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S.A.No.60 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.02.2023

CORAM

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

S.A.No.60 of 2023

V.Harikrishnan (Deceased)

1. H.Lakshmi
2. H.Gayathri
3. H.Geetha
4. H.Swathi

...Appellants

Vs.

V.Anandan

...Respondent

Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code, to allow the Second Appeal and set aside the judgment and decree of the Lower Appellate Court, namely II Additional District Judge, Vellore @ Ranipet dated 29.07.2020 made in A.S.No.45 of 2017, confirming in O.S.No.4 of 2014 dated 10.04.2014 on the file of the Sub Court, Arakonam.

For Appellants : Mr.D.Ashok Kumar

JUDGMENT

This second appeal is directed as against the judgment and decree dated 29.07.2020 made in A.S.No.45 of 2017 passed by the II Additional District Court, Vellore @ Ranipet, confirming the judgment and decree



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dated 10.04.2014 passed in O.S.No.4 of 2014 on the file of the Sub Court, Arakonam., thereby dismissing the suit for declaration and partition.

2. The learned counsel for the appellants submitted that the plaintiff, viz., V.Harikrishnan died and the legal heirs of the deceased/plaintiff have been substituted in this appeal and they have filed this Second Appeal.

3. One V.Harikrishnan (since deceased) is the plaintiff and the respondent is the defendant. The case of the appellant/plaintiff is that the deceased plaintiff and the respondent are brothers. The plaintiff's grandfather, namely Abbai Naidu and his sons have effected a partition deed of their joint family properties through the registered partition deed dated 24.11.1970. As per the said partition deed, "A" schedule properties were allotted the share in favour of the plaintiff's father. After partition, all the family members continued to live as joint family members and they were in joint possession and enjoyment of "A" schedule properties as coparceners along with the plaintiff B schedule properties which were acquired subsequently for the benefit of the said joint family out of the surplus income obtained from the plaintiff "A" schedule properties. Due to the old age of the plaintiff's father and as he could not take part in agricultural



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operations, the joint family properties were partitioned between the plaintiff's father, the plaintiff and the defendant through the unregistered Koorchit, dated 07.07.2002. The said Koorchit was executed in front of the Village Panchayatdars between them. However, the said Koorchit has not been acted upon, and both are enjoying the suit schedule properties in common. Therefore, the plaintiff caused notice dated 06.12.2007 demanding a partition of the joint family properties as per the said Koorchit. The respondent/defendant herein filed a suit in O.S.No.103 of 2008 on the file of the District Munsif Court, Arakkonam in respect of the properties ad-measuring an extent of 0.08.0 Hectares situated at Illupaithandalam Village. In the meanwhile, the suit properties were bequeathed in favour of the respondent, by his father including the properties which were purchased from the joint family income in the name of the plaintiff's mother. The said properties are also one of the joint family properties and the plaintiff's mother being house-wife, had no wherewithal to purchase the said properties. Thereafter, the plaintiff's father died on 05.06.2008. Subsequently, through the Panchayatdars, the plaintiff tried for amicable partition in respect of the joint family properties and it failed. Hence, the suit for declaration, declaring that the Wills dated 29.08.2005 and 05.05.2008 executed by his parents in favour of the defendant as null and void and also



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the settlement deed dated 13.12.2002 as null and void.

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4. Resisting the above contentions of the plaintiff, the respondent/defendant filed written statement and stated that originally, the suit properties stood in the name of the father of the plaintiff, defendant and in the name of their mother, viz., Ranibai Ammal and both the properties are self-acquired properties. They had separate income and acquired the separate properties in their name. In fact, they were in separate possession and enjoyment of their respective properties. Further, the plaintiff did not include the ancestral properties obtained by their father in the present suit for partition. “A” schedule properties were bequeathed in favour of the respondent by his father and that “B” schedule properties stood bequeathed in favour of the respondent by his mother. Both the properties were self-acquired properties and as such, they have right and title over the properties and they also had executed the settlement deed in favour of both the sons, viz., the plaintiff and the respondent by the registered settlement deed dated 13.12.2002.

5. On the basis of the said pleadings, the Trial Court, had framed the following issues:-



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1. Whether the Will dated 29.08.2005 and 05.05.2008 and settlement deed dated 13.12.2002 to be declared as null and void as prayed for?

