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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

A.S(MD)No.15 of 2024
and
C.M.P(MD)No.994 of 2024

N.Amutha

... Appellant

/Vs./

1. K.Nallu Pillai
2. The State of Tamil Nadu,
Represented by the District Collector,
Tiruchirappalli.
3. The Tahsildar,
Thuraiyur Taluk,
Having Office at Thuraiyur Town,
Tiruchirappalli District.

...Respondents

PRAYER: Appeal Suit is filed under Section 956 of the Code of Civil Procedure to set aside the Judgment and Decree dated 28.07.2023 made in O.S.No.87 of 2017 on the file of the Additional District and Sessions Judge (PCR), Tiruchirappalli.

For Appellant

: Mr.K.Prabhakar

For 1st Respondent

: Mr.Ram Sundara Vijayaraj,

For 2nd & 3rd Respondents

: Mr.C. Baskaran



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JUDGMENT

The present Appeal Suit is preferred to set aside the Judgment and Decree dated 28.07.2023 passed in O.S.No.87 of 2017 on the file of the Additional District and Sessions Judge (PCR), Tiruchirappalli.

2. The plaintiff is the 1st respondent herein, the 1st defendant is the appellant herein and the defendants 2 & 3 are the respondents 2 & 3 herein. For the sake of convenience, the contesting parties shall be referred as plaintiff and defendants.

3. The suit in O.S.No.87 of 2017 was filed for declaration to declare that the plaintiff is the absolute owner of the suit property and also seeking consequential relief for recovery of possession from the 1st defendant and mandatory injunction to amend the Patta. The said suit was allowed in favour of the plaintiff. Aggrieved over the same, the 1st defendant has preferred this Appeal Suit.

4. The plaintiff is husband of the 1st defendant and they were married on 24.06.2001 and blessed with two sons. As on date, the eldest son is doing final year of college and the second son is studying 8th standard. The plaintiff is an Electrical Fitter with ITI Course and has completed Higher



Secondary education and completed Wireman Trade and also undergone Apprenticeship Training at Bharat Heave Electricals Limited, Tiruchirappalli.

Thereafter, was carrying on his vocation as electrician in various places and subsequently he has joined as a site electrician at J.J. College of Engineering and worked there for a period of 1998-2005 and was earning paltry sum. In order to earn more the plaintiff went to Dubai and worked in Kone Elevators for a period of 3 years from 2005-2008. During the employment at Dubai the plaintiff had purchased two plots at Navalur Kuttapattu Village, Srirangam Taluk and 4 sovereigns of two gold bangles. When the plaintiff went to Dubai on employment, the plaintiff had shifted the parental house of the 1st defendant. After the contract was over, again the plaintiff had come to India and was earning paltry sum. Hence the plaintiff again went to Singapore in the year 2009. The plaintiff was regularly sending money for managing the house as well as purchasing the property. Based on the money that was sent by him, the 1st defendant had purchased three lands which are stated as item Nos.1 to 3 in the suit property. Subsequently, the relationship between the plaintiff and the 1st defendant was strained, they were separated and their two children are staying with maternal grandparents.



5. The contention of the plaintiff is that the suit properties were purchased out of his own earnings. The plaintiff's job is a risky job but was earning in lakhs. After spending small portion, the balance amount was transferred to the NRE savings account and another savings account. The plaintiff was regularly sending money for managing the house as well as purchasing the property and the same is proved through Ex.A8 and Ex.A9 bank statement. Therefore, he alone is the owner of the property and he is entitled to the properties. The 1st defendant is not having any source of income to purchase the properties hence, the 1st defendant cannot claim ownership, however the 1st defendant had managed to change patta in her own name. Therefore, the claim of the plaintiff is to declare that he is owner of the property and recovery of possession and change Patta.

