

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :11.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.615 of 2000

and

CMP.No.2596 of 2007

1.G. Samundeswari

2.D. Ganapathy

... Appellants/Plaintiffs

Vs.

1.K. Radhabai Ammal (died)

2.S. Muthulakshmi

3.P. Shanmugham

... Respondents/Defendants

(1st Appellant & 2nd Respondent recorded LRs of the deceased 1st respondent vide order of court dt.

6.7.2009 made in memo (USR.No.3916)

Prayer : Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree of the Subordinate Judge, Arni dated 13.03.2000 in A.S.No.7 of 1998 confirming the Judgment and Decree of the Principal District Munsif Court, Arni dated 02.12.1997 in O.S.No.243 of 1996.

For Appellants : Mr.S. Mukunth
for M/s.Sarvabhauman Associates

For Respondents : Mrs. Srimathi for
Mr.V. Ragavachari

J U D G M E N T

The unsuccessful daughter of the first defendant and sister of the second defendant filed a suit for declaration declaring that the suit schedule property belonging to the joint family property against the mother and daughter and lost the case before the courts below and filed a second appeal before this court as against the concurrent Judgment.

2. The case of the plaintiff is as follows:

The first plaintiff is the wife of the second plaintiff and elder daughter of the first defendant and the sister of the second defendant. Similarly, the third defendant is the husband of second defendant and son- in-law of the first defendant. There was a ancestral properties at Allivaram village that stands in the name of the Kuppusamy Mudaliar, who is none other than the husband of the first defendant and father of the first plaintiff and second defendant. He owned Nanja lands of one acre

and Punja lands of three acres. The first plaintiff's father died leaving behind two daughters (first plaintiff and second defendant) and his wife/first defendant as his legalheirs. After the death of the Kuppusamy Mudaliar, his daughters and mother enjoyed the property and the Allivaram village properties were sold by the first defendant and he purchased the property at Marusoor village of Arani Taluk out of the sale consideration derived from Allivaram property. Accordingly, the Marusoor property is a joint family property and the first plaintiff is entitled to equal share on par with the first defendant and the second defendant, being the Manager of the property of the first defendant, he purchased the schedule mentioned property in the Marusoor village. However, in the year 1985, the first defendant sold 25 cents of of land to one Pachai Ammal for the purpose of her own use. The first defendant promised to the first plaintiff that the properties will be shared among the legalheirs accordingly, there was a oral partition among the legalheirs of the Kuppusamy Mudaliar. The schedule mentioned property was enjoyed by the first plaintiff and thereafter, the defendants tried to alienate the property. No other option is left for the plaintiffs except to file a suit and therefore, the first plaintiff along with second plaintiff filed the present suit for a declaration declaring that the suit schedule properties belongs to the plaintiffs.

3. The first defendant filed a written statement as follows:

The first defendant denied the statement of the plaintiffs with regard to the purchase of property in Marusoor village from the sale consideration of the property of the Allivaram village and the first defendant has categorically stated in her written statement that the Marusoor village properties were purchased on her own funds i.e., she purchased the said property in her own name after selling her jewels and enjoyed the said lands without any disturbance. Originally, the Allivaram village property is admittedly a joint family property. The other properties were sold for the purpose of her daughter's marriage. The sale proceeds of the property were spent for the purpose of the marriage of the second defendant. In fact, the family properties were purchased by her husband prior to the purchase of the Allivaram property. The Marusoor village property was not purchased in the capacity as Kartha and Manager of the joint family. It is purchased on her own funds and at no point of time, the Marusoor village properties were maintained as joint family property. In fact, the first plaintiff created some problems in the year 1980. Thereby, the first defendant filed a suit in O.S.No.1114/1980 against the plaintiffs for permanent injunction. After contest, the suit was decreed against the first plaintiff and it has become final.

Hence, filing a petition for declaration does not arise in the very same suit. It is clear that the first plaintiff filed the suit with an intention to grab the property from the first defendant.

4. Though this court has not admitted the case by framing the questions of law, ordered only notice of motion. However, the learned counsel appearing for the appellants would submit that the questions of law raised in the grounds of appeal may be taken as substantial questions of law. The substantial questions of law raised by the appellants are as follows:

(i) When the respondents themselves have admitted the case of the appellants that the properties at Allivaram Village were ancestral properties, whether the Courts below are correct in law in holding that the suit property is the separate property of the 1st respondent?

