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A.S.No.544 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Appeal Suit No. 544 of 2018

and

CMP. No. 13945 of 2018

Kabali

... Appellant

Versus

1.Kuppu

2.Sampoornam

3.Kumudavalli

... Respondents

Appeal Suit filed Under Section 96 of the Code of Civil Procedure, praying to set aside the Judgment and decree made in O.S.No.6418 of 2012, dated 11.08.2017 before the learned XVI Additional District Judge, City Civil Court, Chennai.

For Appellants : Mrs. Dakshayani Reddy, Senior Advocate
for Mr. C. Mahendran

For R1 to 3 : Mr. S. Janarthanan



A.S.No.544 of 2018

The appellants have filed this appeal to set aside the Judgment and decree dated 11.08.2017 passed by the learned XVI Additional District Judge, City Civil Court, Chennai.

2. Heard Mrs. Dakshayani Reddy, learned Senior counsel appearing for Mr. C. Mahendran, learned Counsel for the appellant, Mr. S.Janarthanan, learned counsel appearing for the respondents 1 to 3 and perused the materials available on record.

3. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.

4. The appellant herein is the defendant in O.S. No. 6418 of 2012 on the file of XVI Additional District Judge, City Civil Court, Chennai, which was filed by the respondents/sisters against him claiming their 1/4th share to each of them. It was contended by the respondents that the suit property is the absolute property of his father and after his demise, as his legal heirs, they are also entitled for 1/4th share each. As the defendant is not amenable for an amicable partition, they have filed the suit.



A.S.No.544 of 2018

WEB COPY

5. The said suit was contested by the appellant /defendant. He admits the relationship with the plaintiffs, but denied that the suit property is the self-acquired property of his father. Further he contended that his father Venunaicker, during his life time, purchased the suit property superstructure over the suit property measuring an extent of about 1537 sq.ft. together with lease hold rights from one Yocob Bhai, as per the sale deed dated 25.04.1975 and thus he possessed only the lease hold right over the superstructure. Further he submits that the land on which the superstructure was put up, owned by Nawab Khairunnissa Begumk Sahiba & Pappu Masthan Durgah Endowment, under the control of Tamil Nadu Wakq Board. To that effect the rent agreement was entered in the year 1975, in respect of Plot No.86 to an extent of 1537 Sq.ft. He also contended that his father retired from his private employment and thereafter, as a son, the defendant, at the age of 16 year, joined employment as a Motor Mechanic and contributed his income for the maintenance of the family. It is he who has developed the property by borrowing money from private parties for interest. Thereafter, he dismantled the shed and put up a tiled house, both on ground and first floor. By receiving the rental income, he settled the loan amount up to the year 2012. The plaintiffs also shared the rent received from the property. Now as on date 11



A.S.No.544 of 2018

portions are there in the property. The first floor is under the occupation of first plaintiff and the defendant occupied in one portion. The remaining portions were given to tenants. Therefore, the plaintiffs have not inherited any absolute property from his father, who only obtained leasehold right and the existing building was constructed and developed by the defendant out of his personal efforts. Therefore, he repudiated the claim of the plaintiffs that the suit property is the self-acquired property of his father over which they have a right for share.

6. Before the trial Court both the parties adduced oral and documentary evidence. To prove their case, on the side of the plaintiffs P.W.1 and P.W.2 were examined and Ex.A1 to A4 were marked. On the side of the defendant D.W.1 was examined and Ex.B1 to B7 were marked. Based on the oral and documentary evidence, the learned trial Judge has framed 6 issues. The foremost issue is that whether the plaintiffs are having 1/4th share in the suit schedule property.

7. Admittedly, the plaintiffs and the defendants are the sisters and brothers and children of one Venunaicker. On analysing the evidence on record, the learned trial Judge held that the superstructure belongs to the father



A.S.No.544 of 2018

of the plaintiffs and the defendant. He died *intestate* and on his death the plaintiffs and the defendant each are entitled 1/4 th shares in the superstructure. Though it was stated that the plaintiffs are also entitled to a share in the suit land, when the father was only having lease hold right, the plaintiffs are not entitled to any share in the land. Accordingly, it was held that the plaintiffs are entitled 1/4 th share in the superstructure of the property alone and a preliminary decree was passed to that effect. With regard to mesne profit it was directed that separate proceedings shall be initiated by the plaintiffs. By challenging the said finding the defendant has preferred this appeal.

8. The learned counsel for the appellant/defendant submitted that the learned trial Judge failed to appreciate the evidence on record, more particularly the contribution made by the defendant out of his personal earnings. Ignoring the evidence made available, the learned trial Judge had granted relief in favour of the plaintiffs and as such it is liable to be set aside. Further he submitted that the first plaintiff, who was in occupation of one of the portions did not enter into the witness box and the evidence of the 2nd plaintiff also not supported the case of the plaintiffs. The learned trial Judge, without any independent evidence, decreed the suit in favour of the plaintiffs and it is totally based on mis-conception of law and liable to be set aside. The learned counsel also



A.S.No.544 of 2018

submitted that the plaintiffs failed to produce documents to show that the construction was put up by his father. On the other hand DW1 was able to adduce evidence in respect of putting up construction at his own efforts, but the same was not properly appreciated. Therefore he prayed to set aside the findings of the learned trial Judge by allowing this appeal.

