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S.A.No.165 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No. 165 of 2017
and C.M.P.No.3332 of 2017

1.K.Kuppusamy

2.K.Arjunan

Vs.

...Appellants

1.S.Vadivukkarasi @ Vadivu

2.Minor S.Soundararajan

Represented by next friend/Guardian Mother
S.Vadivukkarasi @ Vadivu

3.S.Sumathi

4.Thangammal

5.Chinnapillai

...Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the II Additional District Judge's Court at Erode, dated 07.10.2016 in A.S.NO. 10 of 2016 confirming the judgment and decree of the II Additional Subordinate Judge's Court at Erode, dated 22.12.2015 in O.S.No. 423 of 2012.



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For Appellants : Mr.T.Deeraj
for Mr. P.Valliappan,
Senior Advocate

For Respondents 1 & 2 : Mr.B.Singaravelu
for M/s. V.S.Kesavan

For Respondent 3 : Unclaimed

For Respondents 4 & 5 : Ms.H.Suchitra
for Mrs.P.T.Ramadevi

JUDGMENT

The Defendants 1 & 2 are appellants. The respondents 1 & 2 filed a suit in O.S.No.423 of 2012 for partition of the suit properties into 4 equal shares. The suit was decreed by the Trial Court granting preliminary decree for partition of the suit properties in 4 equal shares and allotment of 1 share to the respondents 1 & 2. Aggrieved by the same, the defendants 1 & 2 filed an Appeal in A.S.No.10 of 2016 on the file of learned II Additional District Judge, Erode and the same was dismissed. Hence, the defendants 1 & 2 have come before this Court by way of Second Appeal.

2. According to the respondents 1 & 2, the suit properties are ancestral properties of one Karuppa Naicker @ Karuppanna Naicker. The 1st appellant / 1st defendant is the son of said Karuppa Naicker @ Karuppanna Naicker. The



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2nd appellant / 2nd defendant is son of 1st defendant. The respondents 1 and 2

are widowed daughter in law of 1st appellant and son of 1st appellant's deceased son one Sivakumar. The 3rd respondent is the daughter of 1st appellant. The respondents 4 & 5 are the daughters of Karuppanna Naicker and sisters of 1st appellant.

3. According to the respondents 1 & 2 / plaintiffs, the suit properties are ancestral properties of one Karuppanna Naicker. After his death about 40 years ago, the suit properties devolved upon the 1st appellant and the respondents 4 & 5. It is also pleaded by the respondents 1 & 2 that the respondents 4 & 5 gave up their right in the suit properties under a family arrangement. However, in order to have comprehensive adjudication of the lis, they are also arrayed as formal parties. The respondents 1 & 2 claimed 1/4th share in the suit properties as legal representatives of deceased son of the 1st appellant. It was further averred that in spite of notice claiming share in the suit properties, the appellants failed to respond. Hence, the 1st and 2nd respondents filed a suit for partition in O.S.No.423 of 2012 on the file of the learned II Additional Sub-ordinate Judge, Erode.



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4. The 1st appellant filed the written statement denying the claims of the respondents 1 & 2 that the suit properties were ancestral properties. It is the specific case of the 1st appellant that the suit properties were self acquired properties and he also claimed that the 2nd item of the suit properties was originally belonged to him and the same was subsequently settled in favour of the 2nd appellant under a registered Settlement Deed dated 08.02.2000. Hence, subsequent to the Settlement Deed, the 2nd appellant is the absolute owner of the property. It is also claimed that the 2nd appellant also obtained a loan from the Housing Society and constructed a building in the 2nd item of the suit properties. The 1st appellant also claimed right over the 3rd item of the suit properties under a patta issued by the Government in his favour.

5. On these pleadings, both the parties went to the trial. The 1st respondent was examined as P.W.1. The appellants 1 & 2 were examined as D.W.1 and D.W.2. On behalf of the respondents 1 & 2/plaintiffs, 14 documents were marked as Ex.A.1 to Ex.A.14. On behalf of the appellants, 8 documents were marked as Ex.B.1 to Ex.B.8.



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6. The Trial Court, based on the documentary evidence produced by the plaintiffs and the defendants 1 and 2, came to the conclusion that the plaintiffs are entitled to 1/4th share of the suit properties as prayed for. Aggrieved by the same, the defendants 1 & 2 preferred an appeal in A.S.No.10 of 2016 and the same was dismissed by the 1st Appellate Court. Hence, the defendants 1 and 2/appellants are before this Court by way of Second Appeal.

7. The learned counsel appearing for the appellants assailed the judgment of the Courts below mainly on the ground that the respondents 1 & 2 have failed to establish that the suit properties are ancestral properties. It is the specific contention of the learned counsel that both the Courts below erroneously placed the burden of proof on the appellants and held that the appellants have failed to establish that the suit properties are self acquired properties. In support of his contentions, the learned counsel also relied on the following judgments;

“ 1) *Shasidhar and Others vs. Ashwini Uma Mathad*
and another reported in (2015) 11 SCC 269.



