

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.01.2017

PRONOUNCED ON : 19.01.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.702 of 2011

and

M.P.No.1 of 2011

Subramanian ... Appellant/Respondent/Plaintiff

Vs.

1. Sambandam

2. Mala

3. Gopu

4. Venkatachalam ... Respondents/Appellants/Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree of Sub Court, Nagapattinam dated 24.08.2010 made in A.S.No.16 of 2010 reversing the judgment and decree of the District Munsif Court, Nagapattinam dated 22.12.2009 made in O.S.No.145 of 2008.

For Appellant : Mr.S.Sounthar

For Respondents : Mrs.R.T.Shyamala

JUDGMENT

Challenge in this second appeal is made by the plaintiff against the judgment and decree dated 24.08.2010 made in A.S.No.16 of 2010 on the file of the Sub Court, Nagapattinam, reversing the judgment and decree dated 22.12.2009 made in O.S.No.145 of 2008 on the file of the District Munsif Court, Nagapattinam.

2. The second appeal has been admitted and the following substantial questions of law are formulated for consideration in this second appeal.

" (i) Whether the judgment of Lower appellate court is liable to be set aside in its coming to the conclusion that the suit property is an ancestral property without considering Section 8 of Hindu Succession Act.

(ii) Whether the judgment and decree of the First Appellate Court in non suiting the plaintiff are based upon perverse findings and misdirected against the evidence on record."

3. The suit has been laid by the plaintiff for permanent injunction, possession and also mesne profits.

4. The relief of possession is asked for as regards the "B" schedule property and the relief of Permanent injunction is sought for as regards the "A" schedule property. It is also the case of the plaintiff that "B" schedule property forms part of "A" schedule property.

5. The first defendant is the son of the plaintiff. The second defendant is the daughter-in-law of the plaintiff viz., wife of the plaintiff's another son by name Raja, the third defendant is the cousin brother of the second defendant and the fourth defendant is the plaintiff's neighbour. As regards the above said relationship, there is no dispute.

6. From the evidence adduced in this matter, it is found that admittedly, the suit property had been purchased by the plaintiff's father under the sale deed marked as Ex.A7. Accordingly, it is also found that after the death of the plaintiff's father Chidambaram Pillai dated 15.07.1961, the plaintiff had inherited the suit property. Now, according to the first appellate court, inasmuch as one of the sons of the plaintiff had already been born prior to 15.07.1961 i.e. the date of death of Chidambaram Pillai, the succession operates under Section 6 of the Hindu Succession Act and in such view of the matter, proceeded to hold that the suit property is the ancestral property of the plaintiff and his sons, accordingly, the first defendant being a co-owner and the second defendant claiming her right through another co-owner i.e. her husband Raja, held that the plaintiff is not entitled to seek the reliefs sought for in the suit and accordingly, dismissed the suit of the plaintiff. The trial Court, however, had accepted the plaintiff's case and decreed the suit in favour of the plaintiff.

7. Therefore, the only question that remains for consideration in this case is whether the suit property is the separate property of the plaintiff or the ancestral property of the plaintiff and his sons. Admittedly, the suit property had been purchased by the plaintiff's father under Ex.A7. After his death, the plaintiff had inherited the property. No doubt, the first defendant had been born to the plaintiff on 17.04.1954. It has to be therefore seen whether the property inherited by the plaintiff on the death of his father, is taken by him as his separate property or taken by him as the ancestral property of his family, he being the Kartha of the same.

