



A.S.(MD)No.86 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 27.07.2023

PRONOUNCED ON: 18.08.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

A.S.(MD)No.86 of 2016

C.Vijayan : Appellant/Plaintiff

Vs.

1.Sankar
2.Alagammal(died)
3.Chinnakannu
4.Amirthavalli
5.Mujibur Rahman(died)
6.Fathima Bibi
7.Rahina Babu
8.Minor Su.Banu Perveen
9.Minor Jasmin
10.Minor Jaffrin : Respondents / Defendants
(Respondents 8 to 10 represented by
natural guardian and mother Rahima Banu)

(cause title is amended vide memo dated
29.04.2022)

PRAYER:- Appeal Suit filed under Section 96 r/w Order 41 Rule 1 and 2
of the Code of Civil Procedure against the Judgment and Decree, dated
08.01.2016 passed in O.S.No.162 of 2009, on the file of I Additional
District Judge (PCR), Tiruchirappalli.



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For Appellant : Mrs.AL.Ganthimathi
Senior Counsel
for Mr.C.Mahadevan

For Respondents :Mr.H.Lakshmi Shankar
for R.1
:Mr.AN.Ramanathan
for R.4
: R.2 and R.5 – died
: No Appearance
for R.3, R.6 to R.10

JUDGMENT

The Appeal Suit is directed against the judgment and decree passed in O.S.No.162 of 2009, dated 08.01.2016 on the file of I Additional District Court (PCR), Trichirappalli.

2. The suit is for partition.

3. Admittedly, the plaintiff and the first defendant are brothers and sons of the second defendant Alagammal and her deceased husband Chinnaiah. The third defendant has purchased some of the suit properties from the first defendant and the third defendant has sold some portions of the suit properties to the defendants 4 and 5 and as such, they were added



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as defendants 3 to 5 in the above suit. Pending suit, the fifth defendant had died and hence, his mother, wife and children were impleaded as defendants 6 to 10.

4. The case of the plaintiff is that the suit properties are the joint family properties of the plaintiff and the defendants 1 and 2, that his father Chinnaiah, out of the income derived from the ancestral properties and the income derived by the joint efforts of himself and the plaintiff, has purchased the third item of the suit property on 06.07.1957 in his name and the items 1 and 2 of the suit properties, vide sale deeds dated 16.06.1969 and 04.02.1978 respectively in the name of his wife Alagammal – second defendant and the fourth item of the suit properties, vide sale deed dated 20.09.2002 in favour of the plaintiff, that the second defendant was not having any independent source of income, that the improvements have been made in the properties purchased by constructing houses, shops and theatre, that the said Chinnaiah died in the year 2008 and after his death, the second defendant has failed to share the income of the properties with the plaintiff, that the plaintiff has then approached the defendants demanding his share by himself and through mediators, that the plaintiff came to know that the first defendant



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has created some fraudulent documents as if their father Chinnaiah and the second defendant had executed settlement deeds in favour of the first defendant in respect of some of the suit properties, that his father Chinnaiah was not in a sound state of mind and he was not well at the relevant point of time, that the settlement deeds executed by his father and mother are not binding on the share of the plaintiff and that since the defendants 1 and 2 have been attempting to alienate the remaining suit properties, he was constrained to file the above suit for partition and allotment of 1/3rd share in the suit properties.

5. The defence of the defendants 1 and 2 is that the said Chinnaiah started his career from scratch, that originally he was working in a hotel at Manaparai and thereafter he started a tea stall of his own, that he solely developed his business and came up in life, that all the properties acquired by the said Chinnaiah during his life time are all his self acquisitions, that the said Chinnaiah has executed a registered settlement deed in favour of the first defendant on 07.03.2008 in respect of third item of the suit properties, that the second defendant has executed a registered settlement deed dated 20.09.2002 in favour of the first defendant in respect of items 1 and 2 of the suit properties, that the first



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defendant accepted the said settlement deeds and the same have been acted upon, that the first defendant, after effecting mutation of records, has been in possession and enjoyment of the said properties, that the item No.4 of the suit properties belongs to the plaintiff and the same was purposely included in the above suit, that the said Chinnaiah has started a partnership business in Karpagam Theatre by including the plaintiff and some others as partners, that the first defendant alone has been looking after the theatre business prior to and after the suit, that since Karpagam theatre was not included in the suit properties, the suit is hit by the doctrine of partial partition, that the plaintiff has no cause of action for filing the above suit and that therefore, the suit is liable to be dismissed.

