



CROSS.OBJ.(MD)No.12 of 2009

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.06.2024

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THE HONOURABLE MR.JUSTICE **S.SOUNTHAR**

CROSS.OBJ.(MD)No.12 of 2009

1.Muthirulandi
2.M.Lakshmi

...Cross Objectors

-Vs-

1.A.Ramalingam
2.A.Lakshmi (Died)
3.Pethammal
4.Muthupechi

... Respondents

PRAYER: Cross Objection is filed under Order XLI Rule 22 of Code of Civil Procedure, to set aside the judgment and decree in A.S.No.12 of 2007 on the file of the Subordinate Judge, Aruppukottai, dated 05.11.2007 confirming the judgment and decree passed in O.S.No.281 of 2003, dated 09.11.2006 on the file of the District Munsif Judge, Aruppukottai insofar as Item No.5 is concerned.

For Cross Objector : Mr.S.Selva Aditya

For Respondents :No Appearance



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JUDGMENT

The first and second defendants in a suit for partition are the Cross Objectors. The first respondent herein filed a suit for partition for 10 items. The suit was decreed in its entirety. Aggrieved by the same, the Cross Objectors filed an appeal and the first appellate Court allowed the appeal in part and set aside the decree for partition in respect of Item Nos.6, 7 and 8. The decree granted by the trial Court was confirmed in respect of Item Nos.1 to 5, 9 and 10. Aggrieved by the said judgment and decree passed by the first appellate Court, the plaintiff filed an appeal in S.A(MD)No.565 of 2008 in respect of Item Nos.6, 7 and 8. The first and second defendants filed the above Cross Objection questioning the partition decree in respect of the portion of 5th item, namely, pump set and electricity service connection installed in Item No.5 Well.

2.The Second Appeal preferred by the plaintiff was already dismissed as withdrawn by this Court. Since the Cross Objection filed by the first and second defendants has got independent existence, the learned Counsel for the Cross Objectors is heard on merits of the case.



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3.The learned Counsel for the contesting first respondent/plaintiff reported no instructions and hence, the name of the first respondent is printed in the cause list. There is no representation for the first respondent.

4.Perused the materials available on record.

5.The learned Counsel for the Cross Objectors vehemently contended that the service connection for the pump set installed in Item No.5 Well stands in the name of the first defendant and the installation of the motor and the pump set in the Well was done by the first defendant out of his own funds. The learned Counsel further submitted that the said fact was proved by producing invoice and delivery note stand in the name of the first defendant for purchase of motor, as Ex-B18 and Ex-B19. He contended that these material evidence produced by the first defendant was not all properly appreciated by the first appellate Court.

6.It is seen from the pleadings and evidence available on record that the first defendant is the senior most member of the family. The joint family properties has been under his management. Taking into consideration the said



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fact, the first appellate Court held that the electricity service connection could have been obtained in the name of the first defendant. The first appellate Court also observed that the first defendant failed to call for the records relating to his application before the Electricity Board for the purpose of proving whether he applied for electricity service connection in his individual capacity or on behalf of the family.

7. Admittedly, the first defendant is not the full owner of the suit Item No.5 common Well. He is only a co-owner. Therefore, certainly, the first defendant, at the time of submitting application for electricity service connection, would have obtained no objection from the other co-owners. If the application submitted by the first defendant is called for from the Electricity Board and produced before the Court, the no objection certificate obtained by the first defendant from the other co-owner would be found available in the records. The same would go against his case. Therefore, the first defendant is guilty of suppressing material evidence, namely, the application submitted by him for obtaining electricity service connection.



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8.The learned Counsel for the Cross Objectors also submitted that the invoice for purchase of motor and pump set stands in the name of the first defendant and hence, the first appellate Court ought to have held that pump set was installed by him out of his own funds. As mentioned earlier, the first Cross Objector is the senior most member of the family and therefore, the invoice as well as the electricity service connection stand in his name. The said fact will not give any exclusive right to the cross objector/first defendant in respect of pump set, motors and the electricity service connection. It is settled law, when property stands in the senior male member of Hindu joint family, the burden is on him to show that he purchased the property out of his own funds. In the case on hand, merely because the invoice stands in the name of the Cross Objector, we cannot come to the conclusion that motor and pump sets were purchased by cross objector in the absence of any corroboratory evidence.

9.The first appellate Court appreciated the evidence available on record on proper perspective and had given plausible reasoning for coming to the conclusion that the plaintiff is entitled to equal share in the motor pump set and also the service connection available in Item No.5 of the suit property. The said



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factual conclusion reached by the first appellate Court is based on proper appreciation of evidence available on record and there is no perversity in the approach. Hence, this Court is not inclined to interfere with the said finding of fact.

10. Accordingly, the Cross objection stands dismissed. No costs.

07.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

1. The Subordinate Judge, Aruppukottai.
2. The District Munsif Judge, Aruppukottai.
3. The Record Keeper,
V.R. Section, Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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