



S.A(MD)No.633 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 27.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.633 of 2016
and
C.M.P(MD)No.9513 of 2016

Kumar ... Appellant/1st Respondent /1st Defendant

Vs.

1.Pandi (Died) ... 1st Respondent/Appellant/Plaintiff
2.Poosadurai
3.Marimuthu ...2nd & 3rd Respondent/2nd & 3rd Respondent/
2nd & 3rd Defendant
4.Sivagami
5.Akash (Minor)
6.Gayathiri (Minor) ... Respondents 4 to 6

(Respondents 4 to 6 are brought on record as LRs of deceased first respondent vide Court order dated 18.11.2020 made in C.M.P(MD)Nos.3122,3124 & 3128 of 2020 in S.A(MD)No.633 of 2016 by RMDJ)

PRAYER :-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 31.01.2013 in A.S.No.51 of



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2011 on the file of the Sub Court, Ramanathapuram, reversing the judgment and decree, dated 28.09.2011 in O.S.No.74 of 2009 on the file of the District Munsif Cum Judicial Magistrate Court, Thiruvadanai.

For Appellant : Mr.S.Vellaichamy
For R2 - R3 : No Appearance
For R4 – R6 : Mr.D.Saranya

JUDGMENT

The first defendant in the suit is the appellant. The first respondent herein filed a suit for partition of his 1/3rd share. The suit was dismissed in respect of all four items of the suit property. Aggrieved by the same, the first respondent filed an appeal and the First Appellate Court reversed the findings of the trial Court with regard to item No.1 and granted decree for partition of 1/3rd share in respect of item No.1. Aggrieved by the same, the first defendant is before this Court. The appellant, respondents 1 and 2 are brothers and the third respondent is a purchaser of item No.4 of suit property from appellant.

2. According to the first respondent, the suit properties were purchased out of contribution made by all the brothers namely appellant, first and second respondents. It was averred in the plaint that all the brothers working in



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abroad and the first respondent paid the entire salary amount to appellant herein and suit item No.1 was purchased on 10.02.1999 in the name of all the three brothers from one Rahumathulla Shahib, under Ex.A1. It was further averred that out of contribution made by all the three, item Nos.2 and 3 were purchased by the appellant in his own name and in the name of one Subulakshmi. It was also averred that the item No.4 was purchased in the name of appellant out of contribution made by all the three brothers. Therefore, it is the contention of the first respondent that he is entitled to 1/3rd share in all the four items of the suit properties and prayed for partition of 1/3rd share.

3. The appellant herein filed a written statement and contended that the suit item one was purchased out of his own contribution. It was further alleged that the respondents 1 and 2 at the time of purchasing properties told that they would pay their share of sale consideration and on believing their words, item No.1, was purchased in the name of all the three brothers. But however, later on, the respondents 1 and 2 failed to pay their share of sale consideration and therefore, the item No.1 should be treated as his own property. In respect of other items, the appellant denied the contention of the



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respondents that all the other items were purchased out of joint contribution of all the three brothers. On these pleadings, the appellant sought for dismissal of the suit.

4. The trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the respondents 1 and 2 failed to prove their contribution for purchasing suit item No.1 and consequently negated the claim for partition in respect of item No.1. As far as other items are concerned, the trial Court based on the fact that the documents stood in the name of appellant and Subulakshmi came to the conclusion that the first respondent was not entitled to any share in those items. Hence, the entire suit was dismissed. Aggrieved by the same, the first respondent filed an appeal in A.S.No.51 of 2011 on the file of the Sub Court, Ramanathapuram. The First Appellate Court reversed the findings of the trial Court with regard to item No.1 alone and granted decree for partition of 1/3rd share in favour of the first respondent. Challenging the said judgment and decree, appellant is before this Court.



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5. The learned counsel for the appellant assailing the findings of the First Appellate Court submitted that though the title documents of item No.1 stands in the name of all the three brothers, it was purchased only out of contribution by appellant alone. He further contended that from the year 1999 onwards, the appellant had been enjoying the suit property treating his as his own property by excluding right of the respondents 1 and 2. It was also submitted by the learned counsel for the appellant that the appellant by spending huge amount put up a building in the suit item No.1, by getting planing permission from local authority, as proved by Ex.B2. Hence, it is the contention of the learned counsel for the appellant that the appellant asserted his exclusive right over the suit property from the beginning and the same had not been objected by the respondents 1 and 2. Therefore, the learned counsel requested this Court to set aside the findings of the First Appellate Court and dismiss the suit in respect of item No.1 also.

6. The first respondent has filed a suit for partition on a specific pleading that the suit properties were purchased by all the three brothers namely appellant and respondents 1 and 2. At the time of first appeal, since the first respondent/plaintiff had no evidence to prove his right over the item



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Nos.2 to 4, he pressed the appeal only in respect of item No.1. Therefore, this Second Appeal is confined to item No.1 alone. The sale deed in respect of item No.1, dated 10.02.1999 was marked as Ex.A1 and the same stands in the name of appellant, respondents 1 and 2. Therefore, *prima facie* right of all the three brothers over the item No.1 have been proved by the first respondent/plaintiff. It is the case of the appellant that though suit item No.1 was purchased in the name of all the three brothers, the respondents 1 and 2 did not contribute any amount and the same was purchased only out of his own fund. The mother of the parties was examined as PW1. She categorically deposed that suit item No.1 was purchased out of fund for all the three sons, who were working at South Arabia. The mother also had said that she got seven children including two daughters. When mother of the parties had appeared before the Court and made a statement on oath that out of seven children, three of her children, out of their self earning purchased the suit properties in their name, there is nothing to doubt the evidence of mother. The First Appellate Court on the basis of Ex.A1 – Sale Deed in the name of all the three brothers and the evidence of PW1 /mother of the parties came to a factual conclusion that all the three brothers are entitled to equal share in item No.1 of the suit property. I do not find any error in the said factual



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finding rendered by the First Appellate Court.

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7. The learned counsel for the appellant by relying on Ex.B2 - building plan approval granted by the local authorities, in respect of building put up in item No.1, submitted that the appellant asserted his exclusive right over the suit property from the date of purchase and hence, the respondents 1 and 2 were ousted from the suit properties. Even as per the case of appellant, he asserted his title over the item No.1 only from 1999 onwards. The suit is of the year 2009. Therefore, even assuming the exclusive possession pleaded by the appellant is accepted as true, in view of the fact that the suit has been filed within a stipulated period of 12 years, the appellant cannot be heard to contend that he excluded the other respondents. The appellant is the eldest son in the family. Therefore, merely because the building plan approval stands in the name of appellant, we cannot come to the conclusion that the appellant by excluding the rights of respondents 2 and 3 put up constructions in the suit property. The appellant has failed to cross examine PW1 and PW2 with regard to exclusive contribution by him for putting up building in the suit property. Therefore, the said contention made by the learned counsel for the appellant is also rejected.



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8. In view of the discussions made earlier, I do not find any substantial question of law in the Second Appeal and consequently, the Second Appeal stands dismissed. No costs. However, it is open to the appellant to canvas the question of equity, if any, at the time of final decree proceedings. Consequently, connected Miscellaneous Petition is also dismissed.

27.02.2023

NCC : Yes/No
Index : Yes / No
vsd

To

- 1.The Sub Judge,
Ramanathapuram.
- 2.The District Munsif Cum Judicial Magistrate Court,
Thiruvadanai.
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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