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CRP NPD.No.64 of 2025

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 04.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.64 of 2025 & CMP.No.896 of 2025

Sangeetha

... Appellant

Versus

1. Subramanian
2. Rajammal
3. Ramya
4. Vikash
5. Sandhiya
6. Murugesan
7. Muniyappan
8. Perumal

9. The Sub Registrar, O/o.Sub Registrar No.2,
Salai Vinayakar Koil Street, Dharmapuri Town,
Dharmapuri Taluk, Dharmapuri District.

10. The District Registrar, [Registration Department],
O/o.District Registrar, Salai Vinayakar Koil Street,
Dharmapuri Town,
Dharmapuri Taluk, Dharmapuri District.

... Respondents



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PRAYER : This Appeal Suit has been filed under section 96 read with 41 of Code of Civil Procedure to set aside the judgment and decree in O.S.No.90 of 2021 dated 29.10.2024 passed by the learned Additional District Judge, Dhamapuri and thereby allow the appeal suit.

For Appellant : Mr.B.Gopalakrishnan

For respondent : Mr.V.Ramesh,
Government Advocate – R9 & R10

JUDGMENT

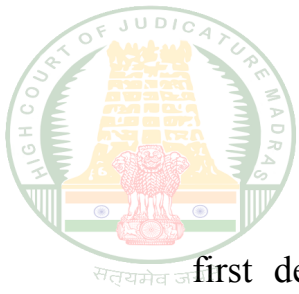
Challenging the decree and judgment of the first appellate Court dismissing the suit filed for partition, the present appeal came to be filed.

2. On perusal of entire materials, this Court is inclined to dispose of the appeal under Order 41 Rule 11[1] of Code of Civil Procedure.

3. Brief facts leading to filing of the suit is as follows :

The plaintiff is the daughter in law of the first and second defendants.

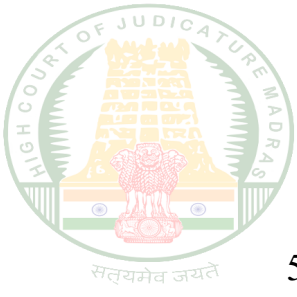
According to the plaintiff, 'A' schedule property was originally allotted to the



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first defendant. Consequently, a registered partition deed has also been executed. The first and second defendants were enjoying the 'A' schedule property along with their sons Kumar and Ravi. Out of the income from the 'A' schedule property, 'B' schedule property was purchased in the name of the second defendant. It is the case of the plaintiff that the 'A' and 'B' schedule properties were enjoyed as joint family properties by the first and second defendants along with their sons Kumar and Ravi. The plaintiff is the wife of the said Ravi. According to the plaintiff, the second defendant has no independent right over the 'B' schedule property. Hence, the plaintiff and the first and second defendants are entitled to share in the 'B' schedule property.

4. In the Written statement filed by the defendants 1, 2, 4, 6, 7 and 8 admitting the relationship, it is their contention that 'B' schedule property was purchased by the second defendant and the 'B' schedule property has also been sold to the sixth defendant. The plaintiff has no right whatsoever in the 'B' schedule property. It is denied that the 'B' schedule property was purchased from and out of the income of the joint family nucleus.



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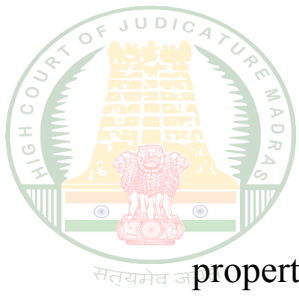
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issues :

5. Based on the above pleadings, the trial Court framed the following

1. Whether the partition has already been effected?
2. whether 'B' schedule property is separate property of the second defendant?
3. Whether the plaintiff is entitled to partition as sought for?
4. Whether the plaintiff is entitled to partition as sought for?
5. To what relief, plaintiff is entitled to?

6. On the side of the plaintiff, P.W.1 and P.W.2 were examined and Ex.A.1 to Ex.A.11 have been marked. On side of the defendants, D.W.1 to D.W.4 have been examined and Ex.B.1 to B3 have been marked. That apart from that Ex.X1 to Ex.X.5 have also been marked.

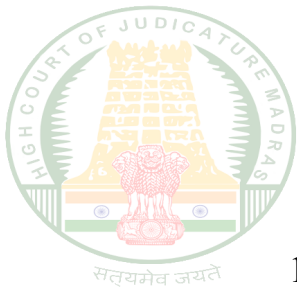
7. Though the suit has been filed claiming partition of both the schedule



properties, in respect of the 'A' schedule property, the claim has been given up by the plaintiff. The suit has been proceeded only in respect of the 'B' schedule property.

