

S.A. No.62 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2025

CORAM:

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

S.A. No.62 of 2023

and

C.M.P.Nos. 1980 & 1986 of 2023

C.Priyadharshini

... Appellant

Vs.

1. I.Chokkanathan

2. C.Kishore Kumar

.. Respondents

PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 11.04.2022 passed in A.S.No.41 of 2019 on the file of III Addl. District Judge, Salem dismissing the entire suit by reversing the judgment and decree dated 01.10.2018 passed in O.S.No.303 of 2016 on the file of Principal Subordinate Court, Salem.



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For Appellant : Mr.S.Kishore Kumar

For Respondents : Mr.A.G.Rajan for R1 & R2

JUDGMENT

The appellant, who is the plaintiff filed a suit in O.S. No. 303 of 2016 against the defendants seeking for the relief of partition and separate possession as well as permanent injunction and the same was partly decreed in favour of him. Against which, the defendants preferred an appeal suit in A.S.No. 41 of 2019 and on analysing the facts and evidence on record, the first appellate judge allowed the appeal suit and the findings of the trial judge was set aside. Challenging the reversal findings of first appellate court, the plaintiff preferred this Second Appeal.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit before the trial court.

3. Before the trial court, the plaintiff filed a suit seeking for the relief of partition claiming 1/3rd share in 'A' and 'B' schedule properties stating that out of income derived from the ancestral property, 'A' and 'B' schedule properties were purchased through two sale deeds in the name of her parents viz. 1st defendant and Vijayalakshmi. The said Vijayalakshmi died leaving

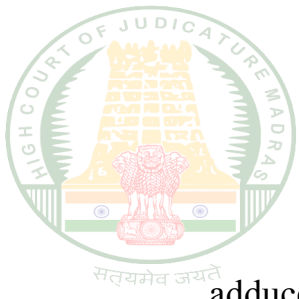


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behind her husband, daughter and son viz., plaintiff and defendants 1 and 2.

Thereafter, they enjoyed the properties jointly. While so, the plaintiff married one Veeraragavan against the wish of her father/1st defendant. Hence, the dispute arose and they have also attempted to sell the 'B' schedule property. The defendants 1 and 2 admits the relationship, but denied the nature of properties as alleged by the plaintiff and submitted that there is no ancestral property. He is mechanic by profession and having workshop at Dharmapuri and out of his own income, he purchased the properties from the same vendors through two sale deeds, however, out of love and affection, 'B' schedule property was purchased in the name of his wife Vijayalakshmi on the same day dated 15.12.1993 from the same vendor and there is no separate income for his wife. Though sale deed stands in the name of Vijayalakshmi, he is the absolute owner of both 'A' and 'B' schedule properties. Accordingly, he prayed to dismiss the suit as it is not a joint family property.

4. Before the trial court, plaintiff examined herself as P.W.1 and 1st defendant was examined as D.W.1. On the side of plaintiff, documents Ex.A1 to Ex.A9 were marked. On the side of defendants, no document was



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adduced. Considering both side submissions, the trial judge framed two issues and the foremost issue is whether the suit properties are the separate properties of 1st defendant?

5. On considering the evidence on record, the trial judge held that as per the recital of sale deed Ex.A1, it stands in the name of 1st defendant and Ex.A2 sale deed stands in the name of his wife Vijayalakshmi. Thereafter, the said Vijayalakshmi died in the year of 1995 leaving behind her husband (D1), son (D2) and daughter (plaintiff) as her legal heirs. As per the recital of Ex.A2, the sale consideration was paid by Vijayalakshmi and she purchased the property. However, there is no contra evidence on the side of 1st defendant to prove that he purchased the 'B' schedule property in the name of his wife nor he adduced any evidence to that effect. Therefore, the trial judge held that 'A' schedule property is the self-acquired property of 1st defendant, in which the plaintiff has no right to claim partition, thereby the suit was partly dismissed in respect of 'A' schedule property and in respect of 'B' schedule property, it was held that it is the absolute property of plaintiff's mother Vijayalakshmi. As she died, her legal heirs, plaintiff and defendants 1 and 2 are entitled for 1/3rd share. Accordingly, the suit decreed



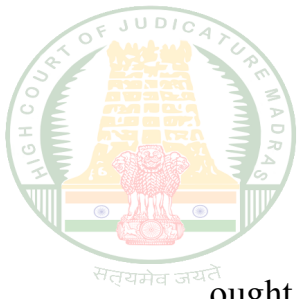
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in respect of 'B' schedule property.

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6. Challenging the said findings, the appeal suit was preferred by the 1st defendant in A.S.No.41 of 2019 before the III Addl. District Judge, Salem, wherein the first appellate judge, on considering evidence on record held that both the suit properties are purchased by 1st defendant by himself and there is no proof that the plaintiff's mother Vijayalakshmi had source of income to purchase the 'B' schedule property nor plaintiff specifically pleaded about the source of income of her mother, thereby the plaintiff not established that her mother purchased the property independently, on the other hand, both properties were purchased by 1st defendant from the same vendor and registered the sale deeds in his name as well as his wife's name out of love and affection. Furthermore, there is no proof that Vijayalakshmi had separate source of income, thereby both 'A' and 'B' schedule properties absolutely belong to 1st defendant, in which plaintiff has no right to claim partition. Accordingly, the appeal suit was allowed and the findings of trial judge was set aside. Challenging the reversal findings of first appellate court, the plaintiff preferred this Second Appeal.

