

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.10.2017

CORAM

THE HONOURABLE Mr.JUSTICE A.SELVAM
and
THE HONOURABLE Mr.JUSTICE P.KALAIYARASAN

Appeal Suit No.12 of 2017
and C.M.P.No.15568 of 2017

1.J.Senthil Kumar
2.M/s.International Maritime Academy,
Rep. by its Director S.Hemalatha,
41, 2nd Floor, Giri Road, T.Nagar,
Chennai-17. ... Appellants/Defendants 7 & 8

Vs

1.Durai Naicker
2.Jothi Ramalingam
3.Sampath
4.Priyadharshini
5.Minor Roshini
Rep. by her father Sampath
6.Dhanalakshmi
7.Gajalakshmi
8.Amsavalli
9.Komathi
10.Lakshmi Kanthan
11.L.Santhosh Kumar
12.L.Nalini
13.L.Nithya
14.L.Nathia
15.E.Kanthababu ... Respondents

Appeal suit filed under Section 96 of CPC against the judgment and decree, dated 28.09.2016, passed by the II Additional District Judge, Thiruvallur at Poonamallee, in O.S.No.198 of 2015.

For Appellants : Mr.V.Manohar
For R1 to R9 : Mr.J.D.Srikanth Varma
for Mr.P.Subba Reddy

J U D G M E N T

[Judgment of the Court was delivered by A.SELVAM,J.]

Challenge in the Appeal Suit is to the judgment and decree, dated 28.09.2016, passed in Original Suit No.195 of 2015 by the II Additional District Court, Tiruvallur at Poonamallee.

2.The respondents 1 to 9, as plaintiffs, have instituted Original Suit No.198 of 2015 on the file of the trial Court, praying to pass a preliminary decree of partition and also to declare the documents mentioned therein are not binding upon them, wherein, the present appellants have been arrayed as defendants No.7 and 8.

3.In the plaint, it is averred that the first defendant, plaintiffs No.6 to 9, sixth defendant and one Yasodha are the sons and daughters of Ezhumalai Naicker and his wife Indiraniammal. Both of them have passed away. During lifetime of Ezhumalai Naicker, on 15.01.1981, a registered partition has taken place between him and his two sons, namely, first defendant and sixth defendant, wherein, the suit first item has been allotted to the share of Ezhumalai Naicker. After partition, the said Ezhumalai Naicker and his wife have acquired the remaining suit properties. One of the daughters of Ezhumalai Naicker by name, Yasodha has passed away on 24.07.1991, leaving behind him, her husband and children by name, Jothiramalingam and Rojaramani and the said Rojaramani has passed away leaving behind him, the plaintiffs No.3 to 5. Since all the suit properties are separate properties of the said Ezhumalai Naicker and his wife Indiraniammal, the plaintiffs No.1 to 5 are jointly entitled to get 1/7th share and the plaintiffs No.6 to 9 are each entitled to get 1/7th share. Further, it is averred in the plaint that the first defendant and sixth defendant have created certain documents in favour of the seventh defendant and the seventh defendant has executed a Lease Deed in favour of eighth defendant and the same are not binding upon plaintiffs. Under the said circumstances, the present suit has been instituted for getting the relief sought therein.

4.In the written statement filed on the side of the first defendant, it is averred to the effect that the first defendant has received sale consideration from the seven defendant to an extent of 1/7th share. The sixth defendant has retained the remaining share of sale consideration.

5. In the written statement filed on the side of the seventh defendant and adopted by the eighth defendant, it is averred to the effect that the seventh defendant, by virtue of Sale Deed, dated 14.12.2005, has purchased the suit items No.1 to 6 for valuable consideration. At the time of purchase, the seventh defendant has verified anterior documents and also legal heirs of Ezhumalai Naicker. The seventh defendant has purchased suit items No.1 to 6 as a bonafide purchaser for a value. The seventh defendant has executed a Lease Deed in respect of a portion of the suit property in favour of eighth defendant. The seventh defendant is running a school and the plaintiffs are not having any partible interest over the suit properties and therefore, the present suit deserves to be dismissed.

6. On the basis of the rival pleadings raised on either side, the trial Court, has framed necessary issues and after analysing both oral and documentary evidence, has decreed the suit as set out in the judgment. Against the judgment and decree passed by the trial Court, the present Appeal Suit has been preferred, at the instance of the defendants No.7 and 8.

7. Before contemplating the rival submissions made on either side, the Court has to narrate the following facts. It is an admitted fact that the first defendant, plaintiffs No.6 to 9, sixth defendant and one Yasodha are the sons and daughters of Ezhumalai Naicker and his wife Indiraniammal. Both of them have passed away. It is also equally an admitted fact that the said Yasodha has passed away leaving behind him, first plaintiff, second plaintiff and one Rojaramani as her legal heirs. The said Rojaramani has passed away leaving behind him, the plaintiffs No.3 to 5.

8. The consistent case of the plaintiffs is that all the suit properties are separate properties of Ezhumalai Naicker and Indiraniammal and since Yasodha has passed away, the plaintiffs are having partible interest over the suit properties and the present suit has been instituted for the relief sought therein.

9. The defence put forth on the side of the defendants No.7 and 8 is that the seventh defendant has purchased suit items No.1 to 6 from the defendants No.1 and 6 for valuable consideration and subsequently, he leased out a portion of the same in favour of the eighth defendant.

