



S.A.(MD) No.175 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.175 of 2011

and

C.M.P.(MD) No.5637 of 2018

1.D.Palaniandi (Died)
2.D.Karuppaiah
3.D.Muthukkannan ... Appellants 1 to 3/Appellants/
Plaintiffs
4.P.Manikandan ... 4th Appellant/
LR of the deceased 1st appellant

[4th Appellant – brought on record as LR of the deceased 1st appellant vide Court order dated 05.07.2022 made in C.M.P. (MD) Nos.5465 and 5467 of 2022 in S.A.(MD) No.175 of 2011]

Vs

1.R.Kuppamuthu
2.R.Sivaraman
3.M.Palaniyae
4.P.Thirumayee
5.V.Thailammai ... Respondents/Respondents/Defendants

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 01.07.2010 made in A.S.No.41 of 2010 on the file of Principal District Court, Tiruchirapalli dismissing the appeal and confirming the judgment and decree dated 05.11.2009 made in O.S.No.396 of 2004 on the file of the II-Additional Sub-Court, Tiruchirapalli.



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For Appellant : Mr.S.Vinayak
for Mr.P.Jayaprakash Narayanan

For Respondents : Mr.M.Ashok Kumar for R1

: Mr.Vinodh Rao for R2

: R3 – Died

: No appearance for R4 & R5

JUDGMENT

The plaintiffs, who have lost their suit for partition successively both before the trial Court in O.S.No.396 of 2004 and then in their first appeal in A.S.No.41 of 2010, have now approached this Court by way of this appeal.

2. The case of the plaintiff may be stated:

- The dispute pertains to partitioning a property comprising a house and vacant site in S.No.13 of Kottapattu Village, Tiruchirapalli Taluk having an extent of 1672 sq. ft.
- According to the plaintiffs, certain Ramasamy Servai and his younger brother Doraisamy Servai constituted a joint family. The family



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possessed several items of property. While so, under Ext.B.1-sale deed dated 17.02.1972, a plot about 1,885 sq.ft. of vacant site was purchased by Ramasamy Servai from and out of the income from the ancestral property. Since Ramasamy Servai was the *Karta* of the joint family at the relevant time, it was purchased in his name.

- While so, after the demise of Doraisamy Servai, the properties belonging to the joint family came to be divided, with Ramasamy Servai representing his branch and the plaintiffs representing Doraisamy branch Vide Ext.A.1-Panchayat Muchalika, dated 12.12.1982.
- Subsequently, Ramasamy Servai is stated to have executed a certain document marked Ext.A.2 dated 17.03.1988 wherein, he is stated to have conceded that the suit property is a common property of both the branches. This is followed by another document dated 09.01.1990. The suit property was not partitioned.

3. The defendants are some of the children of Ramasamy Servai and they have filed their written statement wherein they alleged that the first



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defendant was working in the Indian Railways, that he had purchased the suit property in the name of his father Ramasamy Servai, that subsequently, necessary approvals were obtained from the authorities concerned and a house came to be constructed Vide Ext.B.2 to Ext.B.4, and that he had expended Rs.60,714.50 for the construction of the property. Ever since, the property is in the enjoyment of the defendants. This apart, the defendants pointedly denied both Ext.A.2 and Ext.A.3 and alleged that these documents are fabrications.

4. The matter went to trial and before the trial Court, the third plaintiff examined himself as P.W.1 and besides, he examined one Ganesan as P.W.2. For the defendants, the first defendant examined himself as D.W.1 and he had examined two other witnesses as D.W.2 and D.W.3. While the plaintiffs produced Ext.A.1 to Ext.A.7, the defendants have produced Ext.B.1 to Ext.B.7. On appreciating the evidence, the trial Court believed that the suit property was purchased by the first defendant in favour of his father as contended by them and also accepted Ext.B.2 to Ext.B.4. When the matter reached the first appellate Court, it concurred with the line of reasoning of



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the trial Court. Hence, the present second appeal. The second appeal is not yet admitted.

5. Heard the learned counsel for the appellants and the learned counsel for respondents 1 and 2. The learned counsel for the appellants/plaintiffs attempted to make out a case for the plaintiffs that both the Courts below overlooked Ext.A.2 and Ext.A.3. He also submitted that even though the first defendant was working in the Indian Railways, there is still no proof that he has utilised his personal funds for the purchase of the suit property. Indeed, it is an admitted case of both sides that the family possessed ancestral assets.

6. The learned counsel for defendants 1 and 2 would argue that Ext.A.1 to Ext.A.3 can hardly stand together and highlighted the fact that in Ext.A.1, Ramasamy Servai is stated to have signed and within about few years, signature is re-placed by left hand thumb impression as could be seen in Ext.A.2 and Ext.A.3, and also brought to the notice of the Court that the stamp papers purchased in both the cases were for a very meagre



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denomination, and each one of the stamp papers was purchased from different stamp vendors and that both the documents were attested on the same day and hence the courts below refused to act on them.

7. Since the appeal has not yet been admitted, this Court intends to focus more on the quality of argument advanced for the appellants/plaintiffs. There is no presumption in law that merely because a Hindu Joint Family possessed ancestral assets, necessarily any property purchased in the name of a coparcener should be treated as an ancestral property. That calls for an additional effort on the part of such coparcener who so alleges to prove that the property is an ancestral property. Here, this Court finds that except making a random statement, the plaintiffs have done nothing to establish the nexus between the income from the ancestral asset and the sale consideration passed under Ext.B.1-sale deed. More so, when they have admitted that the first defendant was employed in the Indian Railways and was having his independent income.

8. Turning to Ext.A.2 and Ext.A.3, though there is no pointed cross



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examination on certain aspects now highlighted by the learned counsel for the respondent when P.W.1 was in the box, it is still available for scrutiny. Ext.A.2 was written in two stamp papers and so was Ext.A.3. In each of the document, the two stamp papers used were seen to have been purchased from different stamp vendors and surprisingly, both the documents were seen attested by the same set of attestors on the same date which the ink used by both the attestors would establish. This apart, none of the attestors to any of these documents were examined either. This Court does not want to pass an opinion on Ext.A.2 and Ext.A.3, as it is not essential for a final decision in this case.

9. For the reasons already stated, this Court does not find any merit in this appeal. Accordingly, this Second Appeal is dismissed. No costs.

29.07.2022

Internet: Yes
Index: Yes/No
abr



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N.SESHASAYEE, J.

abr

To

- 1.The II-Additional Sub-Court, Tiruchirapalli.
- 2.The Principal District Court, Tiruchirapalli.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

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