



S.A.No.821 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2024

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.821 of 2017

1.Jayanthi
2.Vasanthi
3.Santhi
4.Chitra
5.Vimala

...Appellants

Vs.

1.Tmt.Selvi
2.S.Saravanan
3.Minor Gomathy
Minor by next friend mother/R1

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure to set aside the judgment and decree passed in A.S. No.65 of 2013 on the file of the II Additional District Judge, Salem, dated 15.04.2014 reversing the judgment and decree passed in O.S. No.115 of 2009 on the file of the Subordinate Judge, Mettur, dated 26.06.2013.

For Appellants : Mr.R.Babu



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S.A.No.821 of 2017

For Respondents : Mr.P.Jagadeesan
for R1 to R3

JUDGMENT

The unsuccessful plaintiffs are the appellants before me. The plaintiffs filed a suit in O.S. No.115 of 2009 seeking the relief of declaration that the suit property was a Hindu undivided Joint Family Property; to declare that the settlement deed dated 25.06.1993 executed by the first defendant in favour of the third defendant is null and void; for a permanent injunction to restrain defendants 1 to 3 from alienating or encumbering the suit property; and for a preliminary decree declaring the plaintiffs' 1/7th share in the suit property.

2. The suit was resisted by the defendants. The defendants 1 and 2 filed a written statement denying the plaintiffs' claims stating that the suit property was settled on the first and second defendants by registered settlement deeds dated 25.06.1993 and 12.03.2004 executed by the first defendant and that the plaintiffs were given 10 sovereigns of gold jewels each, apart from house hold Articles as sridhana, even



during the lifetime of the 1st wife of the 1st defendant and therefore, they were not entitled to any of the reliefs as prayed for.

3. The third defendant filed a written statement stating that the plaintiffs were not entitled to any share in the suit properties and also referred to the settlement deeds executed by the first defendant in favour of the second and third defendants and prayed for dismissal of the suit.

4. The trial Court, after assessing the oral and documentary evidence adduced by the parties, decreed the suit and granted a preliminary decree for partition, by declaring that the settlement deeds are null and void.

5. The defendants 2 to 4 have preferred an Appeal in A.S. No.65 of 2013, the First Appellate Court, reversed the findings of the trial Court finding that the first defendant had sufficient income to purchase the property in 1967 and therefore, the settlement deeds executed by



him were valid and moreover, the plaintiffs had failed to establish that the suit property was purchased out of the sale proceeds of the jewels of their mother viz., first wife of the first defendant.

6. Aggrieved by the reversal findings rendered by the First Appellate Court, the plaintiffs have filed the present Second Appeal. This Court, while admitting the above Second Appeal, framed the following substantial questions of law:-

"a. Whether the first appellate Court was right in overturning the adverse inference drawn by the trial Court against the 2nd and 3rd defendants for not getting into the witness box?

b. Whether purchase of the land by 1st defendant can be termed as self acquired property in the light of oral and documentary evidence available on record.

c. Is the judgment of the first appellate Court is correct in not holding that the settlement deeds in favour of the defendants 2 and 3 are not valid and acted upon when the defendants 2 and 3 have not given evidence in this case and then they have not produced any revenue records or any other credible to prove that they are in



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S.A.No.821 of 2017

separate possession of the portions of the suit property settled upon them?"

7. Heard Mr.R.Babu, learned counsel for the appellants and Mr.P.Jagadeesan, learned counsel for the respondents 1 to 3.

8. The learned counsel for the appellants would submit that the First Appellate Court failed to draw adverse inference against the defendants 2 and 3 who never chose to enter the witness box and moreover, having pleaded that the daughters through the first wife who were given 10 sovereign gold jewels each at the time of their marriage, the defendants have not established the same by placing oral and documentary evidence during trial.

9. Further, he would also state that the first defendant had admitted that he was getting only small income from the bakery business and he was also not been able to state that as to how, he got the source for purchase of the suit property. The learned counsel for the appellant would pray for the judgment and decree of the First



Appellate Court being set aside and judgment and decree of the trial Court being restored.

10. Per contra, Mr.P.Jagadeesan, learned counsel for the respondents would invite my attention to the plaint allegations that there is a specific reference that the purchase of the suit property was met by selling the jewels of the plaintiff's mother. However, the evidence adduced by all the witnesses examined on the side of the plaintiffs have on the contrary stated that the jewels were pledged. In fact, he would also took me through the evidence of D.W.1 to whom a specific suggestion has been put by the learned counsel for the plaintiffs that the jewels of the first wife were mortgaged and that the first defendant was not able to retrieve the said jewels and that a further suggestion put to D.W.1 was that the jewels so mortgaged and the money obtained from the said mortgage was utilized for purchasing the suit property. The first defendant has categorically denied the said suggestions also.



11. The First Appellate Court has taken note of the fact that the first defendant was carrying on a bakery business which is admitted by the plaintiffs and that the sale consideration being only Rs.1,500/-, it cannot be stated that their father did not have sufficient means to purchase the suit property out of his self acquired funds and also found that the plaintiffs had not placed any sufficient evidence to establish that the suit property was purchased out of sale proceeds of their mother's jewels.

12. Even though, the settlement deeds were challenged by seeking appropriate relief of declaration in the suit property, it is an admitted position that the plaintiffs had denied the execution of the said settlement deeds. The attack on the settlement deeds was only on the ground that the property was not the self acquired property of their father/first defendant. The First Appellate Court has discussed the said contentions raised by the plaintiffs and rightly reversed the findings of the trial Court, by allowing the Appeal.



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13. Insofar as the first substantial question of law regarding adverse inference being drawn against defendants 2 and 3, I am unable to accept the contentions of the appellants for the simple reason that the execution of the settlement deeds have not been denied by the plaintiffs at any point of time. If the execution of the settlement deeds had been denied, then probably the 2nd and 3rd defendants not entering the witness box would have had some bearing. However, when the second and third defendants were not required to prove the settlement deed in their favour, no adverse inference can be drawn from the mere fact that they did not enter the witness box.

14.As regards the second substantial question of law regarding the self acquisition of the property by the first defendant, having already found that there is no illegality or perversity in the findings of the First Appellate Court, I am unable to agree with the said contention of the learned counsel for the appellants that the property has to be treated as joint family property.



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15. Insofar as the third substantial question of law that the settlement deeds are not acted upon and no revenue records being produced by the defendants 2 and 3 to establish that they are in separate possession of the properties allotted to them, the factum of the settlement deeds having been executed has not been denied as already discussed herein above. Moreover, the only contention is that the properties were purchased by their father using the sale proceeds of the jewels of his first wife and therefore, the property is a Hindu undivided Joint Family Property.

16. In this regard, I do not find it is necessary for the defendants 2 to 3 to have produced revenue records or other documents to show that they were in separate possession of the portions settled upon them. Hence, it is not the case of the plaintiffs themselves the settlement deed were not acted upon. In the light of the same, I do not find the

P.B.BALAJI, J,

rkp



S.A.No.821 of 2017

substantial questions of law to be answered in favour of the appellants and consequently, the Second Appeal is dismissed. There shall be no order as to costs.

06.02.2024

Index : Yes/No

Internet : Yes/No

rkp

To

1.The II Additional District Judge, Salem

2.The Subordinate Judge, Mettur,

S.A.No.821 of 2017