

A.S. No.316 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S. No.316 of 2022

1.Geetha
2.Ramila
3.Ramesh

... Appellants

Vs

1.Balamani
2.Mylsamy Gounder

... Respondents

Prayer: Appeal Suit filed under Order 41 Rule 1 r/w Section 96 of the Civil Procedure Code against the judgment and decree of the IV Additional District and Sessions Judge, Coimbatore dated 22.04.2022 made in O.S. No.659 of 2018 and set aside the same.

For Appellants : Mr.Sharath Chandran
for Mr.D.R.Arun Kumar

For Respondents : Mr.P.Santhosh
for Mr.K.Govi Ganesan for R1
No Appearance for R2



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JUDGMENT

Challenging the judgment and decree of the IV Additional District and Sessions Judge, Coimbatore dated 22.04.2022 made in O.S. No.659 of 2018, defendants 2 to 4 have filed this appeal. The plaintiff and the first defendant are respondents in this appeal.

2. The suit has been originally filed by the first respondent for declaration and for recovery of possession. According to the plaintiff, the first defendant sold the property to one Anandhakumar, Nachimuthu and Balasubramaniam by virtue of a sale deed dated 04.11.1996. The plaintiff has purchased the said property from the above persons on 27.06.1997. After the purchase, the plaintiff was in possession and enjoyment of the property. The defendants, on collusion have filed a suit for partition in respect of suit properties against the plaintiff in O.S. No.160 of 2016. The first defendant taking advantage of his name in the revenue records claimed title in the suit property. After the filing of the suit, the defendants have illegally occupied the suit property, when the plaintiff was out of station. Despite several mediations, the possession has not been handed over to the plaintiff. Hence this suit.

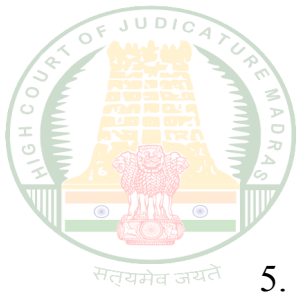


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3. The defendants in their written statement set up a counter claim. According to them, the suit property was purchased out of the joint family nucleus. According to them, the father of the first defendant purchased the property on 14.12.1959. Thereafter, the said property has been mortgaged by the first defendant along with one Ramasamy on 07.06.1971. They again mortgaged the property on 15.03.1983. According to them, the subject property was purchased by the first defendant only out of the joint nucleus. Hence, according to them, they have a share in the property.

4. Based on the above pleadings, the trial court framed the following issues for consideration in the suit:

- 1. Whether the suit property is ancestral property?*
- 2. Whether the plaintiff is the absolute owner of the suit property?*
- 3. Whether the plaintiff is entitled to the relief of declaration of title and recovery of possession as prayed for?*
- 4. Whether the defendants 2 to 4 are entitled to the relief of partition as prayed for in the counter claim?*
- 5. To what reliefs both parties are entitled?*



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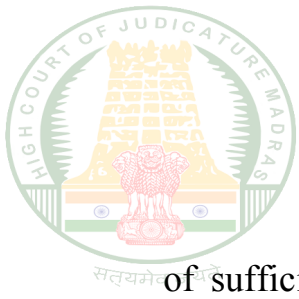
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5. Before the trial court, the plaintiff examined himself as PW1 and has marked four documents as Exts.A1 to A4. On the side of the defendants, the fourth defendant examined himself as DW1 and marked seven documents as Exts.B1 to B7.

6. The trial court, upon considering the evidence on record and the submissions made before it, disbelieved the case of the defendants and decreed the suit. Aggrieved by the same, the defendants 2 to 4 have filed this appeal.

7. The learned counsel appearing for the appellants would submit that the trial court has not considered the evidence properly and in fact, Exts.B2 and B3 would show that the first defendant had a share in the property. Therefore, it has to be inferred that his purchase was only out of the income derived from the joint family nucleus. In support of his submission, the learned counsel appearing for the appellant relied on the decision of the Hon'ble Apex Court in Shyam Narayan Prasad V. Krishna Prasad reported in (2018) 7 SCC 646.

8. The learned counsel appearing for the first respondent/plaintiff would submit that there is no material on record to show that family is in possession



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of sufficient nucleus. The property has been sold 20 years back and such a stand has been taken after 20 years of selling the property. Hence opposed this appeal.

9. In the light of the above submissions, the point that arises for consideration in this appeal is *whether the suit property was purchased out of the earnings from the joint family property?*

10. It is relevant to note that the property was originally purchased by the first defendant under Ext.A1, sale deed dated 28.11.1986. The said document has clearly indicated that the property has been purchased by self earnings. Of course, mere recitals in the document cannot decide the determining factors to assess the character of the property. But the fact remains that the first defendant was a party to the proceedings, but he has not tendered any evidence in this regard. That apart, first defendant is the only person competent to speak as to what is the nature of the income derived from the so-called joint family property, when the person who is competent to give exact nature of the income of the family property, has not offered himself for cross examination.



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Therefore, his son's evidence, in the considered view of this court has no relevance at all.

11. It is too late for the fourth defendant to contend that the property is the ancestral property. Admittedly, the property has been purchased by the first defendant under Ext.A1, in the year 1986. The property has been sold by the first defendant to three persons, namely Anandhakumar, Nachimuthu and Balasubramaniam by virtue of a sale deed dated 04.11.1996. The plaintiff has purchased the said property from the above persons on 27.06.1997 by way of Ext.A3, sale deed. Though Exts.B1 to B3 have been filed to show that the family earns some income from the ancestral properties and the property has been mortgaged by the first defendant along with his sons, merely on the basis of some property owned by the family, as long as the income and the nucleus has not been established, mere holdings of some family property alone is not a ground to hold that the subsequent acquisition is made only out of the joint family nucleus. When the elder member of the family who know all the things, and he failed to offer any explanation in this regard and failed to subject himself to cross examination, it has to be held that the very counter-claim has been filed only to non-suit the plaintiff. Such counter claim is only collusive in



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nature. Therefore, I do not find any merit in the submissions made by the appellants and the appeal deserves to be dismissed.

12. Accordingly, the appeal suit is dismissed. However, there is no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

03.03.2025

Index : Yes / No

Neutral Citation : Yes / No

Asr

To

The IV Additional District and Sessions Judge, Coimbatore



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N.SATHISH KUMAR, J.

Asr

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