



A.S.No.328 of 2016

20IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On : 08.06.2023

Judgment Pronounced On : 20.06.2023

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.328 of 2016

1.K.Sampath Kumar
2.K.Sengadhir Selvi

... Appellants

Versus

1.S.Kumaraswamy
2.R.Ponnusamy

... Respondents

Prayer : Appeal Suit is filed under Order XLI, Rule 1 & 2 read with Section 96 of the Code of Civil Procedure, 1908, to set aside the decree and Judgment dated 31.07.2014 in O.S.No.216 of 2013 on the file of the II Additional District cum Sessions Court, Tirupur.

For Appellants : Mr. G. Rajan
For Respondents : No Appearance

JUDGMENT

A. The Appeal Suit :

This Appeal Suit is directed against the Judgment and decree of the Learned II-Additional District and Sessions Judge, dated 31.07.2014 in O.S.No.216 of 2013, thereby, dismissing the suit filed by the plaintiffs for declaring the sale deed dated 27.08.2004 executed by the first defendant in



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favor of the second defendant as null and void, and to divide the suit properties into three equal shares and allot two shares to the plaintiffs and for other reliefs.

B.The Case of the Plaintiffs:

2. The case of the plaintiffs is that the first and the second plaintiff are the legal heirs of the first defendant. The suit properties are the ancestral properties. While so, when the plaintiffs were minors, in the year 2004, the first defendant had wrongfully alienated the suit properties in favor of the second defendant. The said sale is not binding on them. The plaintiffs came to know about the sale of the property only in the year 2013, and immediately, they filed the suit.

3. The suit was contested by the second defendant, the purchaser, stating that there is no proof to the effect that the suit properties are ancestral properties and that he has purchased the suit properties for proper and adequate consideration, and has been in possession and enjoyment thereof from the year 2004.



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C. The Issues:

4. On the strength of the said pleadings, the Trial Court framed the following issues:

"1. Whether plaintiffs are entitled for declaration of Sale deed No.5934/2004 dated 27.8.04 as null and void?

2. Whether the plaintiffs are entitled for 2-3 share in Suit properties Item No.1 and 2?

3. Whether the plaintiffs are entitled for permanent injunction as prayed for? "

D. The Trial:

5. On the said issues the parties let in evidence. The first plaintiff examined himself as **P.W.1** and on behalf of the plaintiffs, **Exs.A-1 to A-11** were marked. There was no oral or documentary evidence which was let in on behalf of the defendants.

6.The Trial Court, thereafter, considered the case of the parties and held that since the first defendant inherited the property before the birth of the plaintiffs, it is his absolute property, and therefore, the sale is valid and dismissed the suit. Aggrieved by the same, the present Appeal Suit is filed



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before this Court.

E. The Submissions:

7. Heard *Mr. G. Rajan*, the learned Counsel for the appellants and there is no appearance on behalf of the respondents even after service of notice and as such the matter is heard ex parte.

8. *Mr. G. Rajan*, the learned Counsel for the appellants would contend that when the suit property was purchased out of the joint family nucleus, automatically it became the Hindu undivided joint family property, therefore the finding of the Court below is erroneous. The learned Counsel would further submit that the recitals of **Ex.A-2**, Sale Deed itself would show that the plaintiffs will also have a share in the Schedule properties. Therefore, once the plaintiffs have categorically established that there was a joint family nucleus and the property was vested with the plaintiffs' grandfather, by way of a partition, and it is inherited by the first defendant, upon the birth of the plaintiffs, they also have a share in the properties, and therefore would pray that the Appeal Suit should be allowed.

F. Points for Consideration:

9. I have considered the submissions made on behalf of the



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appellants and perused the material records of the case.

10. The point that would arise for consideration in the instant case is that:

"(i) Whether or not the plaintiffs are entitled for a declaration that the sale deed dated 27.08.2004 is null and void?

(ii) Whether the suit properties have to be divided into 3 equal shares and 2/3 shares have to be allotted to the plaintiffs?"

11. The son and daughter are the plaintiffs. The first defendant, their father had sold the suit property to the second defendant vide **Ex.A-6** in the year 2004. The plaintiffs plead that they thought the second defendant was only a tenant and that only in the year 2013 they came to know that it was a sale. It is their further contention that there was an ancestral property which came to the share of the first defendant in the year 1985. The same was sold in the year 1993. The said money was invested in the powerloom business. They also worked in the said powerloom. Out of the income from the joint family business, the first defendant purchased the suit property in his name in the year 2000. Therefore, the same is a joint family



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property and hence the alienation without they being parties to the sale deed is bad in law.

12. It is seen that the alleged sale of ancestral property was in the year 1993. It is stated that the powerloom was started only out of the said income. However, the recitals of *Ex.A-2* sale deed state that it is for the educational expenses of the minor and for purchase of new property. Obviously no new property was purchased. Therefore, it is for the plaintiffs to establish that the first defendant started the powerloom only out of the said sale consideration, which is not done. Secondly, it is contended that the powerloom is a joint family business as they also worked in the same. It is seen that the plaintiffs were only 10 years and 12 years old in the year 1993 and were 17 and 19 years old when the suit property was purchased. Thus, the plaintiffs' case is too far-fetched to believe and there is no positive evidence let in by them in support of their case. As such, they have miserably failed to prove that the suit property was purchased out of the joint family income and therefore, is a joint family property. The suit property, standing in the name of the first defendant, he having purchased the same vide *Ex.A-4* in the year 2000, has sold the same to the second



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defendant vide **Ex.A-6** in the year 2004 and belatedly the plaintiffs filed the suit in the year 2013 and conveniently the first defendant remains exparte after filing written statement. Thus, the plaintiffs' suit is bound to fail. Accordingly, the points are answered that the plaintiffs are not entitled for the reliefs of declaration or partition.

G. The Result :

13.In the result,

- (i) The Appeal Suit in A.S.No.328 of 2016 is dismissed;
- (ii) However, there will be no orders as to costs.

20.06.2023

Index : Yes

Speaking order

Neutral Citation : Yes/No

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To

- 1.The II Additional District cum Sessions Court, Tirupur.
- 2.The Section Officer, V.R. Section, High Court of Madras.

D.BHARATHA CHAKRAVARTHY, J.



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Pre-Delivery Judgment in
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