

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.858 of 2004

Selvi

... Appellant /4th defendant

Vs

- 1.Venkatachalam alias Thirumurthy1st Respondent/Plaintiff
- 2.K.N.Ramasamy
- 3.Nanjammal
- 4.Palanisammal
- 5.The Regional Manager,
The Tamil Nadu Industrial
Investment Corporation,
Jawan's Bhavan
No.27,T.B.Road, Coimbatore-641 018.
- 6.N.S.R.Hariharan Respondents 2 to 6/Defendants
1 to 3, 5 and 6

This appeal is filed under Section 96 C.P.C. judgement and decree of the Additional District Judge and Fast Track Court No.IV, Coimbatore at Tiruppur dated 04.07.2002 in O.S.No.11 of 2001.

For Appellant : Mr.V.Nicholas

For Respondent : Mrs.Rita Chandrasekaran for R5
R1 to 4 & 6- No appearance

J U D G E M E N T

The 4th defendant in the suit in O.S.No.11 of 2001 on the file of the Additional District Judge (Fast Track Court No.IV), Coimbatore at Tiruppur is the appellant. The suit was filed by the first respondent herein, claiming 1/3rd share in the suit properties.

2. The following geneology of the family will be useful for understanding the rival contentions:

K.N.Ramasamy (D1)		
Tmt.Nanjammal (wife-D2)		

Venkatachalam @ Thirumurthi	Tmt.Palaniammal	(D3)
Tmt.Selvi (D4)		
(1 st Respondent/Plaintiff)		

3. According to the plaintiff, the suit properties are ancestral properties belonging to the joint family consisting of himself and the first defendant Ramasamy. He would claim that the 4th defendant Selvi has become coparcener, since she was married after 25.03.1989, the date on which the Hindu Succession Amendment Act 1 of 1990 is deemed to have come into force. The plaintiff further claims that he along with his father, the first defendant and the 4th defendant namely Selvi are entitled to 1/3 share each in the suit schedule properties. Apart from the said claim, the plaintiff would also claim that the Mortgage deed executed by the father namely, the first defendant in favour of the 5th defendant in the suit, The Tamil Nadu Industrial Investment Corporation, is not binding on the shares of the plaintiff and the 4th defendant. Since the 5th defendant exercised its power of sale of the 1st schedule property and sold the same on 21.10.1993 in a public auction, the 5th defendant and the auction purchaser namely, Mr.N.S.R.Hariharan (6th defendant) were made parties to the suit. The 5th and 6th defendants alone contested the suit. The other defendants remained exparte. The claim of the plaintiff was denied by the 5th defendant contending that the first defendant incurred debts as the Manager/Kartha of the joint family and had mortgaged the property in such capacity. The debts are binding on the family, unless it is known that they are incurred for illegal or immoral purposes.

4. On the above pleadings, the learned Additional District Judge (Fast Track Court No.IV), Coimbatore at Tiruppur framed the following issues:

- 1) Whether the plaintiff is entitled to 1/3rd share as claimed by him?
- 2) To what other reliefs, the plaintiff is entitled to?

5. The following additional issue was framed by the Trial Court:

Whether the debt due to the 5th defendant is binding on the plaintiff and defendants 3 and 4?

6. Upon consideration of oral and documentary evidence available before the Court, the Additional District Judge,

Coimbatore at Tiruppur came to the conclusion that the debts were incurred by the 1st defendant in his capacity as Manager of the family and the plaintiff has not proved that the debts were contracted for illegal or immoral purposes, therefore, they are binding on the other coparceners.

7. On the above findings, the learned Additional District Judge, Coimbatore at Tiruppur, dismissed the suit with regard to the 1st schedule, granted decree with reference to item Nos.1 and 2 in the 2nd schedule subject to mortgage in favour of 5th defendant and with reference to the 3rd schedule of property, the suit was decreed as prayed for.

8. Aggrieved by the judgement and decree, the 4th defendant who had actually remained exparte before the Court below has preferred the present appeal.

9. Heard Mr.V.Nicholas, learned counsel appearing for the appellant and Mrs.Rita Chandrasekaran, learned counsel appearing for the 5th respondent. The other respondents are neither represented by any counsel nor do they appear in person.

10. The following points emerge for consideration in the appeal.

1.Whether it could be said that the debts incurred by the manager/Kartha of a Joint Hindu Family for the business carried on by him, are for immoral or illegal purposes?

2.Whether the appellant/4th defendant could question the alienation/encumbrance created by her father prior to the commencement of Hindu Succession (Tamil Nadu Amendment) Act 1/1990?

Point No.1

11. As could be seen from the evidence on record and the clear finding arrived at by the learned Trial Judge, it is an admitted case of the parties that 1st defendant was a Kartha in management of the properties of the family. The debts were incurred by him for the purpose of the business carried on by him on behalf of the family. There is no evidence to show that the debts were tainted with immorality and in such circumstances, the borrowing made by the Kartha, cannot be said to be not binding on the other members of the coparcenery. Therefore, I am of the considered opinion that no case has been made out to interfere with the conclusion arrived at by the Trial Court on the question of binding nature of debt on the other coparceners namely, the plaintiff and defendants 3 and 4.

Point No.2

12. This appeal has been filed at the instance of the 4th defendant, who remained exparte before the Trial Court. The

plaintiff who is the son of 1st defendant has not chosen to question the decree. Admittedly, the appellant would claim to have become the coparcener after the coming into force of Hindu Succession Amendment Act 1 of 1990. The debt itself was contracted prior to the said Act and in the absence of any evidence on the side of the appellant regarding the nature of the debit and the fact that any encumbrance created prior to 25.03.1989 cannot be questioned by the appellant, I do not find any merit in the appeal.

13. In view of the aforesaid reasons, I see no error in the judgement and decree of the Trial Court dated 04.07.2002. The appeal is dismissed confirming the judgement and decree of the Trial Court. However, there shall be no order as to costs.

sd/

Assistant Registrar (CS VI)

/true copy/

Sub Assistant Registrar

vk

To

1.The Additional District Judge and Fast Track Court No.IV, Coimbatore at Tiruppur.

2.The Section Officer, V.R Section,
High Court, Madras-104

+1cc to Mr.V.Nicholas, Advocate SR.No.62348

+1cc to Mr.Aiyar & Dolia, Advocate SR.No.62636

A.S.No.858 of 2004

RSK(CO)
GN(01/03/2017)

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