

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2017

CORAM

THE HONOURABLE MS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.756 of 2017

Palanisamy

...Appellant/Plaintiff

...VS...

1. Palaniammal
2. Samboorani
3. Kalamani
4. Sargunavathi
5. Krishnaveni
6. Thangavel
7. Mohana Easwaran

...Respondents/Defendants

Second Appeal filed under Section 100 C.P.C. against the Judgment and Decree dated 16.11.2006 made in A.S.No.75 of 2006 on the file of Principal Sub-Court, Coimbatore reversing the Judgment and decree passed in O.S.No:1610 of 2004 on the file of 3rd Additional District Munsif Court, Coimbatore dated 24.01.2006.

For Appellant : Mr.S.Gunalan
for P.Indumathi

For Respondents :Mr. R.Mahamandra Rajalakshmi
for Mr.J.Ramakrishnan
(R1 to R6)

J U D G M E N T

This Second Appeal is filed against the Judgment and Decree dated 16.11.2006 made in A.S.No.75 of 2006 on the file of Principal Sub-Court, Coimbatore reversing the Judgment and decree passed in O.S.No:1610 of 2004 on the file of III Additional District Munsif Court, Coimbatore dated 24.01.2006.

2. The Plaintiff in a suit for partition has preferred the above Second Appeal.

3. The case of the Plaintiff is that the defendants 1 to 5 and mother of defendants 6 and 7 are sisters of the Plaintiff. They are born to one Karuppa Gounder who died in the year 1993. According to the Plaintiff, the father Karuppa Gounder and himself constituted a Joint family and the said joint family had ancestral property in Krishnapuram Village, Palladam Taluk. After the death of the paternal grand father in the year 1945, the Plaintiff's father Karuppa Gounder and his brother orally divided the ancestral properties and the plaintiff father was allotted the suit property. The property was purchased in the name of Plaintiff's father under the sale deed dated 17.09.1962. The Plaintiff demanded for a amicable settlement with the defendants, but as the defendants were postponing, the Plaintiff sent a notice through his Advocate on 20.09.2003, for which the defendants sent a reply stating that the father and mother were employed in the Mill from 1955 and out of their income the properties were purchased . Even presuming that they were employed, they were earning meager income which was not sufficient for running the family. Therefore, the property purchased by the plaintiff's father was from and out of the income from the joint family properties and hence prayed for decree of partition of 8/14 th of his share.

3. The suit was resisted by the defendants contending that the suit property was a self acquired property of Karuppa Gounder and it could never be termed as ancestral property. In the year 1950, he joined the textile Mills with his wife and out of the income earned, the property was purchased in the year 1962. As the property is self acquired property of the Karuppa Gounder, the Plaintiff has got no right to claim the exclusive right. The defendants denied the joint family as alleged by the Plaintiff. The defendants also claimed partition of 1/7th share of each.

4. The trial Court decreed the suit holding that the property was a ancestral property and decreed the suit allotting 8/14th share to the plaintiff. Aggrieved by the same, the defendants had preferred A.S.No.75 of 2006, before the Principal Subordinate Court, Coimbatore. The learned Appellate Judge held that the burden of proving that the suit properties are Joint Family Properties are on the persons who allege so and allowed the appeal filed by the defendants.

5. In this case, the Plaintiff has specifically pleaded that the properties are Joint Family properties. Though it is pleaded that it is joint family property, the document is in the name of father of the Plaintiff. The father died in the year 1993. It has been established by the defendants that the parents of the Plaintiff and defendants were employed in the

mill and purchased the said property out of the income earned by the father. Therefore, it is a self acquired property of the father. Therefore, it was established that the property was not purchased out of the income from the joint family. The Plaintiff had failed to establish that there was a joint family nucleus and there was generation of income out of which suit property was purchased. In the absence of proof that the suit property is joint family property, it is held that it is the property of the father and the children were entitled to equal share. Accordingly, the appellate Court had rightly modified the share granted by the trial Court as 8/14th to 1/7th each. The appellate Court has rightly held that it is only self acquired property and it will devolve upon all the children of Karuppa Gounder.

6. In view of the same, there is no infirmity in the Judgment passed by the Lower Appellate Court warranting interference, in the absence of any substantial question of law.

7. In the result, this Second Appeal is dismissed, confirming the Judgment and decree of the Lower Appellate Court, dated 16.11.2006. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Subordinate Judge, Coimbatore
2. The III Additional District Munsif, Coimbatore

+1cc to Ms.P.Indumathi, Advocate SR.No.86540

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