

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE : 20.04.2017
CORAM
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR
A.S.No.565 of 2009

R.Kanagaraj

... Appellant/Plaintiff

Versus

1.N.Rangasamy Gounder (Deceased)
2.Mylsamy
3.Venkatapathy
4.Ramasamy
5.Balasubramaniam ... Respondents/Defendants
(R2 to R4 recorded as Lrs
of the Deceased R1 vide
order of Court dated 23.03.2017
made in Memo in the Appeal)

Appeal Suit filed under Section 96 of Civil Procedure Code
against the judgment and decree made in O.S.No.292 of 2005,
dated 17.11.2008 on the file of I Additional District Judge,
Coimbatore in decreeing the suit in part.

For Appellant : Mr.R.Siddharth
for Mr.T.R.Rajaraman
For Respondents : Mr.B.Neduchezhiyan
for R2 to 4

JUDGMENT

This appeal is filed as against the judgment and decree of
the learned trial Court in respect of A & E schedule of the suit
schedule properties,

2) The brief facts of the plaintiff case is as follows :-

a) The plaintiff is the son of the first defendant and
defendants 2 to 4 are plaintiff's brothers and sons of the first
defendant. 'A' Schedule property is the ancestral property. The
'A' schedule mentioned property are all ancestral and joint
family property. The plaintiff's father and his brothers are
jointly cultivating the property. Out of the earning from the
joint family property, Schedule B, C, D and E were purchased in
the name of first defendant. Hence, the plaintiff has filed the
suit claiming partition of A to E schedule mentioned properties
into 5 equal shares.

b) The first defendant, father of the plaintiff, has filed the written statement stating that the ancestral property was only a small extent and it was a agricultural dry land. It is the contention of the first defendant that Nanjappa Gounder having small extent of agricultural land and the same was self acquired by his father and it was also the dry land. This defendant has taken 33 acres of lands on lease from Dharmaraj Chettiar of Chettipalayam Village in the year 1950 and cultivated the same upto 1975. Therefore, it is contended by the first defendant that Schedule B to E of the property were purchased out of his self earnings. There was no joint family nucleus exist and prays for dismissal of the suit.

3) On the basis of the above pleadings, the trial Court framed the following issues :-

- 1) Whether A & E Schedule properties were ancestral proeptries?
- 2) Whether B,C and D Schedule of the plaint properties have purchased out of joint family properties?
- 3) Whether the plaintiff was in joint enjoyment of the property along with defendants 1 to 4?
- 4) Whether the plaintiff having any share in the property?
- 5) To what relief the parties are entitled to?

4) On the side of the plaintiff, PW1 was examined and Exs.A1 to A21 were marked. On the side of the defendant, DW1 was examined and Ex.B1 was marked. On the basis of the materials and evidence available, the trial Court decreed the suit only in respect of A & E schedule. Learned trial judge found that Schedules A & E are ancestral properties and other properties are self acquired properties of the defendants and granted partition in respect of A & E schedule properties and allotted 1/5 share in the said property to the plaintiff.

5) The learned trial Judge taking into consideration of the fact that there were no sufficient nucleus available to purchase remaining properties and also taking into consideration of the fact that there was no evidence available on the side of the plaintiff to prove the sufficient nucleus to the joint family property to purchase the property in the name of the first defendant has held that the property is his self acquired property.

6) Now it is not disputed that during pendency of the appeal the first defendant died leaving behind plaintiff and defendants 2 to 4 as his legal heirs who are already on record. Therefore all the sons of the first defendant are equally entitled to share the suit property, whether the properties are

ancestral property or in the nature of the self acquired.

7) In view of the subsequent development, it is fairly submitted that the property of his father will come to the legal heirs equally and the legal heirs are already on record. In view of death of the father, this Court is of the view that the legal heirs are equally entitled to share the suit properties. Of course, some of the properties to an extent of 3.66 acres was already sold to the 5th defendant by the first defendant, during his lifetime. The learned counsel for the appellant also fairly conceded that he is not challenging the sale in favour of the 5th defendant.

8) In view of the above, this Court is of the view that the preliminary decree can be modified to the effect that the plaintiff is entitled to 1/4 share in the suit property other than the properties sold to the 5th defendant. Defendants 2 to 4 are also each entitled to 1/4th share.

9) Accordingly, the decree and judgment of the trial Court is modified for dividing the suit properties except the property already sold to 5th defendant into 4 equal shares and allot one such share to the plaintiff. The defendants 2 to 4 are also each entitled to 1/4 share in the properties. Accordingly the appeal is disposed off. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsi2

To

I Additional District Judge,
Coimbatore.

+1 cc to M/s.T.R.Rajaraman Advocate sr 24122
+1 cc to M/s.B.Neduchezhiyan Advocate sr 24124

A.S.No.565 of 2009

rj(co)
17/07/2017