



A.S.No.493 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 10.02.2023

Coram

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR. JUSTICE P.B. BALAJI

A.S.No. 493 of 2006
and
M.P.No.1 of 2006

1.L.Dhayalan
S/o. Lakshmana Chettiar

2.L.Manickam
S/o. Lakshmana Chettiar.

... Appellants

Vs.

1.Minor Shobana
2.Minor Raj Mohan
3.Minor Hemalatha

4.K.Malathi
W/o. L.Kumaravel

5.L.Kumarvel (deceased)
S/o.Lakshmana Chettiar
[RR1 to 3 declared as major and R4 (K.Malathi)
discharged from guardianship vide
order of this Court dated 06.01.2011 made
in M.P.No. 1 of 2010 in A.S.No. 493 of 2006]

[R5 died RR 1 to 4 recorded as
LRs of the deceased R5 vide order of this Court
dated 17/11/2017.]

... Respondents



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This Appeal has been filed under Sec.151 of C.P.C. to set aside the judgment and decree in O.S. No. 16/2004 on the file of the Additional District and Sessions Judge (Fast Track Court), Vellore, dated 28.04.2006.

For Appellants : Mr. M.Sriram

For respondent : Mr. Y.Soloman - R1 to R4
R5 - died.

JUDGMENT

[Judgement of the Court was made by S.S. SUNDAR,J.]

Challenging the judgment and decree passed in O.S. No. 16/2004 by the Additional District and Sessions Judge (Fast Track Court), Vellore, dated 28.04.2006, the present appeal is filed by defendants 2 & 3 in the suit.

2. Respondents 1 to 4 herein filed a suit in O.S.No. 397 of 2000 before the Sub Court, Vellore. Subsequently, the said suit was transferred to the Addl.District and Sessions Judge (FTC), Vellore and renumbered as O.S.No. 16 of 2004. The respondents 1 to 3 are minors at the time of filing the suit and represented by their next friend namely mother who is the 4th plaintiff/ 4th respondent in this appeal. Later as per the order of this Court dated 06.01.2011 in M.P.No. 01/2010, the respondents 1 to 3 were declared as major and the 4th respondent was discharged from her guardianship. Respondents 1 to 4 herein filed a suit in O.S.No. 16 of 2004 for



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partition and separate possession of their 3/4th share in all the suit properties in favour of respondent 1 to 3 and other consequential reliefs. The prayer is also for a direction, directing the 1st defendant to pay the 4th plaintiff a sum of Rs.1,000/- per month towards maintenance w.e.f of 01.12.2000 and to create a charge over the suit properties to secure due payment of maintenance amount to the 4th plaintiff as against the 1/4th share belong to the 1st defendant. The respondents 1 to 3 are the children of the 4th plaintiff and the 1st defendant. The defendants 2 & 3 are brothers of the 1st defendant and they are impleaded as purchasers of the suit properties from the 1st defendant.

3. The case of the plaintiffs in the plaint is that the plaintiffs 1 to 3 and the 1st defendant are members of joint family and that they are also entitled to equal share as the properties are coparcenary properties. It is admitted between the parties that the entire suit properties were allotted to the share of first defendant as per compromise decree (final decree) dated 03.05.1991 in O.S.No. 246 of 1990 on the file of Additional Sub Court, Vellore.

4. It is further stated that the 1st defendant started several businesses like cinema distribution and other businesses and he



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started borrowing money limitlessly for his cinema distribution business. It is further stated that the 1st defendant faced several set backs on account of his acquaintance with his film distribution business, he lost his family business and the people around him tried to get valuable properties from the 1st defendant. It is also stated in the plaint that the defendants 2 & 3 who are brothers of the 1st defendant with dishonest intention cheated the 1st defendant by taking advantage of his vulnerable position, obtained the sale deed dated 24.10.1994 listed as items 2 & 4 mentioned in the suit schedule property. The plaintiff has almost discard the sale deed as a fraudulent creation obtained by plaintiff by fraud misrepresentation. Since the plaintiffs who are not parties to the sale deed dated 28.10.1994, the sale deed executed by the 1st defendant was also challenged on the ground that it is a void transaction, therefore, the plaintiffs are entitled to avoid the same without any relief and to set aside the same.

