



WEB COPY



S.A.No.70 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.02.2023

CORAM

THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.No.70 of 2023

Ravichandran

.... Appellant

Vs

1. Renuka

2. Kalaiselvi

3. Ramesh

4. Kamala

5. Soundarrajan

6. Sarala

.... Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 13.12.2021 made in A.S.No.7 of 2020 on the file of the I Additional District Judge, Tindivanam, modifying the decree and judgment dated 02.12.2019 passed in O.S.No.125 of 2019 on the file of the Principal Subordinate Judge, Tindivanam, in so far as it relates to granting a decree in respect of B Schedule described property in the plaint.

For Appellant : Mr.A.Durai Eswar
for Mr.S.Madhar Khan

JUDGMENT

This Second Appeal is directed as against the Judgment and Decree dated 13.12.2021 made in A.S.No.7 of 2020 on the file of the I



S.A.No.70 of 2023

Additional District Judge, Tindivanam, modifying the decree and judgment dated 02.12.2019 passed in O.S.No.125 of 2019 on the file of the Principal Subordinate Judge, Tindivanam, thereby decreed the suit for partition.

2. The appellant is the first defendant in the suit filed by the respondents 1 and 2 herein for partition in respect of the suit properties. They are brothers and sisters. The case of the respondents 1 and 2 is that the suit property originally belonged to one Elumalai Gounder, who inherited the same from his father. The said Elumalai Gounder and his brother have partitioned the property among themselves and the share allotted in favour of the said Elumalai was enjoyed by him till his life time and died intestate in the year 1979. After his demise, the properties were sold and the “A” schedule properties were purchased in the name of the 3rd defendant. “B” schedule properties were purchased from and out of the income derived from “A” schedule properties. Since, both “A and B” schedule properties had origin from ancestral properties, the plaintiffs claims 1/5th share each in the suit properties. After partitioning by their father in respect of the suit property, they are not living jointly. Hence, the suit.



S.A.No.70 of 2023

3. The 1st defendant resisted the suit and filed written statement stating that the property, which was allotted in favour of the said Elumalai Gounder, was sold in the year 1989 itself. Thereafter, “A” schedule properties were purchased on 25.09.1989 from the said amount in the name of 3rd defendant herein. The total extent of the said properties purchased in the name of 3rd defendant is 2.79 cents. Thereafter, the 3rd defendant had executed settlement deed in favour of the defendants 1 and 2 by the settlement deed dated 09.02.1999. The female child had no rights to claim share in the “B” schedule properties, since she was provided by defendants 1 and 2.

4. Based on the pleadings, the Trial Court framed the following issues :-

(i) Whether the plaintiffs are entitled for preliminary decree in respect of 2/5th share in the suit properties ?

(ii) Whether the extent of 2.79 cents settled to 1,2 defendants on 09.02.1999 is correct ?

(iii) Whether the plaintiffs had no rights in “A” schedule properties is correct ?

(iv) Whether the defendants had purchased the “B” schedule properties is correct ?



S.A.No.70 of 2023

(v) What are all the other reliefs and cost which the plaintiffs are entitled for ?

5. On the side of the respondents 1 and 2 herein were examined P.Ws.1 & 2 and marked Exs.A1 to A3. On the side of the appellants, they had examined D.Ws.1 & 2 and marked Exs.B1 to B7.

6. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed the suit and allotted 2/15th share in the “A” schedule property in favour of the respondents 1 and 2 herein and dismissed the suit in respect of “B” schedule properties. Aggrieved by the same, the respondents 1 and 2 preferred an appeal suit and the same was allowed. Hence, the present second appeal .

7. The learned counsel for the appellants has raised the following substantial questions of law:

(i) Whether the First Appellate Court is right in placing reliance on Section 6 of the Succession Act to modify the judgment and decree passed by the Trial Court and to grant a decree in respect of the “B” schedule property as well ?



WEB COPY



S.A.No.70 of 2023

(ii) Whether the suit filed by the plaintiffs is maintainable when the plaintiffs have not sought for a relief of declaration to declare that the registered settlement deeds under Ex.B4 dated 01.06.2009 in favour of the then minor fourth defendant, represented by mother and natural guardian fifth respondent ?

8. Heard, Mr.A.Durai Eswar, the learned counsel appearing for the appellant and this Court considered the submission made by the learned counsel for the appellant.

9. The learned counsel appearing for the appellant would submit that admittedly “A” schedule property, which was purchased from the sale proceeds on the property, was already sold out in the name of the 3rd defendant. As far as the “B” schedule property is concerned, it was purchased from own income of the 1st defendant and as such, the respondents 1 and 2 are not entitled to have any share in the “B” schedule property. The Trial Court rightly decreed the suit in respect of “A” schedule property, their share was allotted to their father.

10. A perusal of the records reveals that admittedly their father



S.A.No.70 of 2023

was allotted a share among their brothers and thereafter, it was sold out and from the said sale proceeds, the “A” schedule properties were purchased in the name of the 3rd defendant. Therefore, the respondents 1 and 2 are entitled to have the share to the “A” schedule property. Further, though the property was purchased in the name of the 3rd defendant, she was entitled to the property. Insofar as the “B” schedule property is concerned, which was purchased only from the income derived from the “A” schedule property. Admittedly, the first defendant is also a farmer and he cultivated “A” schedule property. Therefore, from the income derived from the “A” schedule, “B” schedule property was purchased in her name. The appellant had marked Ex.P7. Ex.P7 is the partition deed between the defendants 1 to 3 dated 07.04.2015.

11. A perusal of the partition deed reveals that the suit properties are ancestral properties. After demise of the said Elumalai Gounder, the property, which was allotted by his father, was sold out. From the sale proceeds, a property was purchased in the name of the first defendant by registered sale deed dated 29.07.1998 vide document No.993 of 1998. Therefore, it is clear that “A” schedule property was purchased as a joint family property and that the other properties were purchased out of the



S.A.No.70 of 2023

hard work of all the legal heirs. Hence, the “A” schedule properties, which were purchased in the name of 3rd defendant cannot fall within the ambit of Section 14 of Hindu Succession Act and that the “A” schedule properties are not the independent property of the 3rd defendant. Therefore, though the Trial Court decreed the suit for 2/15th share, the First Appellate Court rightly decreed the suit and allowed 1/5th share in favour of the respondents 1 and 2 herein. Accordingly, this Court is of the considered opinion that no substantial question of law is involved in this appeal.

12. In view of above, this Second Appeal is dismissed and the Judgment and Decree dated 13.12.2021 made in A.S.No.7 of 2020 on the file of the I Additional District Judge, Tindivanam, modifying the decree and judgment dated 02.12.2019 passed in O.S.No.125 of 2019 on the file of the Principal Subordinate Judge, Tindivanam, are confirmed. There shall be no order as to costs.

08.02.2023

Index : Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes / No

Lpp



WEB COPY



S.A.No.70 of 2023

G.K.ILANTHIRAIYAN, J.

Lpp

To

1. The I Additional District Judge,
Tindivanam.
2. The Principal Subordinate Judge,
Tindivanam.

S.A.No.70 of 2023

08.02.2023