



A.S.(MD)No.159 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.08.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**
AND
THE HONOURABLE **MR.JUSTICE K.K. RAMAKRISHNAN**

A.S.(MD)No.159 of 2014

Gunasekaran

...Appellant

/Vs./

R.Sowrirajan

...Respondent

PRAYER:- Appeal - filed under Section 96 and Order 41 Rule 1 & 2 of CPC, to set aside the judgment and decree of the learned III Additional District Judge, Tiruchirapalli, passed in O.S.No.119 of 2013, dated 30.06.2014.

For Appellant : Mr.M.Ashokkumar

For Respondent : Mrs.M.Rajeshwari



A.S.(MD)No.159 of 2014

WEB COPY

JUDGMENT

(Judgment of the Court was made by **K.K.RAMAKRISHNAN, J.,**)

The plaintiff in O.S.No. 119 of 2013 on the file of the III Additional District Judge, Trichirappallai has filed this appeal suit challenging the dismissal of the suit in O.S.No. 119 of 2013 by the judgment and decree dated 30.06.2014.

2.The plaintiff is the son of the respondent. The respondent purchased the vacant site mentioned in the suit schedule property for Rs. 20,000/- in the year 1987 situated in the 3rd Cross, Adaikala Annai Nagar, Ponmalaipatti, Trichirappalli District. The plaintiff also contributed amount to purchase the said vacant site. In the year 1987 and 1988, the plaintiff contributed his salary to construct the ground floor in the said vacant site. The plaintiff further contributed to construct the 1st floor and the D.No. 4/459 was assigned and he occupied the 1st floor and the respondent was living in the ground floor. After his marriage in the year



A.S.(MD)No.159 of 2014

WEB COPY

1991, he lived in a separate residence and in the year 1993 a male child was born and he shifted his residence to the railway quarters. Thereafter, in the year 2011, the respondent gave in writing a consent letter to him ie., on 06.02.2011 in the presence of one Mr.Ponnudurai allowing him to do all the repairs so as to live in the said place and thus he renovated the said house at the cost of Rs. 3,75,000/-. Therefore, there is a confirmation of his share. He also from 2011 onwards on the basis of the confirmation, was residing in the first floor of the house and he and his wife were taking care of his mother and the defendant. The defendant executed testamentary disposition in favour of his son and daughter in the year 2000 through the registered will. Now, the defendant is influenced by his wife and elder daughter and they are causing disturbance to the enjoyment of the appellant. Therefore, the appellant issued notice on 12.04.2013 to claim the $\frac{1}{2}$ share in the said property and consequently, filed the present suit claiming the $\frac{1}{2}$ share in the suit schedule property.

3.The respondent filed written statement denying the averment made in the plaint. He specifically denied the appellant's contribution to



A.S.(MD)No.159 of 2014

purchase of the suit schedule property and further construction made in the suit schedule property. He specifically pleaded that he alone has helped the appellant to join in the railway department and he never contributed any amount either to purchase vacant site or construct the building. He further denied that the appellant contributed for renovation work at the cost of Rs.3,75,000/-. He also denied giving of the consent letter dated 06.02.2011 to the appellant. He also denied the averment that he caused disturbance to the possession of the appellant. The appellant never acted according to the wishes of the respondent and not acted as a good son and he acted as dictated by his wife. Therefore, there was some misunderstanding and hence, he filed the frivolous suit claiming $\frac{1}{2}$ share in the suit schedule property without any right to claim. Hence, he seeks to dismiss the suit.

4.The Learned Trial Judge has framed following issues :

4.1.The appellant to prove his case examined himself as PW1 and other witness PW2 and marked the Ex.A1 to Ex.A4. The respondent examined himself as R.W.1 and marked Ex.B1 to Ex.B8.



A.S.(MD)No.159 of 2014

WEB COPY

4.2.The learned trial judge after considering the evidence on record dismissed the suit holding that the plaintiff failed to prove any right in the suit schedule property to claim the $\frac{1}{2}$ share. Further the plaintiff's case of personal contribution to purchase the vacant site and construction made in the vacant site was also not proved. Therefore the Learned Trial Judge dismissed the suit with cost taking into account the filing of the frivolous suit against the father at the age of 84 without any right and cause of action.

5.Challenging the dismissal of the suit, the appellant filed this appeal suit in A.S.No. 159 of 2014 and the Learned counsel for the appellant made the following submissions:

5.1.The Learned Trial Judge failed to consider the document Ex.A3 and the independent evidence of PW2 to prove his claim of his contribution to purchase the property in the name of the respondent and subsequent construction made in the suit schedule property. The respondent has not disputed Ex.A3. Therefore, he renovated the said 1st floor of the building on the basis of Ex.A3 and the same was proved



A.S.(MD)No.159 of 2014

through Ex.A4. Therefore, his case of joint purchase in the name of the respondent and the construction made in the same are all proved and hence his right as a co-owner in the property is clearly established.

5.2.The Learned counsel further submitted that the reasoning of the Learned Trial Judge that the suit is bad for non – jointer of parties is not correct. He specifically pleaded that he and the respondent alone are entitled to equal share in the said property. In the said circumstances failure to bring the other legal heirs of the respondent is not a ground to dismiss the suit. Therefore, he seeks to allow this appeal.

6.The Learned counsel for the respondent submitted that the learned trial judge made elaborate discussion and disbelieved the evidence of PW2 and specifically held that the case of the appellant that he contributed either to purchase the vacant land or to construct the building or for renovation work were not proved through legal evidence. There is no error in the said finding. Therefore, there is no ground to interfere with the same.



