



SA.No.343 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.343 of 2010

and

MP.No.1 of 2010

Santhamani

... Appellant

- Vs -

1. Muthu Gounder (Died)
2. Selvaraj
3. Govindaraj
4. Velathal
5. Sumathi
6. Minor Banupriya
7. Minor Karthick
(R6 & R7 are rep. by their guardian
and Mother Sumathi)
8. Ethiraj (Died)
9. A.K.Palanisamy
- 10.Parvathamani
- 11.Janaki
- 12.Selvaraj
- 13.Mani

(R11 to R13 brought on record as LR's of deceased R8
vide Court order dated 18.07.2023 made in CMP.9023/2022)

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code
against the judgment and decree passed in A.S.No.3 of 2006 on the file of the



SA.No.343 of 2010

Sub-Court, Udumalpet dated 15.12.2008 confirming the judgment and decree in O.S.No.91 of 2000 on the file of the District Munsif Court, Udumalpet dated 07.10.2005.

For Appellant : Mr.S.Madhusudanan
for Mr.N.Thiagarajan

For Respondents : Mr.S.Mukunth
Senior Counsel
for M/s.Sarvabhauman Associates
for R2, R9 & R10
R3 to R5-No Appearance
R1 & R8 - Died
R6 & R7 – Minors rep. by R5
R13-Served. No Appearance
R11 & R12-Not ready in notice.

JUDGMENT

This Second Appeal has been filed at the instance of the plaintiff. The first defendant is the father of the plaintiff as well as the defendants 2 and 3.

2. For the sake of convenience, the parties will be referred according to their litigative status before the Trial Court.

3. The brief facts, which give rise to the instant second appeal is that according to the plaintiff, the suit property is ancestral property. The plaintiff was given marriage in the year 1985. At the time of the plaintiff's marriage, since the 1st defendant was not having sufficient resources to do seers, he promised to give the same after he become well off. However, in spite of the



SA.No.343 of 2010

WEB COPY

fact that the 1st defendant became well off, he did not keep his promise. Hence, the plaintiff has issued a notice on 25.04.1996 calling upon the 1st defendant to divide the suit property. Hence, the plaintiff has come forward to file a suit for partition seeking for 1/4th share.

4. The said suit was resisted by the 1st defendant by contending that the suit property is not at all the ancestral property, and that the suit property was purchased by the 1st defendant along with his brothers jointly in the name of one of their brother Mr.Kandhasami Gounder. Thereafter, the 1st defendant and their brother partitioned the same, and one such share was allotted to the 1st defendant. Therefore, it is the submission of the 1st defendant that the suit property is his absolute property and that the plaintiff is not entitled to have any share.

Evidence, Documents and Finding of the both the Court below:-

5. Before the Trial Court, on behalf the plaintiff, the plaintiff has examined 3 witnesses as PW1 to PW3 and 4 documents have been marked as Exs.A1 to A4. On behalf of the defendants, 2 witnesses were examined as DW1 and DW2 and 2 documents have been marked as Exs.B1 and B2.



SA.No.343 of 2010

WEB COPY

6. The Trial Court, after having considered both oral and documentary evidence, arrived at a conclusion that the suit property is the absolute property of the 1st defendant. Aggrieved with the said finding, the plaintiff approached the First Appellate Court. However, the First Appellate Court concurred with the findings recorded by the Trial Court and dismissed the appeal. Aggrieved with the said finding, the plaintiff is before this Court by way of this Second Appeal.

Substantial Question of Law:-

7. At the time of admission on 12.03.2010, this Court has formulated the following substantial question of law:-

“(i) Whether the Courts below are right in deciding the character of the property on oral evidence, when documentary evidence is available on record, contrary to Section 92 of the Evidence Act?”

Either side Submission:-

8. The learned counsel for the appellant would vehemently contend that since the suit property is the ancestral property, the plaintiff is entitled for 1/4th share. It was also further contended by the learned counsel for the



SA.No.343 of 2010

WEB COPY

appellant that when the first defendant agreed to provide customary seers and delayed the division of property, on his default to give seers, the plaintiff is entitled for partition. Therefore, it is the submission of the learned counsel for the appellant that such defence was not at all considered by the First Appellate Court. The learned counsel for the appellant would also submit that as per Ex.B4, the ancestral nature of the suit property could be established. Hence, prayed to allow the Second Appeal.

9. Per contra, the learned Senior Counsel appearing for the respondents 2, 9 and 10 would submit that, though the property belongs to joint family of the 1st defendant, it was only purchased between the brothers of the 1st defendant, and that such factum was admitted by the plaintiff herself. Therefore, the finding of fact recorded by the Trial Court as well as the First Appellate Court is well merited. Hence, prayed to dismiss the Second Appeal.

10. I have given my anxious consideration to either side submissions.

Analysis of the submission:-

11. The specific submission of the learned counsel for the appellant is that the suit property is the ancestral property. Whereas, both the Trial Court



SA.No.343 of 2010

WEB COPY

as well as the First Appellate Court not agreed with the plaintiff's case. In this regard, both the Courts below have relied upon the evidence of PW1 viz., the plaintiff. In her cross examination, the plaintiff herself has accepted that the suit property was been purchased by the plaintiff and her brothers by their physical exertion. It was also admitted by the plaintiff that there is no ancestral property in their family, which factum was corroborated by the plaintiff's other witnesses viz., PW2 and PW3.

12. Therefore, the First Appellate Court, in its judgment, has extracted the admissions made by PW1 to PW3 and found that the suit property is the absolute property of the first defendant. This Court absolutely cannot have any divergent view with the finding of fact recorded by both the Courts below, which is based on the admissions made by the plaintiff's evidence. The learned Senior Counsel for the respondents would submit that the appellant and the appellant's witnesses have admitted the self acquired nature of the property with the first defendant.

13. Hence, this Court is of the view that the finding of fact recorded by the First Appellate Court is based on merits, and this Court could not find any material to deviate from the said finding. Therefore, the substantial questions of law are decided in favour of the respondents.



SA.No.343 of 2010

WEB COPY

14. In the result, this Second Appeal is dismissed by confirming the judgment and decree of both the Courts below. There shall be no order as to costs. Consequently, connected MP is also closed.

30.11.2023

kmi

Index : Yes/No

Speaking Order : Yes/No

NCC : Yes/ No

To

1. The Sub Court,
Udumalpet.

2. The District Munsif,
Udumalpet.



WEB COPY



SA.No.343 of 2010

C.KUMARAPPAN, J

kmi

S.A.No.343 of 2010
and
MP.No.1 of 2010

30.11.2023