



S.A.(MD)No.217 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.03.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

S.A.(MD)No.217 of 2022

Karungutti Ayinan

... Appellant

/Vs./

1.Chinna Ayinan

2.Jayamani

3.Junior Engineer,
O & M, TNEB, Ayyampalayam Village,
Musiri Taluk,
Trichirappalli District.

4.Executive Engineer,
O & M, TNEB, Mettupatti,
Musiri Taluk,
Trichirappalli District.

5.The Superintendent Engineer,
North Distribution,
Mannarpuram,
TNEB, Trichirappalli.

... Respondents



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PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the Judgment and Decree dated 19.05.2017 in A.S.No. 173 of 2014 on the file of the learned II Additional Subordinate Judge, Trichirappalli, confirming the Judgment and decree dated 17.06.2014 passed in O.S.No.42 of 2011 on the file of the learned District Munsif, Musiri and allow the above Second Appeal.

For Appellant : Mr.P.Ganapathi Subramanian

For Respondents : Mr.B.Ramanathan (R3 and R4)

Standing Counsel

JUDGMENT

This second appeal has been filed challenging the concurrent findings of the Courts below. The appellant is the plaintiff in the suit in O.S.No.42 of 2011 on the file of the District Munsif Court, Musiri. The suit was filed for partition in respect of the suit schedule property and for permanent injunction and also for declaration and the plaintiff had claimed half share in the same. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.



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2. The plaintiff and the first defendant are the brothers and the second defendant is the wife of the first defendant. The plaintiff has questioned the sale deed dated 22.11.2006 executed by his mother, Periya Eluthal in favour of the second defendant, which has been marked as Ex.B3 before the trial Court. According to the plaintiff, the suit schedule property was purchased from and out of the income of the joint family properties standing in the name of Periya Eluthal, the mother of the plaintiff as well as the first defendant.

3. As seen from the written statement, the defendants would contend that the property was not purchased from the income of the joint family properties or had been purchased by the plaintiff, the first defendant and his father as alleged in the plaint. Therefore, the defendants would categorically contend that the suit schedule property absolutely belonged to Periya Eluthal and the sale deed dated 22.11.2006 (Ex.A1 and Ex.B3) executed by her in favour of the second defendant is absolutely valid.



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4. Before the trial Court, the plaintiff filed 11 documents, which were marked as Exs.A1 to A11. Three witnesses were also examined on his side, namely, P.W.1 to P.W.3. On the side of the defendants, four documents were filed, which were marked as Exs.B1 to B4. The documents filed by the defendants included the original sale deed dated 22.11.2006 standing in the name of the second defendant (Ex.B3) and the patta dated 06.09.2010 (Ex.B4) also standing in the name of the second defendant.

5. The trial Court namely, the District Munsif Court, Musiri, by its judgment and decree dated 17.07.2014 dismissed the suit in O.S.No.42 of 2011 filed by the plaintiff on the ground that the plaintiff has not produced any evidence to prove that the suit schedule property was purchased out of joint family funds of the plaintiff, his father and his mother, Periya Eluthal. None of the documents filed by the plaintiff are relevant for the purpose of establishing the plaintiff's claim that the suit schedule property was purchased out of the joint family funds. However, on the side of the defendants, their documents namely, Exs.B1 to B4



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clearly reveal that the second defendant is in possession of the suit schedule property ever since her purchase from Periya Eluthal through the sale deed dated 22.11.2006 (Ex.B3). The patta dated 06.09.2010 also stands in the name of the second defendant. The trial Court has also relied upon Section 14 of the Hindu Succession Act, 1956, which makes it clear that the property of a female Hindu is her absolute property.

6. Based on the oral and documentary evidence available on record as well as by relying upon Section 14 of the Hindu Succession Act, 1956, the trial Court has rightly dismissed the suit filed by the plaintiff, as no iota of evidence has been produced by the plaintiff to show that the suit property was purchased out of joint family funds. The plaintiff has also not challenged the sale deed (Ex.A1) in the suit, but has only filed the suit for partition and other reliefs. This Court does not find any infirmity in the findings of the trial Court.

7. The lower appellate Court in the first appeal filed by the plaintiff before the II Additional Sub Court, Tiruchirappalli in the Appeal Suit No. 173 of 2014, by its Judgment and decree dated 19.05.2017 has rightly



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confirmed the findings of the trial Court by dismissing the first appeal filed by the plaintiff. The substantial questions of law raised by the plaintiff in the grounds of this second appeal have already been considered by the Courts below only in accordance with law. Since the plaintiff has not produced any iota of evidence to substantiate his claim that the suit schedule property was purchased out of joint family funds, the Courts below have rightly dismissed the suit and appeal, based on the oral and documentary evidence available on record. There are no debatable issues of fact or law involved, which requires further consideration of this Court under Section 100 of C.P.C. There is no merit in this second appeal and accordingly, this Second Appeal is dismissed. There shall be no order as to costs.

29.03.2023

Index : Yes / No
NCC : Yes / No
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TO:

- 1.The II Additional Subordinate Judge, Trichirappalli.
- 2.The District Munsif, Musiri.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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ABDUL QUDDHOSE, J.

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Judgment made in
S.A.(MD)No.217 of 2022

Dated:
29.03.2023