



S.A.No.348 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Second Appeal No.348 of 2012
and
Miscellaneous Petition No.1 of 2012

Muthusamy

... Appellant

Vs.

1. Vijaya
2. Kanaga

... Respondents

Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and the decree dated 28.10.2011 passed in A.S.No.18 of 2010, on the file of the Additional District Court, (Fast Track Court No.II), Salem, confirming the Judgment and Decree dated 30.10.2009 passed in O.S.No.428 of 1999 on the file of the Subordinate Court, Mettur.

For Appellant : Mr. P. Mani

For Respondents : Mr. P.Jagadeesan



S.A.No.348 of 2012

JUDGMENT

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This Second Appeal filed by the second defendant in the suit. The plaintiffs are his sisters. The first defendant is their mother. The Trial Court has decreed the suit for partition as claimed by the plaintiffs and confirmed by the Lower Appellate Court and finding of both the Courts are challenged herein.

2. For the sake of convenience the parties are referred as per their ranking before the Trial Court.

3. According to the plaintiffs, the suit properties were separate properties of their father purchased from his own income, he was in possession and enjoyment of the same. After his death, the suit properties were devolved on the plaintiffs and defendants. Both the plaintiffs are entitled for 1/4 share each. Since, the defendants have refused to provide any share in the suit property, they have come forward with the suit for partition.

4. The first defendant filed written statement supporting the case of the plaintiffs and she had also reported that, she has executed a Settlement deed



S.A.No.348 of 2012

on 17.11.1995 in favour of plaintiffs. She has also stated that the second defendant is not taking care of the first defendant and her husband.

5. The second defendant filed separate written statement and contended that the suit properties are the ancestral properties and the Settlement deed is executed in favour of the plaintiffs is not acted upon and the plaintiffs are not entitled for possession. He further stated that the plaintiffs have been given sufficient money and marriage expenses hence, they cannot claim for share in the plaintiffs.

6. Based on the pleadings, the Trial Court has framed the following issues.

“1. Whether the plaintiffs are entitled for partition as prayed for in the plaint?

2. Whether the plaintiffs are entitled for permanent injunction as alleged in the plaint that the 2nd defendant restraining from alienating or encumbering the suit properties?

3. To what relief the plaintiffs are entitled to?



S.A.No.348 of 2012

WEB COPY

Additional Issues:

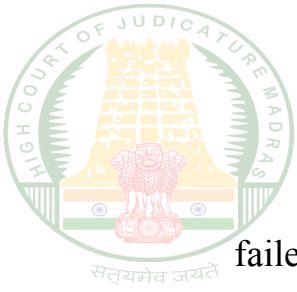
1. Whether the suit properties are the ancestral properties of the plaintiffs and defendants?

Additional Issues:

1. Whether the alleged settlement deed dated 17.11.1995 alleged to have been executed by 1st defendant is true and valid?"

7. After considering the evidence adduced on both sides, the Trial Court has taken a view that, since Title deeds of suit property stands in the name of the plaintiffs father and there is no evidence to show that the properties are ancestral properties in the hands of the plaintiffs father, decreed the suit in favour of the plaintiffs.

8. Aggrieved over the same, the second defendant has filed the appeal before the Lower Appellate Court and contended that the Trial Court has



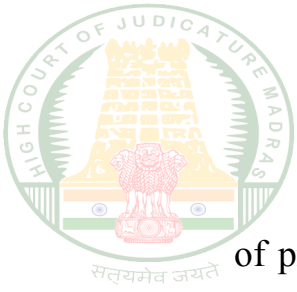
S.A.No.348 of 2012

WEB COPY

failed to appreciate the evidence of P.W.3 who stated about the sale of ancestral properties and purchase of the suit properties. This was not accepted by the Lower Appellate Court and after accepting the evidence of the plaintiffs as well as the first defendant, who was examined as D.W.1, dismissed the appeal and confirmed the judgement of the Trial Court.

9. Aggrieved over the same, the Second Appeal has been filed by the appellant on the ground that, both the Courts have shifted the burden of proving the nature of properties wrongly on the second defendant and also evidence of D.W.3 was misread by both the Courts below. For the purpose of admission of this Second Appeal, notice was ordered to the respondents and both sides heard.