5. It is further stated that the debts incurred by the 1st defendant are all tainted with immoral things, therefore the sale deed cannot be termed as bonafide transaction for any family purpose by the 1st defendant as a manager of the joint family and there is no family necessity for the same.



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6. The suit was contested by the defendants 2 & 3/ purchasers merely on the ground that the 1st defendant was allotted the property mentioned in the compromise decree as 'D' schedule property. The plaint averments with regard to the legality of the transaction was specifically denied para wise in the lengthy written statement and ultimately it was contended that the sale deed dated 24.10.1994 was executed by the 1st defendant in the capacity of manager of the joint family. It is also contended that the sale deed is legal and valid and binding on the plaintiffs. Though in the written statement it is stated that due to debts incurred by father on behalf of family, the sale deed was necessitated for the benefit of family, the sum and substances of the pleadings also required the plaintiff to prove the character of the family and therefore the trial Court has framed following issues;

"1. Whether items No.3 and 4 of the suit properties are belonging to the family of the plaintiffs?"

2) Whether the sale deed dated 24.10.1994 is true and valid and binding the plaintiffs?"

3) Whether the suit is barred by limitation?"

4) whether the 4th plaintiff is entitled to maintenance, if so how much amount the is entitled to?"

5) Whether the plaintiffs are entitled to decree of partition of their 3/4th share in the suit property?"

6) Whether the 4th plaintiff is having charge over the suit property?"

7) To what the relief the plaintiffs are entitled to? "



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7. The trial Court by referring into the fact that the properties were allotted to the 1st defendant in the final decree in O.S.No. 246 of 1990, and that the properties are originally belongs to the father of the defendants 1 to 3. The trial Court found that the character of the properties are ancestral, particularly when the properties are inherited from a common ancestor namely Lakshmana Chettiar/father of defendants 1 to 3 and the grand father of plaintiffs 1 to 3. Since the suit properties are family properties of plaintiffs 1 to 3 and the 1st defendant, the trial Court held that the sale deed dated 24.10.1994, though it is valid to the extent of 1st defendant share, is not binding on the plaintiffs. The other issues were also holding that (i) the suit is not barred by limitation, (ii) whether the plaintiffs are entitled to partition of their 3/4 share in the suit property and (iii). whether the 4th plaintiff is entitled for maintenance. The trial Court held that the 4th plaintiff is entitled for maintenance and a charge to be created over the suit property to the extent to the share of the 1st defendant. Aggreived by the judgment and decree as it relates item nos.3 &4, the above appeal has been preferred by the defendants 2 & 3.



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8. The learned senior counsel appearing for the appellants vehemently argued before this Court by referring to several documents to prove the case of the appellants that the properties are the properties acquired by Lakshmana Chettiar who died long after the enactment of Hindu Succession Act 1956. Therefore, the learned senior counsel for the appellants would submit that the said properties acquired by Lakshmana Chettiar to be inherited only by his sons and daughters after the death of Lakshmana Chettiar in terms of Section 8 of the Hindu Succession Act 1956.

9. The learned counsel appearing for the respondents would further submit that the defendants 2 & 3 in the written statement have categorically admitted in both the replies that the properties are joint family character of the suit property, therefore the plaintiff does not called upon to decide whether the suit properties are the ancestral properties of plaintiffs 1 to 3 and the 1st defendant. The learned counsel for the respondents would further submit that the 1st defendant has sold the property without any family necessity, therefore the sale deed is vitiated and will not bind the plaintiffs' share.

10. Heard the learned senior counsel appearing for the



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appellants and the learned counsel appearing for the respondents 1 to 4 and perused the documents available on record.

11. As regards the nature of pleadings and the arguments advanced by both the learned counsel either side, this Court is of the view that the following points needs to be answered in the above appeal.

i. whether the suit properties are self acquired by the 1st defendant or separate properties of he 1st defendant or joint family properties of plaintiffs 1 to 3 and the 1st defendant.

ii. whether the sale deed executed by the 1st defendant infavour of the defendants 2 to 3 is valid and binding on the plaintiffs 1 to 3.

