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S.A.No.52 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.52 of 2017

1.Chinthamani
2.Ramesh
3.Sumathy
4.Latha
5.Geetha

...Appellants

Vs.

1.Palanisamy
2.Palaniammal

...Respondents

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 02.09.2015 in A.S.No.83 of 2013 on the file of the Subordinate Court, Namakkal confirming the judgment and decree dated 22.08.2013 in O.S.No.485 of 2007 on the file of the Principal District Munsif Court, Namakkal.

For Appellants : Mr.V.Sekar

For Respondents : No appearance



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J U D G M E N T

The unsuccessful plaintiffs in the suit for declaration and injunction are the appellants. The suit filed by the appellants was dismissed by the Trial court. The findings of the Trial Court were confirmed by the First Appellate Court. Aggrieved by the concurrent findings, the plaintiffs have come by way of this second appeal.

2. According to the appellants/plaintiffs, the suit properties were purchased in the name of the first respondent. As per the plaint averment, the appellants/plaintiffs are wife and children of the first respondent. The second respondent/second defendant appeared to have obtained a money decree against the first respondent and brought the suit properties for Court auction sale. It was claimed by the appellants that the suit properties were purchased in the name of first respondent on 21.05.1990. The first respondent purchased the suit properties out of joint family funds. Therefore, the suit properties should also be treated as joint family properties. Hence, the appellants are entitled to 5/6 share in the suit properties.



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3. The appellants also claimed that the first appellant and the first respondent got separated due to strained relationship even 10 years back. As per the mediation conducted in the Village, the first respondent executed a Release Deed in favour of the appellants releasing 5/6 share in the suit properties. Therefore, the appellants prayed for declaration of their right over the suit properties to the extent of 5/6 share and consequential injunction restraining the respondents from interfering with their right over the suit properties.

4. The first respondent remained ex-parte and the second respondent filed the written statement denying averment in the plaint as if the suit properties were purchased by the first respondent out of joint family funds. The second respondent also denied the validity of alleged Release Deed executed by the first respondent. It was the specific claim of the second respondent that she obtained a money decree from the first respondent and the suit properties were brought to the Court auction sale in execution proceedings and in order to prevent the second respondent from realising the fruits of the decree, the appellants have filed the present suit with false allegations.



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5. The Trial Court, on appreciation of oral and documentary evidence especially by relying on admission of first appellant, who was examined as P.W.1, came to the conclusion that the suit properties were self acquired properties of the first respondent and consequently, dismissed the suit. Aggrieved by the same, the appellants preferred the first appeal in A.S.No.83 of 2013 on the file of the Subordinate Court, Namakkal. The First Appellate Court affirmed the findings of the Trial Court. Aggrieved by the concurrent findings against them, the appellants have come by way of this second appeal.

6. The learned counsel appearing for the appellants tried to assail the findings of the Courts below on the ground that the Courts below failed to frame any issue regarding the plea raised by the appellants that the suit properties were purchased out of joint family funds and hence, the conclusion raised by the Courts below as if the suit properties were not purchased out of joint family funds is liable to be set aside, as there was no issue with regard to that point. The specific case of the appellants is that the suit properties were purchased out of joint family funds by the first respondent, in order to prove the same, the first appellant was examined as P.W.1, the third appellant was



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examined as P.W.2. and one Appu was examined as P.W.3. P.W.1 in her cross examination, admitted that the suit properties were not purchased out of joint family funds. She further deposed that suit properties were purchased by her husband namely the first respondent and herself by contributing their funds.

7. In the plaint, it was clearly averred that the suit properties were purchased out of joint family funds in the name of first respondent. It is categorically admitted by P.W.1 that the suit properties were not purchased out of joint family funds. The said admission of P.W.1 is fatal to the case of the appellants. Further, the daughter of first appellant namely third appellant was examined as P.W.2, even though she averred in her proof evidence that the suit properties were purchased out of joint family funds, during cross examination, she admitted that the suit properties were purchased by father and they have not produced any evidence to show that the suit properties were purchased out of joint family funds. Therefore, based on the factual admission of P.W.1 and P.W.2, the Courts below correctly came to the conclusion that the appellants failed to prove that the suit properties were purchased out of joint family funds.

8. The appellants also raised the plea that the first respondent released



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5/6 share in the suit properties in favour of the appellants. The said Release Deed was marked as Ex.A2. The Courts below rejected the said release document on the ground that the same was unregistered document. It is settled law that when the release is in respect of immovable property for more than the value of Rs.100, the same shall be registered. In the case on hand, the Ex.A2, Release Deed relied on by the appellants was unregistered document. Therefore, both the Courts below rightly rejected the same. Further, the Courts below also had taken into consideration the circumstances under which the suit was laid by the appellants. The documents filed on behalf of the respondents, namely Ex.B1 to Ex.B9 proved that the second respondent obtained the money decree against the first respondent and the suit properties were brought for sale in execution proceedings initiated by her. In such circumstances, both the Courts below correctly dismissed the suit. I do not see any perversity in the findings of the Courts below. The second appeal does not involve any substantial question of law and hence deserves dismissal.

9. Accordingly the second appeal stands dismissed



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a) by affirming the judgment and decree dated 02.09.2015 in A.S.No.83 of 2013 on the file of the Subordinate Court, Namakkal confirming the judgment and decree dated 22.08.2013 in O.S.No.485 of 2007 on the file of the Principal District Munsif Court, Namakkal.

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

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Index : Yes/No
Internet : Yes/No
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To

1. The Subordinate Court, Namakkal.
2. The Principal District Munsif, Namakkal.



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S.SOUNTHAR, J.

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