7. The learned counsel for plaintiff argues that the first appellate court



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ought to have appreciated the fact that after demise of mother Vijayalakshmi, all her legal heirs viz., plaintiff and defendants 1 and 2 have jointly sold portion of suit properties to third party. To that effect she produced the sale deed marked as Ex.A3, which itself shows that the said property was treated as absolute property of Vijayalakshmi, but the first appellate court failed to appreciate the said document and erroneously held that Vijayalakshmi had no source of income and the plaintiff's father purchased the property in her name out of love and affection. The said findings are perverse and the same are liable to be set aside. The learned counsel would also submit that as per the sale deed Ex.A2, 'B' schedule property stands in the name of her mother Vijayalakshmi. If the 1st defendant disputing the written recitals of document, he is bound to prove the same by adducing contra evidence, but before the trial court, no such evidence was adduced. In spite of that, the first appellate judge allowed the appeal suit in favour of 1st defendant as such is illegal and the same is liable to be set aside.

8. Considering his submissions, this Second Appeal is admitted on the following question of law :-



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“(1) Is not the findings of the lower appellate court as regards the payment of sale consideration by the 1st defendant is perverse, especially when the recitals of sale deed is contrary?

(2) Whether only the oral evidence of 1st defendant can be considered to negate the recitals of the registered documents, in one of which the 1st defendant himself is a party?

9. By way of reply, the learned counsel for respondents/defendants argues that the 1st defendant used to do mechanic work at Dharmapuri by traveling nearly about 75 kms. away and out of his own earnings, he purchased the suit properties through sale deeds Ex.A1 and Ex.A2 and out of love and affection, he purchased the 'B' schedule property in the name of his wife, who had no source of income, but he alone enjoyed both suit properties as absolute owner. His wife Vijayalakshmi had no source of income and the same was rightly appreciated by the trial judge, but the first appellate court erroneously granted the relief in favour of plaintiff holding that 'B' schedule property is the absolute property of her mother as such is erroneous one. Hence, this Second Appeal is liable to be dismissed by confirming the findings of trial judge.



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10. Heard and considered rival submissions of both learned counsel for appellant as well as respondents and perused the materials available on record.

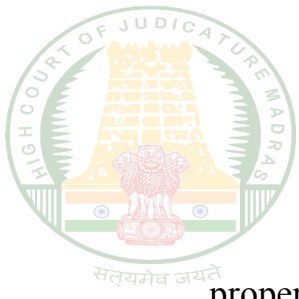
11. The plaintiff is the daughter of 1st defendant and sister of 2nd defendant. The 1st defendant married one Vijayalakshmi and they begotten the plaintiff and 2nd defendant as their children. The relationship between them is undisputed one. As per Ex.A1 and Ex.A2, sale deeds written recitals, it reveals that 'A' schedule property stands in the name 1st defendant and 'B' schedule property stands in the name of plaintiff's mother Vijayalakshmi. In respect of 'A' schedule property, the suit was dismissed. Against which, the plaintiff had not preferred any appeal. In respect of 'B' schedule property, the claim of the plaintiff is that the said property was purchased by her mother out of her own income by mortgaging jewels and paid the sale consideration. Per contra, the 1st defendant contested the case stating that his wife Vijayalakshmi had no independent income and out of love and affection, he alone purchased the said property in her name, but as rightly observed by the first appellate judge, as per the recitals of Ex.A2, sale consideration was paid by Vijayalakshmi not by the 1st defendant. As



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per Sec.92 of Indian Evidence Act, parties are not entitled to adduce oral evidence against written recitals. However, he is entitled to adduce contra evidence by disproving the said circumstances. The 1st defendant denied the plaintiff's claim stating that he alone purchased the property in the name of his wife, but there is no proof to establish the same before the trial court. Therefore, the 1st defendant failed to adduce any contra evidence to disprove the written recitals of Ex.A2 sale deed. Moreover, as per the sale deed Ex.A2, it stands in the name of Vijayalakshmi and the recitals clearly shows that the sale consideration was paid by her. Therefore, 'B' schedule property is the absolute property of plaintiff's mother as rightly held by the trial judge, which needs no interference by this court. On one occasion, the plaintiff as well as defendants jointly sold portion of suit property to third party. To that effect, the sale deed marked as Ex.A3 was produced. Therefore, after the demise of Vijayalakshmi, 'B' schedule property was commonly enjoyed by the plaintiff, her father/1st defendant and her brother/2nd defendant. By way of reply, the learned counsel for respondents would submit that at the instance of purchaser, signature from the plaintiff was obtained, except that, 'B' schedule property was treated as absolute



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property of 1st defendant. As discussed above, as per Ex.A2 sale deed, it is the absolute property of mother of plaintiff Vijayalakshmi and she died intestate, it is an admitted fact. As it is a self-acquired property of Vijayalakshmi, all her legal heirs including plaintiff and defendants 1 and 2, each entitled to 1/3rd share, which was rightly upheld by the trial judge, which needs no interference. Accordingly, the question of law (1) and (2) is answered. Therefore, in respect of 'B' schedule property, the plaintiff is entitled for 1/3rd share. Accordingly, the preliminary decree is passed. In the result, this Second Appeal is allowed and the findings of first appellate judge in A.S.No. 41 of 2019 is set aside and the suit is partly allowed in respect of 'B' schedule property alone, accordingly, plaintiff is entitled 1/3rd share and the suit is partly dismissed in respect of 'A' schedule property. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To
III Addl. District Judge, Salem.

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T.V.THAMILSELVI, J.

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