appearing on either side and perused the materials placed before this Court.



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11. Admittedly, the appellant and the respondent were the husband and wife. Admittedly, they got divorce in the year 2005. Admittedly, they were working in the Petroleum Corporation in Singapore. Their marriage took place in the year 1998. Admittedly, the property covered under ExB2 was purchased in the name of both. Admittedly, the appellant constructed the house in the vacant site in between 2001-2002. Admittedly, the respondent was in Singapore during that period. The disputed fact is that according to the appellant, he had spent the entire money for purchasing the vacant site and for construction and had never utilized the fund of the respondent either for purchasing the vacant site or for construction. According to the respondent, at the time residing in Singapore, she only contributed a major portion and utilizing the same, the appellant/husband had purchased the vacant site. At the relevant point of time, the appellant came to India and started construction and during that period, she sent money from her account to the appellant account, for which, the bank transaction between them have been marked as Ex.A6. Therefore, it is proven fact that both the appellant and respondent were working in the



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Petroleum Corporation. So during that period, they purchased the vacant site as well as constructed the house. Now the question that arose for consideration is as to whether the respondent wife contributed money for purchasing the vacant site and for construction. This fact has been proved by the respondent. It is settled proposition of law that the plaintiff has to prove her case on her own strength and she cannot take advantage of the loop-holes left by defendant. Admittedly, the respondent was working in Singapore in Petroleum Corporation and she was earning a sum of Rs. 80,000/- p.m. in Indian Rupee. During the relevant point of time, there is bank transaction between the appellant and respondent under Ex.A6 which clearly shows that she had sent money from her account at Singapore to the appellant's account in India. This fact during cross-examination of D.W.1, the appellant has admitted. Therefore, once it is admitted that the appellant receives money from the respondent and even otherwise, it is settled proposition of law that any property standing in the name of female is a self acquired property of the female, unless it is contrarily proved. In this case, the respondent wife is a woman of means and she has independent source of



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income. Admittedly, she was working in Petroleum Corporation, which clearly shows that the vacant site was purchased in the name of both the appellant and respondent. It is the presumption that the respondent wife has equally contributed money for purchasing the property. Therefore the respondent is entitled to get half share in the vacant site. Now the Court has to find out as to whether the respondent has proved that she has sent money for constructing the house. Admittedly, the appellant during cross-examination had clearly admitted that he had constructed the house at the vacant site between 2001-2002 and the bank transaction between the appellant and respondent took place only in between 2001-2002 which has been clearly admitted by the appellant during the cross-examination. Therefore, it is the presumption that the respondent had sent money to the appellant's account and the appellant utilizing the said money had constructed the house. Once the appellant has admitted that there are money transaction between the bank account of both, it is for the appellant to prove that money received from the respondent has not been utilized for the construction of the house. Then, if that be the case, when the respondent



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got divorce in Singapore Court in the year 2005, there is no evidence to show that the appellant had repaid the said amount received from the respondent. Therefore, in these circumstances, this Court comes to the conclusion that the respondent has proved her case. Therefore this Court finds that the judgment and decree passed by the trial Court does not warrant any interference and appeal has no merit and no ground whatsoever is made out by the appellant to interfere with the well considered judgment and decree passed by the Trial Court. Therefore this Court finds that there is no merit in the appeal and the same is liable to be dismissed and accordingly, the appeal suit stands dismissed and the judgment and decree passed by the trial Court in O.S.No.30 of 2006, dated 27.09.2010 stand confirmed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

12.Since the suit is of the year 2006 and the appeal suit is of the year 2011, the Honourable Supreme Court in the case of ***Katgtukandi Edathil Krishnan and others .vs. Kattukandi Edathil Valsan and others***



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made in Civil Appeal Nos. 6406-6407 of 2010 dated 13.6.2022 has held as follows:

"33. We are of the view that once a preliminary decree is passed by the Trial Court, the court should proceed with the case for drawing up the final decree suo-motu. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the Code of Civil Procedure. The courts should not adjourn the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the Court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn. Therefore, we direct the Trial Courts to list the matter for taking steps under Order XX Rule 18 of the Code of Civil Procedure soon after passing of the preliminary decree for partition and separate possession of the property, suo-motu and without requiring initiation of any separate proceedings.



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34.We direct the Registry of this Court to forward a copy of this judgment to the Registrar Generals of all the High Courts who in turn are directed to circulate the directions contained in Paragraph 33 of this judgment to the concerned trial Courts in their respective States."

The facts of the above case is squarely applicable to the facts of the present case. If the respondent/Plaintiff has not filed any final decree application, the trial Court shall suo-motu initiate final decree proceedings and also appoint an Advocate Commissioner and pass a final decree in accordance with law within a period of six months from the date of receipt of a copy of this judgement.

Index : Yes / No

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Internet: Yes/No

vsn

To

1.The Additional District Judge,
Fast Track Court No.I,
Karur.



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2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.

vsn

JUDGMENT MADE IN

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