



A.S.No.198 of 2017

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2023

CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS JUSTICE R.KALAIMATHI

A.S.No.198 of 2017
and
C.M.P.No.8544 of 2017

P.Madhesh

...Appellant

Vs.

1.M.Veeramuthu
2.M.Kanagambal
3.Sivakami
4.Mariammal
5.Ravi
6.Murugesan

...Respondents

Prayer: First Appeal filed Order XL1, Rule 1 r/w. Section 96 of C.P.C.,
against the judgment and decree dated 25.09.2014 in O.S.No.89 of 2011 on
the file of the III _Additional District and Sessions Judge, Salem.

For Appellant : Mr.R.Nalliyappan

For Respondents : Dr.P.Jagadeesan for R1 & R2
R3 to R6 – No Appearance



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J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The 1st defendant in O.S.No.89 of 2011 on the file of the III-Additional District and Sessions Court, Salem is on appeal, against the preliminary decree granted in the said suit, declaring that the plaintiffs therein are entitled to 2/3rd share in the suit “A” and “B” schedule properties.

2.The plaintiffs, who are the son and daughter of the appellant born through his first wife, Ramayee Ammal filed the suit, seeking 2/3rd share in “A” and “B” schedule properties, contending that the suit “B” schedule properties are ancestral properties and suit “A” schedule property purchased by their grand father, Pachiyannan from and out of the income from the ancestral properties in the name of the 1st defendant / appellant. Therefore, according to the plaintiffs, they being the children of the first wife and coparcenors, they are entitled to 2/3rd share in the suit properties.

3.The said suit was resisted by the defendants, contending that the



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suit “B” schedule properties are not available at all and the suit “A” schedule properties were purchased by the first defendant from and out of his income, which he got out of his employment in Dalmia Magnisites.

4.On the above pleadings, the Trial Court framed the following issues:-

“i) Whether the plaintiffs are entitled to 2/3rd share in the suit properties.

ii) To what relief are the plaintiffs entitled to?”

5.At trial, the plaintiff was examined as P.W1 and one Muthu, an attesor to the sale deed dated 02.09.1991 under which, the suit “A” schedule properties were purchased as well as a cousin brother of the 1st defendant was examined as P.W.2 and Exs.A1 to A5 were marked. On the side of the defendants, the 1st defendant was examined as D.W.1 and one Kandasamy was examined as D.W.2. Exs.B1 and B2 were marked.

6.The Trial Court, on a consideration of the evidence particularly, certain vital admissions made by P.W.2 in his evidence concluded that the



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suit “A” and “B” schedule properties are ancestral properties and the suit “A” schedule properties were purchased from and out of the income from the “B” schedule properties in the name of the first defendant. On the said conclusion, the Trial Court granted a preliminary decree as prayed for. Aggrieved, the defendant is on appeal. It is pertinent to point out, the purchaser namely, 5th defendant has not come up with an appeal against the said decree.

7.We have heard Mr.R.Nalliyappan, learned counsel for the appellant and Dr.P.Jagadeesan, learned counsel for the 1st and 2nd respondents. The other respondents though served, not appearing either in person or through counsel, duly instructed.

8.Mr.R.Nalliyappan, learned counsel for the appellant would vehemently contend that the plaintiffs have not established that the suit “B” schedule properties are ancestral properties. He would contend that suit “B” schedule properties were purchased by Pachiyannan, and they would not part take character of the ancestral properties. As regards the “A” schedule



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property, the learned counsel would contend that the fact that appellant was employed in Dalmia Magnisites having been admitted and the fact that the sale deed stands in his name are sufficient to prove that the suit “A” schedule properties were purchased out of the income of the 1st defendant from his employment.

9.Contending contra, Dr.P.Jagadeesan, learned counsel for the respondents 1 and 2 / plaintiffs would submit that though the 1st defendant had projected a case of denial of the very existance of the “B” schedule properties in his written statement, he had admitted the existence of “B” schedule properties and their character as ancestral properties in his proof affidavit and his cross-examination.

10.The learned counsel would also draw my attention to the evidence of P.W.1 and attesting witness to sale deed, Ex.A1 dated 02.09.1991, under which the suit “A” schedule properties were purchased. The said witness viz..PW2 has specifically spoken about the character of the properties and the consideration that was paid for purchase of “A” schedule



properties. His evidence has not been shaken in cross-examination. In fact, we find that there is no cross-examination on relevant points or the issues particularly, relating to the nature of the properties, which are spoken to by P.W.2. We have considered the rival submissions.