10.The trial Court, after analysing the evidence available on record, has decreed the suit as set out in the judgment.

11.The learned counsel appearing for the appellants/defendants No.7 and 8 has contended to the effect that all the suit items are joint properties and the defendants No.1 and 6 has sold the suit items No.1 to 6 in favour of the seventh defendant for valuable consideration. The seventh defendant has leased out a portion of the suit properties in favour of the eighth defendant. The trial Court, without considering the character of the suit properties, has erroneously decreed a suit and further, the trial Court has unnecessarily declared the documents mentioned in the plaint are not binding upon the plaintiffs and therefore, the judgment and decree passed by the trial Court are liable to be interfered with.

12.Per contra, learned counsel appearing for the respondents No.1 to 9/plaintiffs has repeatedly contended to the effect that the specific case of the plaintiffs is that the suit first item has been allotted to Ezhumalai Naicker, by virtue of Partition Deed, dated 15.01.1981 and the remaining suit items have been purchased by Ezhumalai Naicker and his wife Indiraniammal and since both of them have passed away, as legal heirs of one of the daughters, viz., Yasodha, the plaintiffs have instituted the present suit. The trial Court, after considering the rival pleadings on either side, has rightly decreed the suit and therefore, the judgment and decree passed by the trial Court do not require any interference.

13.Basing upon the divergent submissions made on either side, the Court has to meticulously analyse as to whether the suit properties are joint properties or separate properties of Ezhumalai Naicker and his wife Indiraniammal.

14.It is seen from the records that on 15.01.1981, a registered partition has taken place amongst Ezhumalai Naicker and his two sons, Lakshmikanthan and Kanthababu [first and sixth defendant], wherein, the suit first item has been allotted to the share of Ezhumalai Naicker. Since a partition has taken place in respect of properties of erstwhile joint family and since the suit first item has been allotted to the share of Ezhumalai Naicker, it is needless to say that the suit first item is a separate property of Ezhumalai Naicker.

15.The consistent case of the plaintiffs is that the remaining suit properties have been purchased by Ezhumalai

Naicker and his wife Indiraniammal and therefore, the same are their separate properties. Even though a fine attempt has been made on the side of the defendants No.7 and 8 that all the suit properties are joint properties, no attempt has been made to prove the said stand.

16.It is a settled principle of law that initial burden lies upon a person, who pleads that a particular property is a joint property. As taunted earlier, defendants No.7 and 8 have not come forward to prove that the suit properties are joint properties. Since the defendants No.7 and 8 have not proved the same and since on the side of the plaintiffs, abundant evidence is available for the purpose of coming to a conclusion that all the suit properties are separate properties of Ezhumalai Naicker and his wife Indiraniammal, this Court is of the view that all the suit properties are joint properties. Therefore, the contention put forth on the side of the appellants/defendants No.7 and 8 is sans merit.

17.As adverted to earlier, the plaintiffs have filed the present suit, simply on the ground that all the suit properties are separate properties of Ezhumalai Naicker and Indiraniammal. It is an admitted fact that one of their daughters by name, Yasodha has passed away. The first plaintiff is her husband, second plaintiff is her son and her daughter by name, Rojaramani has passed away leaving behind him, the plaintiffs No.3 to 5 as her legal heirs. Since all the suit properties are the separate properties of Ezhumalai Naicker and Indiraniammal, the plaintiffs are having partible interest over the suit properties.

18.It is an admitted fact that by virtue of Ex.A5, the seventh defendant has purchased suit items No.1 to 6 from the defendants No.1 and 6 and subsequently, the seventh defendant has executed a Lease Deed, by virtue of Ex.A6, in favour of eighth defendant. Since the plaintiffs are having partible interest over the suit properties, Ex.A5 and Ex.A6 are not binding upon them. Further, it is seen from the records that a Release Deed has been marked as Ex.A8, wherein also the plaintiffs are not parties and the same is not binding upon them.

19.It has already been pointed out that all the suit properties are the separate properties of Ezhumalai Naicker and his wife Indiraniammal. The plaintiffs have filed the present suit as legal heirs of one of their daughters by name, Yasodha. Since the plaintiffs are not parties to the documents alleged to have been executed by the defendants No.1 and 6 in favour of seventh defendant, the same are not binding upon them.

Therefore, viewing from any angle, the contentions put forth on the side of the appellants/defendants No.7 and 8 cannot be accepted.

20.The trial Court, after considering the available evidence on record, has rightly decreed a suit as set out in the judgment. In view of the discussion made earlier, this Court has not found any force in the contention put forth on the side of the appellants/defendants No.7 and 8 and altogether, the present Appeal Suit deserves to be dismissed.

In fine, this Appeal Suit is dismissed with cost. The judgment and decree passed in Original Suit No.198 of 2015, by the II Additional District Court, Tiruvallur at Poonamallee, are confirmed. Consequently, connected miscellaneous petition is dismissed.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

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To

1. The II Additional District Judge,
Thiruvallur at Poonamallee.

2. The Section Officer
VR Section, High Court, Madras.

+1 CC to Ms. V. Manohar, advocate sr 74788.

+1 CC to Ms.P. Subha Reddy, advocate sr 75084.

+1 cC to Ms.G. Dhilip Kumar, advocate sr 74800.

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PPA(CO)
SP(30/11/2017)