



S.A.No.137 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.137 of 2019 &
C.M.P.No.2649 of 2019

Rajammal (Deceased)
Thirupathi

... Appellant

Vs.

Mangai

... Respondent

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 23.12.2010 made in A.S.No.36 of 2009 on the file of the Subordinate Judge, Dharmapuri by confirming the judgment and decree dated 19.01.2007 made in O.S.No.57 of 1999 on the file of the District Munsif Court at Palacode, Dharmapuri District.

For Appellant

: Mr.M.Guruprasad,
for Mr.T.Balaji



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For Respondent : Mr.K.Selvakumar,
for Ms.P.Veena Suresh

JUDGMENT

The present second appeal arises out of the judgment and decree of the court of the learned Subordinate Judge at Dharmapuri in A.S.No.36 of 2009 dated 23.12.2010 in confirming the judgment and decree of the court of the learned District Munsif at Palacode in O.S.No.57 of 1999 dated 19.01.2007.

2. For the sake of convenience, the parties will be referred to as per their ranks in the suit.

3. O.S.No.57 of 1999 is a suit for partition at the instance of a female member of the family. There was one Kaveri, who is said to have been in possession and enjoyment of the ancestral properties. He died 35 years before the presentation of the plaint. At the time of his death, he left



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behind his wife Rajammal, minor children namely Mangai aged 10 years and son Thirupathi aged about 2 years as his legal heirs. The plaintiff pleaded that all the items of the suit schedule are ancestral properties of Kaveri and she pleaded that she is entitled to a share in the property because Kaveri, her father died intestate.

4. On service of summons, the defendants entered appearance and pleaded that item Nos.1 to 6 are ancestral in nature but the properties in item Nos.7,9 to 14 are self-acquisition of their mother Rajammal.

5. On the basis of these pleadings, the learned Trial Judge framed the following issues:

- “1. தாவா சொத்து, வாதி பிரதிவாதிகளுக்குப் பாத்தியப்பட்ட பொதுக் குடும்ப சொத்து எனப்பது உண்மையா?
2. தாவா சொத்தை வாதி பண்ணையம் செய்ததாகவும், அவரது செலவில் வீடுகட்டி ஆயில் எஞ்சின்கள் பெறப்பட்டதாகவும்



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கூறப்படுவது உண்மையா?

3. 2ஆம் பிரதிவாதி தனது வருமானத்தைக் கொண்டு வீடுக் கட்டி ஆயில் எஞ்சின்கள் வைத்து கிரயம் பெற்று, 1ஆம் பிரதிவாதி மூலம் தாவா சொத்து பராமரித்து வந்ததாகக் கூறவது உண்மையா?

4. தாவா சொத்தில் 6இல் ஒரு பாகம் பெற வாதி உகந்தவரா?

5. வாதிக் கோரியுள்ளப் பரிகாரங்களட பெறத்தக்கவரா?

6. இதரப் பரிகாரங்கள் என்ன?"

The following additional issue was also framed by the learned Trial Judge:

“1. தாவா சொத்தில் குறிப்பிடப்பட்டுள்ள 7, 9, 12, 13, 14 அயிட்ட சொத்தக்கள் 1, 2 பிரதிவாதிகளுக்கு தனித்துப் பாத்தியப்பட்டதா?”

6. The parties went for trial. On the side of the plaintiff, she examined herself as PW1 and another witness by name, Natesan as PW2, and marked Ex.A1 to Ex.A3. On the side of the defendants, the second defendant/Thirupathi examined himself as DW1 and three other witnesses as DW2 to DW4 and marked Ex.B1 to Ex.B9.



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7. The learned Trial Judge after the proper evaluation of the oral and documentary evidence let in before him, came to the conclusion that item Nos.10 and 11 are self acquisitions of Rajammal, on the basis of Ex.B4 sale deed dated 11.04.1984 executed in her favour, but found all other items as ancestral properties and therefore, decreed the suit as prayed for.

8. Against the said judgment and decree, a regular appeal was presented by the unsuccessful defendants. It was received as A.S.No.36 of 2009. The learned Subordinate Judge, Dharmapuri confirmed the judgment and decree of the trial court on 23.12.2010.

9. Aggrieved by the said judgment and decree, this second appeal has been preferred before this Court with a delay of about 2412 days. The delay was condoned and the second appeal was admitted on 01.02.2019 on the following substantial questions of law:



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“(a) Whether the finding of the courts below that the properties in item Nos.7, 9, 12, 13, 14 are joint family properties are perverse, erroneous when there is no issue with regard to the same has not been framed by the trial Court?

(b) Whether the courts below are right in shifting the burden on the appellant/defendant to disprove the case of the plaintiff?

(c) Whether judgments and findings of the courts below are not complied with the mandate of Order 41 Rule 33 of CPC?”

10. When the appeal was listed for hearing, I found that the appellant had not served the plaintiff. Therefore, I ordered notice.

11. On service of notice, Ms.P.Veena Suresh entered appearance for the respondent/plaintiff.

12. I heard Mr.M.Guruprasad for Mr.T.Balaji and



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Mr.K.Selvakumar for Ms.P.Veena Suresh for the respective properties.