6. The contention of the 1st defendant is that she being the wife of the plaintiff, she had managed the entire house in his absence, had brought up two children and had managed the entire house hold affairs. Further independently she is also earning income through her job as Commission Agent of Indian Overseas Bank and through agricultural activities in the suit properties and had put up construction in the suit properties. Therefore, the entire contribution through the plaintiff is incorrect and she has also



contributed for the purchase of the suit properties and construction of house in the suit properties. Hence, she is also entitled to equal share in the suit properties.

7. After considering the pleadings, documentary evidence and deposition of the parties, the Trial Court has come to the conclusion that the contribution by the plaintiff is proved and the contribution of the wife was not proved and decreed the suit in favour of the plaintiff. Aggrieved over the same, the wife had filed the present appeal suit.

8. The Learned Counsel appearing for the 1st defendant wife submitted that even if the 1st defendant is considered as homemaker, the contribution of a homemaker is calculated in terms of money, then the 1st defendant is entitled to equal share in the suit properties. Over and above the 1st defendant is a Commission Agent of Indian Overseas Bank and also carrying on agricultural activities in the suit properties. If the income from the above job is calculated then the 1st defendant is entitled to more share in the suit properties. But the Trial Court had erred in denying share in the suit properties. If the aforesaid fact is taken into account, then the 1st defendant is entitled to equal share in the suit properties. However, the Learned Counsel appearing for the



plaintiff submitted that the suit properties were purchased from his own earnings and hence the 1st defendant is not entitled to share. Further the 1st son is doing his college and for his higher studies the properties are necessary for taking loan. If share is granted in the suit properties, then the same may become burdensome for the plaintiff in providing financial support to the son's higher education.

9. After hearing the arguments of plaintiff and the 1st defendant this Court had given its anxious consideration. The plaintiff husband had not denied that the wife is also earning through her job as Commission Agent and agricultural activities, therefore this Court is of the considered opinion the wife has contributed to the family. Even though the wife had not contributed entirely for the purchase of the land, admittedly the wife had contributed for upbringing children, contributed for putting up construction of house. Therefore, the 1st defendant wife is entitled to share in the suit properties.

10. In order to allot share to the plaintiff and 1st defendant, this Court consider to divide the suit properties. At this juncture the Learned Counsel appearing for the 1st defendant wife submitted that the plaintiff husband ought to give maintenance to her. It is seen that the plaintiff and the 1st



defendant are living separately and as on date they had not filed any divorce petition. Therefore, the wife is entitled to share in the suit properties for her contribution as wife and for the maintenance and the same shall be considered as full and final settlement for the permanent maintenance.

11. After considering the extent of the suit properties this Court is of the considered opinion that Item No.2 of the suit property admeasuring 12 cents shall be allotted to the 1st defendant wife for her contribution as wife as well as permanent maintenance to the 1st defendant.

12. For the reasons stated supra, the plaintiff is entitled to Item Nos.1 and 3 of the suit properties. The 1st defendant is entitled to Item No.2 of the suit property. The 1st defendant is directed to deliver vacant possession of the Item Nos.1 and 3 of the suit properties to the plaintiff within a period of three months, from the date of receipt of a copy of the judgement. If there is failure to deliver to vacant possession of the Item Nos.1 and 3 of the suit properties by the 1st defendant, the plaintiff is hereby granted to get vacant possession of the same, through process of the Court. The 3rd defendant is hereby directed by way of mandatory injunction to amend the Patta granted in respect of the item Nos.1 & 3 of the suit properties by deleting the name of the



1st defendant and by inserting the name of the plaintiff within two months. With

the above observations and directions, the Appeal Suit is partly allowed. No

Costs. Consequently, Connected Civil Miscellaneous Petition are closed.

09.07.2024

Index : Yes / No

NCC : Yes / No

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TO:

1. The Additional District and Sessions Judge (PCR),
Tiruchirappalli.
2. The District Collector,
State of Tamil Nadu,
Tiruchirappalli.
3. The Tahsildhar,
Thuraiyur Taluk,
Having Office at Thuraiyur Town,
Tiruchirappalli District.
4. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

KSA

Judgment made in
A.S(MD)No. 15 of 2024

Dated:
09.07.2024