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S.A. No.357 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2024

CORAM:
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No.357 of 2024
and
C.M.P.No. 11104 of 2024

S.M. Arumugham (Died)
2 Bakkiyam
3 A. Mohana Krishnan
4 A. Kesavan

(Appellants 3 and 4 brought on
record as LR's of the Deceased
1st appellant vide C.M.P.No. 9797
of 2022 in S.A.SR.No. 68945 of 2014)

.. Appellants

Vs

1 Malathi
2 Minor Vishnu
Rep. by his guardian mother Malathi

3 V. N. Chenniappan

Thangamani (Died)

5 V.C. Chennimalai
6 Kanagavalli

1/9



S.A. No.357 of 2024

WEB COPY

Devi (Died)

8 N. Rangasamy

9 R. Pradeep

10 Dhivya Priya

(Respondents 3, 5, 6 & 7 are LR.s. of 4th respondent and they are already on record Memo recorded)

(Respondents 8 to 10 are brought on record as LR.s. of deceased 7th respondent vide order of court dated 28.08.2023 made in C.M.P.No.9798 of 2022 in S.A.SR.No. 68945 of 2014)

.. Respondents

PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 17.12.2013 in A.S.No. 22 of 2013 on the file of the Principal District Judge, Erode modifying the judgment and decree made in O.S.No.383 of 2009 dated 30.11.2022 on the file of Subordinate Judge, Perundurai.

For Appellants : Mr.T.Dhanasekaran



S.A. No.357 of 2024

WEB COPY

JUDGMENT

The appellants herein are the 6th and 7th defendants in the suit have preferred this Second Appeal challenging the findings of the courts below in the Appeal Suit in A.S.No. 22 of 2013 on the file of Principal District Judge, Erode modifying the judgment and decree passed in O.S.No.383 of 2009 on the file of the Subordinate Court, Perundurai.

2. For the sake of convenience, the parties are referred as per the ranking in the suit.

3. Brief facts of the case is as follows :-

Before the trial court, the respondents 1 and 2/plaintiffs filed a suit for the relief of partition in O.S.No.383 of 2009 on the file of Subordinate Judge, Perundurai. The plaintiffs are wife and daughter of one deceased Chidambaram. The 1st defendant is V.N.Chenniappan and the 3rd defendant V.N.Chennimalai is the son of 1st defendant, thereby, the defendants 1 and 3 and the said Chidambaram are undivided Hindu joint family members. The 4th and 5th defendants are daughters of 1st defendant and they have already



S.A. No.357 of 2024

got married before the year of 1990. The first item of suit property is ancestral property of 1st defendant. The 2nd and 3rd item of suit properties were purchased by the 1st defendant, as a kartha of the family with the income derived from the ancestral property. Therefore, the plaintiffs claimed 1/3rd share as legal heirs of deceased Chidambaram in the ancestral property, which is specified as 1st item of suit properties. However, the relationship alone is admitted, but the other facts are denied.

4. The contention of 1st defendant is that he purchased item Nos.2 and 3 of the suit properties in the year of 1983 and 1992 and the same are his self-acquired property, but he has not produced any proof for the income derived from the ancestral properties. In respect of 1st item of suit property, there are other sharers, but their share was not calculated. Therefore, they have denied the plaintiffs share.

5. Before the trial court, both parties adduced evidence. Issues framed. In respect of 1st item of suit property, the plaintiffs contention is that the agricultural lands lying in R.S.No. 264/14 and 15 and R.S.Nos. 338/1 and 335/7 residential houses situated in the above survey numbers are the ancestral properties of 1st defendant. But the 1st defendant would



S.A. No.357 of 2024

content that land in R.S.No.264 alone is ancestral property. But, as per the evidence of P.W. 1, Patta No.524, Patta No.246, 'A' register extract for R.S.No.264/11, 'A' register extract for R.S.No. 264/11, 'A' register extract in R.S.No.264/15 are marked as Ex.A1 to Ex.A5, which stands in the name of Nanjappa gounder, who is father of 1st defendant. But, there is no contra evidence on the side of plaintiffs to prove that only one survey No.264 alone is the ancestral property. Therefore, by relying Ex.A1 to Ex.A5, item No.1 of suit property is ancestral property, which consists of four survey Nos. 264, 264/11, 264/14 and 264/15. In respect of item Nos.2 and 3 of the suit properties, according to 1st defendant, it is a self-acquired property. So, the initial burden is binding on him to prove the same and he himself admits in his cross-examination that as a kartha of the family, he sold some of the properties to third party and he purchased the item nos. 2 and 3 of suit properties. It is admitted by D.W.1 that :-

