



S.A. No.451 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2024

CORAM:

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

S.A. No.451 of 2024
and
C.M.P.No. 13722 of 2024

Selvaraj

... Appellant

Vs.

1. Pachaiyammal
2. Arumugam
3. Thangavel
4. Ramesh
5. Dhurai
6. Sasikumar

.. Respondents

PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.46 of 2021 dated 19.09.2023 on the file of I Addl. District Judge, Namakkal confirming the judgment and decree in O.S.No.50 of 2014 dated 26.11.2020 on the file of Sub-Judge, Rasipuram.



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For Appellant : No appearance
For Respondents : Mr.P.Mathivanan for R1
Mr. S.Thangavel for R2

JUDGMENT

The appellant, who is 2nd defendant in the suit in O.S.No.50 of 2014, which was filed by the 1st respondent/plaintiff seeking for the relief of partition claiming 1/3rd share in the suit property and other consequential relief and the same was decreed in favour of plaintiff. Against which, the 2nd defendant preferred an appeal in A.S.No.46 of 2021 on the file of I Addl. District Judge, Namakkal and the same was also dismissed confirming the findings of the trial court. Now, challenging the concurrent findings of courts below, the 2nd defendant preferred this Second Appeal.

2. Heard and considered the contentions of learned counsel for respondents 1 and 2 and perused the materials available on record.



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3. Before the trial court, the 1st respondent/plaintiff filed a suit seeking for the relief of partition claiming 1/3rd share in the suit property stating that the properties in item Nos. 1 to 4 is belong to Mariammal, her mother by way of purchase and the properties in item nos. 5 and 6 is belong to her father. Her mother died on 19.08.2003 intestate and subsequently, her father also died on 13.02.2009. So, the legal heirs, the plaintiff and defendants 1 and 2 are entitled 1/3rd share in the suit property. But, the defendants refused to give share. Hence, the suit was filed. Some of the property was leased out to tenants and 2nd defendant, brother of plaintiff received the rent. Though there was a relinquishment was pleaded on the side of plaintiff was not proved, finally the trial court held that it is a joint family property, but it was not proved. Hence, the trial court rejected the defence claimed by defendants and accordingly, 1/3rd share in the suit properties as well as measne profits was granted in favour of plaintiff. Against which, the 2nd defendant preferred an appeal in A.S.No. 46 of 2021 and the first appellate judge also confirmed the findings of trial judge by independently analysing the facts and evidence



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on record. Furthermore, the first appellate judge held that the oral partition was also not proved, since there is a contradiction on the defence taken on the side of defendants 1 and 2 and accordingly, dismissed the appeal by confirming the findings of trial judge. Challenging the said concurrent findings of the courts below, the 2nd defendant preferred this Second Appeal.

4. On perusal of records, it reveals that already the matter was referred for mediation, wherein, he is not cooperating to settle the issue. Today also, when the matter taken up for hearing, there is no representation on the side of appellant. As discussed above, before the trial court, the 2nd defendant/appellant has not proved the oral partition and also not established the property as it is a joint family property. Admittedly, item Nos.1 to 4 of suit properties belong to plaintiff's mother Mariammal and item Nos.5 and 6 of suit properties belong to his father. Both the properties are self-acquired properties, in which the plaintiff is entitled for 1/3rd share. Hence, I do not find any merit in this Second Appeal as there is no substantial question of law involved. Accordingly,



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this Second Appeal is dismissed as devoid of merit. No costs.

Consequently, connected Civil Miscellaneous Petition is closed.

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

To

I Addl. District Court,
Namakkal.



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T.V.THAMILSELVI, J.

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