

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.Nos.586 and 658 of 2009
and M.P.Nos.1 and 1 of 2009

1. L.Narasiman ... Appellant in S.A.No.586 of 2009/
2. L.Nallappan Defendants

1. Choodammal @ Choodamani ... Appellant in S.A.No.658 of 2009/
Plaintiff

Vs.

1. Minor Naveen Kumar

2. Minor Narish Kumar

(Minor rep by their next friend

Father by name - L.Murugan)...Respondents in S.A.No.586 of 2009/
Plaintiff

1. L.Narashiman

2. L.Nallappan

3. Lakshmi ...Respondents in S.A.No.658 of 2009/
Defendants.

Prayer in S.A.No.586 of 2009:- Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree dated 12.11.2008 made in A.S.No.6 of 2008 on the file of the Principal Sub Court, Krishnagiri, reversing the judgment and decree dated 12.11.2007 made in O.S.No.233 of 2006 on the file of the District Munsif Court, Krishnagiri.

Prayer in S.A.No.658 of 2009: Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree dated 12.11.2008 made in A.S.No.7 of 2008 on the file of the Principal Subordinate Judge, Krishnagiri, confirming the judgment and decree dated 12.11.2007 made in O.S.No.191 of 2006 on the file of the District Munsif, Krishnagiri.

For Appellant
in S.A.No.586 of 2009
For Respondent in
S.A.No.658 of 2009

: Mr.Mukund R.Pandian

For Respondent in
S.A.No.586 of 2009
For Appellant in : Mr.S.N.J.Hariharan for
S.A.No.658 of 2009 Mr.V.Nicholas

C O M M O N J U D G M E N T

There are two appeals and the disputes involved in the same are one and the same and the judgments and decrees of the lower appellate Court were delivered in common.

2. The plaintiff in O.S.No.191 of 2006 is the appellant herein in S.A.No.658 of 2009 and the defendants in O.S.No.233 of 2006 are the appellants in S.A.No.586 of 2009.

3. The case of the plaintiff in O.S.No.191 of 2006 is that the suit properties originally belonged to one Seppoy Laxmanan. The said Seppoy Laxmanan had three sons, namely, Murugan, Narasimhan and Nallappan. The plaintiff is the daughter-in-law of the said Seppoy Laxmanan. The suit properties were self acquired properties of the said Seppoy Laxmanan. The defendants are Seppoy Laxmanan's children. The plaintiff had purchased the said properties from Seppoy Laxmanan on 27.04.2006 as per Ex.A7 and has been in possession of the properties from the date of purchase. As the defendants tried to trespass into the suit property, the suit is filed for declaration of title and for permanent injunction, restraining the defendants from interfering with the suit properties.

4. The suit was resisted by the defendants, contending that the suit properties were purchased out of the joint family income and there was an oral partition, in which, the said property was allotted to the share of the first defendant. Hence, the defendants claimed that the sale by the father is not binding on the defendants and that the alleged sale was also without any consideration.

5. The other suit in O.S.No.233 of 2006 was filed by the minor children of Murugan, who is the son of Seppoy Laxmanan. According to the minor plaintiffs, the properties were the grandfather's property, being ancestral in nature and that, the grandfather Seppoy Laxmanan had executed a settlement deed in favour of the minor children on 01.07.2005 as per Ex.A2. The settlement deed was executed and acted upon by the parties. Therefore, the defendants cannot have any right over the same. Hence, the suit had been filed for declaration and injunction.

6. The defendants in both the suits are the same and they had contended that it is not a self acquired property of the father and that was only an ancestral property. The trial Court after considering the facts and evidence of the case, had dismissed the suit. On appeal, the suit filed by the minor children in O.S.No.233

of 2006, was allowed and decreed and the suit filed by the Mother, namely, Choodammal in O.S.No.191 of 2006 was dismissed. Aggrieved by the decreetal order in O.S.No.191 of 2006, the defendants have preferred an appeal in A.S.No.7 of 2008. Aggrieved over the dismissal of the appeal in A.S.No.7 of 2008, dismissing the suit, the plaintiff has preferred the above Second Appeal No.658 of 2009.