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2) *R.Deivanai Ammal (Died) and another vs.*

G.Meenakshi Ammal and others reported in 2004 (4) CTC

208.”

8.The learned counsel appearing for the respondents 1 & 2/ plaintiffs submitted that the 1st appellant, being the father in law of the 1st respondent and grandfather of the 2nd respondent, has denied the entire relationship with them. The learned counsel, by taking this Court to the findings rendered by the Courts below, submitted that based on the materials available on record, they came to the conclusion that the appellants failed to establish their specific pleading to the effect that the suit properties were self acquired properties. Therefore, the appellants have not made out any case to interfere with the concurrent findings of the Courts below.

9. The respondents 1 & 2 have come to the Court with a specific pleading that the suit properties are ancestral properties. The 1st respondent is the widowed daughter-in-law of the 1st appellant and the 2nd respondent is the minor son of 1st appellant's deceased son. In order to discharge the initial burden, the 1st respondent was examined as P.W.1 and she claimed that the suit properties are ancestral properties of the family.



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10. The 1st item of the suit properties is the dwelling house, in which, the 1st appellant is residing. The 2nd item of the suit properties is another house, in which, the 2nd appellant is residing. The 3rd item of the suit properties is a vacant plot. The 1st respondent who was examined as P.W.1 is the widowed daughter-in-law of the family. In such circumstances, she will not be in a position to produce documents in respect of the properties of the family in order to prove the contention that the properties are ancestral properties. Therefore, the initial burden on the respondents 1 & 2 /plaintiffs got discharged by her oral testimony.

11. The appellants herein, who are residing in the suit properties made a specific pleading that the suit properties are self acquired properties of 1st appellant / 1st defendant. When the 1st defendant was examined as D.W.1, he admitted that he had not produced any document to show that he purchased the above said properties. He also admitted that he had not produced any revenue documents to show that the above said properties stand in his name. When the appellants raised a specific pleading that the properties are self



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acquired properties, they could have easily proved the same by producing the documents to show their self acquisitions. However, for the reason best known to them, they have not produced any documentary evidence to prove that the properties are self acquired properties of the 1st appellant. As far as the Settlement Deed executed by the 1st appellant in favour of his son / 2nd appellant is concerned, the same will not prove the fact that the properties are self acquired properties of the 1st appellant, unless the source of title is proved either by title deed or by revenue documents. In the case on hand, the appellants have not produced any document to prove that the suit properties are their self acquisition. Even assuming that the appellants had produced some evidence to show that the suit properties are self acquired properties of the 1st appellant, still, the Court can presume that the properties are joint family properties. It is not in dispute that 1st respondent is the senior most male member of the family. It is settled law that when a senior member /Karta of the family joint acquires properties in his name, it is presumed that the said properties belong to the joint family. The said position has been categorically held in ***Mallesappa Bandeppa Desai and Ors. vs. Desai Mallappa and Ors.*** reported in ***AIR 1961 SC 1268***. The relevant observation of Hon'ble Apex Court reads as follows:



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“We do not know what the income of the said properties was; obviously it could not be of any significant order; but, in our opinion, there is no doubt that where a manager claims that any immovable property has been acquired by him with his own separated funds and not with the help of the joint family funds of which he was in possession and charge, it is for him to prove by clear and satisfactory evidence his plea that the purchase money proceeded from his separated fund. The onus proof must in such a case be placed on the manager and not on his coparceners”.

The decision in Mallesappa case cited supra was by a three member bench of Hon'ble Apex Court. In view of the law laid down in Mallesappa case, the decision relied on by learned counsel for appellant is not helpful to him.

12. Considering the failure on the part of the appellants / defendants 1 and 2 to produce any evidence in support of their claim that the properties are self acquired properties of the 1st defendant, the Courts below by accepting the evidence of P.W.1, came to the conclusion that the properties are ancestral properties and granted preliminary decree for partition as prayed for. Hence, I



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do not see any perversity in the findings of the Courts below. The second appeal does not involve any substantial questions of law much less questions of law and hence deserve dismissal.

13. Accordingly, the second appeal stands dismissed.

a) by confirming the judgment and decree dated 07.10.2016 passed by the learned II Additional District Judge, Erode in A.S.No.10 of 2016 confirming the judgment and decree dated 22.12.2015 passed by the learned II Additional Subordinate Judge, Erode in O.S.No.423 of 2012.

b) In the above facts and circumstances of the case, there is no order as to costs.

c) Consequently, connected miscellaneous petition is closed.

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

1. The II Additional District Judge, Erode
2. The II Additional Subordinate Judge, Erode.



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S.SOUNTHAR, J.

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