

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2018

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND

THE HONOURABLE MR. JUSTICE S.BASKARAN
A.S.No. 205 of 2017
and

CMP.No.13387 of 2018

1. Chadrakantha

2. Murugaiyan

3. Alagesan

4. Tamil Selvan

2nd and 4th Appellants are represented by their
Power agent 3rd Appellant Alagesan.
Power recognized as per order in I.A.No.104/2012
and 105/2012 respectively dated 22.08.2012

5. Manjula

6. Vembu

7. Minor Tamil Arasai

8. Minor Sachithan

7th and 8th minor appellants are represented by their
mother and natural guardian 6th appellant Vembu

...Appellants/Plaintiffs

Vs

1. Rajeswari

2. Sundaravadivel ...Respondents/Defendants

Prayer: Appeal against the Judgment and Decree passed in
O.S. No.12/2012 dated 22.02.2017 on the file of the District
Judge, Nagapatinam.

For Appellants :Mr.N.Kalyanasundaram
Senior Counsel
for M/s.Star Associates

For Respondents :Mr.P.Dinesh Kumar
for Mr.M.R.Kuyilan

ORDER

The Appeal Suit has been filed by the appellants/plaintiffs, who lost the case, seeking partition of the suit properties.

2.The case of the plaintiffs/appellants before the trial Court was that Item Nos.1 and 2 of the suit scheduled property viz., "1.சர்வே எண்.42/1B பஞ்சை பூரா 0-74-0 ஏர்ஸ் 2.சர்வே எண்.34/1 பஞ்சை பூரா 0-21-0 ஏர்ஸ் " originally belong to Mr.Murugaiya Pillai, father of Mr.Vadivel Pillai and Shanmugam Pillai. After the death of Mr.Murugaiya Pillai, both the brothers enjoyed the properties jointly and thereafter out of the income derived from item Nos.1 and 2 of the suit schedule properties, properties in item Nos.3 to 7 of the suit schedule properties were purchased in the name of Mr.Thiyagarajan, who is the first respondent's husband and son of Mr.Vadivel Pillai. Eventhough, there was a partition deed entered into between Mr.Vadivel Pillai and Mr.Shanmugam Pillai on 05.12.1955, partitioning the scheduled item Nos.1 and 2, it was not acted upon and therefore, partition Suit has been filed, seeking partition of the properties, which have been stated in the schedule.

3.However, the defendants/respondents would submit that eventhough item Nos.1 and 2 of the suit schedule properties originally belong to Murugaiya pillai, after his death, item Nos.1 and 2 of the suit scheduled properties were partitioned, as per partition deed on 05.02.1955 and it was acted upon. Subsequent to Ex.B4-Partition deed, both Mr.Shanmugam Pillai as well as Mr.Vadivel Pillai purchased properties in their own names. Moreover, Mr.Shanmugam Pillai sold one of his properties to the management of Annai Velankanni Church in Velankanni by virtue of sale deed dated 21.05.1984, which was acquired under Ex.B4-partition deed, dated 05.12.1955. Item Nos.3 and 5 to 7 of the suit scheduled properties are self-acquired properties of Mr.Vadivel Pillai, who is the 1st respondent's father in law and item No.4 of the suit schedule properties was purchased by Mr.Thiyagarajan, who is the son of Mr.Vadivel Pillai and husband of the 1st respondent. Therefore the suit is not maintainable for partition.

3.Based on the pleadings, the trial court framed the following issues:

"1.Whether the plaintiffs are entitled to claim partition of 1/2th share in the suit properties?

2.Whether the plaintiffs' predecessor late Shanmugam Pillai and the defendants' predecessor late Vadivel Pillai partitioned their family properties under the Family Arrangement dated 05.12.1955 as alleged by the defendants?

3.Whether the suit items No.3, 5, 6 & 7 are partible properties between the plaintiffs and the defendants as claimed by the plaintiffs?

4.Whether the plaintiffs are estopped from claiming any share in the suit properties as alleged?

5.To what relief the plaintiffs are entitled?"

4.Based on the documentary as well as oral evidence, the trial Court found that Mr.Murugaiya Pillai is the common ancestor, who purchased item No.1 of the suit schedule properties through Ex.B2, dated 07.03.1935 (Ex.B2 is original of Ex.A1) and item No.2 of the suit schedule properties by virtue of sale deed dated 28.03.1945 through Ex.B3. Both the properties stand in the name of common ancestor Mr.Murugaiya Pillai.

5.As far as Ex.B5, Ex.B7, Ex.B8 and Ex.B9 are concerned, those properties were purchased by Mr.Vadivel Pillai as they are standing in the name of Mr.Vadivel Pillai, who is the father-in-law of the 1st respondent. As far as Ex.B.6 is concerned, the property was purchased in the name of Mr.Thiyagarajan who is the son of Mr.Vadivel Pillai and husband of 1st respondent.

6.From the above, the trial Court based on the admission made by PW1 found that as per Ex.B4-Partition deed, dated 05.12.1955, partition has been made. The case of the respondents/defendants was found to be proved as the properties except item nos.1 and 2 of the suit schedule properties, all other items stand in the name of Mr.Vadivel Pillai and the 4th item of the suit schedule properties stands in the name of Mr.Thiyagarajan, who is the son of Mr.Vadivel Pillai. Therefore, the trial Court found that item nos.3, 5 to 7 of the suit schedule properties are self-acquired properties of Mr.Vadivel Pillai and the 4th item of the suit schedule properties is self acquired by Mr.Thiyagarajan, who is the husband of the first respondent.

