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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

S.A.Nos.990 & 991 of 2013

and

M.P.No.1 of 2013 and C.M.P.No.28140 of 2023

1. Hemalatha
W/o.Balakrishnan

2. A.Balakrishnan
S/o.Chinnabba

.. Appellants
in S.A.No.990 of 2013

vs.

1. S.Ramu
2. Deivanai
W/o.Nagabushanam

3. Nagabushanam

..Respondents
in S.A.No.990 of 2013

Hemalatha
W/o.Balakrishnan

.. Appellant
in S.A.No.991 of 2013

Vs.

1. S.Ramu
2. Jayalakshmi
W/o.Late Subramani

..Respondents
in S.A.No.991 of 2013

Cause title of R1 is amended by deleting his name Raman
R1 is declared as Major and his mother / next friend Jayalakshmi is



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discharged from the Guardianship vide Court order dated 17.11.2023 made in C.M.P.Nos.16701, 16304, 16696, 16693, 16298 and 16300 of 2023 in SA.Nos.990 & 991 of 2013

Second Appeal No.990 of 2013 filed under Section 100 of CPC against the judgment and decree passed by the learned Subordinate Judge, Tiruttani dated 30.09.2011 in A.S.No.24 of 2011 reversing the judgment and decree of the learned District Munsif, Tiruttani dated 03.01.2007 in O.S.No.101 of 2001.

Second Appeal No.991 of 2013 filed under Section 100 of CPC against the judgment and decree passed by the learned Subordinate Judge, Tiruttani dated 30.09.2011 in A.S.No.83 of 2011 reversing the judgment and decree of the learned District Munsif, Tiruttani dated 03.01.2007 in O.S.No.190 of 2005.

For Appellants
in both appeals : Mr.T.M.Hariharan

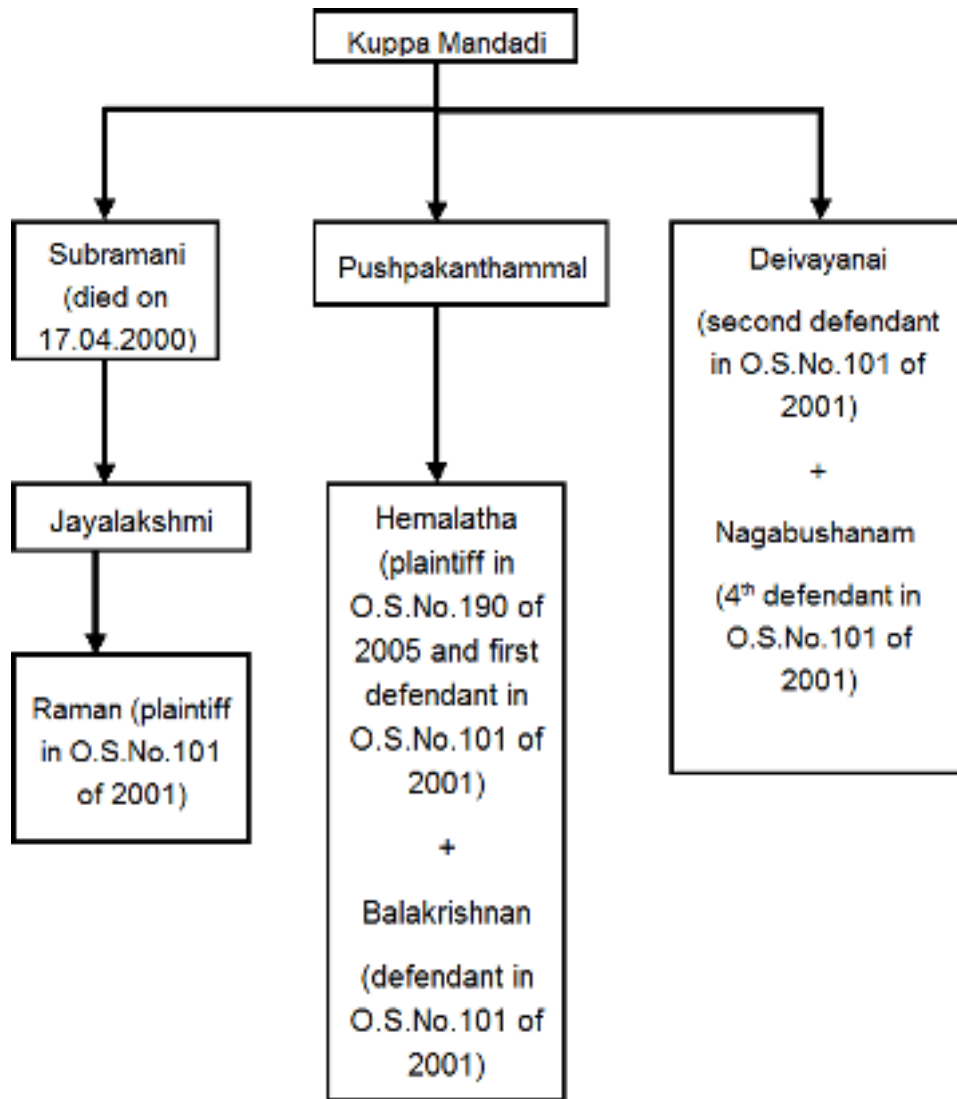
For Respondents
in both appeals : Ms.Zeenath Begum