7. The properties originally belonged to one Seppoy Laxmanan and the same was standing in his name is not disputed by the parties. The said Seppoy Laxmanan purchased the properties, as per sale deed dated 19.08.1968, out of his own earning, by serving in Army. The appellant, who is the daughter-in-law of the said Seppoy Laxmanan had purchased the properties for a valuable consideration of Rs.84,000/-.

8. The question that has arisen for consideration in the appeals is as to whether the properties owned by the said Seppoy Laxmanan were joint family properties or self acquired properties, depending on which the suits have to be decided.

9. It is a settled principle that a person, who alleges that the property is a joint family one, has to prove the same, as the burden is on him. The evidence of D.W.1 and D.W.2 did not support the contention of the defendants themselves. The defendants were not able to produce any evidence to prove that the properties were joint family properties in nature. The 1st defendant also who had deposed as D.W.1, contended that he was working as a coolly and the income from the personal earnings were utilized for the purchase of the suit properties and the same were enjoyed jointly. However, it is found that no such contention was raised in the written statement. The defendants had also pleaded ignorance about the source of income for the purchase of the said property. Therefore, it was submitted that the said Seppoy Laxmanan had no right to execute the sale deed in favour of daughter-in-law.

10. Out of the two suits, one suit is filed by the daughter-in-law, namely, Choodammal and the other suit is filed by the grandsons of the said Seppoy Laxmanan. The said Seppoy Laxmanan himself had been examined as P.W.2 and he has specifically deposed that he was employed in the Army and out of his own earnings, he had purchased the suit properties. He has specifically deposed that in para 1 of the deposition of witness is as follows:-

“1,.....எனக்கு பிதூராஜிதமாய் பாத்தியப்பட்டு எனக்கும் என தம்பிக்கும் ஏற்பட்ட பாகப்பிரிவினை படி எனக்கு பாத்தியப்பட்டிருந்த சுமார் 150 ஏக்கர் விஸ்தீரணமுள்ள சொத்துக்களை என் மகன்கள் முவருக்கும் வாய்முலமாகப் பாகப்பிரிவினை செய்து கொடுத்துவிட்டேன்.”

Therefore, from the above evidence of the said Seppoy Laxmanan himself, it is clear that what ever the joint family properties that was available was divided among his three sons.

11. When the father of the defendants had admitted that the property was purchased by him out of his own income, earned in the Army, in the absence of any rebuttal evidence, the defendants cannot have any right over the suit property. As stated earlier, there is no dispute with respect to the oral partition between the father and the sons, in the presence of the elders and well wishers. Therefore, after partition of the joint family properties, in and by, which the defendants have already got their share, there is no other property available for partition, in which, the defendants are entitled to a right. The other property available, being the self acquired property of the father, he has got every right to dispose them in the manner, he wishes to.

12. In the absence of any evidence to show that there were joint earnings at the relevant point of purchase of properties, the defendants cannot make any claim. Accordingly, the property which is a subject matter in O.S.No.233 of 2006 is a self acquired property of the said Seppoy Laxmanan. As admitted by him, it is open to him to deal with it absolutely.

13. So far as the subject matter of property in O.S.No.191 of 2006, which is purchased by the plaintiff from Seppoy Laxmanan is concerned, the lower appellate Court has concurred with the trial Court in dismissing the same. The said property was purchased by the said Seppoy Laxmanan from one Narasimhan, Srinivasan and Balakrishnan under Ex.A.1. The said property was purchased by Choodammal, who is the daughter-in-law of Seppoy Laxmanan under Ex.A7 dated 27.04.2006. She also claims to be in possession of the same from the date of purchase.

14. The case of the defendants in the said suit, namely, O.S.No.191 of 2006 is that the very sale in favour of the plaintiff is sham and nominal and it was not acted upon. The defendant as D.W.1 has deposed that his father Lakshmanan was living with the plaintiff and her husband, who is the brother of the defendants, as there were some misunderstandings among the family members. Taking advantage of the same, the said sale deed got executed in favour of the plaintiff. From the evidence of D.W.1, it is clear that the property was purchased by the father Lakshmanan and the sale deed was executed by him in favour of his daughter-in-law. It is the only contention of the defendants that the sale deed is only sham and nominal and the vendor had no exclusive right over the same.