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13. It is the argument of Mr.M.Guruprasad that while the defendant has no issues with the decree granted with respect to item Nos.1 to 6, the entire grievance pertains only with respect to item Nos.7, 9, 12 to 14, which he claims are the self acquisition of Rajammal. He would submit that the burden is on the plaintiff to prove that they were the joint family properties and she having failed to prove the same, the courts below should have dismissed the suit with respect to item Nos.7, 9, 12 to 14.

14. Mr.K.Selvakumar would argue that the plaintiff had been able to demonstrate before the court that the family had possessed certain joint family assets and it was the plea of the defendants that few of the assets shown in the items of the suit schedule were not joint family assets but had been acquired by Rajammal during her life time. They, having failed to file the original title deeds, had only produced Ex.B7 to Ex.B9 which are the



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pattas granted during the updation of record proceedings and this would not suffice for the purpose of the plea raised by them.

15. I have heard the arguments on both sides and gone through the records carefully.

16. At the outset, I have to note that the defendants had categorically pleaded that all the suit schedule items are not joint family properties and few of them are self acquisitions. This concedes to the fact that the family was possessed of certain joint family assets. Having taken a plea that certain properties are the self-acquisitions, the initial burden lies among the defendants at least to substantiate the same by producing some evidence before the court to the effect that they are not joint family properties.

17. In order to defeat the case of the plaintiff, all that was pleaded was that the properties are self-acquisitions of Rajammal/first defendant. Though Rajammal was alive during the course of trial as well as during the



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course of appeal, she was not examined as a witness in support of the plea.

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She would have been the best person to speak about her self-acquisitions because at the time of death of Kaveri, the plaintiff and the second defendant were mere toddlers, which seems to be about 3 ½ decades before the suit had been presented.

18. As stated above, the plaintiff was only 10 years old and the second defendant was only 2 years old at the time of death of Kaveri. Therefore, by no stretch of imagination can one expect, a two year old child, even if he grows into an adult, to speak about the incidents which had taken place when he was a toddler. The best evidence having been kept away from the court, I necessarily would have to draw adverse inference against the defendants.

19. Apart from that, the defendants had produced Ex.B4 and Ex.B5 namely the registered sale deed in favour of Rajammal and the settlement



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deed executed in favour of the second defendant. This covers the suit items 10 and 11. While they have been able to produce records for these two items, they unfortunately did not produce any evidence with respect to item Nos.7, 9, 12 to 14.

20. Mr.M.Guruprasad would argue that the second defendant/Thirupathi had served the Nation in Indian Army and out of his income, these assets were purchased. Even for acceptance of that plea, some records are essential. Apart from Ex.B4 and Ex.B5, all other documents are only revenue records.

21. It is too well settled, but I necessarily have to reiterate, that the revenue records do not confer title on a person. The revenue records are only for the purpose of identifying a person, whose name is registered therein, as being responsible to the Government for payment of levy imposed by it. For the mere fact that the revenue records are in the name of the defendants, it



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does not meant that they are the absolute owners of the property.

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22. As the defendants never took any steps to prove that the properties claimed by them are not ancestral properties but they are self-acquisitions, the onus never shifted to the plaintiff for her to produce the records to substantiate her original plea. It was the defendants who took the plea that suit item Nos.7, 9 to 14 are self acquisitions of Rajammal, while conceding that there are other assets of the joint family. Therefore, they having failed, I am not in a position to come to the rescue of Mr.M.Guruprasad.

23. Mr.M.Guruprasad would further plead that title deeds are available and he would produce it before this Court in order to substantiate the case of the defendants. I commenced this judgment pointing out that the appeal itself came to be presented nearly 8 years after the decree had been confirmed by the learned Subordinate Judge. There was enough time to



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produce the records. Unfortunately, they have not produced the required evidence, despite this long lapse of time and the fact that this court extended its benevolence to the defendants by condoning a delay of 2400 days in preferring an appeal was only because valuable rights over the immovable properties are involved in the matter.

24. Therefore, I am not inclined to consider the plea of Mr.M.Guruprasad that the appeal has to be remanded for fresh disposal. The plaintiff has been knocking at the doors of the Court for the past 25 years and if I were to remand after 25 years it will be a travesty of justice. In any event, I am satisfied that the judgment and the decree of the courts below are in accordance with the principles enunciated by this Court and by the Supreme Court and do not require any interference. Therefore, the vehement plea of Mr.M.Guruprasad stands rejected.

25. The plaintiff, by virtue of Section 6 of the Hindu Succession



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(Amendment) Act, as interpreted by the Supreme Court in ***Vineeta Sharma***

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v. Rakesh Sharma, (2020) 9 SCC 1 will be entitled to equal share as that of

the 2nd defendant in all the suit items except item numbers 10 and 11.

Modifying the preliminary decree in exercise of the powers vested in me under Order XLI Rule 33 of the Code of Civil Procedure, the second appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes/No



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To

1.The Subordinate Judge, Dharmapuri.

2.The District Munsif Court at Palacode, Dharmapuri District.



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V.LAKSHMINARAYANAN, J.

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