6. The learned trial Judge, upon considering the pleadings, has framed the following issues and additional issue as follows:

(1) Whether the plaintiff is entitled for partition and separate possession?

(2) Whether the settlement deeds executed in favour of the 1st defendant by the 2nd defendant as well as by the Chinnaiah the father of the plaintiff and the 1st defendant are valid and binding on the plaintiff?

(3) Whether the suit is bad for partial partition?



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(4) To what reliefs?

Additional issue:

(1) Whether the suit properties are joint family properties acquired from and out of ancestral nucleus?

7. During trial, the plaintiff has examined himself as P.W.1 and two other witnesses Thiru.Ponnusamy and Thiru.Rengarajan (Tahsildar, Manapparai) as P.W.2 and P.W.3 respectively and exhibited 15 documents as Exs.A.1 to A.15. The defendants 1 and 2 have examined the first defendant as D.W.1, his wife Tmt.Usha as D.W.2 and 2 other witnesses Thiru.A.R.S.Sekar and Thiru.Balsamy as D.W.3 and D.W.4 respectively and exhibited 4 documents as Exs.B.1 to B.4. The document produced by P.W.3- Tahsildar has been marked as Ex.X.1. The learned trial Judge, upon considering the evidence, both oral and documentary and on hearing the arguments of both sides, has passed the impugned judgment dated 08.01.2016, dismissing the suit. Aggrieved by the dismissal of the suit, the plaintiff has preferred the present Appeal Suit.

8. The learned Senior Counsel for the appellant would submit that the plaintiff has produced ample evidence to prove that the suit properties



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have been purchased in the name of his father and mother out of the income derived from the ancestral properties and also by the hard working of the plaintiff and his father, that the plaintiff has produced necessary evidence to show that there existed ancestral properties of his deceased father and there were income derived from the said properties, that the plaintiff has shown that his mother does not have any income for herself and the properties were purchased from and out of the income derived from the hotel business run by the plaintiff's father, that the second defendant who had pleaded that the properties purchased in her name were her self-acquired properties, had not proved that she had earned income for purchasing the same, that the attestors of the settlement deeds are the close relatives of the defendants 1 and 2, who are the interested parties and that the trial Court ought to have granted a preliminary decree declaring that the plaintiff is entitled to get 1/3rd share in the suit properties.

9. The learned Counsel for the first respondent would submit that the plaintiff alone has to prove that the suit properties are the ancestral or joint family properties and the same were purchased from and out of ancestral properties and from the joint business allegedly conducted by



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the plaintiff with his father, that the plaintiff has not raised any pleadings in the plaint regarding the existence of ancestral or joint family properties and the income derived therefrom, that since the suit properties are the self-acquired properties of Chinnaiah, he has every right to execute settlement deed in favour of the first defendant, that the fourth item of the suit properties was purchased by the said Chinnaiah in favour of the plaintiff and after filing of the suit, the plaintiff has sold some portions in the fourth item of the suit properties to third parties, that since the said Chinnaiah has not claimed the property purchased in the name of the second defendant and admitted that the same was the second defendant's self-acquired property, she has every right to execute the settlement deed in favour of the first defendant and that therefore, the plaintiff is not entitled to claim any share in the suit properties.

10. The points for determination are:

(1) Whether the trial Court erred in rendering a finding that the suit properties are the self-acquired properties of Chinnaiah, despite producing the evidence through P.W.2 and Exs.A.7 to A.10, A.14 and A.15 that Chinnaiah was having ancestral agricultural lands in



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Sadapoosaripatty and income was derived from the cultivation of the said lands?

(2) Whether the trial Court erred in deciding that the deceased Chinnaiah has executed a settlement deed dated 07.03.2008 in favour of the first defendant and the same was acted upon, despite showing that the deceased Chinnaiah was not in sound state of mind and was not in good health?