10. The learned counsel for the appellant submit that the evidence of D.W.3 was totally brushed aside by both the Courts and there is also evidence to the effect that the plaintiffs father was a labourer, earning meagre income and by using such income, there is no possibility of purchasing the suit properties. The plaintiffs have failed to prove the nature



S.A.No.348 of 2012

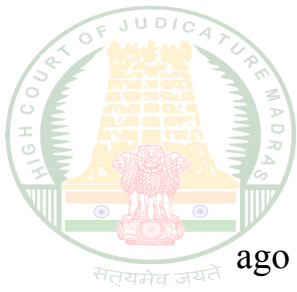
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of properties and both Courts wrongly shifted the burden of proving nature of properties on defendant No.2 and thereby, prays to set aside the Judgment and decree of Courts below.

11. Per contra, the learned counsel for the respondents/plaintiffs submitted that, both Courts below have appreciated the evidence placed on record and after proper appreciation concurrently held against the defendants. There is no substantial question of law involved in this Second Appeal and the appellant herein seeking re-appreciation of evidence which is not permissible at this stage and prays to dismiss the appeal.

12. I have considered the submissions made on both sides and also perused the records.

13. It is the admitted case of the parties that the Sale deeds dated 26.12.1951 and 25.06.1945 through which, first and second item of the properties respectively, purchased by the plaintiffs father. According to the plaintiffs that their father was owned two bullock carts as early as 60 years



S.A.No.348 of 2012

ago and he was earning income using these carts. Through this income, he had purchased suit properties.

14. By relying on evidence of D.W.2, defendant No.2 claims that, there was ancestral properties in the lands of their father. After selling the ancestral property, the suit properties were partitioned in the name of his father. The first defendant in her evidence has also stated that the plaintiffs father was also worked as labourer, he has purchased the properties and both the Courts have accepted the evidence adduced on both sides and concurrently held that, the properties are only self-acquired properties of the plaintiffs father. It was also elicited from the cross examination of D.W.2 that, the ancestral properties claimed to be only a small house situated in Natham and no evidence regarding the sale of said house was also produced to support the case of the defendants. There is also no evidence to show that their father was having any income earned from ancestral properties, to form nucleus to the joint family property. The only income earned by the plaintiff's father is income earned by his own labour.



S.A.No.348 of 2012

WEB COPY

15. As discussed in earlier paragraphs, both the Courts have rightly held that the burden of proving the ancestral nature of the suit properties is on the defendant No.2 and in this case, he failed to discharge the same and accordingly, both the Courts have rightly held that the second defendant failed to prove his burden of proving the ancestral nature of suit property. At the same time, both the Courts have also rightly held that the properties stand in the name of the plaintiffs father was self-acquired property.

16. In the said circumstances, this Court is not inclined to interfere with the concurrent findings of both the Courts. Similarly, the issue regarding the settlement was also decided by both the Courts herein stating that based on the admission given by the first defendant regarding the execution of the Settlement deed and the same has been decided as one of the issues by both the Courts. Since the suit properties are self acquired properties of the plaintiffs father and on his death 1/4 of the share was devolved on the first defendant and who is entitled to gift her share in favour of any person.



S.A.No.348 of 2012

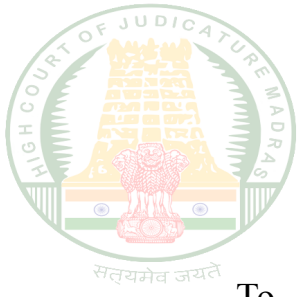
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17. In this case, defendant No.1 has executed the settlement deed in favour of the plaintiffs and accordingly, both the Courts have accepted validity and execution of the Settlement deed, accordingly, declared that they are entitled 3/4 share of the properties. This Court finds there is no substantial question of law raised in this appeal and the same is liable to be dismissed.

18. In the result, this Second Appeal is dismissed. The judgement and Decree dated 28.10.2011 passed in A.S.No.18 of 2010, on the file of the Additional District Court, (Fast Track Court No.II), Salem, confirming the Judgment and Decree dated 30.10.2009 passed in O.S.No.428 of 1999 on the file of the Subordinate Court, Mettur is hereby confirmed. There shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

26.09.2024

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Index : Yes / No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No



S.A.No.348 of 2012

To
WEB COPY

1. The Subordinate Judge,
Mettur.
2. The Additional District and Sessions Judge,
Fast Track Court-II, District Judge, Salem.
3. The Section Officer,
VR Section,
High Court of Madras.

K.RAJASEKAR,J.,

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S.A.No.348 of 2012

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S.A.No.348 of 2012

26.09.2024