9. By way of reply the learned counsel for the respondents/ plaintiffs submitted that the learned trial Judge rightly concluded that, the superstructure of the suit property alone belongs to the plaintiffs' father Venunaicker absolutely in which plaintiffs are having 1/4th share each and granted relief rightly, which needs no interference. Further he submitted that the defendant has not disproved that the entire superstructure was constructed by him, out of his own earnings and the same was rightly observed by the learned trial Judge. Therefore, he prayed to dismiss the appeal as it has no merits.

10. Considering both side submissions it is evident that the plaintiffs and the defendants are the daughters and son of Venunaicker who died *intestate* leaving behind them as his legal heirs. The plaintiffs being the daughters of the said Venunaicker filed the suit against her brother / defendant claiming 1/4th share each totally 3/4 th share in the suit property. The suit was filed by stating



A.S.No.544 of 2018

that his father purchased vacant land measuring an extent of 2600 sq.ft. situated at No.14/8, P.M. Dharga, 4th lane, Lloyds Road, Chennai-600 008, during the year 1975 from one Yacob Bhai, through registered sale deed. Thereafter, their father had put up construction measuring 2500 sq.ft. consist of ground plus two floors which consists of 12 residential portions and the same was described in the plaint schedule. One portion is occupied by the 1st plaintiff after the demise of her husband, and the defendant is residing in another one portion and the other 9 portions are in occupation of the tenants. But his brother alone is receiving entire rent and refused for amicable settlement, hence they filed the suit claiming division of properties.

11. But defendant totally denied the claim of the plaintiffs by stating that his father purchased only the superstructure and not the vacant land as claimed by the plaintiffs and the said vacant land absolutely belongs to Pappu Masthan Durgah. To that effect he relied on the certified copy of Sale deed which was marked as Ex.B1. On perusal of Ex.B1-sale deed, with description of the property with four boundaries it could be evident that the plaintiffs' father purchased only superstructure with lease hold rights and not the land. But on seeing the plaint averments, as per the description of the property, the plaintiffs claimed absolute right in respect of the land. As rightly pointed out by the



A.S.No.544 of 2018

defendant, his father purchased only the superstructure, not the land.

Therefore, as per Ex.B1 sale deed, plaintiffs father is having absolute right over the superstructure alone. After his demise, his son and daughters are entitled 1/4th share each in the superstructure.

12. The foremost objection raised by the defendant is that, his father purchased only the thatched shed and the same was dismantled subsequently at his own costs and efforts, he put up superstructure. It is also stated that the defendant was employed as a taxi driver, borrowed loan and put up the superstructure, both in ground and the first floor. After letting out the property to the tenants, with the rental amount, he settled the loans. It was also stated that a portion of the rental amount received was also parted to the plaintiffs up to the year 2012.

13. As per the evidence of P.W.1, there are 11 residential portions in which one portion is occupied by the first plaintiff and another portion is occupied by the defendant and the remaining 9 portions are under the occupation of the tenants. The defendant also produced Ex.B2 to show that he worked as a driver in an auto carriage for monthly salary long back. Admittedly his sisters got married long back during the life time of his father.



A.S.No.544 of 2018

Thereafter, he alone took care of the entire building. The father of the plaintiffs and defendant died in the year 2005 and the suit was filed in the year 2012. As per the evidence of DW1 the construction was put up by him by borrowing loan from third parties and the same was not disputed by the plaintiffs. It is an admitted fact that all the three sisters got married and there is no proof on the side of the plaintiffs, to show that they have in any manner contributed for putting up the superstructure in the said property. Therefore, the evidence of DW1 probablise that he made improvements in the property after the demise of his father and that he had put up construction by borrowing loans. The learned trial Judge without appreciating the entire evidence of the defendant erroneously granted the relief in the suit. Moreover the plaintiffs' father only purchased the thatched shed, but as on date there is a concrete structure with residential houses. Therefore, after the plaintiffs marriage the defendant contributed his own income to improve the said superstructure. In such circumstances, this Court is inclined to grant relief as follows.

14. At the time of arguments the learned counsel for the appellant/defendant submitted that totally there are 11 portions. For each portion a sum of Rs.1200/- is received as rent. Further he submitted that out of 11 portions, the 1st plaintiff is occupying one portion and another one is in occupation of



A.S.No.544 of 2018

the defendant. Therefore, for remaining 9 portions rent is being received.

Considering the contributions made by the defendant, this Court directs all the plaintiffs, to receive the rent in respect of 4 portions, and the remaining 5 portions the defendant is directed to receive the rent in order to maintain the property. As the defendant established that he contributed for construction in the said property rent in respect of more portions is directed to be received by the defendant. . Therefore, the findings of the learned trial Judge is set aside.

15. Accordingly a Preliminary Decree is granted holding that all the three respondents/plaintiffs shall receive rent in respect of four portions, at the rate of Rs.1200/- each portion, and in respect of rent for the remaining five portions the defendant shall receive the rent and also take care of the maintenance of the building. One portion which is under the occupation of the plaintiff can be enjoyed and the another portion which is under the occupation of the defendant is also permitted to be enjoyed by him, as agreed before this Court.

16. Accordingly the preliminary Judgment and decree made in O.S.No.6418 of 2012, dated 11.08.2017 before the learned XVI Additional District Judge, City Civil Court, Chennai is modified. The suit is decreed as



A.S.No.544 of 2018

indicated above. No costs. In view of the above Appeal suit is partly allowed.

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03.11.2023

Index : Yes/No

Speaking/Non Speaking order

Neutral Citation:Yes/No

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To

1. The III Additional District and Sessions Judge, Salem.

2.The Section Officer,
VR-Section, High Court of Madras.



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A.S.No.544 of 2018

T.V.THAMILSELVI, J.

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