A.S.(MD)No.159 of 2014

WEB COPY

6.1. All the documents are in the name of the respondent and the same were produced before the trial court and marked as Ex.B1,B2,B3,B4 and B7. Therefore, no strong evidence was produced to overcome the documentary evidence on the side of the appellant. Hence, he seeks to dismiss the appeal.

7.This Court considered the rival submission and perused the records and also the impugned judgment and decree.

8.The following points arise for the consideration of this appeal :

8.1.Whether the appellant has established through legal evidence that he and the respondent alone purchased the suit property and made the construction thereon in order to claim the partition of $\frac{1}{2}$ share.

8.2.Whether the judgment of the learned trial judge needs any interference.



A.S.(MD)No.159 of 2014

WEB COPY

9.This unusual suit has been filed by the son against the father after some conflict arose between him and his father after marriage which resulted in betrayal of confidence of father upon the son. To prove the case of the appellant that he made a contribution to purchase the vacant site on 18.02.1987 under Ex.B1, the appellant has not produced any clinching evidence. Even, there are no circumstances, to presume his contribution to purchase the property. His stand that he contributed through his employment was discussed in detail by the Learned Trial Judge and specifically found that the same was false. According to him he joined in the railway department and he contributed his salary and other amount earned from conducting the hindi tuition is only in pleadings and the same was not supported by any evidence. Even as per the evidence, at the time of the purchase, his father was in the railway service for 42 years. He also received the terminal benefit of Rs.65,000/- in the year 1988. The plaintiff, to prove his employment on the date of the purchase, has not produced any document, on other hand abundant materials were produced to presume the purchase by the respondent by



A.S.(MD)No.159 of 2014

using his own source of income namely, his terminal benefits. The sale deed dated 18.02.1987, is in the name of the respondent and all the revenue records also are in the name of the respondent. The case of the appellant that he had paid half of the sale consideration mentioned in the Ex.B1 dated 18.02.1987 is not proved and the same was not whispered in the said document. It is settled principle that the person claiming the property as a co-owner of any property standing in the name of the other person, has to prove and the burden of proof rests on him to prove the contribution to purchase the property and intention to purchase the property in the name of the other person. In this case, this Court finds no material adduced by the plaintiff either to prove his contribution to purchase the property or intention to purchase the property for the common enjoyment. Apart from that, no material circumstances were proved through the document and oral evidence to presume the claim of the appellant that he contributed his source of income to purchase the vacant site and for subsequent construction. The learned trial judge correctly considered all aspects and rendered a finding that the plaintiff has not established his case that he made a contribution through his



A.S.(MD)No.159 of 2014

WEB COPY

employment. As rightly pointed out by the Learned Trial Judge that at the relevant point of time the plaintiff not even joined in the railway department. On other hand the respondent was in service at the time of the purchasing the property and he obtained Rs.65,000/- as terminal benefit and the same was utilized for construction of the property. In view of the same this court finds no merit in the submission of the Learned counsel for the appellant that the purchase was made with equal contribution by the appellant and construction was made with his contribution.

10.The learned trial judge disbelieved the evidence of PW2. PW2 was examined on the side of the plaintiff to prove his contribution for construction and renovation of the suit schedule property. He is not an engineer and he is not a registered valuer and contractor. He is not even aware of the contents of Ex.A4. He also has not issued any receipt for the payment said to have been received from the appellant for the construction. Further, there is no mention in Ex.A4 about the area of the extent of the construction activities. The said Ex.A4 dated 15.02.2011, is



A.S.(MD)No.159 of 2014

not a stamped paper and it is not an NJS Paper. From above discussion, this Court is not able to accept the evidence of P.W.2 to prove the case of the appellant that he made the renovation in the year 2011. Therefore, the learned trial judge correctly disbelieved the evidence of PW2.

11.Ex.A3 was heavily relied by the appellant to prove his case. The said Ex.A3 was marked with objection. The respondent specifically denied the same in the written statement. To prove the same, nobody was examined. Even the averment in the said document has not supported the case of the appellant. The appellant relied the same to prove his case that the respondent gave the confirmation of ½ share in the property through the said Ex.A3. But the contents is otherwise. In the said circumstances the argument of the counsel on the basis of the said exhibit also cannot be accepted. In result, in all aspects the appellant failed to prove his right to claim the ½ share in the suit schedule property and hence the learned trial judge rightly dismissed the suit.



A.S.(MD)No.159 of 2014

WEB COPY

12.It is settled principle of law that when the trial court rendered its finding on appreciation of the evidence, the same is not liable to be interfered without any perversity in its approach and the same is fortified by the following judgment of the Hon'ble Supreme Court in the case ***Madhusudan Das Vs. Smt. Narayani Bai & Ors.***, reported in ***AIR 1983 SC 114:-***

“ The rule is __ and it is nothing more than a rule of practice __ that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judges notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate Court should not interfere with the finding of the trial Judge on a question of fact.

13.In view of the above discussion, the appeal is devoid of merits. Therefore, in all aspects, the questions framed are answered against the appellant.

12/14



A.S.(MD)No.159 of 2014

WEB COPY

14. Accordingly this appeal suit is dismissed and the judgment and decree passed in O.S.No. 119 of 2013 on the file of the III Additional District Judge, Trichirappallai is confirmed. There shall be no order as to costs.

(P.V.J.) & (K.K.R.K.J.)
21.08.2024

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

To:-

The III Additional District Judge,
Tiruchirapalli.



WEB COPY



A.S.(MD)No.159 of 2014

P.VELMURUGAN.J.,
and
K.K. RAMAKRISHNAN, J.
vsg

Judgment made in
A.S.(MD)No.159 of 2014

Dated:
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