

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON: 06.10.2017

ORDER PRONOUNCED ON:23.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Application Nos.2237, 2238 and 2239 of 1994
in CS No.474 of 1986

V.Ambalavanan

... Applicant
 in all the Applications

Vs

1. K.R.Vinayakamurthy

2. R.Murugesan

...Respondents
 in all the Applications

Prayer: Applications are filed under Order XIV Rule 12 of the O.S.Rules read with Section 151 of the Code of Civil Procedure, praying to set aside the order dated 30.01.1992 made in Application Nos.1631 and 1632 of 1990 and Application No.3680 of 1990 in C.S.No.474 of 1986 respectively.

For Applicant : Mr.M.S.Subramanian

For Respondents : Mrs.Deepa Mariappan
 for Mr.G.Dhanraj

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COMMON ORDER

These applications have been filed by the plaintiff in the above suit in CS No.474 of 1986, under Order XIV Rule 12 of the Original Side Rules

read with Section 151 code of Civil Procedure.

2. The suit in CS No.474 of 1986 has been filed by the plaintiff seeking partition and separate possession of "A" and "B" Schedule properties. Even according to the plaint averments the "A" Schedule property, which is house ground and premises situate at Landons Road, Kilpauk, Madras 600010, is the self-acquired property of Ambalavana Chettiar, who died on 08.06.1970, leaving behind his wife, who is the 1st defendant and his sons, namely defendants 2 to 4, as his legal heirs. The suit "B" Schedule properties are the ancestral property of the said Ambalavana Chettiar. The averments in the plaint as it originally stood regarding the acquisition of a suit "A" Schedule properties, with which alone these proceedings relate to, are as follows:

"7. The said Ambalavana Chettiar was a leading merchant of madras and he earned many items of movable and immovable properties through his own efforts and he died sometime on the 8th June 1970. He left behind him his wife, the 1st defendant and his sons, defendants 2 to 4 as his heirs and legal representatives, according to Hindu Law by which he was governed."

3. It is the claim of the plaintiff that in a partial partition that took place between the sons of Ambalavana Chettiar, in the year 1971, the suit "A" Schedule property was allotted to the 2nd defendant, who is the father of the plaintiff. It is the claim of the plaintiff that the 2nd defendant, who led a wayward life incurred several debts by mortgaging the suit "A" Schedule property. On the basis of the said mortgage, a suit came to be filed by the mortgagee, namely the 5th defendant. The said suit was disposed of as settled out of Court and it is learnt that the 2nd defendant sold the property, namely the "A" Schedule property to the 7th defendant, who in turn had sold the properties to defendants 8 and 9. According to the plaintiff, the suit "A" Schedule property having been inherited by the 2nd defendant from his father, the plaintiff as the grand son would be entitled to a right by birth in the said property. The plaintiff also claims that the sale by the 2nd defendant in favour of the 7th defendant and the further sale by the 7th defendant in favour of the defendants 8 and 9 was not for binding necessities. Therefore, the same is not binding on his share in the property.

4. The defendants entered appearance and filed their written statement.

5. The defendants 8 and 9, who are the purchasers have filed two

applications, namely Application Nos.1631 and 1632 of 1990 praying for striking out the pleading in paragraph Nos. 8 to 13, 18 to 25, 28, 29, 31 and 33 in the plaint, insofar as they relate to the property shown in Schedule "A" property of the suit in CS No.474 of 1986 and for rejection of the plaint in CS No.474 of 1986 insofar as it relates to Schedule "A" property in the said suit.

6. After the filing of the above applications by the defendants 8 and 9, the plaintiff came forward with an application in Application No. 3680 of 1990, seeking to amend the plaint by incorporating paragraph 12 A in the plaint, which reads as follows:

"12A. After the partition, the property got by the parties were being treated as ancestral and joint Hindu family property in their hands and consequently the plaintiff by birth had derived rights in the said property and on that account also the plaintiff is entitled to demand partition and challenge the alienation of the second defendant."

7. All the above applications were heard by the learned Master and by a common order dated 30.01.1992, the Applications Nos.1631 and 1632 of 1990 were allowed by the learned Master. And the application in Application No.3680 of 1990 seeking amendment of the plaint was dismissed.

8. Aggrieved, the plaintiff has come forward with the above applications, which are in the nature of appeals against the orders of the learned Master.

Application No.2239 of 1994:

9. This application is filed against the order rejecting the application filed by the plaintiff for amendment in Application No.3680 of 1990. For the purpose of convenience, the said application is taken up for disposal.

