

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Reserved On :15.12.2016

Pronounced On:20.12.2016

CORAM

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

Second Appeal No.112 of 1996

Chinnappan

..Appellant

/vs/

1.Radhakrishnan

2.Arayer @ Alamelu

3.Thangavelu

4.Santhana Krishnan

5.Muthu Krishnan

6.Madheswari

7.Dhanam

8.Indira

..Respondents

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 31.3.1994 in A.S.No.131 of 1933 passed by the learned First Additional District Judge of Salem, reversing the judgment and decree dated 14.10.1992 in O.S.No.496 of 1981 passed by the learned Additional District Munsif of Salem.

For Appellant :Mr.K.Ramanraj

For Respondents :Mr.R.Babu for Mr.N.Manokaran
for R1,3,5 and 6
R2 to R4-died
No appearance for R7
R8-dismissed on 13.07.2009

JUDGMENT

The suit filed for partition and possession was allowed by the trial Court, but reversed by the first appellate Court. The unsuccessful plaintiff, who lost the case before first appellate Court is the the appellant herein.

2. Brief facts as pleaded by the rival claimants are as follows:

The suit schedule properties originally owned by one Sreeranga Gounder. He died intestate leaving behind his sons viz., Elumalai and Chinnappan (plaintiff). The said Elumalai died leaving behind his son and wife. They are the first and second defendants in the suit. The suit properties were jointly enjoyed by the family members i.e. the plaintiff and the defendants, even after the demise of Elumalai. Due to misunderstanding, the plaintiff caused notice through his lawyer on 18.02.1981 seeking partition. Since there was no response from the

defendants, the suit for partition and possession as prayed, was filed.

3. The defendants 1 and 2 in their written statement denied the plaint averments. According to them, Elumalai had other legal heirs, apart from the defendants 1 and 2. Therefore, the suit is bad for non-joinder of necessary parties. Sreeranga Gounder had very small extend of property measuring 12x51 feet. The plaintiff released his share in the said property in lieu of the marriage expenses met out by his brother Elumalai. For the plaintiff's marriage, Rs.563/- was spent by Elumalai. After the relinquishment of the plaintiff right over the share in the suit property, after his life time, Elumalai and his legal heirs are in possession and enjoyment of the properties. Hence, the plaintiff has no share in the suit property.

4. Pending suit, on application by the plaintiff, the remaining legal heirs of Elumalai were impleaded as Defendants 3 to 8. The trial Court based on the pleadings has framed six issues and examined P.W.1 and P.W.2 on behalf of the plaintiff and marked Exs.A-1 to A-18. The first Defendant was examined as DW-1 and marked Exs.B-1 to B-10. After analysing the evidence, the trial Court has

allowed the suit for partition holding that the plaintiff is entitled for 1/2 share in the suit property.

5. The first appellate court in the appeal filed by the defendants 1 to 6 reversed the trial Court's judgment and allowed the appeal. Aggrieved by the appellate Court's judgement, the present Second Appeal filed by the plaintiff raising various grounds.

6. At the time of admission, the following Substantial Questions of Law were formulated for consideration:

"(1)Whether the learned First Additional District Judge is correct in believing release of rights in the joint family properties by the appellant herein, without execution of a document of release in respect of his rights in the immovable properties?

(2)Whether the learned First Additional District Judge has gone wrong in applying the presumption under Hindu Law that every Hindu Family is presumed to be joint till the contrary is proved and whether the respondents in the case have proved earlier partition in the family?

(3)Whether the appellant herein is entitled to claim partition in respect of Rangaswamy Gounder's shares who died intestate without issue, as Class II

heir under the provisions of the Hindu Succession Act, 1956?"

7. The learned counsel for the appellant submitted that, one Padavetta Gounder had three sons by names Govindan, Sreerangan and Rangasamy. Under sale deed Ex A-1 in the year 1924 the said Padavetta Gounder purchased 1/3rd share in the suit land to the extend of 32 x 30 hand measurement in S.No.1451. In the year 1926, the rest of the portion in S.No.1451 measuring to an extent of 40 x 40 feet and the building therein, were purchased jointly in the name of Padavetta Gounder and his son Sreerangan. The plaintiff and the first defendant's father Elumalai are sons of Sreerangan. Padavetta Gounder died intestate, leaving his three sons to inherit his properties. In the year 1937 under Ex.A3, one of his son Govindan sold a portion of his share in the property bearing S.No.1451 to his other son Rangasamy. Later, in the year 1952 under Ex.A-4, Govindan released his remaining right in S.No.1451 in favour of his brother Sreerangan. After the demise of Rangasamy intestate, the entire property in S.No.1451 got devolved on Sreerangan. Through Sreerangan, his sons Elumalai and Chinappan are entitled for equal share in the property, Ex.B-10 is only a statement of expenses incurred for the marriage of the plaintiff. Being the eldest