12. The learned senior counsel appearing for the appellants though admitted that there is reference to the joint family character of properties, submitted that the defendants have not admitted the existence of the joint family properties as joint family or coparcenary in the hands of Lakshmana Chettiar. It was therefore at the time of framing issues, the trial Court was required to frame



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a specific issue with regard to the character of the suit property that whether they are joint family or coparcenary property or separate properties of the 1st defendant. The learned senior counsel would refer the plaint in O.S.No. 246 of 1990, which is marked as Ex.A1 and final decree in the said suit. The learned counsel also referred to the contents and recitals of the sale deed Ex.A3 dated 24.10.1994.

13. From the entire evidence, the issue with regard to the character of family properties should be considered in the light of interest of parties both joint family or ancestral.

14. This Court has considered all the relevant documents and materials and evidence in relation to the character whether they are joint family properties or separate properties of the 1st defendant. With regard to the question whether the properties are joint family properties or ancestral properties, we found some confusion in the pleadings of respective parties. The term ancestral would include any property which is inherited from the ancestors. The said Lakshmana Chettiar may be an ancestor for the plaintiffs. In other words, the properties which are ancestral in the hands of plaintiffs whether the joint family or coparcenary properties for the purpose



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of concluding main character of the properties. In the present case, it is admitted that there are unequal terms in every documents and evidence that the properties were acquired by Lakshmana Chettiar. Absolutely there is no hint or evidence to suggest that the Lakshmana Chettiar had acquired any other properties from any source in the power of joint family nucleus for all his acquisition. In the absence of any pleadings or evidence for acquisition of properties by Lakshmana Chettiar with the aid of joint family nucleus, We are unable to find any merits in the submission that the properties which are divided amongst the children are the joint family properties of Lakshmana Chettiar and his children. The views expressed by the parties are supported by specific recitals in the plaint marked as Exhibits A2 and A3. Para 3 & 4 of the plaint in O.S.No. 246 of 1990 is extracted hereunder;

"3..... The plaintiff and the defendants father J.Lakshmana Chettiar had acquired the properties morefully described in 'A' Schedule hereunder. The said J.Lakshmana Chettiar died on 14.01.1988 intestate leaving behind the plaintiff and the defendants 1 to 4 herein his sons, and the 5th defendant his daughter and his wife L.Thara Bai Ammal as his legal representatives. The death certificate of the said J.Lakshmana Chettiar is filed herewith.

4.....The aforesaid L.Thara Bai Ammal died



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intestate on 22.08.1988 leaving behind her sons – the plaintiff and the defendants 1 to 4 herein and her daughter-the 5th defendnat herein as her legal representatives.”

15. Similarly the recitals of the sale deed Ex.A2 executed by the son of the 1st defendant in favour of the plaintiffs 1 to 3 are also relevant and the same is extracted below;

“..... என்னவென்றால் 27/11/1980 தேதியில் எழுதி வேலூர் மாவட்ட பதிவாளர் அலுவலகத்தில் 1 புத்தகமம் 1782 தொகுதி 29 முதல் 33 வரை பக்கங்களில் 1980ம் வருடத்திய 4817 எண்ணாக பதிவு செய்யப்பட்ட கிரைய பத்திர முன்னிலைக்கு என் தகப்பனார் அவர்களுக்கு கயார்சிதமாக பாத்தியப்பட்ட இதன் கீழ் சொத்து விவரத்தில் கண்ட சொத்தையும், இதர சொத்துக்களையும் சேர்த்து நானும், ஏன் சகோதரர்களும் சேர்த்து கூடுதல் சார்பு நீதிமன்றத்தில் அசல் வழக்கு எண் 246/90 முன்னிலைக்கு சமாதானமாகி ஒப்புக் கொண்டு பாகபிரிவினை செய்துக் கொண்டோம். அவ்வாறு பாகபிரிவினை செய்துக் கொண்டதில் மேற்படி சொத்தும் வேறு சில சொத்துக்களும் என்னுடைய பாகத்திற்கு வந்து என் சுவாதீன அனுபவத்தில் அனுபவித்து வருகிறேன். அவ்வாறு என்னுடைய அனுபவத்தில் இருக்கும் இதன்கீழ் சொத்து விவரத்தில் கண்ட சொத்தை குடும்ப செலவுகளுக்காகவும், என்னுடைய கடன்களை பைசல் செய்யவும், உங்களுக்கு ரூபாய் 5,00,000.00க்கு கிரையம் பேசி கிரையத்தொகை ரூபாய் ஐந்து லட்சமும் பெற்றுக் கொண்ட விவரமானது, நூளது தேதியில் உங்களிடமிருந்து ரொக்கமாகப் பெற்றுக் கொண்ட ரூபாய் 4,00,000.00 எழுத்தால் ரூபாய் நான்கு லட்சம் ஆகும். இந்த பத்திரம் பதிவு செய்யும் நேரத்தில் பதிவாளர் அவர்கள் முன்பாக இரண்டு பே ஆர்டராக பெற்றுக் கொள்வதாக ஒப்புக் கொண்ட வகையில் சேர்ந்த ரூபாய் 1,00,000.00 எழுத்தால் ரூபாய் ஒருது லட்சம் ஆகும்,”