11.On the rival contentions the following points emerge for consideration:

“i) Whether the suit “B” schedule properties are ancestral properties ?

ii) Whether the suit “A” schedule properties were purchased from and out of the income of the 1st defendant ?

iii) Whether the plaintiffs are entitled to 2/3rd share in the suit schedule properties ?”

Issue No.1

12.It is the specific case of the plaintiffs that the “B” schedule properties that belongs to the family of Pachiannan and Pachiannan died, leaving behind those properties and those properties were inherited by the first defendant as his only son. Though the 1st defendant in his written



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statement would deny the very existence of the “B” schedule properties, he would in his proof affidavit admit the existence of the suit B schedule properties and he would contend that his sisters are entitled to a share in the properties. He would also add that he does not have any property in his hands as on date when he filed the proof affidavit. This evidence of the 1st defendant is wholly unreliable. Further, in his cross-examination, the 1st defendant would admit that his children, defendants 3 and 4 born through the 2nd defendant namely, 2nd wife had joined execution of the sale deed dated 15.11.2010 in respect of the “A” schedule properties executed in favour of Murugesan, the 5th defendant. The evidence of the 1st defendant in cross-examination reads as follows:-

“ஏ ஷெட்யூல் 5ம் பிரதிவாதிக்கு 15.11.2010ம் தேதி முருகேசன் என்பவருக்கு விற்றுள்ளேன். அந்த கிரையபத்திரத்தில் நானும் 2ம் பிரதிவாதியின் மூலம் பிறந்த மகன் 3ம் பிரதிவாதி மாரியம்மாள் மகன் 4ம் பிரதிவாதி அஜீத் ஆகியோர்கள் கையெழுத்து செய்துள்ளோம். தாவா சொத்து பொதுக்குடும்ப சொத்து என்பதால் பின்னால் பிரச்சனை ஏற்படக்கூடாது என்பதற்காக 15.11.2010ம் தேதி நடைபெற்ற கிரையப்பத்திரத்தில் கையெழுத்து செய்தோம்.”



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13.This admission of D.W.1, in our considered opinion would put

the character of “A” schedule properties beyond pale of controversy.

Coupled with this is the evidence of P.W.2, cousin brother of the 1st defendant and the attesor to sale deed, Ex.A1 dated 02.09.1991 under which, the said “A” schedule properties were purchased, he has spoken no uncertain terms that it was Pachiyappan / father, who purchased the properties in the name of the defendant and he has also stated that he has no enmity with the defendant.

14.As rightly pointed out by the learned counsel, Mr.P.Jagadeesan, his evidence, in chief-examination has not been tested in cross-examination. We are unable to find any question relating to the character of the properties or relating to the source of income for purchase of the “A” schedule properties in his cross-examination. Therefore, his evidence in chief-examination remains uncontroverted. We are therefore, unable to fault with the Trial Court when it relied upon this evidence to conclude that the suit “A” schedule properties are also ancestral properties purchased out of the income from the “B” schedule properties.



Issue No.2:-

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15.As regards the nature of “B” schedule properties, plaintiffs has come up with the specific case, the Pachiyannan died leaving behind “B” schedule properties and the 1st defendant succeeded to it as the only son. In the written statement, the 1st defendant would deny the very existence of the “B” schedule properties. However, in his evidence, he has admitted the existence of “B” schedule property and he has claimed that his sisters have also share in the property. He has gone a step further and he has claimed in his proof affidavit that he has no property in his hands as on the date of the said proof affidavit. In his cross-examination, he would admit the existence of the “B” schedule property. In the absence of any other evidence, we are unable to fault the Trial Court for having accepted the evidence of the P.W.1 and P.W.2 to come to the conclusion that the “A” schedule properties are also ancestral properties.

Issue No.3:-

16.In view of the answers to the 1st and 2nd points, it naturally follows that the plaintiffs would be entitled to 2/3rd in the suit schedule properties and judgment and decree of the Trial Court is confirmed.



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17.In view of the above, this Appeal is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

(R.S.M.,J.) (R.K.M.,J.)
13.07.2023

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Internet:Yes

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Nuetral Citation :No



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The III-Additional District and Sessions Court,
Salem.



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R.SUBRAMANIAN, J.
and
R.KALAIMATHI, J.

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