



S.A.(MD).No.141 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 19.12.2023

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

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- 1.A.S.Usha Devi
- 2.K.S.Achuthan
- 3.K.S.Haribalaji
- 4.Minor.K.S.Sankaranarayanan

... Appellants

(appellants 2 and 3 are declared as major and the guardianship of their mother appellant No.1 A.S.Usha Devi is discharged vide common order dated 29.11.2023 made in CMP(MD)Nos.15935 and 15937 of 2023 in SA(MD)No.141 of 2017)

(Minor appellant No.4 is represented by his mother and natural guardian 1st appellant)

/Vs./

- 1.K.S.Rathinam
- 2.T.J.Mahalakshmi
- 3.T.S.Sumithra
- 4.G.M.Ganga
- 5.P.B.Dhanalakshmi
- 6.A.V.Nirmala
- 7.M.Anitha

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree, dated 22.12.2015, passed in A.S.No.32 of 2015 on the file of IV Additional District Judge, Madurai, confirming the Judgment and



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Decree, dated 16.12.2014, passed in O.S.No.148 of 2012, on the file of the II Additional Sub Court, Madurai.

For Appellants : Mr.M.Senthilkumar
For R1 to R6 : No appearance
For R7 : Mr.R.Janakiramulu

JUDGMENT

The present second appeal is filed against the judgment and decree passed in A.S.No.32 of 2015 on the file of the IV Additional District Court, Madurai against the judgement and decree passed in O.S.No.148 of 2012 on the file of the II Additional Sub Court, Madurai.

2. The plaintiff in the suit is the appellant herein and the defendants in the suit is the respondents herein. For the sake of convenience, the contesting parties shall be referred to as Plaintiff and Defendants.

3. The suit is filed for partition of undivided half share by metes and bounds in the suit schedule property. And to declare the sale deed, dated 21.03.2011, registered as Document No.2957 of 2011 as null and void and to direct the 8th respondent to pay the past and future undivided rental interest in the said suit property from the date of sale. The Trial Court had dismissed the suit,



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aggrieved over the same, the plaintiffs preferred an Appeal Suit before the First Appellate Court. Confirming the judgment and decree of the Trial Court, the First Appellate Court dismissed the Appeal Suit. Aggrieved over the same, the present second appeal is filed.

4. In short, the daughter-in-law and the grand-children had filed suit against the father-in-law and other legal heirs for partition claiming half share in the suit property and half rental income.

5. The brief facts is that the 1st defendant, i.e., the father-in-law of the 1st plaintiff is having five daughters and one son. The claim of the 1st plaintiff is that in order to put up construction, her husband namely Late K.S.Subramaniam had borrowed loan from PF, from Thrift Society and also from SBI. He has also borrowed from a private lender by mortgaging the house property to a private lender thereby mobilized Rs.6,00,000/- in order to put up super structures. Hence, the claim of the 1st plaintiff is that she is entitled to half share in the plaint suit property.

6. This claim was vehemently contested by the defendants and submitted that the 1st plaintiff deserted her the husband Late K.S.Subramaniam.



Even though subsequently they were united, again they fought with each other and unfortunately, the said late K.S.Subramaniam died and the 1st plaintiff made allegations against her husband's family as if her husband's family had killed the 1st plaintiff's husband late K.S.Subramaniam died and preferred criminal complaint. Based on the complaint, criminal case was registered against the first defendant father-in-law, the 2nd defendant mother-in-law, the sisters-in-law and also registered criminal case against minor children of the respondent family. This had infuriated the defendants. The defendants had faced the criminal trial over the years and the criminal case ended up in acquittal wherein the defendants 2 and 6 were acquitted from the criminal charges. Hence, the claim of the plaintiffs was stiffly resisted by the defendants. Further the defendants submitted that the deceased K.S.Subramaniam has paid only Rs.80,000 + Rs.30,000 which were borrowed as loan from Thrift Society and from SBI respectively and denied that the deceased borrowed of Rs.6,00,000/-.