10. The original pleading of the plaintiff in the plaint, which has already been extracted, is specific to effect that the suit "A" Schedule property, namely the House property situate at Landons Road, Kilpauk, Madras 600010, is the self-acquired property of Ambalavana Chettiar. The plaintiff also avers that whether the properties are ancestral property or self-acquired property of Ambalavana Chettiar, the plaintiff will be entitled to one-half of the share to which the 2nd defendant, his father, is entitled to. By way of amendment the plaintiff seeks to introduce a new case to contend that the property was treated as joint family property in their hands by the parties. This proposed amendment is directly in conflict with the original pleading in the plaint made in the suit. The averments in paragraph 7 and paragraph

11 of the original plaint would show that the plaintiff specifically admitted that the suit "A" Schedule property is the self-acquired property of Ambalavana Chettiar, who died on 08.06.1970, after coming into the force of Hindu Succession Act 1956. Therefore, the succession to that properties would be governed only by Section 8 of the Hindu Succession Act. By the amendment the plaintiff sought to introduce a nucleus claiming that the said property was treated as a joint family property in the hands of the defendants 2 to 4, who are the sons of Ambalavana Chettiar. The plaintiff is not seeking any amendment to the prayer in the suit, wherein he had claimed a larger share in the suit "A" Schedule property as if, it is the self-acquired property of Ambalavana Chettiar, and that it was allotted to the 2nd defendant in the partial partition that is said to have been taken place in the year 1971. It is a trite position of law that a party cannot be allowed to withdraw his admissions made in the original pleadings by way of an amendment.

11. This Court had in **Lalitha v. K.Shanthi**, reported in **Manu/TN/1805/2002**, held that a party cannot be allowed to withdraw the admissions made in the original pleadings by way of amendment. Therefore, I do not think, the plaintiff would be entitled to introduce a new claim in the form of the proposed amendment. The learned Master has

considered the Law on the question of the amendment and held that the plaintiff is not entitled to introduce a new case by way of amendment. I do not see any ground to interfere with the order of the learned Master, in dismissing the application in Application No.3680 of 1990 seeking amendment of the plaint. Therefore, the Application No.2239 of 1994, challenging the order dismissing the application No.3680 of 1990 is confirmed.

Application Nos. 2237 and 2238 of 1994:

12. These applications are appeals against the order passed by the learned Master. In Application Nos.1631 and 1632 of 1990, as already stated that the claim of the plaintiff is that the properties are self-acquired properties of Ambalavana Chettiar. According to the plaintiff, be it the self-acquired property or ancestral property of Ambalavana Chettiar, he would be entitled to one-half of the share to which the 2nd defendant his father is entitled to. The plaint proceeds on the above premise, I do not think the said assumption on the part of the plaintiff is right in law. Admittedly, Ambalavana Chettiar, died on 08.06.1970, after the coming into force of Hindu Succession Act, 1956. Therefore, the succession to self-acquired properties would be regulated by Section 8 of the Hindu Succession Act. A property inherited by a Clause I heir under Section 8 of the Hindu

Succession Act will not take the colour of the joint family property or ancestral property, vis-a-vis his children. The 2nd defendant has inherited the property described in Schedule "A" property to the plaintiff as a Clause I heir under Section 8 of the Hindu Succession Act. Therefore, it does not partake the character of the co-parcenary property in his hands vis-a-vis the plaintiff. Law on this aspect is settled by a Full Bench Judgment of this Court in ***The Additional Commissioner of Income Tax, Madras -1, v. P.L.Karuppan Chettiar*** reported in ***AIR 1979 Madras 1***. The said judgment had been affirmed by the Hon'ble Supreme Court in ***The Commissioner of Wealth Tax v. Chander Sen***, reported in ***AIR 1986 SCC 1753***.

13. In view of the aforesaid categorical pronouncements by the Hon'ble Supreme Court as well as the Full Bench of this Court, the plaintiff cannot claim a right by birth to the Schedule "A" property in CS No.474 of 1986. Therefore, the question of the plaintiff having a right by birth even during the life-time of his father in the said property does not arise. The learned Master has referred to the pronouncement of this Court as well as the Supreme Court and has rejected the plaint in respect of the suit "A" Schedule property.

14. In the pleadings particularly in paragraph Nos. 8 to 13, 18 to 25,

28, 29, 31 and 33 of the plaint related to the suit "A" Schedule property, the plaintiff had alleged that his father, the 2nd defendant, was leading a wayward life and created debts and those debts were not for legally binding purposes and therefore, the alienation made by the 2nd defendant in favour of the 7th defendant and further alienation made by the 7th defendant in favour of defendants 8 and 9 are not binding on him. Now that it has been held the plaintiff had no right by birth those pleadings which relate to the Schedule "A" property cannot be allowed to continue in the plaint. Hence the learned Master was right in striking out the pleadings in the paragraphs stated above.

15. In fine both the Application Nos.2237 and 2238 of 1994 are dismissed, confirming the order of the learned Master. However, there will be no order as to costs in the circumstances of the case.

सत्यमेव जयते

23.10.2017

Index : Yes/No

Internet: Yes/No

Speaking order/Non Speaking order

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R.SUBRAMANIAN,J.

jv



Pre Delivery Order

Appl.Nos.2237 to 2239 of 1994
in C.S.No.474 of 1986

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CS No.474 of 1986

R.SUBRAMANIAN, J.

The suit is of the year 1986 and now the suit has to be tried with reference to the "B" Schedule property alone. Registry is directed to post the suit for framing of issues on 23.10.2017.

23.10.2017

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