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A.S.No.937 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

A.S.No.937 of 2012

Suhasini

...Appellant

-Vs-

1. L.Ramachandran
2. Sujatha
3. R.Aravind Kumar
4. R.Sudharsan
5. R.Nandhini
6. Pappammal
7. Life Insurance Corporation of India,
Vellore Division,
represented by its Manager,
having its office
At Ide Scudder Road (Arcot Road),
Vellore-632 004.

8. Viji @ Vijayaraj

... Respondents

Prayer: First Appeal filed under Section 96 of CPC praying against the Judgment and Decree of the District Court at Thiruvannamalai in O.S.No.12 of 2007 dated 18.06.2012.

For Appellant	: Mrs.V.Pavithra for Mrs.V.Srimathi
For R1, R3, R4 R5 and R6	: No appearance
R2	: Died (steps due)
For R7	: Mr.D.Simon



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JUDGMENT

This appeal suit has been filed as against the Judgment and Decree dated 18.06.2012 in O.S.No.12 of 2007 passed by the District Court at Thiruvannamalai, thereby dismissed the suit for partition.

2. The appellants are the plaintiffs and the respondents are the defendants. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court.

3. The case of the plaintiff is that she is one of the daughters of the first and second defendants and the defendants 3 to 5 are her brothers and sister. The first defendant purchased the suit property from the income derived from the joint ancestral property. Thereafter, due to his bad habit, he had borrowed huge amounts from outsiders and also from the 6th and 7th defendants herein. However, due to default, the 6th and 7th defendants filed a suit. The suit filed by the 6th defendant was decreed. Pursuant to the initiation of execution proceedings, the 8th defendant purchased the suit property. While ordering delivery of possession of the suit schedule property, the plaintiff came to understand about the earlier suit and filed a suit for partition.

4. Resisting the same, the defendants 2 to 5 filed their written statement



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stating that the first defendant is working as a Physiotherapist. He never evinced any interest in the welfare of the family. In fact, he was absent for several months in his work spot and due to drinking, he was admitted into hospital. Therefore, they are also sailing with the plaintiff and sought for partition of the suit property.

5. The 6th defendant filed a written statement stating that the suit has been engineered by the first defendant in the name of his daughter to stall the execution proceedings in E.P.No.55 of 2001 in O.S.No.348 of 1998. The first defendant borrowed a sum of Rs.3,00,000/- in three installments for the purpose of discharging his family debts and for construction of house in the suit property and executed a mortgage deed in favour of the 6th defendant, on 16.05.1997. Therefore, the 6th defendant filed a suit in O.S.No.348 of 1998 and a preliminary decree was passed. On the strength of the preliminary decree, the 6th defendant filed E.P.No.55 of 2001, in which the 7th defendant filed a claim application which was allowed. Ultimately, the suit schedule property was auctioned for a sum of Rs.15,10,000/-, on 28.02.2007 and the property was purchased by the 7th defendant. The Court auction purchaser is also a proper and necessary party and the 7th defendant was impleaded as a party to the suit. That apart, the suit property was a self acquired property of the first defendant. He had purchased



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the said property out of his own income as Physiotherapist Therefore, the plaintiff is not entitled for any share in the suit property.

6. The 7th defendant stated that the first defendant is the Judgment Debtor in O.S.No.299 of 1997. The suit property was purchased by the first defendant out of his own income. In order to put up construction, the first defendant approached the 7th defendant for loan, by depositing the original documents and also created mortgage in favour of the 7th defendant. Thereafter, he had committed default in payment of mortgage debts. Therefore, the 7th defendant filed a suit in O.S.No.299 of 1997, on the file of the Subordinate Court, Tiruvannamalai. The said suit was decreed and a preliminary decree was passed on 24.03.1998 and final decree was passed on 04.08.2000. Pursuant to the final decree, the 7th defendant filed an execution petition in REP.No.49 of 2006 for bringing the suit property for sale. The suit property was purchased by the 8th defendant in the Court auction. Therefore, the plaintiff is not entitled for any relief.

7. The 8th defendant filed a separate written statement stating that through a Court auction, the 8th defendant had purchased the suit property for a valid consideration. The sale was also confirmed and the title of the 8th



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defendant over the suit property accrued to him from 29.04.2007. The 8th defendant had already filed a petition for delivery of possession and the same was obstructed by the plaintiff without having any right over the property. Therefore, the suit has been filed only to stop the execution proceedings initiated for delivery of possession by the 8th defendant.

