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S.A.No.467 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

S.A.No.467 of 2024
and CMP.No.14390 of 2024

Palanisamy ... Appellant

Vs.

1.Pushpa

2.Chinnaponnu

3.Lakshmi

4.Sellamal

5.Shanthi ... Respondents

PRAYER:--

This Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree dated 23.08.2023 made in A.S.No.48 of 2019 on the file of the I Additional District Judge, Salem confirming the judgment and decree dated 04.02.2019 made in O.S.No.357 of 2012 on the file of the I Additional Subordinate Court, Salem by allowing the present Second Appeal.

For Appellant : Mr.T.Balaji

For R1 to R5 : Mr.T.S.Vijaya Raghavan

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JUDGMENT

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This Second Appeal is filed to set aside the Judgment and Decree dated 23.08.2023 made in A.S.No.48 of 2019 on the file of the 1st Additional District Judge, Salem confirming the judgment and decree dated 04.02.2019 made in O.S.No.357 of 2012 on the file of the I Additional Subordinate Court, Salem by allowing the present Second Appeal.

2.The Second Appeal arises out of a suit filed by the plaintiffs for partition and separate possession. The second appeal is filed by the second defendant against the concurrent Judgment of the lower appellate Court.

3.The parties will be referred to as per their litigative rank in the trial Court.

4.The short facts leading to the second appeal are as follows:

The plaintiffs and the defendants 3 and 4 are sisters. The second defendant is the brother of the plaintiff. The first defendant is the father of the plaintiffs and the defendants 2 to 4. According to the plaintiffs, the first defendant was holding ancestral properties and the same were acquired for Salem Steel Plant in 1973.



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According to the plaintiffs, out of the compensation amount paid to the first defendant the suit property was purchased by the first defendant on 22.01.1975. The plaintiffs and the defendants constituted a joint Hindu family and they were enjoying the property in common. As differences arose between them, the plaintiffs filed the suit for partition of their 3/7 share in the suit property.

5.The first defendant filed the written statement and the same was adopted by the second defendant. The defendants admitted the relationship between the parties. The defendants denied that the suit property was purchased out of the compensation amount received from the Government, for acquisition of the ancestral properties. The first defendant contended that the suit property was his self acquired property he having purchased the same from out of his own earnings as a bullock cart rider for selling lime stone and other agricultural activities. According to the defendants, the plaintiffs were married long back and at no point of time the plaintiffs constituted a joint family with the defendants 1 and 2. The first defendant contended that as the suit property was his absolute property, he executed a gift deed on 28.09.2012 in favour of the second defendant and the second defendant was living in the suit property along with his family including the first defendant by constructing a tiled and terraced house. The defendants contended that the first defendant's wife and the



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mother of the plaintiffs and the defendants 2, 3 and 4 left the matrimonial home and filed a suit against the first defendant for partition. The defendants contended that the plaintiffs were not entitled to the relief of the partition, as the suit property was a self acquired property of the 1st defendant.

6.The first plaintiff examined herself as P.W.1 and marked Ex.A1 to Ex.A6. The second defendant examined himself as DW1 and Ex.B1 to Ex.B4 were marked through him. The defendant examined one Govindaraj and through him Ex.B5 and Ex.B6 were marked. The trial Court framed two issues and on appreciation of the oral and documentary evidence on record found that the suit property was not the self acquired property of the first defendant, but it was purchased out of the joint family nucleus in the form of compensation awarded by the Government for acquisition of the ancestral lands. The trial Court disbelieved the contention of the defendants that the suit property was purchased from and out of the earnings of the first defendant from bullock cart riding for selling lime stone and other agricultural activities. The trial Court found that Ex.B3 i.e. Judgment dated 26.04.2016 in O.S.No.176 of 2013 for partition filed by the plaintiffs mother against the first defendant would have no bearing on the present suit, as the said suit was dismissed on different grounds. The trial Court also held that because the plaintiff's mother was non-suited it did not bar



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the plaintiffs from filing the suit for partition. On the settlement Deed, the trial Court held that the same was hit by Section 52 of Transfer of Property act as the same was executed during the pendency of the suit. On the aforesaid reasons, the trial Court decreed the suit for partition of the plaintiffs 1/7 share each in the suit properties.