member of the joint family, Elumalai had the details of the expenditures. There is no documentary evidence to prove the claim of the respondents that in lieu of his marriage expenses spent by his brother Elumalai, the plaintiff Chinnappan released all his rights in the ancestral joint family property in favour of his brother Elumalai. Admittedly, the plaintiff was working as a Peon temporarily even in the year 1953 and his marriage was only in the year 1969. There is no necessity for the plaintiff to release all his right over the ancestral property to meet out his marriage expenses. While so the first appellate Court erred in reversing the judgment of the trial Court.

8. Per contra, the learned counsel for the respondents submitted that, under Ex.A-3, Govinda Gounder released his right in favour of Elumalai, on 6.12.1949 and under Ex B-8 sold a portion of the suit property purchased by his wife Marimuthammal from Lakshmi ammal to Elumalai on 15.09.1955. Ex.B-2, Ex.B-4, Ex.B-5, Ex.B-7 to Ex.B-9, documents are related to the mortgage of the suit property and discharge of the mortgage debt by Elumalai and this proves the fact that suit property was dealt independently by Elumalai and he had created encumbrance over the property and discharged it later. The

error of the trial Court by overlooking these facts had been rectified by the first appellate Court and reversed the erroneous finding of the trial Court. Further, for more than 60 years Elumalai and his legal heirs alone are in possession and enjoyment of the suit property. The plaintiff, who was in Government employment, had never been in the suit village ever since 1953. Ex.A-7 to A-14 clearly prove the above fact and the first appellate Court has rightly relied upon this document and disallowed the claim of the plaintiff/appellant.

9. On consideration of the submissions of the respective counsels and the records of the Courts below, this Court finds that the first appellate Court has failed to appreciate the evidence holistically, beside erred in applying the law properly. The release deed of the Govinda Gounder in the year 1946 vide Ex.B-3 is dated 6.12.1949. Under this document a portion of the properties, which was purchased by Padavetta Gounder and his son Sreerangan is released by Govindan. When there is no evidence to show that there was a partition among Padavetta Gounder and his son Sreerangan; and admittedly Sreerangan was alive, when Ex B-3 was executed, how come Govindan accrued right over the property which he released under Ex.B-3 or sold

under Ex.B8, is not satisfactorily explained by the defendants. Similarly, the plea of release of plaintiff right over the ancestral property for the debt occurred for his marriage expenses is also incredible.

10. There cannot be a release of right over an immovable property without reducing it into writing and properly registered. When the parties admit the property is their ancestral property, the person, who holds the ancestral property, holds it not only for himself, but also on behalf of other members of the joint family, who are in absentia. The law on this point is well settled. Mere mortgaging the joint family property and redeeming it will not give an inference that the defendants had an animus to hold the joint family property as his own. What ever be the length of his period, unless such an animus is expressive, open and to the knowledge of the party adverse. One cannot plead and succeed on the ground of adverse possession hostile to the true owner.

11. Under the Hindu Law, partition of joint family property cannot be presumed, unless it is proved through acceptable evidence. In the present case, there is no piece of evidence to presume

partition. Ex.B-10 statement of account is not an evidence either for partition or for release of right. Similarly, the mortgage deeds and subsequent redemptions reflected in Exs B-2,Ex B-4, B-5, B-7 to 9 are also not a proof for partition. At the most it could be considered as act of the manager of a joint family property, who has the right of representing the other joint family members for the beneficial enjoyment of the joint family property. Therefore, the Substantial Questions of Law formulated are held in favour of the appellants. The judgment of the first appellate Court in A.S.No.131 of 1933 dated 31.03.1994 is set aside and the judgment of the trial Court in O.S.No.496 of 1981 dated 14.10.1992 is confirmed.

12. In the result, ***the Second Appeal is allowed.*** In view of the relationship between the parties, there is no order as to costs.

20.12.2016

Index:Yes/No
 Internet:Yes/No
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 To
 The First Additional District Judge, Salem.
 The Additional District Munsif, Salem.

Dr.G.Jayachandran, J.

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Judgement made in
S.A.No.112 of 1996

20.12.2016

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