



AS.No.29 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.12.2023

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

AS.No.29 of 2011 and
MP.No.1 of 2011

1.Thulasi Gounder
2.Duraikannu
3.Krishnamoorthy

... Appellants

Vs.

Kanagarani

...Respondent

PRAYER: Appeal Suit is filed under Section 96 of CPC against the judgment and decree dated 28.06.2010 in OS.No.10 of 2008 on the file of the Additional District Court(Fast Track Court-II), Cuddalore.

For Appellants : Mr.P.Dinesh Kumar
for Mr.D.Ravichander

For Respondent : No appearance

JUDGMENT

This Appeal suit is filed against the judgment and decree dated 28.06.2010 passed in OS.No.10 of 2008 on the file of the Additional District Court(Fast Track Court-II), Cuddalore, thereby decreed the suit for partition.



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2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The plaintiff is the respondent and defendants are the appellants. The case of the plaintiff is that she was born to one, Govindasamy Gounder and Annammal, along with the defendants. Her grandfather owned small property. Thereafter, from the income of her father, so many properties were purchased by him. Some of the properties were purchased in the name of her brothers i.e. the defendants. Therefore, she is entitled for her $\frac{1}{4}$ share in the suit properties. Hence, the suit.

4. Resisting the same, the defendants filed written statement and stated that the first defendant had purchased the suit property item No.25 and 26 in his name by his own income. 21st item of the suit property was purchased in the name of the second defendant out of his own income. Suit property item No.6, 13 and 16 were purchased in the name of the third defendant out of his own income. Therefore, these properties are not subjected to any partition since those properties are self acquired properties of the defendants.



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5. On hearing the rival pleadings, the learned trial Judge framed the following issues for determination of the suit :-

- 1) *Whether the plaintiff is entitled for $\frac{1}{4}$ share in the suit property?*
- 2) *Any other relief, if any?*

6. In support of the plaintiff's case, P.W.1 was examined and thirty nine documents were marked as Ex.P.1 to Ex.P.39. On the side of the defendants, D.W.1 was examined and Ex.D1 to Ex.D8 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed the suit, accordingly the plaintiff is entitled to have $\frac{1}{16}$ share in all the items of the suit properties. Aggrieved by the same, the defendants have preferred this appeal suit.

7. The learned counsel for the defendants would submit that though the defendants had specifically stated in the written statement that the suit property item Nos.25 and 26 were purchased in the name of the first defendant and item 21 was purchased in the name of the second defendant and item No.6,



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13, 16 were purchased in the name of the third defendant, the trial court failed to frame any issue. The said properties were also subjected for partition only on the ground that the said properties were purchased during the period contemporary to the properties purchased by their father. Insofar as other properties are concerned, they had no objection even before the trial court.

8. Heard, the learned counsel appearing for the defendants. Though notice was served on the plaintiff and counsel entered his appearance earlier, today no one appeared before this Court on behalf of the plaintiff either in person or through pleader.

9. On the submissions made by the learned counsel for the defendants, the following points arise for consideration:

1) whether it is fatal to the case of the plaintiff when the trial court failed to frame issues with regards to the suit property item No.25, 26, 21, 6, 13 & 16 with regards to ownership?

10. On perusal of the written statement filed by the defendants revealed that they categorically mentioned about their purchase of the suit



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property item No.25, 26 in favour of the first defendant, insofar as item No.21 purchased by the second defendant, item No.6, 13 & 16 purchased by the third defendant. In order to prove the same, they had marked Ex.D1 to Ex.D8. Ex.D1 is the sale deed executed in favour of the first defendant dated 04.08.1977. Subsequently to the purchase, the entire records were mutated in his name and he was issued patta. Insofar as item No.21 of the suit property is concerned, it was purchased by the second defendant by the registered sale deed dated 27.01.1980. After the purchase, entire revenue records were mutated in his name. Insofar as the suit property item No.6, 13 & 16 are concerned, they were purchased by the third defendant by the registered sale deed dated 23.04.1987. In pursuant to the said sale deed, he was issued patta and other revenue records were mutated in his favour. Though the plaintiff had marked so many documents with regards to house tax receipts, there is no document to show that her father purchased every item of the suit property, while the defendants purchased their properties. That apart, the trial court held that the defendants failed to prove that they purchased the properties out of their own income. The trial court ought not to have decreed the suit on the defendants' plea when the defendants had taken specific stand that those properties were purchased by



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them and it cannot be subjected for any partition. The trial court failed to frame any issues with regards to those properties whether self acquired or not. Therefore, the properties which were purchased by the defendants cannot be sought for any partition and the plaintiff is not entitled for any share in the properties which were purchased by the defendants out of their own income.

11. Accordingly, this appeal suit is partly allowed and the judgment and decree dated 28.06.2010 passed in OS.No.10 of 2008 on the file of the Additional District Court(Fast Track Court-II), Cuddalore is set aside only insofar as the suit property item No.25, 26 purchased by the first defendant, item No.21 purchased by the second defendant and item No.6, 13 & 16 purchased by the third defendant. The remaining portion of the judgment and decree of the trial court shall remain *in tact*. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

12.12.2023

Index : Yes / No
Internet : Yes / No
Speaking order /Non-speaking order
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To

- 1.The Additional District Court(Fast Track Court-II),
Cuddalore
- 2.Section Officer,
V.R.Section,
High Court of Madras



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G.K.ILANTHIRAIYAN, J.

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