(ii) Whether the courts below are correct in law in not following the dicta of the decision reported in 1988 (I) LW S.No.3(D.B)?

(iii) Whether the courts below are correct in law in adhering to the decisions reported in 1984 (II) MLJ 313 and 199 (II) MLJ 561 especially when they did not have any bearing over the facts of the instant case?

(iv) Whether the Lower Appellate Court is correct in law in rendering a Judgment even without framing any points for determination as contemplated under Order 41 Rule 31 of the Code of Civil Procedure?

(v) Whether the courts below are correct in law in non-suited the appellants, particularly when the suit filed by the 1st respondent for permanent injunction was dismissed and had become final?

(vi) Whether the courts below are correct in law in holding that a decision in a suit based on possession can operate as resjudicata in a subsequent suit based on title as well as subsequent event of oral partition in 1985?

(vii) Whether the courts below are right in law in discarding Ex.s A-3 to A-18 and evidence of PWs-1 to 5 which would prove the factum of oral partition in 1985?

5. Learned counsel appearing for the appellants would submit that the Allivaram village property admittedly is a joint family property which was acquired by these plaintiffs as well as the defendants after the death of Karta of the joint family, one Kuppusamy Mudaliar and the said Allivaram village property was sold in 1977 for valuable sale consideration and the same was marked as Ex.A1. Thereafter, the suit schedule properties were purchased through the above said sale consideration.

6. On perusal of the documents, Ex.A1 clearly shows that all the properties were sold for the purpose of purchasing another property and that itself shows that all the properties were purchased from the funds of joint family property and the Marusoor village property is also a joint family property. Accordingly, the plaintiffs are entitled to equal share on par with the defendants and there is no other issue in this regard. Accordingly, he framed substantial question of law that whether the Marusoor village property purchased from the Allivaram property is the only issue before this court.

7. Learned counsel appearing for the respondents would submit that admittedly the property stands in the name of first defendant and the same was purchased through her own funds after selling her jewels. In fact, though the Allivaram property was sold for a sale consideration of Rs.11,000/-, the Marusoor village property was purchased for more than Rs.15,000/-. That itself shows that the sale consideration paid by the first defendant was out of her own funds. However, the lower court as well as the lower appellate court have arrived at a conclusion that the actual funds in respect of the property purchased by the first defendant is treated as his own funds unless the plaintiffs/appellants produce some materials evidence to show that the properties were purchased from the joint family funds. Hence, the concurrent findings need not be interfered without any substantial materials.

8. However, he submit that merely the property possessed by a Hindu woman cannot be treated as joint family property. The female member is entitled to take share in the family's property and there is no presumption property stands in the name of the female Hindu as property of the joint family property.

9. In the present case, the suit filed by the daughter against her mother and other sisters claiming the joint family property is not sustainable. In order to substantiate the arguments, learned counsel for the respondents has relied upon the decision of this court in the case of V. Thangappan Vs. The Tamil Nadu Industrial Investment Corporation Ltd., rep by its Regional Manager reported in 1992-2- L.W., in paragraph No.5 which reads as follows:

" 5. In the present case, the property is held by the second respondent who is not a coparcener in a Hindu undivided family. She is undoubtedly a member of the Hindu undivided family, but she cannot be considered to be a coparcener. This particular notion is peculiar to the Hindu Law and a woman cannot claim to be a coparcener inspite of the fact that she is entitled in law to take a share in the family properties under the circumstances provided by the law. Secondly, it should be proved by the parties that the property is held for the benefit of the coparcener in the family. In this case, the property is held by a female member of the family. It has been repeatedly held that there is no presumption that a property standing in the name of a female member of the family is a joint family property and the burden is on those persons who claim it to be a joint family property to prove the same beyond doubt. In the present case, there is absolutely no evidence to prove that the property was purchased with the aid of family funds for the benefit of the family in the name of the second respondent. Consequently, S.4(3) of the Act is not attracted".

In view of the above and on perusal of the Exhibits as well as the orders of the lower court as well as the lower appellate court, I do not find any error in the order of the courts below to be interfered with. Hence, the substantial questions of law is answered against the appellants and accordingly, the second appeal is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

gv

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge, Arni.

2. The Principal District Munsif Court, Arni.

+1cc to M/s.Sarvabhauman, Advocate SR.No.2636/18

Copy to:The Section Officer, VR Section,
High Court, Madras 104(2 copies)

EU:28.2.2018

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