(3) Whether the plaintiff is entitled to get a preliminary decree declaring that he is entitled to get 1/3 share in the suit properties?

(4) Whether the Appeal Suit is liable to be allowed?

(5) To what other reliefs, the parties are entitled ?

Points 1 to 5:

11. The plaintiff, by alleging that the suit properties are the joint family properties, has claimed partition and allotment of 1/3rd share. But according to the defendants, the suit properties were the self-acquired properties of the deceased Chinnaiah. In the plaint, the plaintiff has alleged that Chinnaiah has purchased the properties from the income derived from the ancestral nucleus of the family properties and also the hard working of the plaintiff and his father. Except the above, the



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plaintiff has not furnished any other particulars about the existence of ancestral properties and the income derived from the same. During trial, the plaintiff has taken a stand that his father Chinnaiah was having agricultural lands in Sadapoosaripatty. In order to prove the same, he has examined P.W.2 -Ponnusamy and summoned Manaparai Tahsildar and examined him as P.W.3 and produced the computerised pattas under Exs.A.9 and A.10, proceedings of the Tahsildar Manaparai and copy of the letter of the plaintiff under the Right to Information under Exs.A.14 and A.15 respectively. P.W.2 – Ponnusamy, who is a resident of Poikaipatty, in his chief examination affidavit would say that the deceased Chinnaiah was having ancestral properties and he was running a tea shop at Manaparai bus stand. P.W.2 would further reiterate the contentions raised by the plaintiff in his chief examination affidavit. But in cross-examination, he would admit that he was not aware of the survey number and the extent of the ancestral properties owned by the said Chinnaiah, that Chinnaiah has sold the ancestral lands to his brother Vellakutty in the year 1952, but he has not seen the document, that he does not know about the extent and the price for which the properties were sold and that all the three brothers were owning 1 ½ acres of land and it is a dry land. P.W.3 – Tahsildar would say that originally patta was



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standing in the names of Vellakutty, Chinnathambi and Chinnaiah – sons of Chitti Goundar, but subsequently patta was issued in favour of wife and children of Chinnathambi.

12. As rightly pointed out by the learned Counsel for the first respondent, in Exs.A.9 and A.10 pattas, Patta No.1644 stands in the name of Chinnathambi, S/o Chitti and Patta No.3401 stands in the name of wife and sons of the deceased Chinnathambi. In Ex.A.15, the properties in S.No.528/1A and 1B were shown in the name of Chinnakannu and Vellaikutty respectively.

13. In order to counter the above contentions of the plaintiff, the defendants 1 and 2 have examined D.W.4 – Balsamy, who is none other than the son of Chinnathambi Gounder, brother of Chinnaiah. D.W.4, in his evidence, would say that Chinnaiah had left the village at his young age and went to Manaparai, that Vellakutty Gounder and Chinnaiah Gounder are the brothers of his father Chinnathambi Gounder, that the entire ancestral properties were in the enjoyment of his father Chinnathambi Gounder and patta also stands in their favour, that Chinnaiah Gounder has no right in the said properties and he never



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claimed any right over the same and that the said Chinnaiah never enjoyed the agricultural lands in Sadapoosaripatty. In cross-examination, he would say that his paternal uncle Chinnaiah Gounder had left the village by informing that he was not in need of ancestral lands.

14. It is pertinent to note that the plaintiff, himself in his cross-examination, would admit that his father was not having any ancestral lands in Sadapoosaripatty, that his grandfather was having 2 ½ acres of lands in the said village, that the said lands are being enjoyed by the sons of his paternal uncle, that he has not added the property available at Sadapoosaripatty, that his father while he was alive had orally gifted the said land in favour of his paternal uncle and that his father was not given any income from the said lands and the relevant portion is extracted hereunder for better appreciation:

“சுபுசாரிபட்டியில் என் தந்தையாருக்கு சொத்து வேலை. என்தாத்தாவிற்கு வேந்தது. அது என் தந்தையாரின் பாகத்தில் வந்தது. என்தந்தையாருக்கு 2 சுகாதாரர்கள். என்தாத்தாவிற்கு சுபுசாரிபட்டியில் 2 1/2 ஏக்கர் சொத்து வேந்தது. அந்த நிலம் மானாவாரி புங்கை மற்றும் கிணற்று பாசனம் உள்ளது. மானாவாரி புங்கையிலும்இ கிணற்று பாசனத்திலும் தனிதனியாக



