

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.11.2017

Delivered on : 27.11.2017

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.1209 of 2015
and
M.P.No.1 of 2015

1.R.Eswaramurthy
2.M.Rajamanickam
3.R.Thiagarajan
4.R.Saravanan
5.R.Pushpalatha
6.Smt.Saroja

.... Appellants/Defendants

vs.

1.Divyapriya
2.Sharanya

.... Respondents/Plaintiffs

Appeal suit filed under Order 41 Rule 1 read with Section 96 of C.P.C. against the judgment and decree dated 24.08.2015, passed by the 3rd Additional District Judge, Salem, in O.S.No.19 of 2012.

For Appellants : Mr.V.Sekar

For Respondents : Mr.V.Raghavachari for
Mr.S.Rameshkumar

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JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

This Appeal Suit has been directed against the judgment and decree dated 24.08.2015, passed in O.S.No.19 of 2012, by the 3rd Additional District & Sessions Court, Salem.

2.The respondents herein, as plaintiffs, have instituted Original Suit No.19 of 2012 on the file of the trial Court, praying to pass a preliminary decree of partition and also to pass a decree of perpetual injunction, wherein, the present appellants have been arrayed as defendants.

3.The material averments made in the plaint are that the plaintiffs are the daughters of the first defendant. The second defendant is his father. The defendants 3 and 4 are his brothers. The 5th defendant is the sister of the defendants 1, 3 and 4 and 6th defendant is the wife of the second defendant. The father of the second defendant, by name, Mariappa Gounder, has owned extensive agricultural lands in Navapatti Village. The second defendant is the only son of the said Mariappa Gounder. Out of joint family income, the said Mariappa Gounder has purchased the lands comprised in Survey Nos.8/1B and 25/1B, in the name of the second defendant. The properties standing in the name of the second defendant are also joint family properties. For the purpose of giving better education to the grandchildren of the said Mariappa Gounder, he shifted his abode to Mettur, where he purchased certain properties in the name of the 6th defendant. The first defendant has got married in the year 1983. The defendants 3 and 4 are living separately. The mother of the plaintiffs, by name, Maheswari, has lived in joint family for a period of 15 years. The first defendant has failed to maintain his family members properly. The brothers of the first defendant have enjoyed income derived from the joint family properties. Since the first defendant has failed to maintain his family members, the mother of the plaintiffs has filed Pauper O.P.No.3 of 2003 for getting maintenance and the same has been subsequently dismissed. The first defendant has also filed H.M.O.P.No.39 of 2011 against his wife for getting divorce. Now the wife of the first defendant has been living along with the plaintiffs in the house of her parents. The suit properties are the joint family properties, in which the plaintiffs are having partible interest. Since the defendants are not amenable for amicable partition, the present suit has been instituted for the reliefs sought therein.

4.In the written statement filed by the first defendant, adopted by the defendants 2 to 6, it is averred to the effect that the relationship mentioned in the plaint is true. It is false to aver that all the suit properties are the joint family properties. The suit properties are the absolute properties of the second defendant. No income has been derived from joint family properties. The second defendant has discharged debt obtained over the suit second schedule. The suit 3rd Schedule is the absolute property of the 6th defendant and there is no merit in the suit and the same deserves to be dismissed.

5. On the basis of rival pleadings raised on either side, the trial Court has framed necessary issues and after pondering the available evidence on record, it is found that both plaintiffs are each entitled to 1/12th share in all the suit properties and to that extent a preliminary decree of partition has been passed. Further, the trial Court has also granted a decree of perpetual injunction. Against the judgment and decree passed by the trial Court, the present Appeal Suit has been preferred at the instance of the defendants, as appellants.

6. The crux of the case of the plaintiffs is that the plaintiffs are the daughters of the first defendant. The second defendant is the father of the first defendant and the defendants 3 to 5 are his brothers. The 6th defendant is the wife of the second defendant. The father of the second defendant, by name, Mariappa Gounder, has owned extensive agricultural lands in Navapatti Village and by way of utilising the income derived from joint family properties, certain items of suit properties have been purchased in the name of the second defendant and also in the name of the 6th defendant and therefore, all the suit properties are joint family properties. The first defendant has neglected the plaintiffs and their mother and due to that various litigations have come into existence and since the defendants are not amenable for amicable partition, the present suit has been instituted for getting the reliefs sought therein.

7. The defence put forth on the side of the defendants is that the suit properties are the separate properties of the second defendant and only out of his own income certain properties have been purchased and further, the suit 3rd Schedule is the absolute property of the 6th defendant and therefore, the plaintiffs are not entitled to get partition.

8. The trial Court, after considering the rival evidence available on record, has decreed the suit as mentioned supra.

9. On the basis of the rival pleadings raised on either side, the court has to analyse the following both factual and legal points.

(1) Whether all the suit properties are the joint family properties?

(2) Whether the suit 3rd Schedule is the absolute property of the 6th defendant?

