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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **17.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A(MD)NO.89 OF 2023

Thangam :Appellant/Appellant/Defendant

.VS.

Ganapathy :Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree made in A.S.No. 72 of 2019, dated 11.3.2020, on the file of the Principal District Judge, Tirunelveli, confirming the judgment and decree made in O.S.No.130 of 2015, dated 27.06.2019, on the file of Sub-Court, Sankarankovil.

For Appellant :Mr.F.X.Eugene

For Respondent :Mr.V.Meenakshisundaram
for M/s.D.Nallathambi

JUDGMENT

Challenge is made to the judgment in A.S.No.72 of 2019, dated 11.3.2020, on the file of the Principal District Judge, Tirunelveli, confirming the judgment in O.S.No.130 of 2015, dated 27.06.2019, on the file of Sub-Court, Sankarankovil.



2.The appellant and the respondent are brother and sister.

The respondent, as plaintiff, filed a suit in O.S.No.130 of 2015 seeking the relief of partition in respect of the suit properties. The case of the respondent/Plaintiff is that the suit properties belong to both the plaintiff and defendant. The plaintiff is the elder brother. However, keeping the defendant alongside with him in his business, the suit properties were purchased during 1994-1999. The property tax was assessed in the name of the plaintiff and the defendant. They are running a hotel in the suit property in the name and style of "Thangam Hotel". After purchase of the suit properties, a new building was constructed spending lakhs of rupees in the suit property. From March 2014, the defendant has not shown the proper accounts and therefore, a panchayat was held in the presence of the elders of the family. After accepting the terms reached for effecting partition, the defendant has not come forward to execute the partition deed. On the other hand, he sent a demand draft for Rs.10,000/- stating that it relates to lease for the land. The plaintiff returned the demand draft. In the said circumstances, the suit was filed for partition of plaintiff's half share in the suit properties.

3.In the written statement filed by the defendant, the



relationship between the plaintiff and defendant is admitted.

However, the claim made by the plaintiff that the suit properties were purchased jointly using the funds of the plaintiff, is denied. It is also denied that they have been running Hotel Thangam from the year 1994. It is the specific case of the defendant that the suit properties were purchased as vacant lands. The boundaries, extent and survey number are wrongly given in the plaint. In 2001, in the Tamil month of "Thi", the plaintiff and defendant had divided the properties orally. As per the oral partition, the western portion was allotted to the defendant and the eastern portion was allotted to the plaintiff. After oral partition, the parties have been enjoying their respective portions. The defendant took lease of the plaintiff's land and constructed a building thereon using his wife's jewellery. The plaintiff is entitled for only the land in the suit properties and he has no right in the building. The defendant was granted license for running the hotel in the name and style of "Thangam Hotel". The plaintiff had never been in possession and enjoyment of the building in the suit property. The defendant is paying Rs.10,000/- towards lease of the land. Till December 2013, the lease amount was paid. When the lease amount was sent through demand draft, in December 2014, that was not received. The defendant had sent the lease amount through demand draft to the plaintiff and that was



refused. The defendant is entitled for protection under the Tamil Nadu City Tenants Protection Act.

4. On the above said pleadings, issues have been framed and trial was conducted. P.W.1 to P.W.5 were examined and Ex.A1 to Ex.A8 were marked. On the side of the defendant, D.W.1 to D.W.3 were examined and Ex.B1 to Ex.B39 were marked.

5. On the basis of the oral and documentary evidence, the learned trial Judge found that the plaintiff is entitled to partition of half share in the land and the building in the suit properties. However, the claim of partition with regard to the administration of Thangam Hotel and the movables available in the Hotel was rejected. Against the said judgment, the defendant filed an appeal in A.S.No.72 of 2019 and against rejection of the part of the claim, the plaintiff filed cross appeal in the appeal. The learned appellate Judge, on considering the submissions made, oral and documentary evidence, dismissed the appeal confirming the judgment of the trial Court and dismissed the cross appeal filed by the plaintiff. Satisfied with the judgment of the Courts below, the plaintiff had not preferred any Second Appeal. Aggrieved against the judgments of the Courts below, the defendant filed the present Second Appeal.



6.It is the submission of the learned counsel for the appellant that the plaintiff had no means to construct a new building in the suit properties. It was the defendant, who had contributed funds for the construction of the building in the suit properties. The plaintiff was only working as a Clerk in a power-loom and whatever the income he got in the power-loom, was not even enough to meet the day-to-day requirements. Major contribution for the purchase of the land was given by the defendant. When it comes to the building, the entire contribution was made only by the defendant by raising loan and by selling the jewelleryes of his wife etc. Despite production of documents relating to grant of loan and other documents to show his exclusive right over the suit building, the Courts below have rejected the case of the defendant. In the said circumstances, this appeal is filed.