8. As regards the above, it could be seen that as per the provisions of Hindu Succession Act, 1956, considering the devolution of interest under Section 8 of the Hindu Succession Act, 1956 amongst the Class-I heirs, the properties derived by the first defendant from his father could only be treated as his separate properties and not as the joint family properties of the first defendant and his sons. To the above position of law, there are ample authorities and a perusal of the decisions reported, would go to show that the properties derived by the first defendant from his father could only be treated as the separate properties of the first defendant and not as the joint family properties of the first defendant and his sons. In this connection, a useful reference may be made to the decisions reported in AIR 1979 MADRAS 1 (The Additional Commissioner of Income-tax, Madras-1 V. P.L.Karuppan Chettiar), 1993 Supp (1) Supreme Court Cases 580 (Commissioner of Income Tax V. P.L.Karuppan Chettiar), (1986) 3 Supreme Court Cases 567 (Commissioner of Wealth Tax, Kanpur and Others V. Chander Sen And Others), (2008) 3 Supreme Court Cases 87 (Bhanwar Singh V. Puran And Others) and the latest decision (2016) 4 Supreme Court Cases 68 (Uttam V. Saubhag Singh and Others). A perusal of the above said decisions would go to show that when the son inherits the property, as per Section 8 of the Hindu Succession Act, 1956, he does not take it as Kartha of his own undivided family, but take it in his individual capacity. Therefore, the position of law being above as adumbrated by our High Court and the Apex Court in the above said decisions, the contention of the defendants' counsel that the suit property is the joint family property of the plaintiff and his sons cannot at all be countenanced in any manner.

9. Further, it could be seen that on a conjoint reading of Sections 4,8,19 and 30 of the Hindu Succession Act, 1956, it could be seen that if the self acquired property or joint family property, once they get devolved in accordance with Section 8 of Hindu Succession Act, 1956, on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons, who have succeeded to it as they

hold the property as tenants in common and not as joint tenants.

10. Therefore, it could be seen that the suit property inherited by the plaintiff from his father is only his separate property and not the ancestral or the joint family property of the plaintiff and his sons. In such view of the matter, as rightly argued by the plaintiff's counsel, the first appellate court has misconstrued the position of law as regards the character of the property inherited by the plaintiff from his father in respect of the suit property and it is found that the suit property is the separate property of the plaintiff and the defendants as such cannot lay any claim over the suit property as co-owners.

11. In the light of the above discussions, when it is found that the suit property is the separate property of the plaintiff and according to the plaintiff, only on the permission granted by him, the second defendant is residing in a portion of the suit property (i.e.) "B" schedule property and as the said permission had been revoked by the plaintiff, it could be seen that the plaintiff is entitled to obtain the reliefs sought for. The first appellate court has upheld the defendants' version merely on the footing that the sons of the plaintiff are also co-owners in respect of the suit property. However, when it is found that the sons are not co-owners and further, when the defendants have not established any legal right to be in the possession of the suit property as such and the documents produced on behalf of the defendants also stand only in the name of the plaintiff viz., house tax receipts, EB receipts etc., it could be seen that the defendants as such cannot resist the plaintiff's suit in any manner legally and accordingly, it is found that the trial court has rightly upheld the plaintiff's case and rejected the defendants version.

12. The first appellate court, on a misconception of the facts and the law pertaining to the same and also on an improper and wrong appreciation of the evidence on record held that the defendants are in a portion of the suit property as co-owners. When such view of the first appellate court is found to be misdirected the evidence on record and also erroneous as well as perverse, the same cannot be allowed to sustain any further and therefore, it has to be held that the decision of the first appellate court in accepting the defendants' version do not have the sanction of law and liable to be reversed. In such view of the matter, the substantial questions of law are formulated for consideration in this second appeal are answered in favour of the plaintiff and against the defendants.

In conclusion, the judgment and decree dated 24.08.2010 made in A.S.No.16 of 2010 on the file of the Sub Court, Nagapattinam, are set aside and the judgment and decree dated 22.12.2009 made in O.S.No.145 of 2008 on the file of the District Munsif Court, Nagapattinam are confirmed and accordingly, the second appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

sms

To

1. The Sub Court, Nagapattinam.
2. The District Munsif Court, Nagapattinam.

+1cc to Mr.S.Sounthar, Advocate sr.3899

+1cc to M/s.R.T.Shyamala, Advocate sr.3617

gj (co)
ss(13/2/2017)

Judgment in
S. A.No.702 of 2011 and
M.P.No.1 of 2011

WEB COPY