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S.A.No.1359 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.1359 of 2013 &

M.P.No.1 of 2013

Gajalakshmi

... Appellant

(Appellants 5 to 8 brought on record as LRs of the deceased first appellant vide order of this Court dated 30.11.2021 made in CMP.Nos.13885 to 13887 of 2018)

vs.

1.S.Saravanan

2.S.Jagathish

3.S.Babu

... Respondents

PRAYER: Second Appeal filed under Section 100 of CPC to set aside the Judgment and Decree dated 26.06.2013 passed in A.S.No.25 of 2012 on the file of the learned Sub Court, Arani reversing the Judgment and Decree dated 12.01.2011 in O.S.No.85 of 2007 on the file of the District Munsif Court,



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For Appellant : Mr.P.Santhosh,
for Mr.K.Govi Ganesan

For Respondent 1 : No appearance

For respondent 3 : Mr.C.Prakasam

Respondent 2 – Notice dispensed with

JUDGMENT

The present second appeal arises against the Judgment and Decree of the court of Subordinate Judge at Arani in A.S.No.149 of 2007 dated 26.06.2013 in reversing the judgment and decree of the learned District Munsif, Arani in O.S.No.85 of 2007 dated 12.01.2011. By the said Judgment and Decree, the learned Subordinate Judge allowed the appeal and dismissed the suit for partition.

2. This second appeal came up for admission on 19.12.2013 and was admitted on the following substantial questions of law:

1. When the defendants have not specifically denied the pleas that the suit properties are ancestral in



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nature and thereby virtually admitted the said plea is it just and correct on the part of the lower Appellate Court to non-suit the plaintiff?

2. When the children were already born at the time of execution of Ex.A1 Partition Deed and when they had the right by birth whether Section 8 of the Hindu Succession Act is applicable as found by the Appellate Court for negating the claim of the plaintiff? ”

3. Heard Mr.P.Santhosh, learned counsel representing Mr.K.Govi Ganesan, learned counsel for the Appellant and Mr.C.Prakasam, learned counsel for the third respondent.

4. For the sake of convenience, the parties will be referred to as their ranks in the suit.

5. The plaintiff is the Appellant. She presented a suit for partition against her father, brothers and the subsequent purchaser of the property from her father and brothers. One Sriramalu i.e., the first defendant



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purchased the suit schedule mentioned property on 07.02.1973.

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Subsequently, he purchased six cents in the same survey number on 11.05.1978. The purchase made on 07.02.1973 was one made in common with the first defendant and his then minor brothers. The first defendant and his brothers entered into partition deed on 12.06.1996 whereby the suit schedule mentioned property and the property purchased on 11.05.1978 fell to the share of the first defendant/Sriramalu. Sriramalu settled the property which he purchased on 11.05.1978 in favour of his sister's son. This property is not the subject matter of the present suit. Insofar as the subject matter of the present suit is concerned, the first defendant sold the property to the fourth defendant by way of a registered document dated 05.07.2004 under Ex.B7.

6. Treating the purchase dated 07.02.1973 as one which belongs to the joint family of the first defendant, the present suit came to be filed.

7. The learned trial judge construed the partition document dated



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12.06.1996 as one which is creating the joint family and granted the decree.

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This was reversed by the lower appellate court holding that it is the self-acquisition of the first defendant and therefore, not a subject matter of partition.

8. In the present case, no evidence has been let in by the plaintiff in order to prove that there was joint family nucleus for the first defendant/Sriramalu. It is too well settled that even if there is a joint family property of the first defendant, it is the duty of the plaintiff to prove that the nucleus that was available was in excess enabling the Karta to purchase additional property from the joint family funds. When proof of joint family itself is not available, the question of probing into availability of nucleus does not arise.

9. In this particular case, from Ex.A1 dated 12.06.1996, it is clear that Sriramalu and his brothers divided the property which was purchased by



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Sriramalu amongst themselves. This does not create a joint family. Sriramalu out of love and affection for his brothers had included them in the purchase made by him on 07.02.1973. This does not make the property, which is self acquisition, a joint family property. If the property is not a joint family property, the plaintiff does not have a right over the same. It is always open to the purchaser of the property, which is self-acquired, to alienate the property to anyone. It was in exercise of that right that Sriramalu alienated the property in favour of the fourth defendant. Therefore, the purchase made by the fourth defendant of the seven cents which is the subject matter of the suit are a transfer of self acquisition made by the father in favour of a third party. In such a transaction, neither the sons nor the daughters will have the right.

10 Consequently, for the aforesaid reasons, I answer the substantial questions of law against the Appellant. Accordingly, **the second appeal is dismissed** not for the reasons given by the lower appellate court, but on the reasons set forth above. The judgment and decree of the lower appellate court



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in A.S.No.25 of 2012 dated 26.06.2013 is confirmed and the suit in

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O.S.No.85 of 2007 on the file of the learned District Munsif, Arani at shall stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

To

1.The Sub Court, Arani

2.The District Munsif Court, Arani



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V.LAKSHMINARAYANAN, J.

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