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S.A.No.1083 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.1083 of 2013

and

M.P.No.1 of 2013

Ijavudeen

.. Appellant

Vs.

1.Nazimudeen

Represented by Power Agent,
J.Ismail

2.The Sub-Registrar,

Kullanchavadi,
having office at Kullanchavadi,
Kurinjipadi Taluk,
Cuddalore District

.. Respondents

(R1 Nazimudeen
represented by
Power Agent
J.Ismail vide Court
order, dated
20.02.2024 made
in C.M.P.No.1497
of 2022 in
S.A.No.1083 of
2013 by VLNJ)



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Prayer : The Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree of the Additional District and Sessions Court – I, Cuddalore, dated 25.07.2012 passed in A.S.No.90 of 2011 dismissing the appeal, confirming the judgment and decree of the learned I Additional Subordinate Judge of Cuddalore, dated 29.11.2011 passed in O.S.No.248 of 2010.

For Appellant : Mr.R.Gururaj

For R1 : Ms.S.R.Sumathy

For R2 : Mr.B.Tamil Nidhi
Additional Government Pleader

JUDGMENT

The present Second Appeal arises out of the judgment and decree of the Court of the learned I Additional District and Sessions Judge at Cuddalore in A.S.No.90 of 2011, dated 25.07.2012 in confirming the judgment and decree of the Court of the learned I Additional Subordinate Judge at Cuddalore in O.S.No.248 of 2010, dated 29.11.2011.

2. O.S.No.248 of 2010 is a suit for partition and separate possession of half share of the plaintiff and for consequential orders.



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3. The case of the plaintiff is that he is the younger brother of the 1st defendant. The 1st defendant and himself were employed in Dubai in tailoring business. From the amounts earned by both of them in Dubai, the amounts were sent to India by which the suit property was purchased in the name of the 1st defendant. According to the plaintiff, at all point of time, the property was treated as a joint property owned by the plaintiff and the 1st defendant. Since it was a joint acquisition, the plaintiff filed the suit for partition.

4. On entering appearance, the 1st defendant filed a written statement stating that the suit property was purchased on 12.07.2002 for a sale consideration of Rs.58,500/- from and out of his own funds. He would state that the proof of payment is found by the amounts in the State Bank of India, Kullanchavadi Branch in the accounts in his name.

5. He further pleaded that he had constructed a house over the suit property and had obtained revenue records in his favour. He denied the fact that till the death of their mother, the plaintiff, 1st defendant and their mother were all residing together. He would state that he was residing separately in the suit schedule property along with his wife/Fathima. He



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claimed to be in exclusive possession of the property and pleaded for dismissal of the suit.

6. On the basis of these pleadings, the learned Trial Judge framed the following issues :

“ 1. வழக்குச் சொத்தினை சரிநல இளப்பத்துடன் இரு பாகமிட்டு அதில் ஒரு பாகத்தை வாதி பெறுவதற்கு அருகரா ?

2. வாதிக்கு கிடைக்கக்கூடிய இதர பரிகாரங்கள் என்ன ? ”

7. On the side of the plaintiff, he examined himself as P.W.1 and four other witnesses to substantiate his claim. On the side of the defendants, the 1st defendant examined himself as D.W.1 and one other witness to defeat the claim of the plaintiff. On the side of the plaintiff Ex.A1 to Ex.A13 were marked and on the side of the defendants, Ex.B1 to Ex.B8 were marked.

8. Considering the oral and documentary evidence let in before the



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Court, the learned Judge came to a conclusion that the plaintiff had not proved his claim and thereby, dismissed the suit.

9. Aggrieved by the same, a regular appeal was preferred before the learned I Additional District and Sessions Judge at Cuddalore in A.S.No.90 of 2011. The learned Appellate Judge in and by way of his judgment, dated 25.07.2012 confirmed the order of dismissal.

10. Aggrieved by the same, the present Second Appeal has been filed before this Court.

11. This Court did not admit the appeal but had ordered notice regarding admission on 22.11.2013. Today, the matter is listed before me for admission.

12. Mr.R.Gururaj, learned counsel for the appellant would submit that the Courts below had failed to appreciate that the burden of proof is on the defendants and not on the plaintiff. He would state that there was sufficient evidence produced by the plaintiff in order to substantiate that he had transferred moneys for the purpose of constructing the house. He



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would also plead that the 1st defendant has not let in any evidence in order to prove that he had sufficient funds for the purpose of construction. Therefore, he would seek for interference at the hands of this Court.

13. Ms.S.R.Sumathi, learned counsel for the 1st respondent would submit that when the plaintiff comes up with a case that the property is liable to be partitioned as he has contributed to the same, the burden is on him to prove his contribution. She would plead that as per Ex.B5, her client had produced sufficient evidence to substantiate the income, based on which, the property had been purchased. She would plead that being a concurrent finding, this Court should not interfere with the finding of facts of the Courts below and therefore, she would plead that the appeal should not be admitted.

14. I have carefully considered the arguments on either side.

15. The suit is one for a partition. The sale deed admittedly stands on the name of the 1st defendant. Therefore, the burden lies on the plaintiff to prove that he had contributed to the purchase of the property. I



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am hasten to add that I am not going into the issue of bar of the suit by virtue of the Benami Transactions (Prohibition) Act, 1988 since the plea was raised neither before the Trial Court nor before the first Appellate Court.

16. Regards this issue, the plaintiff relies upon Ex.A12 for the purpose of showing that he had contributed funds to the 1st defendant to purchase the property. Per contra, the 1st defendant has filed Ex.B5 in order to show that he had sufficient funds in his account in the State Bank of India, Kullanchavadi Branch for the purpose of purchase of the property.

17. The plaintiff not having discharged the burden to show his contribution for the purchase of the property and the 1st defendant having shown that he had sufficient funds for purchasing the property in his own name and the sale deed having been registered in the name of the 1st defendant, I am afraid I am not in a position to accept the plea of Mr.R.Gururaj.



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18. The Courts below had properly appreciated that the burden of proof is on the plaintiff and for having failed to prove that the purchase made by the 1st defendant was from the contribution by the plaintiff. They have rightly dismissed the suit for partition.

19. The questions of law suggested by Mr.R.Gururaj do not arise for consideration in this appeal. Consequently, I am not admitting the Second Appeal. The Second Appeal is dismissed.

20. Considering the close relationship between the parties, this Court is not inclined to impose any costs. The connected Miscellaneous Petition is closed.

04.03.2024

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
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V. LAKSHMINARAYANAN, J.

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To

- 1.The Additional District and Sessions Court – I,
Cuddalore
- 2.The I Additional Subordinate Judge,
Cuddalore

S.A.No.1083 of 2013
and
M.P.No.1 of 2013

04.03.2024