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எவ்வளவு உள்ளது என்றால் தற்பாது ஈாபகம் லீலை. அதில் என் தந்தையாருக்கு என்று பாகம் மரியவில்லை. மொத்தத்தில் உள்ளது. தற்பாது என்னுடைய பெரியப்பா மகன்கள் அனுபவித்து வருகிறார்கள். 3 ுபர் அனுபவித்து வருகிறார்கள். ஒரு பெரியப்பா குழந்தைகள் லீலை. சடபூசாரிபட்டி சொத்தை நீத வழக்கில் ுசர்த்துள்ளனா என்றால் லீலை. என் தந்தையார் றுக்கும்பாது வாய் தானமாக என் பெரியப்பாவிற்கு கொடுத்து சென்றார். சடபூசாரிபட்டியில் நிலம் றுந்தது என்று மிராத்தில் சொல்லவில்லை என்றால் சரிதான். தானம் செய்து விட்டதால் சொல்லவில்லை.

அந்த சொத்தில் றுந்து என் தந்தையாருக்கு பெரியப்பா மகன்கள் வருமானம் கொடுத்தார்களா என்றால் லீலை.””

15. But in subsequent cross-examination, he would say that the suit properties were purchased by his father from the income derived from the properties owned by father's father and that there was cultivation of bajra millet, ground nut and cotton, but he does not know about the yield. As rightly pointed out by the learned Counsel for the first respondent, the plaintiff himself has specifically admitted that though his father was owning ancestral land in Sadapoosaripatty, he gifted the same to his brother Chinnathambi and that his father has not



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received any income from his ancestral lands.

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16. As per the settled Hindu law, property acquired by a karta or a coparcener with the aid or assistance of joint family assets is to be impressed with the character of joint family property. Merely because there is a joint family, there is no presumption that property possessed by its members is joint family property. Any party alleging that a particular property is the joint family property, it is for that party to prove the same.

17. Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact. Where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish that the property was acquired without the aid of the joint family property. To put it in other way, that the party has to prove that there was a joint family nucleus and has surplus income out of which, one can reasonably presume that the property in question could



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have been purchased, for raising a presumption that the property standing in the name of a member of Hindu joint family could have been purchased out of the joint family nucleus.

18. In the case on hand, it is clearly evident that the deceased Chinnaiah was having ancestral lands in Sadapoosaripatty, but absolutely there is no evidence to show that he was in enjoyment of the said property and was deriving income from the same. As already pointed out, the plaintiff himself has specifically admitted that his father has not derived any income from the ancestral lands at Sadapoosaripatty.

19. Now turning to the plea that the properties were purchased from the income derived by the hard working earning of the plaintiff and his father in the hotel business, except the above pleading, the plaintiff has not elaborated anything further. Even according to the plaintiff, he was born in the year 1954. But his father Chinnaiah has purchased the third item of the suit property on 06.06.1957, when the plaintiff was 3 years old. The said Chinnaiah had purchased items 2 and 3 of the suit properties in the name of the second defendant in 1969 and 1978, when the plaintiff was aged 15 years and 24 years respectively. P.W.1 would



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say that he was 20 years old, when his father has purchased the fourth item of the suit property in his name. As rightly pointed out by the learned Counsel for the first respondent, the plaintiff has neither raised any pleading nor produced any evidence to prove that in what way he worked with his father in the hotel business and earned the income.

20. Considering the above, this Court has no hesitation to hold that the plaintiff has miserably failed to prove that the suit properties are the joint family properties of the plaintiff and the defendants 1 and 2. Consequently, this Court has to necessarily hold that the property purchased by Chinnaiah in his name on 06.06.1957, is his self-acquired property.