7.The case of the respondents that the partition deed dated 05.12.1955 was acted upon, is proved by Ex.B1, which is the sale deed executed by the plaintiff/appellant (i.e.,) Mr.Shanmugam Pillai and his sons in favour of Rector of Annai Velankanni church in Vellankanni, selling 1st item of the property found in B schedule of Ex.B4-Partition deed. In Ex.B1, executed by Mr.Shanmugam Pillai and others, it has been stated that there was a partition between Mr.Vadivel Pillai and Mr.Shanmugam Pillai on 05.12.1955. Relying upon the said Ex.B1 as well as taking note of the properties standing in the name of Mr.Thiyagarajan and Mr.Vadivel Pillai, the trial Court held that the properties viz., item Nos.1 and 2 of the suit schedule properties were partitioned under the family arrangement, dated 05.12.1955.

8.As far as issue No.3 is concerned, all the properties viz., item Nos.3, 5, 6, 7 of the suit schedule properties

stand in the name of Mr.Vadivel Pillai, the brother of Mr.Shanmugam Pillai and the 4th item of the suit schedule properties, stand in the name of Mr.Thiyagarajan, who is the son of Mr.Vadivel Pillai and the trial court rightly held that after partition, the properties mentioned as item nos.3 to 7 in the suit schedule properties are not partitioned properties between plaintiffs and defendants. All the pattas and the land taxes, which have been marked as Ex.B13 to Ex.B15 and Ex.B21 prove that the properties are self acquired properties of Mr.Vadivel Pillai and Mr.Thiyagarajan and therefore, the said issue was held against the plaintiffs rightly.

9.As far as issue No.4 is concerned, it was proved before the trial Court that Ex.B4 is a partition deed and it was acted upon by all the parties including the plaintiffs. The Court held that the plaintiffs/appellants are estopped from claiming any share in the suit properties. While holding that, the trial Court relied upon the other documents, through which, Mr.Vadivel Pillai and Mr.Thiyagarajan, purchased the properties in their own names after the partition. Moreover, Mr.Shanmugam Pillai purchased the properties, which were mentioned in Ex.B23 and Ex.B24 and the said properties were settled in favour of his wife and daughters through Ex.B25 and the same were also sold by his wife and daughters through Ex.B26 and Ex.27.

10.With regard to issue No.1, since in the issue No.2, the trial Court gave a finding that the property was already partitioned as per Ex.B4-Partition deed, dated 05.12.1955, between the two brothers and in view of the findings in issue No.3, the trial Court rightly held that item Nos. 3, 5, 6, 7 of the suit schedule properties stand in the name of Mr.Vadivel Pillai and Item No.4 of the suit schedule properties stand in the name of Mr.Thiyagarajan, which are the self acquired properties and they cannot be partitioned. Therefore, issue No.1 is also held against the plaintiffs by the trial Court rightly.

11.As far as issue No.5 is concerned, since Mr.Shanmugam Pillai's wife is the 1st plaintiff and his son is the 2nd plaintiff, 2nd plaintiff's children who are 3 to 5 plaintiffs are not necessary parties to the suit, the trial Court held. In any event, the aggrieved daughters of Mr.Shanmugam Pillai viz., Mrs.Bhuvaneswari and Mrs.Kalyani have not come before the Court. When the fathers themselves are parties, there is no necessity to make their children as parties, the trial Court rightly held and the issue No.5 was answered rightly by the trial Court.

12.From the above, it is very clear that the trial Court took into consideration the pleadings and evidence and rightly held the following:

i. Item Nos.1 and 2 of the suit schedule properties were purchased by Mr.Mahalingam Pillai and the same were partitioned between Mr.Vadivel Pillai and Mr.Shanmugam Pillai by virtue of Ex.B4-partition deed, dated 05.12.1955.

ii. The partition deed has been acted upon as proved by Ex.B1, through which Mr.Shanmugam Pillai sold the portion of the property, which he got through Ex.B4-partition deed.

iii. Subsequently, all the properties except item No.4 of the suit schedule properties were purchased by Mr.Vadivel Pillai in his own name and item No.4 of the suit schedule properties was purchased by Mr.Thiyagarajan in his own name and therefore, they are all self acquired properties of Mr.Vadivel Pillai and his sons. Even otherwise, Mr.Shanmugam Pillai purchased certain properties through Exs.B23 and B24 and thereafter, he settled the properties in favour of his daughters Mrs.Bhuvaneswari and Mrs.Kalyani. The same properties were subsequently sold to the third parties. Therefore, the trial Court rightly held that item Nos.1 and 2 of the suit schedule properties were already partitioned by Mr.Vadivel Pillai and Mr.Shanmugam Pillai as early as on 05.12.1955 through Ex.B4, which has been acted upon.

Therefore, there is no occasion for this Court to interfere with the decree and Judgment passed by the trial Court.

Accordingly, the appeal is dismissed with costs. Consequently, connected miscellaneous petition is closed.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sai/jas
To
The District Judge,
Nagapattinam.

+3cc to Mr.M.R.Kuyilan, Advocate SR.NO.60689
+1cc to M/s.Star Associates, Advocate SR.NO.60734

GJ(CO)
sm:3.10.2018