

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.741 of 1997

1.Mani
2.Srinivasan (Minor) (died)
3.Nagarajan (Minor)
(Appellants 2 & 3 declared as Major
and the 1st Appellant is discharged
from his guardianship vide order of
Court dated 21.09.2010 made in
CMP.Nos.1301 to 1304/2010) ... Appellants

Vs.

1.Chellammal (Died)
2.Jayaveeran
3.Murthy (Died)
4.Azhagesan
5.Anjalai (Died)
6.Oppayee (Died)
7.Rajammal
8.Marudhamuthu (Minor)
9.Mariappan (Minor)
(RR8 and 9 are represented by their
natural guardian mother)

10.Selvaraj
11.Chandra
12.Indira
13.Palanisamy
14.Padmavathy
15.Rajalingam @ Parmasivam

(Recorded RR2 and 4 as LR's of the deceased
R3 and recorded RR8 and 9 as LR's of the
deceased R1 and RR10 to 15 brought on record
as LR's of the deceased R1 vide order of Court
dated 21.09.2010 made in CMP.Nos.1305
and 1306/2010).

16.Chellappa
17.Sekar
18.Selvi
19.Gayathri
20.Sathya
21.Senthil

(RR16 to 21 brought on record as LR's of the
deceased R5 vide order of Court dated
21.09.2010 made in CMP.No.1309/2010)

22.Arasappan

23.Mariammal

24.Booma

(RR22 to 24 brought on record as LRs of the deceased R6 vide order of Court dated 21.09.2010 made in CMP.No.1312/2010)

25.Vasanambal

26.Minor Gayathri

27.Minor Ganesh

28.Minor Manickam

(RR26 to 28 rep. by their mother & natural guardian Vasanambal R25)

(RR 25 to 28 brought on record as LRs of the deceased 2nd appellant vide order of Court dated 21.03.2017 made in CMP.No.4080/17 in S.A.No.741/1997) ... Respondents

Prayer: The Second Appeal has been filed under Section 100 of C.P.C. against the Judgment and decree dated 02.02.1996 made in A.S.No.215 of 1990 on the file of the Subordinate Judge's Court, Ariyalur confirming the Judgment and Decree dated 16.04.1990 made in O.S.No.332 of 1987 on the file of the District Munsif Court, Ariyalur.

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

For Respondents: Mr.S.Muthukrishnan for R1 to 24
R1, R3, R5 & R6 - died

JUDGMENT

The defendants, who are the appellants in the second appeal, have lost their case before the Trial Court. As against the preliminary decree passed by the Trial Court, the defendants preferred an appeal before the First Appellate Court and the First Appellate Court confirmed the decree passed by the Trial Court. Now, the defendants are before this Court as against the concurrent findings of the Courts below.

2.The plaintiffs who are the respondents in the second appeal had filed a suit for partition against the defendants and succeeded the suit before the Trial Court and the First Appellate Court.

3.The sum and substance of the plaint averments are as follows:

The properties are originally belonged to one Nagammal and the same was purchased by her from and out of her own funds which she earned by immoral and illegal ways and from the funds of paternal home. The properties are the self acquired properties of the said Nagammal. She purchased Ac.1.32 cents at the time of Zamindari which had been classified as Ac.2.04 cent in Ryotwari Track, on 14.08.1963 and the 1st item on 25.10.1960 by another document and separate patta has been issued in her name for these items. These properties were treated and enjoyed by the Nagammal as her own individual properties. Till her life-time, she was paying kist to the Government as absolute sovereign owner.

4.The surrounding promboke land was also enjoyed by Nagammal. She died intestate leaving behind her four daughters and two sons as her legal heirs. One of her daughters Maruthambal and her both sons Karuppiah and Ganesan died. Maruthammal left behind her three sons as her legal heirs, husband predeceased her. So the three sons of Maruthambal and another three daughters of Nagammal, namely, Chellammal, Anjalai and Oppayee are the plaintiffs now in the suit.