COMMON JUDGMENT

These two second appeals arise out of the judgment and decree of the Court of Subordinate Judge at Tiruttani in A.S.No.24 of 2011 and A.S.No.83 of 2011 dated 30.09.2011 in setting aside the judgment and decree of learned District Munsif, Tiruttani in O.S.No.101 of 2001 dated 03.01.2007 and O.S.No.190 of 2005 dated 03.01.2007.



2. There was one gentleman by name Kuppa Mandadi. He had one son and two daughters. The genealogy of the parties are set forth below.



There is no dispute in relationship between the parties. There are totally seven items of the property. The dispute relates only to item Nos.4, 6 and 7.



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3. Kuppa Mandadi had executed a “WILL” under Ex.B4 on 19.02.1998 in favour of his daughters Pushpakanthammal and Deivanai. Subsequently, he executed a settlement deed for item Nos.4, 6 and 7 in favour of Hemalatha, the granddaughter through Pushpakanthammal. On the basis of this settlement deed, the said Hemalatha mutated the revenue records for item Nos.4, 6 and 7 in her favour under Ex.B2. According to Ramu, the grandson of Kuppa Mandadi through the son Subramani, the settlement deed was cancelled under Ex.A8 dated 05.06.2000. The properties which is the subject matter of settlement in favour of Hemalatha and four other items are said to have been purchased, by grandson Ramu from Kuppa Mandadi for a valuable consideration of Rs.1,41,764/-.

4. On the strength of purchase dated 10.04.2001, minor Ramu represented by his mother and natural guardian Jayalakshmi filed O.S.No.101 of 2001 against his cousin Hemalatha and her husband Balakrishnan and his aunt Deivayanai and her husband Nagabushanam. This suit is one for bare injunction.



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5. The claim of Ramu in that suit was that the seven items were self-acquisitions of Kuppa Mandadi and he had alienated the property in his favour under Ex.A1.

6. To this plaint, a written statement was filed by Deivayanai, which was adopted by the fourth defendant, to the effect that the properties are ancestral properties of Kuppa Mandadi and therefore, the daughters are entitled to a share by virtue of Tamil Nadu Act No.1 of 1990 and hence, the same in favour of Ramu, son of Subramani will not bind insofar as her 1/3rd share is concerned.

7. This brings us to the second suit filed by Hemalatha as against Ramu and Jayalakshmi. This suit was numbered as O.S.No.190 of 2005 on the file of the District Munsif Court at Tiruttani. It was a suit for declaration of the title of Hemalatha and for recovery of possession.

8. According to Hemalatha, the properties were self-acquisitions of Kuppa Mandadi and when he was in his sound disposing state of mind executed a settlement deed in her favour on 25.05.2000 and she had taken possession of the same and had mutated the property. She further



pleaded that having settled the property in her favour on 25.05.2000 and she having taken possession of the same, Kuppa Mandadi did not have the right to cancel the same as he had not retained the power of cancellation on 05.06.2000. Under the strength of injunction in the plaintiff's suit, the defendant had trespassed, hence the suit.

9. Curiously enough, Ramu who had originally filed the suit stating that the properties were self acquisitions of Kuppa Mandadi took a diametrically different stand literally supporting the stand of the defendants in the other suit. He pleaded that the properties, which are the subject matter of the suit in O.S.No.190 of 2005, are joint family properties of Kuppa Mandadi.

