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S.A.No.41 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.41 of 2018
and
CMP.No.734 of 2018

1.Muniammal (Died)
2.Gopal
(A1-Died, A2 and RR1 to 6 already
on record are recorded as LR's of the
deceased A1 vide Court order
dated 23.11.2023 made in S.A.No.41/2018
& CMP.No.734/2018)

... Appellants

Vs.

1.Murugammal
2.Lakshmi
3.Yasotha
4.Rajam
5.Shanthi
6.Manjula

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 26.10.2016 made in A.S.No.358 of 2015 passed by the learned XV Additional Judge, City Civil



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Court, Chennai, reversing the judgment and decree dated 21.08.2015, made in OS.No.1593 of 2014, passed by the XVIII Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.V.Ramana Reddy

For Respondents : Mr.V.Balaji for R1 to R6

JUDGMENT

The unsuccessful defendants 1 and 4 are the appellants. Pending Second Appeal, the first appellant died and her legal heirs namely second appellant and other respondents (R1 to R6) were recorded as her legal representatives. The daughters and son of the deceased first appellant, namely respondents 1 to 4 filed a suit for partition seeking 1/8th share each in the suit property. The suit was dismissed by the trial Court and the appeal filed by the respondents 1 to 4 was allowed by the first Appellate Court. Aggrieved by the same, the defendants 1 and 4 have come up with this Second Appeal.

2. According to the respondents 1 to 4, they are all daughters of Ganesan and deceased first appellant. The respondents 5 and 6 are other



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daughters of Ganesan and deceased first appellant. The second appellant is the son of the said Ganesan and first appellant. It was the case of the respondents 1 to 4 that the suit property belonged to Arulmighu Valleeswaran Temple, Mylapore and their father Ganesan was lessee of the suit property. He constructed superstructure in the site belonged to the temple and had been living there till his death. After the death of Ganesan, all of his legal representatives namely wife and children were entitled to 1/8th share and the respondents 1 to 4 demanded partition during July 2014 and the same was refused by the appellants and hence they were constrained to file a suit seeking partition of their 1/8th share in the suit property.

3. The appellants/defendants 1 & 4 filed a written statement and resisted the suit on the ground that originally thatched superstructure was put up by his father and later on out of his own earnings the second appellant herein converted the thatched superstructure with the tiled house and he has been living there along with first appellant. It was averred by the second appellant that during the life time of his father Ganesan, he expressed his desire to give entire suit property to the second appellant and as such he has been in possession and enjoyment of the suit property.



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4. The trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the suit property belonged to the temple and therefore, the suit filed by the respondents 1 to 4 without impleading the owner of the site was bad for non- joinder of necessary parties and consequently, dismissed the suit. Aggrieved by the same, the respondents 1 to 4 preferred an appeal in A.S.No.358 of 2015 on the file of the XV Additional City Civil Court, Chennai. The first Appellate Court reversed the findings of the trial Court and granted a preliminary decree for partition of 1/8th share in respect of lease hold right over the suit site and superstructure standing thereon. Aggrieved by the same, the defendants 1 & 4 have come up with this Second Appeal.

5. The learned counsel for the appellants submitted that the site of the suit property belonged to the temple and therefore, the same is not available for partition. As far as the superstructure standing in the suit site is concerned, the same was built by the second respondent and all revenue records stand in his name. Therefore, the First Appellate Court erred in coming to the conclusion that that the superstructure was put up by the father of the parties.



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6. It is not disputed that site of the suit property belongs to Arulmighu Valleeeswarar Temple, Mylapore and the father of the parties namely Ganesan was lessee of the site. It is also admitted by the appellants in the written statement that the father of the parties Ganesan had put up the thatched superstructure in the suit property. The appellants claim that thatched structure was subsequently converted as tiled house by the second appellant out of his own earnings

7. Though the second appellant pleaded that the tiled house standing in the suit property was put up by him, he has not produced any documents to show that the tiled house was put up by him. He could have produced permission obtained from local authorities for constructing tiled house to prove that he had put up the tiled house superstructure. Further, he has not examined any independent witness to prove that the present superstructure was put up by him out of his own earnings. The learned counsel for the appellants by relying on the property tax receipt, metro water card and Tamil Nadu Electricity Board card etc., submitted that all these documents stand in the name of the second appellant and therefore, he should be construed as the owner of the superstructure.



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8. It is seen from the facts of the case that the second appellant is the only son of the deceased Ganesan and all respondents are his daughters. In these circumstances, merely because property tax receipt and metro water card etc., were mutated in the name of the second appellant, it cannot be presumed that he had put up the construction. When he specifically raised a plea that the thatched superstructure put up by the father Ganesan was removed and new tiled house was put up by him out of his own earnings he has to prove the same. In the case on hand, he failed to establish through any oral and documentary evidence that he had put up new superstructure in the suit property out of his own earnings. The interested testimony of the second appellant is not sufficient to support the said fact.

9. In such circumstances, the first Appellate Court rightly came to the conclusion that the superstructure that stands in the suit site was built by father of the parties namely Ganesan and hence, the respondents 1 to 4 were entitled to 1/8th share each in the suit property. I do not find any substantial question of law arising for consideration in the Second Appeal to interfere with the said findings arrived by the First Appellate Court. Accordingly, this Second Appeal stands dismissed.



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10. a) In the result, the Second Appeal stands dismissed by confirming the judgment and decree passed by the First Appellate Court.

b) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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(2/2)

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

To

1.The XV Additional Judge, City Civil Court, Chennai

2.The XVIII Assistant Judge, City Civil Court, Chennai.



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S.SOUNTHAR, J.

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