2. Whether the plaintiff is entitled for $\frac{1}{2}$ share in the A and B Schedule property as prayed for?

3. To what other relief?

6. On the side of the plaintiff, PW.1 to P.W.4 were examined and documents were marked as Ex.A1 to Ex.A9. On the side of the respondent, DW.1 to D.W.4 were examined and documents were marked as Ex.B1 to Ex.B21. On considering the oral and documentary evidence, the trial Court dismissed the suit filed by the plaintiff (since deceased). Aggrieved by the same, the plaintiff filed an Appeal Suit and the Appellate Court has also dismissed the First Appeal and confirmed the judgment and decree passed by the trial Court. Hence, the present Second Appeal is filed by the plaintiff (since deceased) and represented by his legal heirs.

7. This Second Appeal is filed on the following substantial question of law:-

(1) Whether the Lower Appellate Court is correct in law in saying that all the suit properties are not joint family properties



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without any valid and conclusive proof?

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(2) Whether the Lower Appellate Court is right in law in decreeing the appeal on the basis of conjectures and surmises regarding validity of the Will and settlement deed in manner known to law?

8. The learned counsel for the appellants submitted that both the suit schedule properties were ancestral properties and therefore, the plaintiff's parent had no absolute right or title over the properties and as such, the Wills and the settlement deed executed by them are not valid one. "A" schedule properties were originally allotted by way of partition, vide partition deed between their father and his brothers. From the income of all the ancestral properties, "B" schedule properties were also purchased in the name of his mother. Therefore, the appellants have also equal right over the suit properties. Hence, the plaintiff filed the suit for declaration and partition in the suit schedule properties. Without considering the above facts, both the Courts below dismissed the suit and appeal holding that the suit properties are self-acquired properties and the Wills and the settlement deed executed by them are valid one.



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9. Heard Mr D.Ashok Kumar, learned counsel for the appellants.

10. This Court considered the submissions made by the learned counsel for the appellants and perused the materials available on record.

11. On a perusal of the records, it reveals that the plaintiff filed the suit challenging the Wills executed by his parents in favour of the respondent dated 29.08.2005 and 05.05.2008 in respect of the suit properties. He also challenged the settlement deed dated 12.12.2002 executed in favour of the respondent by his father. The specific case of the plaintiff is that "A" schedule properties were ancestral properties of his father and the same were purchased out of the income of the ancestral properties and "B" schedule properties were purchased in the name of his mother. "A" schedule properties were derived by the plaintiff's father by the registered partition deed dated 24.11.1970, which was marked as Ex.A1. As per the partition deed, A-schedule properties were allotted in favour of his father. However, all the items mentioned in A-schedule properties of the partition deed, were not included in the suit "A" schedule properties. Some of the properties were conveniently left out by the appellants. However, the plaintiff failed to prove that after partition, all of them lived as joint family



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and they jointly possessed the suit schedule properties. Further, the partition deed Ex.A1 reveals that the plaintiff's father had obtained A-Schedule properties as independent and individual properties. As far as B-schedule properties are concerned, they were purchased by his mother. There is absolutely no record to show that only from and out of the outcome of A-schedule properties, the B-schedule properties were purchased in the name of his mother. The plaintiff has also failed to produce any piece of evidence to that effect. In fact, he categorically admitted that he is in his possession and that he failed to produce any document to show that there was income from A-schedule properties.

12. B-schedule properties were purchased by the plaintiff's mother by registered sale deed dated 14.12.1976. Thereafter, A-schedule properties were settled in favour of the plaintiff's father, which was marked as Ex.B9. Therefore, both father and mother of the plaintiff had executed a registered settlement deed dated 13.12.2002 in favour of the respondent herein in respect of A-schedule item Nos.3, 4, 5 and 7 and B schedule item Nos.6, and 15 to 19. On the same day, they had also executed one other settlement deed in favour of the plaintiff in respect of other properties. Having accepted the settlement deed executed in favour of the plaintiff, he is



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now challenging the settlement deed executed in favour of the respondent, as well as the Wills executed in favour of the respondent herein. Therefore, both the Courts below have rightly dismissed the suit and this Court finds no infirmity or illegality in the judgements and decrees passed by both the Courts below.

13. Hence, this Court finds that there is no question of law, much less the substantial question of law in the present Second Appeal. Accordingly, the Second Appeal is dismissed in limine, without being admitted. No costs.

03.02.2023

Index : Yes/No
Speaking order/Non-speaking order
Neutral Citation: Yes/no
kv

To

1. II Additional District Judge, Vellore @ Ranipet
2. The Subordinate Judge, Arakkonam
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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