10. The learned counsel appearing for the appellants/defendants has repeatedly contended to the effect that the second defendant is the only son of Mariappa Gounder

and the erstwhile Hindu Joint Family has not owned any income yielding agricultural lands. The second defendant has independently done his business and out of his own earnings, certain items of suit properties have been purchased and further, the 6th defendant has purchased the suit 3rd Schedule and therefore, all the suit properties are not the joint family properties, in which, the plaintiffs are not having any partible interest. The trial Court, without considering the evidence let in on the side of the appellants/defendants, has erroneously decreed the suit and therefore, the judgment and decree passed by the trial Court are liable to be interfered with.

11. Per contra, the learned counsel appearing for the respondents/plaintiffs has succinctly contended to the effect that the second defendant and his father, by name, Mariappa Gounder, have constituted the erstwhile Hindu Joint Family and the erstwhile Hindu Joint Family has had owned income yielding agricultural lands and by way of utilising the income derived from the joint family properties, certain items of suit properties have been purchased in the name of the second defendant and also in the name of the 6th defendant and therefore, all the suit properties are joint family properties. Since the plaintiffs are the daughters of the first defendant, they are also members of the present joint family. Under the said circumstances, the present suit has been instituted. The trial Court, after considering the voluminous evidence adduced on the side of the plaintiffs, has rightly decreed the suit as prayed for and therefore, the judgment and decree passed by the trial Court do not require any interference.

12. The learned counsel appearing for the appellants/defendants has relied upon the decision reported in (2014) 6 MLJ 566 (G.Mohandoss and Others vs. G.Shanmugham and Others), wherein, the learned Single Judge has relied upon the decision reported in (1998) (2) MLJ 388 (Muniappa Naicker v. Balakrishna Naicker, in that decision it is observed that nucleus must have left sufficient surplus income to enable acquisition. If a member proves that there was sufficient joint family nucleus, from and out of which, the said property could have been acquired, the burden shifts to the member of the family setting up claim that it is his personal property.

13. The learned counsel appearing for the respondents/plaintiffs has relied upon the decision passed in Civil Appeal No.11220 of 2017 (Adivappa and Others vs. Bhimappa and Another), by the Hon'ble Supreme Court, wherein, at paragraph No.22, it is observed that it is a settled principle of Hindu Law that there lies a legal presumption that every Hindu family is joint in food, worship and estate and in the absence of any proof of devision, such legal presumption

continues to operate in the family. The burden lies upon the member, who, after admitting the existence of jointness in the family properties, asserts his claim that some properties, out of entire lot of ancestral properties, are his self-acquired properties.

14. From a cumulative reading of the decisions mentioned supra, the Court can easily cull out the following legal points:

If a joint family has owned sufficient income yielding properties, it is presumed that subsequent acquisition has been made only by using income derived from the joint family properties. However, a joint family member can acquire property independently by using his separate funds. If a member has proved the subsequent aspect, the Court can very well come to a conclusion that it is his self-acquired property.

15. With the above legal backdrops, the Court has to analyse the present case.

16. The consistent case of the plaintiffs is that the erstwhile Hindu Joint Family consisted of the second defendant and his father Mariappa Gounder, has had owned extensive agricultural lands and by utilizing the same, certain items of suit properties have been purchased in the names of the second defendant and his wife, viz., 6th defendant and therefore, all the suit properties are the joint family properties.

17. The defence put forth on the side of the defendants is that the erstwhile joint family has had no income yielding agricultural lands and the second defendant has run a tea shop and by utilising the income derived therefrom, the second defendant has purchased certain properties in his name and further the suit 3rd Schedule is the absolute property of the 6th defendant.

18. Even though such a defence has been taken on the side of the appellants/defendants, for the purpose of proving the same, no acceptable documents are forthcoming. Further, on the side of the plaintiffs, it has been positively established to the effect that the erstwhile Hindu joint family has had owned income yielding agricultural lands.

19. It is true that certain items of properties are standing in the name of the second defendant. Since the erstwhile joint family has had owned income yielding agricultural lands, as per the dictum given by the Hon'ble Supreme Court, a presumption can be drawn to the effect that the

properties standing in the name of the second defendant are also joint family properties.

20.As mentioned supra, on the side of the defendants, no clinching evidence has been adduced to the effect that without utilising joint family income, the second defendant has purchased certain items of properties in his name. Therefore, it is quite clear that the properties standing in the name of the second defendant are also joint family properties.

21.Now, the Court has to look into the contention put forth on the side of the defendants in respect of the suit 3rd Schedule. It is an admitted fact that in the suit 3rd Schedule, two items of properties are found place. As per Exs.B26 and B27, the first item of suit 3rd Schedule stands in the name of the 6th defendant and as per Ex.B28, the second item of suit 3rd Schedule stands in the name of the second defendant.

22.The learned counsel appearing for the appellants/defendants has contended to the effect that the first item of 3rd Schedule is the absolute property of the 6th defendant, in which, the plaintiffs are not having any partible interest and the trial Court has erroneously decreed the suit in toto.

23.The learned counsel appearing for the respondents/plaintiffs has also contended that the 6th defendant is not having any independent income and only by utilizing joint family income, the first item of suit 3rd Schedule has been purchased in the name of the 6th defendant and the same is also a joint family property.

