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S.A.No.427 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.427 of 2017

Rajendiran

... Appellant

Vs.

Selli (Died)
Valarmathy

... Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 10.09.2015 in A.S.No.69 of 2013 on the file of the Principal District Judge, Salem, modifying the judgment and decree dated 02.08.2013 in O.S.No.586 of 2010 on the file of the I Additional Subordinate Judge, Salem.

For Appellant : Mr.P.Jagadeesan

For Respondent : No appearance



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JUDGMENT

The defendant in the suit for partition is the appellant. The respondent and her mother/deceased Selli filed a suit for partition against the appellant claiming $2/3^{\text{rd}}$ share in the suit property. The trial Court partly decreed the suit by granting $1/6^{\text{th}}$ share each to the deceased Selli and the respondent. Aggrieved by the same, the respondent and deceased Selli preferred an appeal and the same was allowed and the first Appellate Court granted a preliminary decree for partition of $1/3^{\text{rd}}$ share each to the appellant, the respondent and the deceased Selli. Aggrieved by the same, the appellant has come up with this Second Appeal.

2. According to the respondent/plaintiff, the suit properties are self acquired properties of Duraisamy Gounder. The appellant and the respondent are his son and daughter. The deceased first plaintiff Selli was his wife. Therefore, the respondent and her mother Selli claimed $2/3^{\text{rd}}$ share in the suit property as deceased Duraisamy Gounder died intestate.



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3. The appellant herein filed a written statement and claimed that the suit properties were ancestral properties of Duraisamy Gounder. According to the appellant, the ancestral properties of Duraisamy Gounder were sold by him and out of sale proceeds suit properties were purchased in the name of Perachi Gounder in the year 1970. The said Perachi Gounder settled the suit properties in favour of Duraisamy Gounder on 20.09.1970. Therefore, the suit properties have to be treated as ancestral properties of Duraisamy Gounder and as such, the respondent and her mother can only claim equal share in the half share of Duraisamy Gounder but not on entire suit properties. It was further claimed by the appellant that 7 sovereigns of gold jewels belonged to joint family was pledged by Duraisamy Gounder in a bank and the same was unilaterally redeemed by the respondent by producing false legal heir certificate and hence, the appellant is entitled to share in the said jewels. The plaint was later amended and the said jewels were included as suit item No.2.

4. The trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the appellant failed to produce any oral and documentary evidence to prove that the suit properties were ancestral properties. However, strangely treated the suit properties as



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ancestral properties and granted a preliminary decree for partition of 1/6th share each to respondent and her mother. The appellant was granted a preliminary decree for 4/6th share. Aggrieved by the same, the respondent and her mother Selli preferred the first Appeal in A.S.No.69 of 2013 on the file of the Principal District Judge Salem. The first Appellate Court held that the appellant failed to prove the character of suit properties as ancestral properties and hence, it will be treated as self acquired properties of Duraisamy Gounder.

5. In such circumstances, by applying Section 8 of the Hindu Succession Act, the First Appellate Court held that the appellant, respondent and their mother Selli were entitled to equal share in the suit properties. Therefore, the appeal was allowed and the preliminary decree for partition was modified by declaring 1/3rd share to respondent and others. Aggrieved by the judgment and decree, the appellant has come up with this Second Appeal.

6. At the time of admission, this Court formulated the following substantial questions of law:

“1. When the suit property was purchased in the name of one Perachi Gounder under Ex.B1 from out of sale



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proceeds of the ancestral property and subsequently the same was gifted to the appellant's father under Ex.B3, is not the same to be treated as an ancestral joint family property?

2. Whether the Appellate Court is right when the second plaintiff/respondent was married even prior to 1989, before the passing of Hindu Succession (Tamil Nadu Amendment Act) 1990, is entitled to get any share in the suit property?"

7. Heard arguments of the learned counsel for the appellant. Though sole respondent is served and her name printed in the cause-list. There is no appearance for the respondent.

8. The learned counsel for the appellant submitted that the Courts below failed to take into consideration the recitals in Ex.B1 & Ex.B2 which would establish that the ancestral properties of Duraisamy Gounder was sold by him under Ex.B1 and out of sale proceeds, the suit property was purchased in the name of Perachi Gounder under Ex.B2. Later, Perachi Gounder settled the suit property in favour of Duraisamy Gounder under Ex.B3. Therefore, the Courts below ought to have treated the suit property as ancestral property of



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Duraisamy Gounder. The learned counsel for the appellant further submitted that the oral evidence of DW1 and DW2 were not considered by the Courts below while giving findings with regard to the character of the suit property.