8. The learned counsel appearing for the appellant mainly would submit that the 'B' schedule property was purchased in the name of the second defendant and the 'B' schedule property has been purchased out of the contribution made by the husband of the plaintiff. It is further submitted that the 'B' schedule property has been purchased out of the income from the 'A' schedule property.

9. Whereas it is the contention of the learned counsel appearing for the respondents that the 'B' schedule property was purchased by the second defendant and the 'B' schedule property has also been sold to the sixth defendant. The plaintiff has no right whatsoever in the 'B' schedule property. It is their further contention that there is no such joint family nucleus as contended by the plaintiff.



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10. On a careful consideration of the materials available on record and on the submissions made by both the learned counsels, the following points arise for consideration in this appeal:-

1. Whether there was surplus income from the 'A' schedule property to substantiate the claim of the appellant?
2. Whether the 'B' schedule property was purchased out of the contribution made by the husband of the plaintiff or out of the income from the 'A' schedule property?

11. **Points 1 & 2 :**

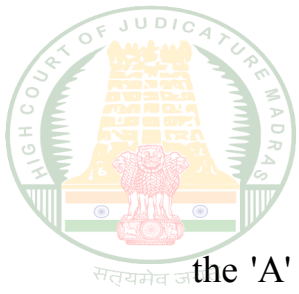
I have perused entire materials available on record. Though the suit has been filed claiming partition in respect of two items of the property, as far as 'A' schedule property is concerned, claim has been given up in the suit itself by the plaintiff. Whereas, the suit has been proceeded in respect of the 'B' schedule property alone. It is the contention of the appellant that the 'B' Schedule property was purchased out of the income from the 'A' schedule property. That apart, it is his contention that contribution has been made by the husband of the plaintiff for the purchase of the 'B' schedule property.



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12. Admittedly, 'B' schedule property has been purchased in the name of the second defendant, wife, of the first defendant. Though it is stated by the plaintiff that only from the contribution made by sons of the first and second defendants and out of the income from the 'A' schedule property, the 'B' schedule property has been purchased in the name of the second defendant by the first defendant. Even if the contention has some force, in the eye of law, it has to be held that the property purchased in the name of the wife should be construed for her benefit only. In such view of the matter, the plaintiff cannot seek a share in the 'B' schedule property. Be that as it may.

13. The further contention of the plaintiff is that the 'B' schedule property was purchased from the income derived from the 'A' schedule property. Absolutely there is no material whatsoever placed by the plaintiff in this regard. The 'B' schedule property has been purchased in the year 1984 under Ex.A.11 sale deed. On the date of purchase, the plaintiff is not even married to the son of the first defendant and she was not in a position in her entire evidence to substantiate her stand that there was sufficient nucleus from



the 'A' schedule property. The very evidence of P.W.1 clearly show that she has shown ignorance about the nature of contribution made by her husband for the purchase of the 'B' schedule property. Even she is not aware of the date of birth of her husband.

14. The trial Court considering Ex.A.3 death certificate of the husband of the plaintiff has clearly held that even on the date of purchase of 'B' schedule property, the age of the said Ravi, husband of the plaintiff would be around 12 to 13 years. Therefore, the contribution as alleged by the plaintiff cannot be countenanced. Further, absolutely there is no evidence produced by the plaintiff to prove the fact that the income derived from the 'A' schedule property. As long as sufficient nucleus has not established from the joint family property, merely contending that the property has been purchased in the name of the mother-in-law, it cannot presumed that the said property has been purchased out of the income of the joint family property. Further P.W.2 in his evidence has clearly admitted that he did not know native of the first and second defendants and the he is not aware of the purchase of the 'B' schedule property. When sufficient nucleus from the joint family property has not been



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established, merely on the basis of the pleadings, it cannot be held that 'B' schedule property is also a joint family property. Hence, I do not find any merits in this appeal.

15. In the result, the appeal is dismissed on merits, invoking Order 41 Rule 11[1] Code of Civil Procedure. There shall be no Order as to costs. Consequently, connected miscellaneous petition is closed.

04.02.2025

Index : Yes / No
Internet: Yes
Speaking/non speaking order

vrc

To,

The Additional District Judge,
Dharmapuri.



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N. SATHISH KUMAR, J.

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