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16. When the question regarding character of property arise for consideration, the burden lies on the person who said the character of the property as joint family property. In the present case, the burden lies on the plaintiffs who are the members of the suit property as joint family property. Except the recitals in the plaint and the documents Ex.A3, no other document is filed by the plaintiffs to prove the character of the property as otherwise. Documents marked as Ex.A2 & A3 are the documents filed by the plaintiffs themselves. In the absence of any other documents, the plaintiffs ought to have let in sufficient evidence to prove the character of the properties as otherwise. The case of the appellant is also that the 1st defendant has instigated the suit by his own children. Though this Court is not inclined to go into the issue, the submissions of the plaintiffs cannot be accepted without their being sufficient evidence. When the properties are held to be the properties acquired by Lakshmana Chettiar on his own, they have to be treated as self acquisition of Lakshmana Chettiar. Admittedly, the said Lakshmana Chettiar died after 1956, therefore the succession will be as per Section 8 of the Hindu Succession Act. It was keeping in mind by the plaintiffs that the character of properties are as self acquired properties of Lakshmana Chettiar. The plaint in



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O.S.No. 246 of 1990 was also resulted by admitting equal share to the sons and sister of the defendants 1 to 3. The parties have understood that they inherited the properties as legal heirs of Lakshmana Chettiar, hence filed the suit for partition in the year 1990 with these documents. This Court has no reason to hold that the suit properties are ancestral merely because there is reference in the written statement that the properties are joint family properties.

17. This Court has to necessarily consider the pleadings and the understanding of many advocates in the State. Whenever the properties are described as ancestral, it does not mean that they are joint family or coparcenary properties of the family. Every property that is inherited by common ancestor can be claimed as ancestral, they need not be coparcenary property, unless the property is acquired by any persons with the aid of joint family, the same cannot be characterised as a coparcenary property, so as to divide among the members of the joint family.



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18. This Court and the Hon'ble Supreme Court on several occasions consistently made the distinction between coparcenary property and the properties of individuals. The Hon'ble Full Bench of this Court in the case of ***The Additional Commissioner of Income Tax, Madras -1 Vs. P.L.Karuppan Chettiar (T.C.No. 197 of 1974) reported in AIR 1979 Madras 1***, has made a distinction between the properties inherited by a male as a joint family property as well as separate property. In the said case, the coparcenary property was divided between father and son. The property that was allotted to the share of father was held to be a separate property of father himself after partition. Therefore, the Hon'ble Full Bench held that the properties after the death of father to be inherited by the son, therefore the son will get the property as self acquisition, even though the properties that were allotted between parties was recognised as a joint family properties. Therefore the Hon'ble Full Bench has held that the property that was allotted to the father and in the partition, inherited by son should be assessed in his individual name and the income from the properties that was allotted in the partition should be treated as joint family property. The relevant portion of the judgments is extracted as follows;



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" 6. The question is whether when succession opens under Section 8, Karuppan and his son will take the property in the same manner. Clearly, this is not so. When we search for the relatives mentioned in class I of the schedule, which is attracted by virtue of Section 8, we find no sons are mentioned at all. though the grandson of a deceased son is mentioned. What would be the effect when such a grandson comes into the picture need not be dealt with in this case. But where the son as well as his son are the persons concerned, by applying Section 8, we have to come to the conclusion that the father along, namely Karuppan in this case would inherit the property to the exclusion of the grandson. This being the effect of the statutory provision, no interest would accrue to the grandson in the property which belonged to Palaniappa. Even assuming Palaniappa's property was ancestral property in the hands of Karuppan, still because of the effect of the statute, Karuppan's son would not have an interest in the property. This was directly derogatory of the law established according to the principles of the Hindu Law and this provision in the statute must prevail in view of unequivocal expression of the intention in the statute itself which said that to the extent to which provisions had been made in the statute, those provisions should override the established provisions in the texts of Hindu Law. This is what M. H. Beg J. as he then was, said in the decision in Commr. of Income Tax v. Ram Rakshpal, MANU/UP/0255/1966 : [1968]67ITR164(All) . Commenting of this, Divan C. J. in Commr. of Income Tax v. Babubhai Mansukhbahi MANU/GJ/0028/1975 : [1977]108ITR417(Guj) made the following observations :