7.In reply to the above submission, the learned counsel for the respondent/Plaintiff submitted that there is evidence to show that the loans were obtained by the plaintiff and defendant for the construction of the building and for its improvement and that the property tax was assessed in their joint names. With regard to the submission of the learned counsel for the appellant that the defendant alone had contributed for the construction of the



building, this case is not supported by any acceptable evidence. In the said circumstances, the learned counsel for the respondent prayed for confirming the judgment of the Courts below and for dismissal of the Second Appeal.

8.This Court considered the rival submissions made on either side and perused the records.

9.From the pleadings, oral and documentary evidence and the submission of the learned counsel for the parties, it is not in dispute that the suit properties were purchased under Ex.A1 and Ex.A2 in the name of the plaintiff and defendant. Even now, the learned counsel for the appellant does not deny the fact that the suit properties were purchased in the name of the plaintiff and defendant. But his contention is that the plaintiff had contributed only for the purchase of the land and for construction of the building, total amount was contributed only by the defendant. Ex.A1 and Ex.A2 clearly show that the suit proeperties were purchased in the name of the plaintiff and defendant. These properties are joint properties in name of both the plaintiff and defendant and they are entitled to equal share in the suit properties.



10.The main issue in this case is whether the building in the suit properties was constructed by the defendant alone or also by the Plaintiff. On this aspect, the learned trial judge had elaborately discussed the evidence, especially, Ex.B11-legal opinion and the property tax receipts in respect of the suit properties marked as Ex.B27 to Ex.B30. A perusal of Ex.B11, legal opinion shows that the building plan approval was granted by Puliangudi Municipality for the construction of the building in the suit property. This approval was granted in the name of Ganapathi and Thangam namely, the plaintiff and the defendant in this case. It prima facie establishes the fact that both the plaintiff and the defendant applied for approval for the construction of the buildings in the suit properties. Confirming this, it is seen from Ex.B27 to Ex.B29 property tax receipts that the buildings in the suit properties bearing Door No. 58, 58-A,58-B and 3C have been assessed for property tax in the name of plaintiff and defendant. Thus, it conclusively establishes that both the plaintiff and defendant applied for approval for the construction of the building and after construction of the building, the property tax was assessed in their names.

11.It is also relevant to consider Ex.B12, wherein, it is stated that 'now we have shifted the business to the newly constructed



spacious building located very near to the daily market. We spent full of the money in the construction of the building and we are in need of funds for the interior decoration and other works". This is the letter sent to the Branch Manager, Pandiyan Grama Bank, Puliangudi seeking financial support(loan) for the purpose of interior decoration. This letter was addressed not in the individual capacity of the defendant and it clearly confirm that the plaintiff was also as a part of this letter seeking financial help from the said bank.

12.The defendant states that he used his own funds from selling his wife's jewelleries for the purpose of construction. In support of this claim, the defendant's wife was not examined as a witness. It is seen that only after filing of the suit, defendant had sent Rs.10,000/- claiming it as lease amount. D.W.3 examined on the side of the defendant, had not appeared for cross-examination and therefore, his evidence was rejected. D.W.2 has stated that he did not know anything personally about the lease of land. Thus from the oral and documentary evidence produced,it was found that the defendant had not proved his case that he alone had contributed funds for the construction of the building in the suit properties.



13. When it is not in dispute that the suit properties were purchased in its original form under Ex.A1 and Ex.A2., both the Courts below have concurrently held that the plaintiff is entitled for half share in the suit properties, of course, denied the relief relating to the management and running of Thangam Hotel and the movables available in the Hotel. This Court, on consideration of the oral and documentary evidence, finds that both the Courts below have taken a right decision and it requires no interference from this Court.

14. In ***Sir Chunilal V. Mehta and Sons .vs. The Century Spinning Co. Limited*** reported in ***AIR 1962 SC 1314***, the Honourable Supreme Court formulated what amounts to a substantial question of law, as follows:

1. Whether it is of general public importance (or)
2. Whether it directly and substantially affects the rights of parties **and if so;**
3. Whether it is **either** an open question (in the sense not finally settled by this Court or Privy Council or Federal Court) **(or);**
4. The question is not free from difficulty and calls for



discussion of alternative views;

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15. In the case before hand, the appellant has not made out any of the aforesaid grounds to formulate substantial question of law. There is no substantial question of law arises for consideration in this Second Appeal. Thus this Court finds that there is no cause for interference in the judgments of the Courts below and hence, the Second Appeal is dismissed. No costs.

17.11.2023

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
vsn

To

1. The Principal District Judge,
Tirunelveli.
2. The Sub-Judge,
Sankarakovil.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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G.CHANDRASEKHARAN,J.

vsn

**JUDGMENT MADE IN
S.A(MD)NO.89 of 2023**

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