7. Aggrieved by the Judgment and Decree of the trial Court, the defendants 1 and 2 filed an appeal in A.S.No.49 of 2015 before the I Additional District Judge, Salem. The lower appellate Court by an elaborate Judgment and Decree dated 23.08.2023 dismissed the appeal and confirmed the Judgment and Decree dated 04.02.2019 of the trial Court. The lower appellate Court found that the suit property was an ancestral property and that the defendants failed to prove that it was purchased out of the earnings of the first defendant. The lower appellate Court further found that the defendants failed to prove that the amount received as compensation for acquisition of the first defendant's ancestral property was applied for the marriage expenses of the plaintiffs and defendants 3 and 4. The lower appellate Court on its finding that the suit property was purchased out of the compensation received on acquisition of the ancestral properties dismissed the appeal. Aggrieved by the Judgment and Decree of the lower appellate Court, the defendants filed the above second appeal.



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7. At the time of admission, the learned counsel for the appellant submitted that the lower appellate Court erred in relying on Ex.A6 dated 01.08.1970 for its finding that the suit property was purchased out of the compensation paid for acquisition of the first defendant's ancestral properties. The learned counsel further submitted that the lower appellate Court failed to note that the suit property was purchased by the first defendant from and out of his own earnings and therefore, the suit property was a self acquired property. The learned counsel further relying on the Judgment in O.S.No.176 of 2013 submitted that the plaintiffs present suit was not maintainable, as the aforesaid suit for partition filed by the wife of the first defendant i.e. the mother of the plaintiffs and defendants 2, 3 and 4 was dismissed.

8. I have heard both the learned counsels and I have perused the materials on record.

9. The plaintiffs, who are the daughters of the first defendant filed the suit for partition against the first defendant, who is their father, second defendant, their brother and the defendants 3 and 4 their sisters. The simple case of the plaintiffs was that the first defendant purchased the suit property from and out of the compensation



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awarded to him for acquisition of his ancestral properties. According to the plaintiffs as the suit property was purchased from out of the compensation received from acquisition of ancestral properties, the same partook the character of ancestral properties and hence they were entitled to a share in the same.

10.The case of the defendants on the other hand was that the property was not purchased out of the ancestral funds, but it was a self acquisition of the first defendant. The first defendant purchased the same from and out of his own earnings. As the plaintiffs filed the suit for partition, the burden is on the plaintiffs not only to establish the existence of the joint family property but also that the income from the same was sufficient for the purchase of the suit property. The plaintiffs in order to establish that there were joint family properties and income was also derived from the same produced Ex.A6, which is the award passed by the Land Acquisition Officer and Special Deputy Collector in award No.12/1973 dated 01.08.1973, for acquisition of the ancestral properties in S.Nos.23 and 24 of Vattamuthampatti Village in Annexure 'B' of Ex.A6. From Ex.A6 it is seen that compensation of Rs.95,504.45/- was awarded for acquisition of the aforesaid lands and towards the 1st defendant's share a sum of Rs.18,299.80/- was awarded. The fact that the ancestral property was acquired and compensation was also awarded was admitted by the first defendant in Ex.A3, the



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reply notice sent by him to the plaintiffs legal notice. Therefore, from Ex.A3 and Ex.A6, it is clear that the first defendant was possessed of ancestral properties and he was also awarded compensation of Rs.18,299.80/- for acquisition of the same towards his share. It is pertinent to note that the suit property was purchased within 17 months of the award passed in the acquisition proceedings. The plaintiffs having established that the first defendant received compensation for acquisition of the ancestral properties, the burden shifted on the defendants to prove that the suit property was not purchased from and out of the compensation amount. The first defendant stated that the compensation amount was spent for the marriage expenses, jewels and seervarisai for his 5 daughters. The Courts below disbelieved the said explanation because the daughters were not in marriageable age at the relevant point of time. Further absolutely no evidence was let in by the defendants to show that the first defendant had independent income, apart from the income from the ancestral properties. As the findings of the Courts below are based on proper appreciation of the evidence on record, I see no justifiable reasons to interfere with the same.

11.I find that no substantial questions of law raise for consideration in the second appeal and hence the same is dismissed at the admission stage itself. However, there shall be no order as to costs. Consequently, the connected



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miscellaneous petition stands closed.

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NCC : Yes /No

Index : Yes / No

Speaking Order / Non-speaking order

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To

1.The I Additional District Judge,
Salem.

2.The I Additional Subordinate Court,
Salem.

3.The Section Officer,
Vernacular Records,
High Court,
Madras.

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N.MALA, J.

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