21. The defendants 1 and 2 have taken a stand that the items 1 and 2 of the suit properties are the self-acquired properties of the second defendant. It is the specific case of the plaintiff that his mother – second defendant was not having any independent source of income and that the items 1 and 2 properties were also purchased from the income derived from the ancestral nucleus and the hard working earning of the plaintiff and his father. As already pointed out, the plaintiff has failed to prove



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those aspects. No doubt, as rightly pointed out by the learned Senior Counsel for the appellant, the defendants 1 and 2 have not shown that the second defendant was having independent source of income and from that income, items 1 and 2 properties were purchased. Even assuming for arguments sake, that the deceased Chinnaiah Gounder has purchased the said properties in the name of the second defendant, the presumption is that the purchase was for the benefit of his wife. No doubt, the husband can claim that property by proving that he had purchased the said property benami in the name of his wife. In the case on hand, admittedly, Chinnaiah has not claimed any right in items 1 and 2 of the suit properties standing in the name of the second defendant.

22. It is not in dispute that while Chinnaiah Gounder was alive, the plaintiff has issued a paper publication in Daily Thanthi on 10.03.2008 under Ex.A.5 alleging that some persons are attempting to create documents by using the ill-health of Chinnaiah Gounder, for which,

Chinnaiah Gounder and his wife – second defendant have issued a reply notice under Ex.A.6, whereunder it has been specifically stated that



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Chinnaiah Gounder was in good health both physically and mentally and that the items 1 and 2 of the properties shown in Ex.A.5 notice were belonging to the second defendant and that she had every right to execute any document as per her wish. Since Chinnaiah Gounder has not claimed the items 1 and 2 of the suit properties from the second defendant by alleging that he had not purchased the same for the benefit of the second defendant, this Court has no other option but to say that the items 1 and 2 of the suit properties are the separate properties of the second defendant.

23. The defendants 1 and 2 have specifically stated in their written statement that they have not claimed any right or share in the item 4 of the suit properties, as the same was purchased for the benefit of the plaintiff by Chinnaiah. It is not in dispute that the plaintiff after filing of the present suit, has formed a lay out in item 4 of the suit properties and sold some plots to some third parties. Since this Court has come to a

decision that the items 1 to 3 of the suit properties are the self-acquired properties of Chinnaiah Gounder and the second defendant, they have every right to execute settlement deeds in favour of their son – first



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defendant.

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24. As already pointed out, the plaintiff has taken a stand that his father was not in sound state of mind at the time of execution of Ex.B.3 – settlement deed dated 07.03.2008. The reply notice under Ex.A.6 was issued by Chinnaiah Gounder and the second defendant on 17.03.2008. The defendants 1 and 2 have examined D.W.3-attestor of Ex.B.3. D.W.3 would depose that Chinnaiah Gounder alone had requested him to stand as attesting witness to the settlement deed, that he was in good health both physically and mentally and that the document was executed on 07.03.2008 and the same was registered on 10.03.2008. The second defendant – another attesting witness to Ex.B.3 settlement deed, would specifically depose about the execution, attestation and registration of the said document. The plaintiff, in his cross-examination, has specifically admitted the signatures of his father found in Ex.B.3 settlement deed. Though the plaintiff has also disputed the settlement deed executed by the second defendant, she has specifically admitted the execution of Ex.B.4 settlement in favour of the first defendant.

25. Considering the above, it is clear that the said Chinnaiah had



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executed a registered settlement deed under Ex.B.3 in respect of the third item of the suit properties in favour of the first defendant and the same was acted upon. Regarding Ex.B.4 settlement deed, since the executant herself has admitted the execution, the question of proving the same does not arise at all. Hence, the finding of the trial Court that the settlement deeds executed by Chinnaiah and his wife, second defendant in favour of the first defendant are valid and binding on the plaintiff, cannot be found fault with. Consequently, this Court concludes that the Appeal Suit is devoid of merits and the same is liable to be dismissed. Considering the other facts and circumstances of the case and also the relationship between the parties, this Court further decides that the parties are to be directed to bear their own costs. Accordingly, the points 1 to 5 are answered.



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26. In the result, the Appeal Suit is dismissed. The parties are directed to bear their own costs.

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NCC : Yes : No
Index : Yes : No
Internet : Yes : No

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To

1. I Additional District Court (PCR), Tiruchirappalli.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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