

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

S.A.No.587 of 1990

1.Perumal Naidu

2.Minor Venkatesan

rep. by his next friend and father
1st appellant.

....Appellants/Respondents 2&6

..Vs..

1.Perumal Naidu (died)

2.Saroja Ammal

3.Jayamani

4.Varadarajulu Naidu

5.Pappayyee Ammal

6.Sarasu Ammal

7.Jamuna

8.Murugan

9.Anitha

10.Selvam

....Respondents/Plaintiff/Defendants 1,3,4&5

(Respondents R6 to R10 are brought on
record as legal heirs of the
deceased first respondent vide order of
Court dated 24.11.2004 made in
C.M.P.Nos.760 to 762 of 2003)

PRAYER: Second Appeal filed under Section 100 of the C.P.C.,
against the decree and Judgment of the learned Subordinate
Judge, Cuddalore, in A.S.No.22 of 1989 dated 06.01.1990,
upholding the decree and judgment of the learned District
Munsif, Kallakurichi, in O.S.No.594 of 1980 dated 25.07.1986.

For Appellants : Mr.R.G.Annamalai

For Respondents : No Appearance

JUDGMENT

No appearance for the respondents.

The appellants are the defendants in O.S.No.594 of 1980 on the file of the Additional District Munsif, Kallakurichi, who are also the appellants in A.S.No.22 of 1989 on the file of the learned Subordinate Judge, Cuddalore. The first appellant Perumal Naidu (since deceased) filed a suit in O.S.No.594 of 1980 before the Additional District Munsif, Kallakurichi, seeking for a declaration that the suit properties are the self acquired properties of his father and that the brothers of his father and defendants 6 to 13 should not claim any right over the same.

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

The suit Item Nos.1 and 2 were purchased by the plaintiff's father Gopal Naidu through a registered sale deed dated 20.06.1927 (Certificate copy of which is marked as Ex.A1) from one Periyapaiyan and Paranjothi. Eversince, the date of purchase, the plaintiff's father Gopal Naidu was in possession and enjoyment of the suit property. There was a partition in the family on 30.06.1934 (Ex.A2) in which, the suit Items 1 and 2 were not included which would clearly go to show that the suit properties were never treated as joint family properties of the plaintiff's father. The suit properties were also acquired by the Government in the year 1935 for non payment of land tax. A representation before the Revenue Divisional Officer was given by the defendants 2 to 5 in respect of item 2 of the suit property. Based on the representation, the Revenue Divisional Officer issued a joint Patta in respect of the Item 2 of the suit property.

3. Aggrieved over the same, the plaintiff filed an appeal before the District Revenue Officer. The District Revenue Officer after conducting an elaborate enquiry, set aside the orders passed by the Revenue Divisional Officer. However, a direction was given to both the parties to file a suit to find out whether the suit properties are self acquired properties of the father of the plaintiff or their joint family properties. Therefore, the plaintiff filed the suit in O.S.No.594 of 1980 seeking for the reliefs as mentioned above.

4. The second respondent Perumal Naidu, who is the present appellant herein filed a written statement contending that the plaintiff's father did not have wherewithal to purchase the suit properties and that the partition deed dated 30.06.1934 (Ex.A2) was not the final partition deed. According to the another partition deed dated 25.11.1941 (Ex.A4) was also executed. It is also contended that since the plaintiff's father he was the

Manager of the joint family, the suit properties were purchased to his name of the plaintiff and therefore, the claim made by the plaintiff that the suit properties are the self acquired properties of the plaintiff's father late Gopal Naidu cannot be accepted.

5. The trial Court, after full contest decreed the suit in favour of the plaintiff in respect of suit item 2 and dismissed the suit as far as item 1 is concerned. Since the plaintiff gave up over the same his right.

6. Aggrieved over the same, the present appellant (second defendant in O.S.No.594 of 1980) filed an appeal before the Principal Subordinate Judge, Cuddalore in A.S.No.22 of 1989. The first Appellate Court upheld the findings of the District Munsif, Kallakurichi.

7. Now, the second defendant and his son Venkatesan have filed the present appeal on the following substantial question of law:

"Whether the judgments of the Courts below are vitiated by their failure to apply the relevant provisions of Hindu Law?"

8. Mr.R.G.Annamalai, the learned counsel appearing for the appellants contended that as per the partition deed dated 25.11.1941 (Ex.A4), the suit second item is also a joint family property of plaintiffs and defendants and therefore, the plaintiff cannot claim any exclusive right over the same.

9. This aspect has been dealt with by both the Courts below in extenso. A perusal of Ex.A4 also shows that Ex.A4 was executed since some of the properties were left out in the earlier partition deed dated 30.06.1934 (Ex.A2). There is no mention about the acquisition of the lands by the Government in Ex.A4.

10. Both the Courts below have concurrently held that the suit Item 2 is the self acquired property of the plaintiff's father. All the observations made by both the Courts below are based on sound principles of law and I do not find any reason to interfere with the findings of both the Courts below and therefore, the appeal fails and is dismissed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mbi/dna

To

1. The Subordinate Judge,
Cuddalore.

2.The District Munsif, Kallakurichi,

3.The Section Officer,
VR Section, High Court,
Madras.

+2cc to Mr.R.G.Annamalai, Advocate, S.R.No.74162

S.A.No.587 of 1990

NRI (CO)
GSP (01/02/2019)



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