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S.A. No.728 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No.728 of 2024

and

C.M.P.No.23814 of 2024

P.Athmaram Achari (died)

A.Balachandar (died)

1. A.Chandrasekaran
2. V.Hemalatha
3. A.Thirunavukkarasu
4. A.Damodaran

... Appellants

Vs.

1. T.K.Lakshmi
2. Pushpavalli
3. Kasthuri
4. K.Harikumar
5. K.Balaji
6. Samundeeswari
7. K.Sundar
8. B.Suguna

.. Respondents



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PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 27.11.2023 made in A.S.No.36 of 2019 on the file of Subordinate Judge, Arakkonam confirming the judgment and decree dated 20.06.2019 passed in O.S.No.36 of 2011 on the file of District Munsif Court, Arakkonam.

For Appellants : Mr.N.Krishna Kumar

JUDGMENT

The appellants, who are the legal heirs of 2nd defendant have preferred this Second Appeal. Challenging the concurrent findings of the courts below rendered in A.S.No. 36 of 2019 by the Subordinate Judge, Arakkonam arising out of trial court findings in O.S.No.36 of 2011 on the file of District Munsif Court, Arakkonam, this Second Appeal was preferred by legal heirs of 2nd defendant.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.



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3. Before the trial court, the plaintiff filed a suit for partition praying to allot 1/4th share in the suit property stating that entire suit property belongs to one Parasuraman Achari, who purchased the same by way of registered sale deed dated 07.07.1960 and so, the same is his self-acquired property. Thereafter, he died on 17.03.1999 leaving behind his two sons and two daughters. The 2nd daughter, who filed a suit claiming partition against the defendants and legal heirs of another son Krishnamoorthy. The 2nd defendant, another son of Parasuraman Achari filed a written statement stating that all the legal heirs have orally relinquished their respective share in his favour, thereby he possessed and enjoyed the property and a oral partition was also pleaded. Before the trial court, both parties have adduced oral and documentary evidence. The trial court framed three issues and the foremost issue is whether the plaintiff is entitled for 1/4th share in the suit property based on the sale deed. On considering both oral and documentary evidence, the trial court decreed the suit holding that the suit property is a self-acquired property, wherein she is entitled for 1/4th share. In respect of oral partition, as per the ratio laid down in the authority reported in **2017 (2) MWN (Civil) 241**, in the case of *Chithra vs. Saroja and others*, the



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trial court held that the burden is casted upon the 2nd defendant to prove the plea of oral partition, but the same was not proved by adducing any evidence. Therefore, the objection raised by the defendants declined. Accordingly, the suit was decreed by allotting 1/4th share in favour of plaintiff. Challenging the same, the defendants preferred an appeal in A.S.No. 36 of 2019 before the Subordinate Judge, Arakkonam, wherein the first appellate judge independently analysed the facts and evidence on record and finally concludes that the suit property is a self-acquired property of plaintiff's father, but the defendants failed to prove their case. Accordingly, the appeal was dismissed by confirming the findings of the trial court. Challenging the concurrent findings, the legal heirs of 2nd defendant preferred this Second Appeal.

4. The learned counsel for appellants would submit that the courts below ailed to take note of the fact that in the oral partition, the suit property was allotted to appellants' father Athmaram Achari and subsequent to that, he was in possession and enjoyment of the same. Furthermore, though the same was proved by producing house tax receipts, the courts below failed to appreciate the same. So, he pleaded that sufficient question



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of law was involved for consideration and hence, he prayed to admit this

Second Appeal on the following question of law :-

(a) Is the lower appellate court justified in decreeing the suit for partition when the 1st respondent relinquished her right to file Suit under Art. 110 of Limitation Act?

(2) Is the courts below are justify in decree the suit by partition granting 1/4th share to the 1st respondent over looking the evidence on record the appellants father is the absolute owner of suit property by oral partition coupled with his possession vide Ex.B1 and B2 and P.W.1?

5. Considering the facts and circumstances and on perusal of records, it reveals that the defendants pleaded the plea of ouster of co-sharer before the trial court. But there is no specific averment in respect of ouster of co-sharer, on the other hand, he also contended that there was a oral partition effected between the family members and the same was also not proved and same was rightly observed by the courts below, which needs no interference of this court. Admittedly, the suit property is a self-acquired property of plaintiff's father, in which she is entitled for 1/4th share and both



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the courts below have rightly arrived a conclusion, which needs no interference of this court. Furthermore, the learned counsel for appellants would submit that there is a house site in the suit property and admittedly, the entire extent of suit property is 3600 sq.ft., in which, the plaintiff is entitled to claim her exclusive right of 1/4th share. Hence, I do not find any merit in this Second Appeal as there is no question of law involved for consideration as claimed by the appellants. Accordingly, this Second Appeal is dismissed as no merit. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

28.10.2024

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp

To

Sub-Judge,
Arakkonam.



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T.V.THAMILSELVI, J.

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