

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.04.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.No.149/2017

Narasimhan

... Appellant / Plaintiff

Versus

1.Nagendiran

2.Kuppammal

3.Indrani

4.Saraswathi

5.Jayalakshmi

6.Angamuthu Ammal

... Respondents /
Defendants

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree made in AS.No.4/1999 on the file of the learned Subordinate Judge, Dharmapuri dated 27.03.2003 in confirming the Judgment and decree as made in OS.No.254/1984 on the file the learned District Munsif, Dharmapuri dated 16.11.1998.

For Appellant : Mr.V.Ayyadurai, Senior Counsel
for Mr.V.B.Perumal Raj

For R6 : Mr.M.Muruganandham for
Mr.V.Lakshminarayanan

JUDGMENT

The plaintiff, who had lost before the Courts below, is the appellant herein.

2 The facts leading to the filing of this Second Appeal, briefly narrated, are as follows:-

[a] The appellant / plaintiff has filed a suit in OS.No.254/1984 on the file of the Court of the District Munsif at Dharmapuri, praying for a judgment and decree to declare that he is having right, title and possession in respect of the suit

property situate at Virupatchipuram, Dharmapuri Taluk and District and also for permanent injunction, restraining the defendants from interfering with his peaceful possession and enjoyment of the same and also for cost.

[b] The appellant/plaintiff would aver among other things that he had purchased the said suit properties under Registered Sale Deeds dated 03.07.1975 [Exs.A1 and A2] and thereafter, started paying statutory levies and the patta was also transferred in his name [Ex.A3] and as such, he is having absolute right and title over the property. It is further averred by the appellant/plaintiff that the defendants have no rights whatsoever, in respect of the suit properties and with the support of some unruly elements, started interfering with his possession and enjoyment on 15.04.1984 and therefore, came forward to file the suit.

[c] The defendants filed the written statement, denying the averments and would contend that the suit properties originally belonged to one Soora Rengaiyya Chettiyar family and the suit probabilities were purchased for the benefit of the joint family out of the joint family income as well as the efforts put up by the plaintiff and the defendants and since the 1st defendant has to go out of the State in pursuant to his employment, the suit properties were purchased in the name of the eldest member of the family, viz., the plaintiff herein and as such, the suit properties are joint family properties. It is further contended by the defendants that they have not engaged the services of any rowdy elements to interfere with the possession of the plaintiff and since the properties acquired on account of the joint effort and contribution, the plaintiff is not entitled to get a declaration and other consequential reliefs and prays for dismissal of the suit.

[d] The Trial Court, on a consideration of the pleadings, had framed the following issues:-

- Whether it is true that the plaintiff alone is having title and possession in respect of the suit properties?
- Whether the plaintiff is entitled to the relief of declaration and for permanent injunction?
- Whether the suit properties are joint family properties as pleaded by the defendants?
- To what other reliefs the plaintiff is entitled to?
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[e] The Trial Court, on 18.06.1996, had framed the additional issue, viz., Whether the suit properties have been valued properly for the purpose of Court fees?

[f] During the course of trial, the plaintiff examined himself as P.W.1 and also examined one Gopal Maistry as P.W.2 and Exs.A1 to A53 were marked and on behalf of the defendants, the 1st defendant was examined as DW1 and one Govindaraj was examined as DW2 and Exs.B1 to B67 were marked.

[g] The Trial Court, on a consideration of pleadings and on appreciation of oral and documentary evidences, has dismissed the suit vide judgment and decree dated 16.11.1998 and challenging the legality of the same, the appellant/plaintiff, filed an appeal in AS.NO.4/1999 on the file of the Court of the Subordinate Judge, Dharmapuri and also filed IA.No.74/2002 under Order 41 Rule 27 of the Code of Civil Procedure for reception of additional documents and the said miscellaneous petition was allowed.

[h] The Lower Appellate Court, on a consideration of the Memorandum of Grounds and materials placed before it, had formulated the following points for determination:-

- Whether the documents sought to be marked as additional evidence, can be entertained and are necessary for the disposal of the appeal?
- Whether the judgment and decree passed by the Trial Court are liable to be set aside and the appeal is to be allowed?

[i] The Lower Appellate Court, on a consideration of the oral and documentary evidences, especially, Ex.B3 series had found that Ex.B3 would indicate that there are series of communications/correspondences between the plaintiff and the 1st defendant and it would disclose that the properties were acquired on account of the joint contribution by the plaintiff as well as by the 1st defendant and also taken into consideration of the fact that the original of Ex.A1 has been produced from the custody of the defendants and had also evidenced the fact that the suit properties were belonged to joint family.

[j] The Lower Appellate Court further found that since the plaintiff has acted as Kartha, the revenue documents naturally, would stand in the name of the plaintiff and also taken note of the fact that though the defendants are brother and sisters, the appellant/plaintiff had totally suppressed the said fact that applying the ratio laid down in various decisions, had found that the plaintiff would not have acquired the suit properties without the help and assistance of the other defendants and therefore, it could be construed as a joint family acquisition and therefore, the suit properties are to be treated as Joint Family properties and citing the said reasons, had dismissed the appeal suit vide impugned judgment and decree dated 27.03.2003. Aggrieved against the said dismissal, the appellant/plaintiff has filed the present second appeal.

[k] It is seen that the present Second Appeal has been filed on 29.01.2004 with a delay and after condonation of delay, the appeal came to be numbered after 13 years, i.e., on 17.02.2017.

