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S.A.No.24 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.24 of 2018

R.Shanmugam

...Appellant

Vs.

1.E.Amsa

2.Devi

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the decree and judgment passed in A.S.No.2 of 2015 on the file of the I Additional District Judge, Tindivanam, dated 18.12.2015 adopted the decree and judgment passed in OS.No.124 of 2010 on the file of the Sub-Judge, Tindivanam and dated 23.12.2014.

For Appellant : M/s.Dalit Tiger C.Ponnusamy

For Respondents : Mr.A.Rajesh Kanna for R1 & R2



S.A.No.24 of 2018

WEB COPY

JUDGMENT

The unsuccessful defendant in the suit is the appellant. The respondents who are sisters of the appellant filed a suit seeking partition of their 2/3rd share in the suit property. The suit was decreed by the trial Court and the First Appeal filed by the appellant was also dismissed. Hence, he is before this Court.

2. According to the respondents/plaintiffs, the appellant and respondents are children of Ramakrishnan. The said Ramakrishnan and his wife died intestate 30 years back. On the date of death of Ramakrishnan, the appellant herein was a minor and the first respondent herein had taken care of the appellant and the second respondent. The suit properties had been looked after by the first respondent only during minority of the appellant. The appellant came back to the suit village and he attempted to alienate the suit property behind the back of the respondents and hence, notice was issued calling upon the appellant seeking partition. Since the appellant replied with the false allegations, the respondents were constrained to file a suit for partition.



S.A.No.24 of 2018

3. The appellant herein filed a written statement and admitted that his father died on 07.03.1976. It was claimed by the appellant that after death of his father he had been maintaining in the family and he performed the marriage of the second respondent in the year 1994 by spending huge amount. It was also claimed by the appellant that in lieu of the first respondent share in the suit property, he paid a sum of Rs.25,000/- to her and hence, the first respondent was not entitled to claim any share in the suit property. The appellant also claimed adverse possession by long and exclusive enjoyment of the suit property.

4. Before the trial Court, the respondents were examined as PW1 & PW2. On behalf of the respondents, 8 documents were marked as Ex.A1 to Ex.A8. On behalf of the appellant, he was examined as DW1 and one Balakrishnan was examined as DW2 on behalf of the appellant 8 documents were marked as Ex.B1 to Ex.B8.

5. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that after the death of father in the year 1976, the first respondent maintained both the appellant and



S.A.No.24 of 2018

second respondent. In fact the said findings of the trial Court was based on the admission of DW1 and DW2. Therefore, the trial Court came to the conclusion that the respondents were entitled to $2/3^{\text{rd}}$ share in the self acquired properties of Ramakrishnan namely the father of the parties. Aggrieved by the preliminary decree for partition referred by the trial Court, the appellant preferred an appeal in A.S.No.2 of 2015 on the file of the I Additional District Judge, Tindivanam. The First Appellate Court also affirmed the findings of the trial Court and dismissed the appeal. Aggrieved by the same, the unsuccessful defendant has come up with this Second Appeal.

6. The learned counsel for the appellant submitted that pending first appeal he filed an application for receipt of additional evidence whereunder, he produced two family arrangements entered between the appellant and the respondents as additional document for consideration of the First Appellate Court and the said application was erroneously dismissed by the First Appellate Court. The learned counsel for the appellant further submitted that the appellant paid a sum of Rs.25,000/- to the first respondent towards her share in the suit property and marriage of the second respondent was performed by the appellant by spending his own funds. In such



S.A.No.24 of 2018

circumstances, the respondents 1 & 2 are not entitled to claim any share in the suit property.

7. As far as the petition for reception of additional evidence filed by the appellant is concerned the documents that were produced by the appellant were styled as family arrangement dated 15.11.1994 and 2007 and therefore, it is clear that these two documents came into existence prior to filing of the suit. However, in the written statement filed by the appellant there is no reference about the family arrangement dated 15.11.1994 and 2007.

8. It is settled law, the party is not entitled to lead any evidence without plea. Since the appellant failed to raise any plea regarding the family arrangement in his written statement, he is not entitled to lead any evidence in this regard. In fact he failed to give any evidence regarding family arrangement before the trial Court. The application had been filed under Order 41 Rule 27 of CPC for raising additional documents before the first Appellate Court. When these two documents came into existence even in the year 1994 and 2007 and very much available at the time of trial, the failure of the appellant to produce those two documents only points to his negligence in conducting trial. In the



S.A.No.24 of 2018

absence of any convincing reasons for his failure to produce it before trial Court, the additional evidence sought to be produced by the appellant cannot be received. In these circumstances, the First Appellate Court has rightly rejected the petition for raising additional evidence and the said conclusion of the First Appellate Court requires no interference by this Court.

9. The appellant claimed that he paid a sum of Rs.25,000/- to the first respondent in lieu of her share in the suit property. However, the said averment in the written statement has not been substantiated by any acceptable evidence. It is also pleaded by the appellant that marriage of the second respondent was performed by him by spending by his own funds. The performance of marriage of female member of the family is the pious duty of the father or brother. In such circumstances, merely because the marriage is performed the female members will not loose their right over the suit property, unless it is shown that she released her right in favour of the brothers.

10. Therefore, the conclusion reached by the Courts below that after the death of Ramakrishnan, the father of the parties, by operation of Section 8 of the Hindu Succession Act, all of the children, namely the appellant



S.A.No.24 of 2018

and respondents are entitled to 1/3rd share is in accordance with law and the same requires no interference. I do not find any substantial question of law to interfere with the factual findings of the Courts below. Accordingly, the Second Appeal is dismissed.

11. a) In the result, the Second Appeal stands dismissed by confirming the judgment and decree passed by the Courts below.

b) In the facts and circumstances of the case, there shall be no order as to costs.

13.12.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To

- 1.The I Additional District Judge, Tindivanam.
- 2.The Sub-Judge, Tindivanam.



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S.A.No.24 of 2018

S.SOUNTHAR, J.
dna

S.A.No.24 of 2018

13.12.2023