10. On the basis of these pleadings, parties went to trial. Learned trial Judge framed the following issues :

"எழுவினாக்கள் in O.S.No.101 of 2001 :-

1. தாவா சொத்து வாதி, பிரதிவாதிகளின் சொத்து என்ற பிரதிவாதியின் கூற்று உண்மையா?
2. குப்ப மந்தடி என்பவரால் வாதிக்கு எழுதிக்கொடுத்த 10.04.2001 கிரைய பத்திரம்



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உண்மையானதா? பிரதிவாதிகளை கட்டுப்படுத்துமா?

3. 2வது பிரதிவாதிக்கு குப்ப மந்தடி 25.05.2002 தேதியில் எழுதி வைத்த செட்டில்மெண்ட் பத்திரம் உண்மையானதா?

4. தாவா சொத்து வாதியின் சுவாதீனத்தில் உள்ளதாக கூறுவது உண்மையா?

5. வாதி கோரும் உறுத்துக்கட்டளை பரிகாரம் பிரதிவாதிகளுக்கு எதிராக கிடைக்கத்தக்கதா?

6. வாதிக்கு கிடைக்கும் இதர பரிகாரம் என்ன?

எழுவினாக்கள் in O.S.No.190 of 2005 :-

1. தாவா சொத்து குப்ப மந்தடிக்கு மட்டுமே பாத்தியப்பட்ட சொத்தா அல்லது குப்ப மந்தடிக்கும் சுப்பிரமணிய மந்தடிக்கும் கூட்டாக பாத்தியப்பட்ட சொத்தா?

2. 25.05.2000 தேதியின் குப்ப மந்தடி எழுதிய செட்டில்மெண்ட் பத்திரத்தை 5.6.2000 தேதியில் எழுதிய ரத்து பத்திரம் வாதியை கட்டுப்படுத்துமா?

3. முதல் பிரதிவாதி 10.4.2001 தேதியில் வாங்கிய கிரையம் செல்லத்தக்கதா?

4. வாதி கோரும் உரிமை விளம்புகை பரிகாரமும் சுவாதீன பரிகாரமும் கிடைக்கத்தக்கதா?



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5. வாதிக்கு கிடைக்கும் பரிகாரம் என்ன?"

11. After a detailed trial, the trial Court came to the conclusion that the properties are self acquisitions of Kuppa Mandadi and therefore, decreed the suit that had been filed by Hemalatha and dismissed the suit filed by Ramu.

12. Aggrieved by the same, Ramu preferred two first appeals. A.S.No.24 of 2011 was preferred against the dismissal of his suit in O.S.No.101 of 2001 and A.S.No.83 of 2011 was preferred as against the decree granted in favour of Hemalatha in O.S.No.190 of 2005.

13. Instead of clubbing the appeals together and passing a common judgment, learned Subordinate Judge passed two separate judgments on the same day i.e., 30.09.2011. She entered upon a finding in A.S.No.24 of 2011 holding that neither the plaintiffs nor the defendants have proved that the suit properties are ancestral in nature. Therefore, it was held that Kuppa Mandadi had enjoyed the property in his full right. She went on to hold that since the settlement deed had been cancelled by Kuppa Mandadi under Ex.A8, the Settlement deed in favour of Hemalatha did



not come into force. She held the cancellation of Ex.B1 under Ex.A8 to be valid and therefore, decreed O.S.No.101 of 2001 and granted permanent injunction.

14. While in this appeal, learned Judge held that the properties were self-acquisitions of Kuppa Mandadi, curiously enough in the other appeal, the learned Judge held that the properties are ancestral in nature. Having come to the conclusion that the properties are ancestral in nature, she held that the settlement deed is *void* and *non-est* in law.

15. Reading of both these judgments would show that the learned Subordinate Judge has held that properties are ancestral and at the same time are self- acquisitions. Therefore, these two judgments rendered by the learned Subordinate Judge conflicts with one another.

16. When the second appeal came up for admission on 17.12.2014, the appeals were admitted on the following questions of law :

'These second appeals are admitted on the following substantial questions of law :

1. Whether the Appellate Court has not grievously



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erred in law in proceeding to dispose of the appeals by two separate judgments each based on a different and mutually destructive major premise when common questions arise and when the suits have been disposed of by joint trial and common judgment?

2. Whether the Appellate Court has not erred in allowing the appeal in A.S.No.83 of 2011 on reasoning that the properties are ancestral joint family properties contrary to the finding in A.S.No.24 of 2011 and contrary to the finding of the trial Court that the properties are separate properties of Kuppa Mandhadi?

3. Has not the Appellate Court erred in applying different yardsticks to the parties before it by pinning down the appellant to a statement in her written statement while allowing the respondent to contend even against his own plaint?