"The Division Bench there held that in view of the provisions of Section 6 and Section 8 of the Hindu Succession Act, the old position no longer prevailed and



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the income from assets inherited by a son from his father must be held to be his individual and not the income of the Hindu undivided family consisting of himself and his son. Main reliance in support of this conclusion was placed by the Allahabad High Court on the provisions of Sections 6 and 8 of the Hindu Succession Act. The Allahabad High Court accepted the principle that if it had not been for the Hindu Succession Act, on the death of a father whatever was inherited by his son by way of succession became ancestral property in the son's hands and this ancestral property in the hands of the son belonged to the coparcenary or the joint Hindu family consisting of the son and his own male issue.....

After discussing the matter at some length the learned Chief Justice observed at p. 422-

".....With respect to the learned Chief Justice of the Allahabad High Court, it is impossible to read into the words of Section 8 any provision which interferes with the scheme of Hindu Law as it prevailed prior to the enactment of the Hindu Succession Act. Neither Section 6 nor S. 8 nor Section 30 affects this principle of Hindu Law as to in what capacity or in what character the son would enjoy the property once he received it from his father in succession". Proceeding further, the learned Chief Justice, referred to a passage from Mulla's Principles of Hindu Law, 14th Edn. Edited by S. T. Desai. Illustration (a) at page 849 of the commentary is then extracted and the learned Chief Justice agreed with the Commentary and the illustration.

With very great respect, we are unable to agree with the view expressed by the learned Chief Justice. The passage quoted from the



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commentary did not deal with the effect of section 8 of the Act. What has been illustrated also is the position under the Hindu Law untrammelled by statutes and it occurs in the commentaries to Section 6 of the Act which deals with survivorship and the saving by Section 6 of that principle to the extent to which it had been done. This passage is of no assistance in determining the impact of Section 8 on the principles of devolution of property on the death on the principles of inheritance. We have dealt with the effect of Section 8 earlier and it is clear that here Karuppan alone took the properties of his father Palaniappa which the latter had obtained in the partition, and irrespective of the question whether it was ancestral property in the hands of Karuppan or not, he would exclude his son. Since the existing grandson at the time of the death of the grandfather has been excluded, we think that an after-born son of Karuppan will also not get any interest which Karuppan inherited from his father. Thus, the principles of Hindu Law are not applicable. It is impossible to visualise or envisage any Hindu undivided family in regard to the property which Karuppan got. This is the view that we have taken in the decision in T. C. No. 276 of 1972 : 1977 Tax LR 1420 Addl. Commr. of Income Tax Madras v. V. R. A. Manicka Mudaliar to which one of us was a party. We respectfully agree with the view expressed in that decision and answer the question referred to us in the affirmative i.e. in favour of the assessee and against the Department.”

19. This Court finds that the suit properties are the separate properties of the 1st defendant and therefore the sale deed executed by the 1st defendant infavour of the defendants 2 & 3 in Ex.A3 dated 24.10.1984 is valid and binding on the plaintiffs. Since the



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properties are held to be separate properties of the 1st defendant, the suit for partition is not maintainable during the lifetime of the 1st defendant. Therefore this Court is unable to grant any relief to the plaintiffs.

20. With the above, the Appeal is allowed and the judgment and decree in O.S. No. 16/2004, dated 28.04.2006 passed by the Additional District and Sessions Judge (Fast Track Court), Vellore is set aside. No costs. Consequently, connected Miscellaneous petition is closed.

(S.S.S.R, J.)

(P.B.B., J.)

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Index : Yes / No

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Speaking Order / Non Speaking Order

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**S.S. SUNDAR, J.
AND
P.B. BALAJI, J.
ak**

**Judgment in
A.S.No.493 of 2006
and
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