3 In the Memorandum of Grounds in the Second Appeal, the following Substantial Questions of law arise for consideration:-

- Whether the Courts below are right in casting the entire burden of proof upon the appellant to prove that the suit property was purchased out of his own fund, in his suit seeking the relief of declaration and permanent injunction?
- Whether the judgment and decree of the Courts below suffers from misleading of evidence, non-consideration of vital aspects, misapplication of law and for want of appreciation of oral and documentary evidences, more in particular with regard to Exhibit A7, A48 and A49 and exhibits A54 to A57?
- Whether the Courts below are right in dismissing the suit claiming title solely on the basis of the letters in Ex.B3 series and custody of original deeds ignoring the unconvertible evidences as to the status of the appellant, recitals in Ex.A1 and A7, A48 and A49?
- Whether the Lower Appellate Court is right in distinguishing the dictum laid on in the judicial precedents as cited on behalf of the appellant?

4 Mr.V.Ayyadurai, learned Senior Counsel assisted by Mr.V.B.Perumal Raj, learned counsel appearing for the appellant/plaintiff would submit that admittedly, the suit properties stand in the name of the appellant/plaintiff as evidenced under Exs.A1 and A2 - Sale Deeds, supported by the patta marked as Ex.A3 and also other revenue documents marked as Exs.A4 to A53 and since it is the case of the defendants that it is a Joint Family properties, the burden lies on them to sustain the said case and also would further submit that it is a settled position of law that the proof of existence of a joint family does not lead to the presumption that the property held by any member, is joint and the burden rest upon the person who is asserting with the properties as joint family to establish the said fact and unfortunately, the Courts below, have overlooked the settled legal position and wrongly casted the burden of proof on the appellant/plaintiff to sustain the said fact. It is the further submission of the learned Senior Counsel for the appellant that simply because the original of Ex.A1 has been produced from the custody of the defendants, the same will not

automatically lead to the presumption that the suit properties are joint family properties and would further submit that the Courts below had placed heavy reliance upon Ex.B3 [Communications/Correspondences] between the plaintiff and the 1st defendant and since those communications are between two brothers, it cannot be said that the suit properties are joint family in nature and therefore, prays for interference.

5 Per contra, Mr.M.Muruganantham, learned counsel appearing on behalf of Mr.V.Lakshminarasimhan, learned counsel appearing for the 6th respondent / 6th defendant would contend that Ex.B3 series, had sealed the fate of the appellant/plaintiff and communications/correspondences exchanged between the plaintiff and his wife and the 1st defendant would clearly reveal the fact that the suit properties were joint family acquisition and would further add that the appellant/plaintiff has totally suppressed the relationship between him and the defendants and the Courts below, on thorough appreciation of factual aspects and correct application of legal principles, had rightly reached the conclusion to negative the claim of the appellant/plaintiff and since the findings are concurrent in nature, this Court may not interfere with the same and prays for dismissal of the Second Appeal.

6 This Court paid its best attention to the rival submissions and also perused the materials placed before it.

7 The defendants are the brother and sisters of the plaintiff and however, a perusal of the plaint would disclose that the said relationship has not been disclosed, may be on account of the fact that the plaintiff is in loggerheads with the defendants.

8 No doubt, the suit properties stand in the name of the appellant/plaintiff as evidenced under Exs.A1 and A2 and also Ex.A3-Patta Passbook, supported by the Revenue Records as Exs.A4 to A53. Similarly, the defendants had marked Ex.B4-Voters List, which disclose that they are also the residents of the property and they have also paid statutory levies as evidenced under Exs.B11 to B67, may be in the name of the plaintiff/appellant. The clinching documents to sustain the case of the defendants have been marked as Ex.B3 series and the contents of the same have been extracted by the Lower Appellate Court in paragraph No.11. Ex.B3 series are the communications/correspondences between the plaintiff and his wife and with the 1st defendant and the 1st defendant is employed in Air Force and he has been repeatedly sending amounts to the plaintiff for the purpose of doing cultivation and making improvements to the suit properties and the said documents are not seriously disputed by the appellant/plaintiff.

9 The Courts below has also recorded the findings that though the appellant / plaintiff claim that he was employed as a teacher, so also his wife, he has not produced any semblance of documents to sustain the said fact.

10 No doubt, the burden lies on the defendants to sustain the fact that the suit properties is a joint family in nature and sufficient means are available to acquire the same and thereafter, the burden shift on the plaintiff to sustain his case that it is a self-acquired property. In the absence of evidence as to the nature and occupation of the plaintiff coupled with the series of correspondences marked as Ex.B3, which evidences the fact that the 1st defendant out of the income earned as Air Force Personnel, has also made contribution for making improvement and development of the suit properties, this Court is of the view that the defendants have discharged the burden and therefore, the onus shifts on the plaintiff to sustain his case that it is a self-acquired property and unfortunately, he has failed to do so. The Courts below, on a thorough consideration of the oral and documentary evidences, had reached the conclusion that the suit properties are not self-acquired properties of the appellant / plaintiff and the said findings are concurrent in nature. This Court, on an independent application of mind to the reasons assigned by the Courts below, is of the considered view that the said findings cannot be said to be perverse and non-appreciation of the evidence available. The questions of law raised in the Second Appeal have been answered by the Lower Appellate Court on correct application of well settled legal principles and therefore, no substantial questions of law arise for consideration in this Second Appeal.

11 In the result, the Second Appeal is dismissed, confirming the judgment and decree passed by the Courts below. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

AP
To

1.The Subordinate Judge,
Dharmapuri.

2.The District Munsif,
Dharmapuri.

Copy to:
The Section Officer
VR Section, High Court,
Madras.

+1cc to Mr.V.Lakshminarayanan, Advocate Sr.21510
+2cc to Mr.V.B.Perumalraj, Advocate Sr.21444

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