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A.S.No.322 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :31.08.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

A.S.No.322 of 2019

and

C.M.P.Nos.11742 of 2019 & 11178 of 2022

Mrs. S.Davidson Amos (Died)
W/o.Late Davidson P.Amos

1.Devaprasad Amos
S/o.Late Davidson P.Amos

D.Immanuvel (Died)
S/o.Late Davidson P.Amos

2.Mrs.Sophia Samson
W/o.D.Samson

.. Appellants

Vs.

Sundar Singh Daniel
S/o.Late Davidson P.Amos

.. Respondent

PRAYER : Appeal suit is filed under Section 96 of the Code of Civil Procedure, praying to set aside the Judgement and Decree dated 11.01.2019 passed in O.S.No.14 of 2004 on the file of the First Additional District and Sessions Court, Vellore.



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For Appellant : Mr.P.Seshadri

For Respondent : Mrs.G.Jeremiah

J U D G M E N T

The appellants have preferred this appeal suit against the Judgment and Decree passed by the learned First Additional District and Sessions Judge, Vellore in O.S.No.14 of 2004, dated 11.01.2019.

2. The appellants herein are the plaintiffs in O.S.No.14 of 2004 on the file of First Additional District and Sessions Court, Vellore. Originally O.S.No.96 of 2000 was filed by the appellants / plaintiff for the relief of partition against the defendant, who is their brother, claiming 3/4th share in the suit property. The first plaintiff was the mother of the plaintiffs 2 to 4 and the defendant. All are legal heirs of the deceased Davidson P.Amos. Admittedly, all the parties belong to Christian family. According to the plaintiffs, the entire property was purchased by their father through sale deeds dated 03.08.1957, 15.08.1959, 16.05.1959 and 02.02.1967. On 11.12.1975 Davidson P.Amos died, leaving behind the plaintiffs and defendant. Due to



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job opportunity, the defendant left India and settled in U.S.A. and he has not co-operated for amicable partition. Hence, they filed a suit for partition, claiming 3/4th share in the property, as per the Indian Succession Act, which is applicable to Indian Christians.

3. The defendant denied the entire claim over the property stating that after the death of their father some of the properties were already sold by his mother as well as other brothers and sisters and they enjoyed the entire sale proceeds. The defendant was not benefited with any of the sale proceeds. Having utilised his absence the plaintiffs themselves arranged a family and sold the property and therefore in the remaining suit properties the plaintiffs are not entitled to any share.

4. Before the trial Court, both the parties adduced evidence to prove their defence. On the side of the plaintiffs, P.W.1 was examined and Ex.A.1 to Ex.A.14 were marked, and on the side of the defendant, D.W.1 was examined and Ex.B1 to Ex.B9 were marked. Considering both sides submissions and evidences, the learned trial Judge framed three issues, in which, one of the foremost issue is "*Whether the plaintiffs admitted to*



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relinquish all shares in the suit properties in the family arrangement?" and

the Additional Issue is "Whether the plaintiffs have sold the properties belongs to their father Davidson Amos, as mentioned in the Additional Written statement without giving share to the defendant?"

5. Based on the issues, the learned trial Judge admits the title of the plaintiffs father through sale deed Ex.A1 to A4 and Davidson Amos / father died in the year 1975 leaving behind the plaintiffs and the defendant as legal heirs. While fixing the allotment of the shares, the learned trial Judge accepted the contention of the defendant holding that after the death of the first plaintiff, the mother maintained the family and she sold the property without the consent of the defendant. The defendant settled in U.S.A. and spent his earnings in the joint family nucleus, but he was not enjoying the joint consideration. Therefore, all these years the plaintiffs enjoyed 65% of the benefits of the family property compared, to the share in the property, already they exhausted their remedy. So no share was allotted to the plaintiffs. Accordingly, major portion of the properties of their father has been alienated and enjoyed by the plaintiffs and the meager portion which is left in the hands of the defendant cannot be brought into orbital of family partition.



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Accordingly issues were framed and decided. Though the share was admitted but the allotment of the share was declined and also it was held that there is no evidence with regard to the family arrangement, additional issue was decided, but in toto the entire suit was dismissed. By challenging the said findings the plaintiffs have preferred this appeal.