15. The lower appellate Court has dismissed the suit on the basis that the evidence of the plaintiff was not very clear on the details of the purchase. The lower appellate Court has held that the plaintiff has deposed that she did not know the value of stamp papers purchased for the purpose of sale and also she was not aware of the patta number and other details. It is surprising to note that when execution of sale in favour of the plaintiff is not disputed by the

defendants and that it was claimed to be the sham and nominal one, the other details of the sale need not be gone into.

16. The only question that can be relevant to consider is about the exclusive ownership of the vendor Seppoy Laxmanan. The vendor himself has been examined who has stated that he had received Rs.84,000/- as sale consideration from his daughter-in-law and executed the sale deed. The said Seppoy Laxmanan, P.W.2, has deposed that

“மருமகளுக்கு விற்ற சொத்தை மிலிட்டரியில் சம்பாதித்த பணத்தை வைத்து தான் வாங்கினேன், மருமகளுக்கு ரூ.84,000 வாங்கிக் கொண்டு தான் கிரயம் எழுதிக்கொடுத்தேன்.”

From the above admission of the vendor, it is clear that the sale was intended to be executed only in favour of the plaintiff and it was not written sham and nominal.

17. As stated earlier, the burden is on the person who alleges the property to be a joint family property. When the defendants have specifically contended that the suit property is a joint family property purchased out of the joint efforts and income, the burden is on them to establish the same. Though the family of the defendants have presumed to be joint, there is no presumption that the joint family is possessed of joint family properties. Presumption will arise, only if it is shown that there was surplus income left in the family, out of which, the suit property was purchased. If the value of the property is such that, there is no income shown at the relevant point, any acquisition made, cannot be treated as a family property. Any member of the joint family can acquire the property out of the income of their own avocation of their choice. Therefore, there is no presumption that any property acquired by a member is a joint family property. Hence, the purchase by the vendor Seppoy Lakshmanan with his own effort is his separate property and he need not share it with others, except by his own will. In this case, the grandfather who has settled the properties in favour of the grand children and also sold the property in favour of the daughter in law himself has deposed about his alienations. It is not in dispute that both the properties were standing in the name of the said Seppoy Lakshmanan, having been acquired by him in his individual name. Hence, the law presumes that it is his self acquisition.

18. In view of the above legal position, even though the defendants have claimed that the properties were joint family ancestral properties, the same has not been proved by the defendants. Even the oral evidence of the witnesses examined on the side of the plaintiff and the defendants were considered by the lower appellate Court to come to the conclusion that it only supports the case of the plaintiff in O.S.No.233 of 2006. But the lower appellate Court erred in dismissing the suit of the plaintiff in O.S.No.191 of 2006 as the said property was purchased only from the joint efforts of the family members, which is absolutely baseless, as the vendor himself has

deposed that he had purchased the property and sold the same for valid consideration to his daughter-in-law.

19. On going by these circumstances, I feel that the judgment of the lower appellate Court is correct insofar as the Second Appeal No.586 of 2009 is concerned and with respect to S.A.No.658 of 2009, the same has to be set aside. The finding of the lower appellate Court is not based on correct propositions of law in casting the burden of proof and also arrived at a conclusion that the property was not purchased from the income of Seppoy Lakshmanan. The evidence of D.W.2, who is the wife of Seppoy Lakshmanan, was also not considered in its proper perspective. The learned counsel for the appellant in S.A.No.586 of 2009 was also not in a position to satisfy this Court with any material piece of evidence to discharge the burden with respect to proof of nature of property. In such circumstances, the substantial questions of law are answered in favour of the appellant in S.A.No.658 of 2009, and against the appellant in S.A.No.586 of 2009.

20. In the result, Second Appeal No.586 of 2009 is dismissed, confirming the judgment and decree of the first appellate Court in A.S.No.6 of 2008, thereby setting aside the judgment and decree of the trial Court and the suit in O.S.No.233 of 2006 is allowed.

21. In the result, Second Appeal No.658 of 2009 is allowed, setting aside the judgment and decree of the first appellate court and trial Court and the suit in O.S.No.191 of 2006 is allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

srn
To

1. The Principal Sub Court, Krishnagiri
 2. The District Munsif, Krishnagiri
- +2 ccs to Mr.V.Nicholas, Advocate, sr.52315 & 52316
+1 cc to Mr.Kukund R.Pandiyar, Advocate, sr.52257

S.A.Nos.586 and 658 of 2009
and M.P.Nos.1 and 1 of 2009

tej co
kra 12/10/2015