24.On the side of the plaintiffs, the second plaintiff has been examined as P.W.1 and she adduced evidence to the effect that by utilising joint family income, the first item of suit 3rd Schedule has been purchased in the name of the 6th defendant.

25.At this juncture, the Court has to meticulously analyse the age of the second plaintiff. At the time of giving evidence, she was aged about 24 and she has given evidence only in the year 2012. Under the said circumstances, the Court can very well come to a conclusion that she got birth in the year 1988. Further it is seen from the records that the first item of suit 3rd Schedule has been purchased in the name of 6th defendant even prior to the birth of P.W.1 (second defendant). Under the said circumstances, she is not a competent witness to speak about the source of purchase in the name of the 6th defendant.

26.It is a settled principle of law that if a property stands in the name of a female member of a Hindu joint family, the strong presumption is that it is her separate property and further she need not prove source of purchase money.

27.It is not an exaggeration to say that on the side of the defendants, trustworthy evidence has been forthcoming to the effect that the first item of suit 3rd Schedule has been independently purchased in the name of the 6th defendant without utilising joint family income. Therefore, the first item of suit 3rd Schedule is the separate property of the 6th defendant, in which, the plaintiffs are not having any partible interest.

28.The trial Court, without looking into the correct legal position in respect of second item of suit 3rd Schedule, has erroneously decreed the suit in toto.

29.It has already been discussed in detail that the properties standing in the name of the second defendant are also joint family properties and therefore, it is quite clear that except first item of suit 3rd Schedule, the plaintiffs, being the daughters of the first defendant, are entitled to get partition and to that extent, the present Appeal Suit is liable to be allowed in part.

In fine, this Appeal Suit is allowed in part without cost. The judgment and decree passed by the trial Court are modified as follows:

The plaintiffs are each entitled to get 1/12th share in the suit properties, except first item of suit 3rd Schedule and to that extent, a preliminary decree of partition is passed without cost. The suit is dismissed without cost in respect of first item of suit 3rd Schedule. In respect of the relief of permanent injunction, the judgment and decree passed by the trial Court are confirmed. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-iv)

//True Copy//

Sub Assistant Registrar

msk

To

1. THE III ADDITIONAL DISTRICT JUDGE, SALEM.

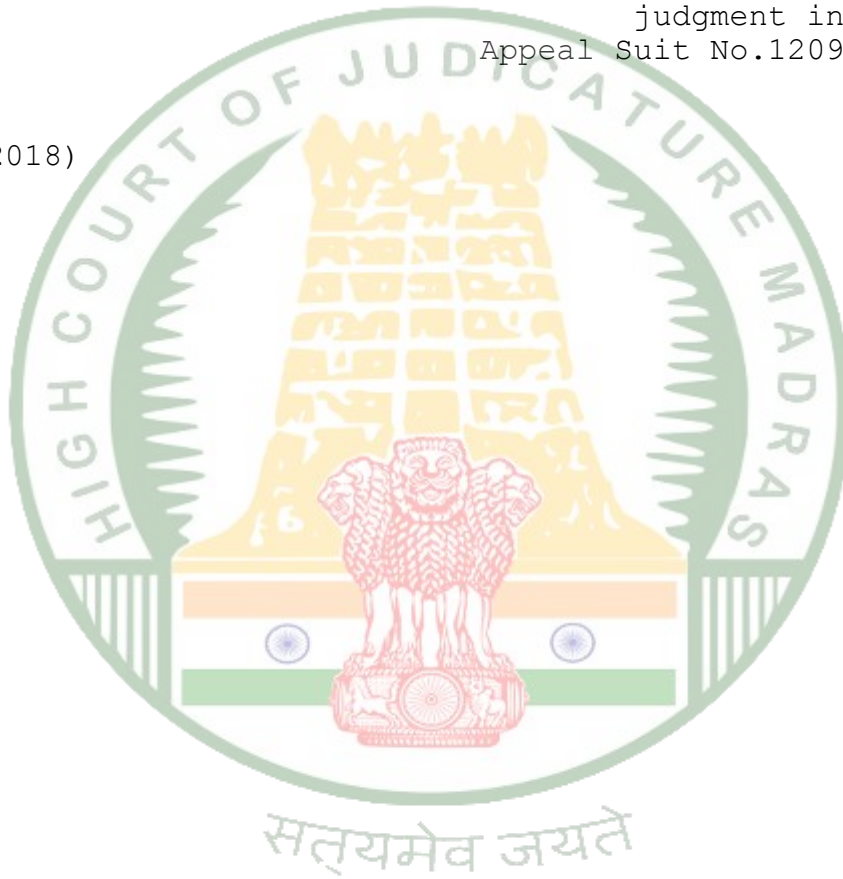
2. THE SECTION OFFICER,
V.R. SECTION, HIGH COURT,
MADRAS (2COPIES)

+1cc to Mr.V.SEKAR Advocate, S.R.No. 84071

+1cc to Mr.S.RAMESH KUMAR Advocate, S.R.No. 84001

judgment in
Appeal Suit No.1209 of 2015

CNR(CO)
TR(08/01/2018)



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