



S.A.No.361 of 2021

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 20.06.2024

CORAM

THE HONOURABLE **MR. JUSTICE ABDUL QUDDHOSE**

S.A.No.361 of 2021

Rathinavelu

.. Appellant

Vs

1.Chinnaiah Gounder

2.Sellammal

3.Boobathy

.. Respondents

Prayer: This Appeal is filed under Section 100 CPC against the judgment and decree dated 17.12.2020 passed in A.S.No.76 of 2019 on the file of the I Additional Subordinate Judge, Salem, confirming the judgment and decree passed by the II Additional District Munsif, Salem, in O.S.No.266 of 2012, dated 23.04.2019.

For Appellant

: Mr.R.Nalliyappan

For Respondents

: Mr.A.Arivazhagan



S.A.No.361 of 2021

JUDGMENT

This second appeal has been filed challenging the concurrent findings of the Courts below.

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2. In the suit, the appellant herein is the plaintiff and the respondents herein are the defendants. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

3. The first defendant is the father of the plaintiff; the second defendant is the sister of the plaintiff; and the third defendant is the son of the second defendant.

4. The plaintiff claims that the suit schedule property is a joint family property. Eventhough the suit schedule property was purchased by the first defendant in his name under the sale deed dated 05.07.1958, according to the plaintiff, out of the joint family income arising out of the sale of two properties under the sale deeds dated 09.07.1952 and 02.07.1958, the suit schedule property was purchased in the name of the first defendant under the sale deed dated 05.07.1958.



S.A.No.361 of 2021

5. The contention of the plaintiff has been disputed by the defendants as seen from the written statement. They have categorically pleaded that the suit schedule property is a self acquired property of the first defendant and that the plaintiff has no legal right over the same.

6. The Trial Court, based on the pleadings of the respective parties, framed the following issues:-

(i) Whether the plaintiff is entitled to get permanent injunction against the defendants? If yes,

(ii) What are the other reliefs the plaintiff is entitled for?

(iii) Whether the plaintiff is entitled for declaration that the suit property belongs to him absolutely?

7. Before the Trial Court, the plaintiff has filed 13 documents, which were marked as Exs.A1 to A13; and two witnesses were examined, namely, the plaintiff himself as PW1 and one Mr.Muthaiyalu as PW2.

On the side of the defendants, three documents were filed, which were



S.A.No.361 of 2021

marked as Exs.B1 to B3; and the first defendant himself was examined as DW1. Suit summons issued to the defendants in O.S.No.266 of 2012 was marked as Ex.C1.

8. The Trial Court, while rejecting the claim of the plaintiff, held that the plaintiff has not produced any evidence to prove that the suit schedule property was purchased by the first defendant out of the joint family income, that had arisen by sale of two properties under the sale deed dated 09.07.1952 (Ex.A6) and sale deed dated 02.07.1958 (Ex.A7). The Trial Court has also given a finding that the oral partition claimed by the plaintiff 25 years back allegedly allotting the suit property to the plaintiff was not proved. Excepting for filing kist receipts and house tax receipts, the other documents filed by the plaintiff, which were marked as exhibits, do not stand in the name of the plaintiff. Only based on the evidence available on record, the Trial Court has come to the right conclusion that the plaintiff is not entitled for declarative and injunction relief as prayed for in the suit.

9. Aggrieved by the findings of the Trial Court, the plaintiff has filed first appeal before the I Additional Sub-Court, Salem, in A.S.No.76



S.A.No.361 of 2021

of 2019. The Lower Appellate Court has also rightly confirmed the findings of the Trial Court by dismissing the appeal by its judgment and decree dated 17.12.2020 passed in A.S.No.76 of 2019. Aggrieved by the concurrent findings of the Courts below, the present second appeal has been filed by the plaintiff in the suit.

10. This Court had admitted the second appeal on 07.09.2021 by formulating the following substantial questions of law:-

a) Whether the plaintiff is not entitled for the relief of declaration especially when the suit properties stand in the name of the defendant?

b) Whether house tax receipts, electricity bill, kist receipts and certificate issued by the Village Administrative Officer would establish the factum of oral partition followed by separate possession of the plaintiff?

c) Whether mere sale deed is enough to hold the title of the defendant is good, especially when there are evidence that the properties which are subject matter of the said sale deed has been purchased from the income of the joint family property?



S.A.No.361 of 2021

11. It is undoubtedly clear from the evidence available on record, as rightly held by the Courts below, that the plaintiff has not proved through oral and documentary evidence that only out of the joint family income, that arose out of the sale of two properties under the sale deed dated 09.07.1952 (Ex.A6) and sale deed dated 02.07.1958(Ex.A7), the suit schedule property was purchased by the first defendant under the sale deed dated 05.07.1958 (Ex.B1).

12. Admittedly, the property under the sale deed dated 05.07.1958 (Ex.B1), which is the suit schedule property, was purchased only in the name of the first defendant. Excepting for filing kist receipts and house tax receipts, there is no other documentary evidence to prove that there was a oral partition, by which, the suit schedule property was allotted to the plaintiff 25 years back. This Court is of the considered view that both the Courts below, only based on the evidence available on record, have come to the right conclusion that the plaintiff is not entitled for the declarative and injunction relief as sought for in the plaint.

13. For the foregoing reasons, the substantial questions of law formulated by this Court are answered against the plaintiff by holding



S.A.No.361 of 2021

that based on the evidence available on record, both the Courts below have rightly come to the conclusion that the plaintiff is not entitled for the declaratory and injunction relief as sought for in the plaint. In the result, there is no merit in the second appeal and accordingly, the second appeal is dismissed. No Costs.

20.06.2024

Index: yes/no
Neutral citation: yes/no
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To

1.II Additional District Munsif Court,
Salem.

2.I Additional Sub-Court,
Salem.

ABDUL QUDDHOSE,J.

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S.A.No.361 of 2021

S.A.No.361 of 2021

20.06.2024