6. The learned counsel for the appellants submitted that when the learned trial Judge admits that the entire property purchased by Davidson P.Amos by the registered sale deed of the year 1957 to 1967, which were marked as Ex.A1 to Ex.A4, the denial of the partition as such is totally unfair and liable to be set aside. Further, he submitted that there is no proof of the family arrangements as pleaded by the defendant and the plaintiffs are entitled for the share in the property, and without appreciating the said fact the suit was dismissed as mis-conception of law, and besides he also submits that alienation was made by the mother for the benefit of the family. After attaining majority, the defendant has not challenged the sale made by the mother, after death of his father, the mother was maintaining entire family, which the learned trial Judge failed to take note. Accordingly, he prays to set aside the findings of the trial Court.



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7. The learned counsel for the respondent submitted that conduct of the plaintiffs shows that they sold the property for their own benefits. The defendant was settled in USA, and was not enjoying the alienation made by his mother and the funds were also not used for the development of joint family property. So considering the said aspect the learned trial Judge rightly gave relief in favour of the defendant which needs no interference and prays to dismiss the appeal.

8. It is an admitted fact that the suit property and other properties were originally purchased by the husband of the first plaintiff namely Davidson P.Amos and the sale deeds were marked as Ex.A1 to A4. Admittedly, in the year 1975 the said Davidson P.Amos left behind the plaintiffs and the defendant as his legal heirs. As per the Indian Succession Act, the mother is entitled for 2/6 share and in the remaining shares the plaintiffs 2 to 4 and the defendant are entitled for 1/6 share each.

9. According to the defendant, after the death of their father, the mother sold the property along with the other plaintiffs. The defendant settled



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in USA, and his earnings were also utilised for the welfare of the family.

Besides, the permission of the defendant was not obtained by the mother while selling the property belonging to the family, when the children were minor at that time.

10. The learned counsel for the appellants admits that there was no permission to sell the property. But admittedly the defendant has also not challenged the alienation made by the mother and also on behalf of the minors.

11. The fact remains that to discharge the loan borrowed by the father in the Co-operative Housing Society, Vellore, the mother sold the property in the year 1968 through Ex.A11, and the mother discharged the loan after the demise of their father. Admittedly, till all the children attained majority, the entire family was managed by the mother to the welfare of the minors, she was forced to execute the sale deeds, during the year 1979 and 1988, which were marked as Ex.A9 and A10. Therefore, the plaintiffs are able to establish that only for the welfare of the children and to maintain the family, she sold the property.



WEB COPY 12. There is no evidence on the side of the defendant to establish that the entire sale proceeds were enjoyed only by the plaintiffs. Admittedly, he was settled in USA, after attaining majority. Further, there was no proof that he had spent money to develop the joint family nucleus. Therefore, the objection raised by the defendant stating that already the shares belonging to the plaintiffs were exhausted by selling their property and hence in the remaining suit property the plaintiffs are not entitled for claim as such is totally unsustainable. But, the learned trial Judge rendered a finding, without appreciating all the facts and circumstances as well as the proposition of law, and also without considering the fact that the property was sold by the mother for the benefit of the family, that the defendant alone is entitled for the entire suit property, which is unsustainable and liable to be set aside.

13. Therefore, the finding of the learned trial Judge is set aside. Now that the mother has died, her share goes to sons and daughter, and one of the brothers also died as a bachelor. So the available legal heirs on record are plaintiffs 2, 4 and the defendant. They are entitled to 1/3 share in the property.



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14. Accordingly, this Appeal Suit is allowed and the original suit is decreed. The plaintiffs 2, 4 and the defendant are entitled for each 1/3 share in the entire suit property. Final decree can be passed by the trial Court. Consequently, connected Miscellaneous petitions are closed. No costs.

31.08.2023

Index : Yes/No
Speaking Order: Yes/No
Neutral Citation: Yes/No
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To,

1. The I Additional District and Sessions Court,
Vellore.
2. The Section Officer, VR-Section,
High Court of Madras, Chennai.



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T.V.THAMILSELVI,J.
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