4. Even assuming that the properties are joint family properties, whether on the death of Subramani does not his share devolve on his wife, mother and son minor Raman and whether the minor Raman would continue to constitute a coparcenery with his grand father even thereafter under the old law of survivorship done away with under the Hindu Succession Act?'

17. Having gone to the aforesaid narration would lead me to the conclusion that had the learned Subordinate Judge heard both the appeals



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together and disposed of by a common judgment, she would not have held the very same property to be joint family properties as well as self-acquisition of Kuppa Mandadi. Such a finding is mutually destructive for the following reasons.

18. If the property is a self acquisition of Kuppa Mandadi, certainly he had right to execute a Settlement Deed in favour of his granddaughter Hemalatha, then the issue that would arise is whether the cancellation of the deed under Ex.A8 is true and genuine. If the properties are held to be joint family properties, then his daughters having got married after the coming into force of Tamil Nadu Act No.1 of 1990, they would have a share in the property which means that Kuppa Mandadi could not have executed the settlement deed transferring all the properties in favour of one coparcener. In such an event, the question of going into the validity of the cancellation deed would not arise because one coparcener cannot alienate all the properties to the detriment of the other coparceners. Therefore, the Lower Appellate Court should have come to a clear and categorical conclusion in the appeal whether the properties were joint family or self-acquisition and not both. Therefore, I agree with the submissions of Mr.T.M.Hariharan



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that the findings are mutually destructive and would not have arisen had the Lower Appellate Court heard the appeals together.

19. This puts Ms.Zeenath Begum in a very piquant situation to argue the matter on one hand that the properties are self-acquisition so as to sustain her sale deed dated 10.04.2001 and that at the same time she will have to stand by her written statement in O.S.No.190 of 2005 which states that the properties are ancestral properties.

20. Learned trial Judge had gone into detail and have come to the conclusion that the properties are self-acquisitions of Kuppa Mandadi and had found a solution to the dispute that had been raised in both the appeals. Since the Lower Appellate Court rendered two separate judgments, this has resulted in the present confusion.

21. Apart from that, the plaintiff in O.S.No.101 of 2001 has brought forth the sale deed dated 10.02.1979 in order to substantiate that the purchase was made by Kuppa Mandadi on that date as his self-acquisition. This document has not been produced either during the trial or at the time of hearing the first appeal. Noticing the confusion that has



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resulted in the light of the two conflicting judgments, I feel interest of justice would be reached if both the second appeals are allowed and the appeals are remanded for fresh disposal before the learned Subordinate Judge, Tiruttani.

22. Accordingly, Substantial Question of Law No.1 is answered in favour of appellants. The judgment and decree dated 30.09.2011 made in A.S.No.24 of 2011 and A.S.No.83 of 2011 on the file of the Court of Subordinate Judge, Tiruttani are set aside. The appeals will stand restored to the file of the Subordinate Court, Tiruttani. Learned Subordinate Judge, Subordinate Court, Tiruttani is requested to take up both the appeals together and dispose of the same by a common judgment instead of rendering two separate judgments which might result in conflicting findings as it has happened on 30.09.2011. The parties being close relatives and since I am remanding the matter, parties shall bear their costs. The parties shall appear before the Lower Appellate Court on **01.03.2024**.

23. The Lower Appellate Court is requested to take up the appeals and dispose of the same on or before 31.07.2024 and submit a report to



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this Court. The first respondent Mr.S.Ramu is permitted to file additional documents that has been presented before this Court before the Lower Appellate Court. Similarly, in case the appellant Hemalatha wants to let in any evidence, it is open to her to file appropriate application under Order XLI Rule 27 of the Code of Civil Procedure, 1908. If the application filed by any of the parties is allowed, learned Subordinate Judge is requested to proceed under Order XLI Rule 28 and thereafter, receive the same in evidence.

24. Registry is directed to send back the original records to the file of Subordinate Court, Tiruttani, immediately to enable the Court to proceed as per the directions given in the judgment. The connected miscellaneous petitions are closed.

05.02.2024

Index:Yes/No

Neutral Citation:Yes/No

Speaking Order / Non-speaking order

mk

Note: Upload on 07.02.2024



To
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1. Learned Subordinate Judge,
Subordinate Court,
Tiruttani.
2. Learned District Munsif,
District Munsif Court,
Tiruttani



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V. LAKSHMINARAYANAN, J.

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S.A.Nos.990 & 991 of 2013

05.02.2024