9. It is the specific case of the appellant that the suit properties are the ancestral properties of Duraisamy Gounder and he sold the same under Ex.B1 sale deed and out of sale proceeds, purchased the suit property in the name of Perachi Gounder under Ex.B2. Therefore, the recitals in Ex.B1 & Ex.B2 are relevant while deciding character of the suit properties. A perusal of Ex.B1 would suggest that the ancestral property of Duraisamy Gounder was sold for the purpose of purchasing other property. Under Ex.B1, Duraisamy Gounder received a sale consideration of Rs.1,000/-. Further the appellant has not produced any documentary evidence to show that out of said sale proceeds, the property was purchased in the name of Perachi Gounder. A perusal of Ex.B2 sale deed which stands in the name of Perachi Gounder would suggest that the consideration of Rs.2000/- for purchase of suit property was paid by himself. In the absence of any acceptable evidence contrary to the recitals found in Ex.B2, it has to be presumed that the suit property was purchased by Perachi Gounder out of his own funds and settled the same in favour of



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Duraisamy Gounder. In such circumstances, the final findings reached by the Courts below that the suit properties are self acquired properties of Duraisamy Gounder requires no interference by this Court.

10. A perusal of evidence of DW2 and DW3 would suggest that their evidence is not useful to support the case of the appellant that the suit properties were purchased by Duraisamy in the name of Perachi Gounder.

11. In fact, DW2 in his cross examination clearly admitted that the suit properties were originally belonged to Perachi Gounder and the said admission of DW2 clearly goes against the appellant's case. The suit properties were settled in favour of Duraisamy Gounder. Therefore, the findings of the First Appellate Court that the suit properties are self acquired properties of Duraisamy Gounder is confirmed. The substantial question of law No.1 is answered against the appellant and in favour of the respondent.

12. In view of the findings reached by this Court in the first question of law that the suit properties are self acquired properties of Duraisamy Gounder, the second question of law need not be answered as the



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suit properties held to be self acquired properties. Once this Court comes to the conclusion that the suit properties are self acquired properties of Duraisamy Gounder, the class I heirs of Duraisamy Gounder, namely, the respondent/plaintiff, her mother deceased Selli and the appellant/defendant are entitled to 1/3rd share each in the suit properties.

13. It is seen from the memorandum of grounds in the first Appeal in A.S.No.69 of 2013, the mother of the parties namely Selli died pending first Appeal and the respondent herein amended grounds and added a new ground in the grounds of First Appeal, wherein it was admitted that after the death of Selli, the appellant and the respondent were entitled to equal share in the suit properties. Therefore, it can be safely presumed that Selli died intestate. In such circumstances, the preliminary decree passed by the First Appellate Court requires modification by declaring that the appellant and the respondent are entitled to ½ share in the suit property.

14. In view of the discussion made earlier, both the substantial questions of law framed at the time of admission are answered against the appellant. Further, in view of subsequent change of circumstances namely the



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death of mother of the parties Selli, the appellant and the respondent are entitled to $\frac{1}{2}$ share each in the suit property. Eventhough death of Selli was recorded by first Appellate Court and respondent also admitted in memorandum of grounds of first Appeal after death of Selli, her share would devolve on appellant and respondent equally, the first Appellate Court by accidental omission, failed to take into consideration the death of Selli and pass preliminary decree for $\frac{1}{2}$ share. The first Appellate Court erroneously allotted $\frac{1}{3}^{\text{rd}}$ share to deceased Selli also. The said accidental omission by First Appellate Court can be corrected by this Court, instead of driving parties to file application seeking modification of preliminary decree. Hence, though question of laws are answered against the appellant, by taking into consideration the subsequent event, namely death of Selli, the preliminary decree for partition passed by the Courts below is modified accordingly.

15. a) In the result, the Second Appeal stands partly allowed by modifying the judgment and decree passed by the Courts below, by declaring appellant and respondent entitled to $\frac{1}{2}$ share each in the suit property.



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S.SOUNTHAR, J.

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

20.11.2023

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

- 1.The Principal District Judge, Salem.
- 2.The I Additional Subordinate Judge, Salem.

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