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S.A.No.641 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.641 of 2017
and
CMP.No.15848 of 2017

Indirani

...Appellant

Vs.

1.Saraswathy
2.Geetha
3.Susheela
4.Nirmala
5.Balamani
6.Subramanian

...Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 20.02.2017 made in A.S.No.26 of 2007 on the file of the I Additional District Judge, Coimbatore, confirming judgment and decree dated 07.11.2006 made in OS.No.123 of 2005 on the file of the I Additional Sub-Court, Coimbatore.

For Appellant : Mr.P.Saravana Sowmiyan
For Respondents : Ms.S.Yogalakshmi
for Mr.A.Thiyagarajan for R1 to R6



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JUDGMENT

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The plaintiff has filed the suit for partition against the defendants.

2. The trial Court granted a preliminary decree for partition in respect of first item of the suit property and dismissed the suit in respect of second item of the suit property. Aggrieved by the same, the plaintiff filed an appeal and the same was also dismissed. Aggrieved by the concurrent findings in respect of item No.2 of the property, the plaintiff has come before this Court by way of this Second Appeal.

3. The first respondent/first defendant is the mother of the appellant and the respondents 2 to 5. The sixth respondent was arrayed as one of the defendant as there was an attempt by the respondents 1 to 5 to alienate the property in favour of the sixth respondent. Pending Second Appeal, the sixth respondent died and the appellant had taken steps to bring the legal representatives on record. However, the legal representatives are not yet served.

4. The learned counsel appearing for the appellant submitted that the sixth respondent was added as a party only on the apprehension that the



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respondents 1 to 5 would sell the property to the sixth respondent. Therefore, the presence of the legal representatives of the sixth respondent may not be required for disposal of the Second Appeal.

5. The suit for partition was laid by the appellant in respect of two schedules of the properties. According to the appellant, the suit properties were purchased by her father Karuppusamy, out of his own income. It is the specific case of the appellant that the second schedule of the suit property was purchased by her father Karuppusamy in the name of his wife, the first respondent herein out of his own income.

6. It is further pleaded that the first respondent had no independent source of income and appellant's father purchased the said property in the name of his wife namely the first respondent. The father of the appellant died intestate on 20.05.1990. Therefore, according to the appellant, she and the respondents 1 to 5 are entitled to 1/6th share in both the properties.

7. The appellant filed a suit claiming 1/6th share in the suit properties. The first respondent herein filed a written statement claiming



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absolute right over the second schedule of the suit property. According to her, she purchased the said property under a sale deed dated 12.04.1979 and the sale consideration was paid out of her own funds. The plea raised by the appellant that as if the second schedule of the property was purchased by the father of the appellant in the name of the first respondent was specifically denied in the written statement.

8. During trial, the appellant was examined as PW1 and 9 documents were marked on her side as Ex.A1 to Ex.A9. The first respondent was examined as DW1 and her brother was examined as DW2. Four documents were marked on behalf of the first respondent as Ex.B1 to Ex.B4.

9. The trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the first schedule of the suit property is the ancestral property of the appellant's father and the appellant and the respondents 1 to 5 are entitled to 1/6th share in the said property. As far as the second schedule of the suit property is concerned, the trial Court found that the appellant failed to prove the said property was purchased by her father in the name of the first respondent. Therefore, the suit



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was partly decreed only in respect of first schedule and the same was dismissed in respect of the second schedule. Aggrieved by the same, the appellant filed an appeal in A.S.No.26 of 2007 on the file of the I Additional District Judge, Coimbatore.

10. The first Appellate Court also concurred with the findings of the trial Court and dismissed the appeal. Aggrieved by the same, the appellant has come before this Court.

11. The learned counsel appearing for the appellant submitted that in the written statement the first respondent pleaded that the second schedule of the suit property was purchased by her out of her own income. However, during the course of evidence, the first respondent as DW1 deposed that the sale consideration was paid out of the amount borrowed from her brother. Therefore, the first respondent trying to improve her case which is contrary to her own pleadings.

