



SA. No.556 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2024

CORAM:

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

SA. No. 556 of 2024
& CMP 17810 of 2024

Aswinkumar

... Appellant

Vs.

1.Udayakumar
2.Karuppana Gounder
3.Subbathal
4.The Branch Manager,
Bank of Baroda,
Nambiyur Village and Post,
Gobichettipalayam Taluk,
Erode District.
5.K.S.Eswari

...Respondents

PRAYER : This Second appeal filed under Section 100 of Civil Procedure Code, against the judgement and decree dated 27.02.2023 made in A.S No. 27 of 2022 on the file of III Additional District Court, Gobichettipalayam, Concurring the judgment and decree dated 18.02.2021 made in OS No. 125 of 2014 on the file of the Subordinate Judge Court, Gobichettipalayam and



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pray to set aside the same.

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For Appellant : Mr.M.Roshan Atiq

JUDGMENT

Challenging the judgement and decree dated 27.02.2023 made in A.S No. 27 of 2022 on the file of III Additional District Court, Gobichettipalayam, Concurring the judgment and decree dated 18.02.2021 made in OS No. 125 of 2014 on the file of the Subordinate Judge Court, Gobichettipalayam, the appellant filed this appeal.

2. The learned counsel for the appellant submits that the before the Trial Court he established that suit property was purchased by his grand father/Second defendant by selling the ancestral property. Therefore, the suit property is ancestral in nature not a self acquired property of his grandfather/second defendant. On the contrary, the second and third defendant executed a gift settlement deed in favour of the first defendant/father of the plaintiff on 27.11.2006 in respect of the suit property which is ancestral property hence the alleged gift settlement deed would not



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bind the share of this petitioner but also having share in the suit property since it is a joint family property but the said fact has not been properly properly appreciated by the Trial Court and holding that SARFAESI proceeding initiated in respect of suit property since his father/first defendant failed to repay the loan, if at all this petitioner is having claim over the property he has to approach DRT where SARFAESI proceeding was initiated by the fourth defendant/bank.

3. The learned counsel submits that plaintiff has right over the suit property hence the plaintiff has rightly approached the Civil Court, DRT has no jurisdiction to decide the Civil right over the property but the Court below erroneously dismissed the suit. Hence, he prayed to allow this appeal.

4. On perusal of the records, it reveals that after SARFEASI proceedings initiated against the first defendant by the fourth defendant/bank, where the first defendant borrowed a loan of Rs.11 lakhs and failed to repay the amount, hence the bank initiated the proceedings under SARFEASI Act against the plaintiff's father/first defendant which is absolutely belongs to the first defendant, based on the gift settlement deed executed by the second defendant. After initiating the said proceedings, the appellant filed the present suit. Furthermore, the gift deed was executed in



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the year 1996 by the second defendant in favour of the first defendant, thereafter his father/first defendant started Anbu Thangamaligai, but due to huge loss he has not repaid the loan borrowed from the fourth defendant/bank, thereafter bank/fourth respondent initiated the SARFEASI proceedings, after the said proceedings the present suit was filed. Admittedly, there is no proof on the side of the appellant/plaintiff to prove that the suit property is ancestral property. As observed by the Court, sale deed is of the year 1979 thereafter marriage was held to one of his daughter of the second defendant. Subsequently, in the year 1981, present suit property was purchased for the sale consideration of Rs.9,000/- but, in fact, original sale consideration of ancestral property comes around Rs.6,000/- there is no evidence on the side of the appellant to prove that the said amount was utilized to purchase the property. The present suit was filed in the year 2005 after initiating SARFEASI proceedings to avoid the said proceedings, all there facts rightly appreciated by the Court below. No Substantial question of law involved. Hence, I am not find any merit in this appeal. Accordingly, the appeal is dismissed at admission stage itself. No costs.

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T.V.THAMILSELVI,J.

Pbl

To
1.The Section Officer,
V.R Section.

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