



S.A.No.560 of 2024

T.V.THAMILSELVI, J.

Challenging the concurrent findings of the Courts below, the defendants have preferred this Second Appeal. The plaintiff claimed 1/3rd share in respect of the Items 1 and 2 of the suit schedule properties as joint family properties. The Trial Court upheld that the 1st item of the property was already partitioned and in respect of the 2nd item of the property, 1/3rd share of the property was allotted to the plaintiff by declining the defence taken by the appellant/1st defendant, that it is the self acquired property of the 1st defendant purchased in the year 1970-1974. Admittedly, there is a partition held between the plaintiff and the defendants, but the 2nd item of the property was not included. The Courts below held that the 1st defendant has no source of income at the time of purchase, admittedly, he is aged about 21 years old. The learned counsel for the appellants submitted that even assuming that it was omitted to mention in the Partition held which shows that it is not an ancestral joint family property. Furthermore, the learned counsel pointed out that there is EX.B.1 - Sale Agreement dated 02.01.1995 between the 1st defendant and the 2nd defendant in respect of the



2nd item of the property in which the plaintiff is one of the attesor who had knowledge about the self acquired property. Accordingly, the learned counsel for the appellants disputed the findings of the Courts below.

2.This Court admits the Second Appeal on the following Substantial Questions of Law:

“(1)When the execution of Ex.B1 - Sale Agreement dated 02.01.1995 between the 1st and 2nd appellants, wherein the respondent signed as attesting witnesses was at no point of time disputed by any of the parties including the respondent, aren't the Court below was not justified in eschewing the said documentary evidence, while deciding the suit Item-2 of the property is a Joint Family property or a self-acquired property?.

(2)When by execution of Ex.B1-Sale Agreement dated 02.01.1995, the respondent/plaintiff accepted the Suit Item-2 of the property is the individual property of the 1st appellant aren't he estopped from claiming the said property as joint family property in later point of time, that too, after a period of 15 years and if so, isn't the Judgements of the Courts below are contrary to Section 115 of the Indian Evidence Act ?



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(3) Whether the Courts below are not correct and proper in shifting the burden on the appellants to prove that Item-2 of the suit schedule property was purchased out of the 1st appellant's own funds, when Ex.B1 - Sale Agreement and Ex.B.3 - Panchayat Partition (where the appellants and respondent were parties to it) on the face of it shows that the said property is an individual property of 1st appellant?

4. When Ex.X.1 to Ex.X.4 on the face of it shows that the age of the 1st appellant was 21 years old and 25 years old at the time of purchase of property under Ex.A.7 and Ex.A.8 and only a sum of Rs.100/- only paid out of Sale consideration of Rs.20,000/- and through Ex.B.24, the 1st appellant has discharged the debt amount availed by his Vendors and on the other hand, when there was no evidence produced/adduced by the respondent/plaintiff to prove that the Item-2 of the suit property was purchased out of Joint family funds, aren't the Courts below was not correct and justified in arriving at a conclusion that the nature of Item-2 of the suit property as a joint family property and thereby granted decree of partitioning the same?



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5. When the execution of Ex.A.9 - Registered Partition in the year 1984 between Rangasamy Gounder and his two sons, namely, Palanisamy Gounder and Rangasamy, has no recitals in respect of Item-2 of the suit schedule property purchased in the years 1970 and 1974 and have specific recitals in respect of Item-1 of suit schedule property, aren't the Courts below not just and proper in concluding the Item-2 is a joint family property?

6. Was not the facts shows that by execution of Ex.B1- Sale Agreement dated 02.01.1995 and Ex.B.3 - Panchayat Partition, dated 21.04.1995, the appellants and the respondents were concisions about the nature of the suit properties and consciously took a decision to partition the Joint family properties, i.e., Item-I of suit properties through Ex.B.3 by leaving aside Item- 2 of the suit property which they all admitted to be a self-acquired property of the 1st appellant and if so, aren't the Judgements of the Court below suffers infirmities and perversities? ”



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3. Registry is directed to call for the entire records from the Court concerned.

4. Post this Second Appeal on 09.01.2025 for hearing.

02.12.2024

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