7. The second appeal was admitted on the following substantial questions of law:

“i) Whether any interest will be created in the suit property in favour of the first plaintiff's husband, contributing the he amounts for the renovation / re-construction of the building in the suit property?



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(ii) *Whether the Courts below are perverse in holding that the loan obtained by the plaintiff's husband for family expenses cannot be utilized for the purpose of construction of dwelling house for the family?*

(iii) *Whether the Courts below have committed error in law in not considering the fiduciary relationship between the 1st plaintiff's deceased husband and the first defendant?"*

8. The contention of the plaintiffs is that the 1st plaintiff's deceased husband, who is the only son of the 1st defendant had borrowed amount from various places and had contributed for the construction of the house, hence the plaintiffs claim that they have half right over the property. It is seen that the 1st defendant has one son and five daughters. In such circumstances, the suit property belongs to the 1st defendant (father-in-law), deceased son and five daughters. But it is seen that the suit property is self-acquired property of the 1st defendant and the 1st defendant has exclusive right to deal with the property. The son and daughters may claim right over the property if they inherit the property under intestate succession, but when the father is alive then the claim as intestate succession does not arise.

9. When the deceased son had contributed some amount for construction and at the most the said contribution may be treated as loan to father.



If treated as loan, then the plaintiffs may have some right to claim back the said amount, but cannot claim any right over the property. Therefore, the 1st substantial question of law “whether interest will be created in the suit property in favour of the first plaintiff’s husband, if he had contributed any amount for renovation or reconstruction work” is held against the plaintiffs.

10. As far as the next substantial question of law is concerned, the Courts below had held that there is no evidence that the entire borrowed amount was utilized for construction of the house. Further the loan was obtained by stating the reason as “family expenses” and the loan was not obtained by stating the reason as “construction of house”. This Court is of the considered opinion that when there are no evidence to prove that the entire loan amount was paid for construction purpose, then the Court below are right in holding that the loan was obtained for family expenses of the plaintiffs. Hence the second substantial question of law is held against the plaintiffs.

11. As far as the next substantial question of law is considered, the deceased’s is the son of the 1st defendant and it is only father and son relationship and there is no question of any fiduciary relationship. Therefore, this Court is of



the considered opinion that the very framing of this substantial question of law is erroneous and the same is held against the plaintiffs. Therefore, all the three substantial questions of law are answered accordingly.

12. It is seen that the suit was filed in the year 2012, but the property was sold prior to the filing of the suit, that is in the year 2011 itself. Hence the third-party interest is created. Further the purchaser is a bonafide purchaser and therefore the sale is valid in the eyes of law.

13. The suit property that was in the name of the first defendant which is a self-acquired property of the 1st defendant. Therefore, the prayer of declaration cannot be granted.

14. This Court records the attitude of the 1st plaintiff. It is so unfortunate that the plaintiff had preferred criminal case against the defendants. Especially with the allegation of murder charge against family members of the deceased husband that too against minors of the family.

15. Since the defendants themselves had accepted that the deceased son had paid Rs.1,10,000/- (Rs.80,000/- and 30,000/-), since the 1st plaintiff's



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husband died, this Court on the basis of compassion is directing the defendants to pay Rs.2,00,000/- without interest as full and final settlement to the plaintiffs. The said amount shall be paid within a period of one month from the date of receipt of a copy of this judgment. The appellants may share the said Rs.2,00,000/- equally among themselves. The share of the minor appellant shall be deposited in an interest accruing account in any Nationalized Bank and the interest amount shall be withdrawn by the 1st appellant once in three months. Once the minor appellant attains majority, the same shall be withdrawn by him with accrued interest.

16. With the above said direction, the second appeal is disposed of.

No costs.

19.12.2023

Index : Yes / No
NCC : Yes / No
Tmg

TO:

1. IV Additional District Judge, Madurai.
2. II Additional Sub Court, Madurai.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.141 of 2017

Dated:
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