8. On the basis of the pleadings, the Trial Court framed the following issues:-

“ 1. Whether the suit property is the ancestral joint family property of the first defendant?

2. Whether the suit property is the separate and self-acquired property of the first defendant?

3. Whether the debts incurred by the first defendant are true, valid and binding on the plaintiff and the defendants 2 to 5?

4. Whether the plaintiff is entitled to obtain partition and separate possession of 1/5th share in the suit property as claimed in the plaint?

5. Whether the plaintiff is entitled to obtain the relief of accounting as claimed in the plaint?

6. Whether the plaintiff is entitled to obtain the relief of permanent injunction as against the first defendant as claimed in the plaint?

7. Whether the plaintiff is entitled to obtain the relief of permanent injunction as against the 6th defendant as claimed in the plaint?

8. Whether the plaintiff is entitled to obtain the relief of permanent injunction as against the 7th defendant as claimed in the plaint?

9. To what relief, the plaintiff is entitled to?”



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9. On the side of the plaintiff, they had examined P.W.1 and marked Exs.A1 to 9. On the side of the defendants, they had examined D.Ws.1 and 2 and marked Exs.B1 to 3. On perusal of oral and documentary evidence, the Trial Court dismissed the suit. Hence, this Appeal suit.

10. The learned counsel for the appellant would submit that the appellant is one of the daughters of the first defendant. Though the suit property was purchased in his name, it was purchased only from the income derived from the ancestral property. In fact, the defendants 2 to 5 also supported the case of the plaintiff and they are also entitled to their share. Without the knowledge of the plaintiff, the first defendant borrowed loan from 6th and 7th defendants and spent all the amount lavishly for his own purpose. Since the suit property was purchased from the income derived from the ancestral property, he had no right or title over the property to mortgage the same by depositing the title deeds. Utilizing the said circumstances, 6th and 7th defendants filed suits and obtained decrees. In fact, the decree was an exparte decree and the same was executed. Only at the time of taking delivery of possession, the plaintiff came to know about the decree and filed a suit for partition.

11. Having regard to the pleadings, evidence and submissions made by



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the learned counsel appearing on either side, the following points arises for

consideration in this appeal:-

(i) Whether the plaintiff is entitled for partition or not?

(ii) Whether the suit property is a self acquired or purchased from the income derived from the ancestral property?

12. A perusal of records revealed that the suit property was purchased by the first defendant in his name by a registered sale deed. Admittedly, the first defendant is a Physiotherapist and he had a very good practice. Though the plaintiff specifically contended that the suit property was purchased only from the income derived from the ancestral property, she failed to prove the same by any piece of evidence. In fact, the plaintiff failed to produce the certified copy of the sale deed standing in the name of the first defendant. In order to discharge family debts and also to put up construction in the suit property, the first defendant borrowed loan from the 6th and 7th defendants by depositing the title deeds of the suit property. Since she had committed default, the 6th and 7th defendants filed suits and the same were decreed. In the execution proceedings, the suit property was subjected for auction sale. In the auction, 8th defendant purchased the suit property for a valid sale consideration and the same was also confirmed at the time of taking delivery. It was objected by the plaintiff, on



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instructions given by the first defendant.

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13. He is the backbone for filing this suit for partition. It is evident to know that the plaintiff is unmarried at the time of filing suit. Therefore, she knows the entire transaction in respect of the suit property. In fact, in the suit property, after availing loan, the first defendant had put up construction and rented out to third parties. Therefore, only to escape from the auction, the first defendant induced the plaintiff to file a suit that too for partition. Admittedly, the first defendant had purchased the suit property in his name. There is no iota of evidence to show that the suit property was purchased from the income derived from the ancestral property. That apart, the first defendant is a Physiotherapist and he has sufficient income.

14. Therefore, the plaintiff is not entitled for any share in the property, since it is a self acquired property by the first defendant.

15. Hence, both the points are answered in favour of the defendants and this Court finds no infirmity or illegality in the Judgment and Decree dated 18.06.2012 in O.S.No.12 of 2007 passed by the District Court at



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Thiruvannamalai and this appeal suit is liable to be dismissed.

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16. Accordingly, this Appeal Suit is dismissed. No costs.

18.12.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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To

The District Court at Thiruvannamalai.

G.K.ILANTHIRAIYAN. J.

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