“குடும்ப வருமானத்தை கொண்டு குடும்பத்திற்கு தலைவர் என்ற முறையில் வாங்கியது என்றால் சரிதான். குடும்ப முறையில் வாங்கப்பட்டது என்றால் சரி”



6. On perusal of evidence, one V.C.Arunachalam, who was examined as D.W.2 on the side of defendant also admitted in cross-examination that item Nos.2 and 3 are purchased by 1st defendant as kartha of the Hindu joint family from the income derived from the joint family property. It is the evidence of D.W.2 that :-

“1ம் பிரதிவாதிதான் கூட்டு குடும்பத்தின் தலைவர் என்றால் சரி அதனால் அவர்தான் குடும்பத்தின் வர அனைத்து வரவு செலவுகளை கவனித்து வந்தார் என்றால் சரி கூட்டு குடும்ப தலைவர் என்ற முறையில் அவர் பெயரில் 2 கிரையங்கள் வாங்கினார் என்றால் சரி 77ம் வருடம் அம்மணியம்மாள் என்பவருக்கும், 1ம் பிரதிவாதி கூட்டு குடும்ப சொத்துக்களை கிரையம் செய்து கொடுத்தார் என்றால் சரி அதே வருடத்தில் நாகப்பன் மகன் சென்னியப்பன் 1ம் பிரதிவாதியும் அவர் மக்களும் 1ம் பிரதிவாதிக்கு உண்டான பூர்வீக சொத்துக்களை கிரையம் செய்து கொடுத்தார் என்றால் எனக்கு தெரியாது. தெற்கு தோட்ட பூமி 2ம் பிரதிவாதி இருந்தது எனக்கு தெரியும். சிதம்பரம் இறந்த பின்பு மூத்த மருமகளின் நகைகளை பேங்கில் வைத்து 2 மாடி கட்டிடம் கட்டினார்கள். மேல் மாடியில் சென்னியப்பனும், கீழ் தளத்தில் சிதம்பரம் குடும்பம் இருந்தார்கள் என்றால் எனக்கு தெரியாது. ஆரம்பத்தில் 2 தறி போட்டார்கள் என்றால் சரி தாவாவில் கண்டுள்ள சொத்துக்கள் சென்னியப்பன் குடும்பத்திற்கு பாத்தியப்பட்ட சொத்துக்கள் என்றால் சரி 1ம் பிரதிவாதிக்கு என்ன வருமானம் வருகிறது என்ன செலவு என்று நான் ஆவணம் எதுவும் பார்க்கவில்லை.”



S.A. No.357 of 2024

WEB COPY

Therefore, during the cross-examination of D.W.1 and 2, they admit that as a kartha of the family, 1st defendant sold the ancestral property and purchased item Nos.2 and 3 subsequently. But, there is no evidence to establish that these two properties were purchased by the 1st defendant out of his separate income. So, the evidence of D.W.1 and 2 is sufficient to conclude that item nos. 2 and 3 of suit properties are purchased with the income derived from the ancestral property. Therefore, the courts below have rightly held that all the suit properties are ancestral properties, in which, the plaintiffs are entitled to 5/30 share. Moreover, the 1st appellate judge held that daughter is also entitled for a share in the property. According to plaintiffs, she is entitled for 5/30 share and the defendants 1, 3, 4 and 5 are entitled for 6/30 share each. Against this finding, there is no document adduced on the side of plaintiff. Now, the defendants 6 and 7 have purchased the third item of suit properties from the 1st defendant through sale deed of the year 2009. Admittedly, the 1st defendant has no right to sell the entire extent of the suit properties and the same would not bind the plaintiffs as rightly observed by the trial court. Challenging the



S.A. No.357 of 2024

findings of the court below, one of the purchaser had filed a suit. But, as discussed above, all the suit properties are ancestral properties in nature, in which, as a legal heir of deceased Chidambaram, plaintiffs are entitled to 5/30 share and remaining share, as discussed above in the first appeal, thereby, the entire extent of property in item nos.2 and 3 was sold by the 1st defendant in favour of this appellant and the other defendants are not binding the plaintiffs. So, there is no materials available to raise the substantial question of law, since because the vendors have no right and title over the property, thereby this Second Appeal is not maintainable. Accordingly, at the admission stage itself, this Second Appeal is dismissed as no merit. Findings of 1st appellate court is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

13.06.2024

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To
The Principal District Judge, Erode.

8/9



WEB COPY



S.A. No.357 of 2024

T.V.THAMILSELVI, J.

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S.A. No.357 of 2024

13.06.2024