12. The learned counsel further submitted that when there is no evidence available on record to show that the first respondent had no



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independent source of income to purchase the property, the Courts below ought to have accepted the plea of the appellant that the second schedule of the suit property was purchased by the father of the appellant in the name of the first respondent, who is her wife.

13. The learned counsel for the respondents 1 to 5 by taking this Court to the findings of both the Courts below submitted that both the Courts below correctly came to the conclusion that the property purchased by the first respondent is her self acquired property and therefore, the appellant is not entitled to any share in the property during the life time of the first respondent.

14. It is the specific case of the appellant that the suit second schedule of property was purchased by her father in the name of the first respondent namely her mother. It is also the case of the appellant that the first respondent had no independent source of income to pay the sale consideration for the purchase of the second schedule of the property. It is settled law, when a female member of the Hindu family purchased a property in her own name, the presumption is it is her separate property, unless the contrary is proved by the person who is asserting it as the property of joint family. The said



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proposition has been categorically held by the Division Bench of this Court in

Nagayasami Naidu and Ors. Vs. Kochadai Naidu and Ors. reported in ***AIR***

1969 Mad 329. The relevant observation of the Division Bench reads as follows:

"18.A...There is an essential distinction as to the scope of the presumption in the case of acquisitions in the names of male members of a joint family and the female members of a joint family. In the case of male members of a joint family, there is a presumption that if the joint family had sufficient ancestral nucleus, the properties standing or acquired in the name of junior members are joint family properties unless the presumption is rebutted by showing that the properties are the separate properties of the particular member or members in whose names the properties stand or were acquired. There is no such presumption in the case of properties standing in the name of female members, In the latter case, it is for the party who claims properties as joint family properties to specifically plead the, particulars and details, in the pleadings and establish the same by adducing necessary evidence. If there is no pleading and if on the side of the plaintiffs there is no evidence, there is no need for detailed scrutiny of the case of the female members or persons claiming through them, as to the resources of the female members and as to how they acquired the properties in question. If the plaintiff on whom the burden lies adduces no evidence, no



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further question arises and the female member in whose name the property stands, must be held to be the beneficial owner of the property in question.”

15. The above decision was followed in ***Pushpavalli Ammal and Ors. Vs. Manikandan and Ors.*** reported in **2021 (6) MLJ 214 = MANU/TN/5290/2021.**

16. Further, a reading of Section 14 (1) of the Hindu Succession Act, also makes it clear that the property of a female Hindu is her absolute property. The appellant in her plaint averment has stated that the second schedule of the property was purchased by her father in the name of mother as a Benami. After coming into force of Benami Prohibition Act, 1989, the appellant is not entitled to raise such a plea.

17. If a property is purchased by a husband in the name of his wife, it is deemed to be purchased for her benefit. If any one asserts that the property was not purchased for the benefit of his wife, it is for him to prove the same.



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18. In the case on hand, absolutely there is no evidence available on record to suggest that the property was not purchased for benefit of the first respondent. The appellant was examined as PW1 and no other independent witness was examined on her behalf.

19. Therefore, the plaintiff has not produced any evidence to show that the property was purchased by funds provided by father of the appellant. Hence, by virtue of presumption available under Benami Prohibition Act, it would be deemed that the property was purchased for benefit of the first respondent. I am conscious of amendment to Benami Prohibition Act by amending Act 43/2016 which came into force on 01.11.2016. The said amendment will have only prospective operation. The present suit was filed well before the said amendment. Hence, the rights of parties shall be determined as per law that stood on date of suit. Even otherwise, in the case on hand, there is no oral and documentary evidence to suggest that the father of the appellant provided funds to the first respondent to purchase the second schedule of the suit property.



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20. In such circumstances, the concurrent findings rendered by the Courts below that the second schedule of the suit property is the self-acquired property of the first respondent requires no interference by this Court. Finding no substantial question of law, much less any question of law, the judgment and decree passed by the Courts below, are confirmed and consequently, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

05.10.2023

Index : Yes
Internet : Yes
Neutral Citation Case : Yes
dna

To

- 1.The I Additional District Judge, Coimbatore.
- 2.The I Additional Sub-Court, Coimbatore.



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S.SOUNTHAR, J.
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