5.The 1st son Karuppiah died leaving behind, his wife and sons who are the defendants 1 to 4. Ganesan died leaving behind, his wife and sons, who are the defendants 5 to 7. After the death of Nagammal the properties devolved upon the living daughters and the heirs of deceased sons and daughter. Each branch is entitled for $1/6^{\text{th}}$ share. As per Hindu Succession Act, the plaintiffs 1, 5 and 6 get $1/6^{\text{th}}$ share each and the plaintiffs 2, 3, 4 get $1/6^{\text{th}}$ share. Likewise, defendants 1 to 4 will get $1/6^{\text{th}}$ share and other defendants will get another $1/6^{\text{th}}$ share. Thus, the plaintiffs are entitled to get $4/6^{\text{th}}$ share and the defendants will get $2/6^{\text{th}}$ share.

6.After the death of Nagammal the 3 living daughters are looking out the properties and all the plaintiffs and defendants have been enjoying the properties commonly as co-owners. But in the recent times some misunderstanding crept among the sharers and the defendants are trying to claim exclusive right over the suit properties. Since, the plaintiffs 1, 5 and 6 have been in possession they have issued notice to 1 to 5 defendants through their counsel. For that the reply has been sent to the plaintiffs alleging that the suit properties are the joint family properties of the husband and her father-in-law.

7.It was further alleged that the properties were purchased in the name of Nagammal only out of the joint family funds and two sons Karuppiyah and Ganesan have partitioned the properties orally in the year 1975. All these allegations made in the reply notice, are all patently false and Karuppiyah and Ganesan never enjoyed the properties separately. Even the promboke land mentioned in the reply notice were all in the possession of Late Nagammal.

8.So, as per law, the plaintiffs are entitled for their share as the legal heirs of the said Nagammal. Since, it has become very difficult to live and enjoy the properties as the co-owners, the suit is filed for partition and separate possession of the plaintiffs' shares.

9.The sum and substance of the written statement filed by the defendants 1 to 4 are as follows:

The defendants have not denied the relationship of Nagammal as stated in the plaint. The suit schedule properties were purchased by the said Nagammal out of the nucleus funds of the joint family and the said purchase was made for the purpose of well being of the joint family and registered in the name of Nagammal. Hence, the suit schedule properties are not self acquired properties of Nagammal. Adjacent to the suit properties, there was a poramboke land. The said poramboke land was encroached by the first defendant i.e. Kaliammal, who is the wife of Karuppiyah. The State Government issued 'B' memo for the same. Hence, the said adjacent poramboke land belonged to her children.

10.The suit schedule properties was partitioned between Karruppiyah and Ganesan during the life time of Nagammal in the year 1975. The taxes were paid in the name of Nagammal. After the partition, the defendants have muted the revenue records in their favour. Defendants 1 to 4 are the legal heirs of Karuppiyah and defendants 5 to 7 are the legal heirs of the Ganesan. Accordingly, the plaintiffs have no right to claim any partition in the suit schedule properties, even if there is any claim, they are only entitled to 4/18 share.

11.In respect of Government Poramboke land, the first defendant removed all the weeds and converted the same into an agricultural land by spending huge amount and the plaintiffs are not entitled to any share in the suit schedule properties.

12.The sum and substance of the written statement filed by the defendants 6 and 7 are as follows:

The defendants denied the allegations that the suit properties were purchased by Nagammal by way of illegal and immoral activities. The suit properties were purchased out of the joint family nucleus funds and registered in the name of Nagammal as a Hindu Co-parcener and the same was enjoyed commonly and the plaintiffs are not entitled to any share in the suit properties.

13.The Trial Court after elaborate discussion and perusal of the documents decreed the suit in favour of the plaintiffs and the same was confirmed by the First Appellate Court, against which the second appeal has been preferred.

14.At the time of admitting the second appeal, the following substantial questions of law have been framed:

1.Whether the Courts below are right in law in concluding that the suit properties are the self acquired properties of Nagammal especially when PW1 has admitted that the properties have been purchased out of the earning of all the family members and in the light of this admission, the very plea of self acquisition by the respondents would stand belied?

2.Whether the Courts below are right in ignoring the evidence let in by the appellants to prove that the properties have purchased from out of common funds?

15.The learned counsel appearing for the appellants would submit that the suit schedule properties are not self acquired properties of the said Nagammal and the same was purchased from the joint family nucleus funds. The father in law and the husband of the Nagammal were the earning members of the family and the suit schedule properties were purchased from their earnings in the name of Nagammal.

16.The suit schedule properties was partitioned between Karruppiah and Ganesan during the life time of Nagammal in the year 1975. The taxes were paid in the name of Nagammal. After the partition, the defendants have muted the revenue records in their favour. Defendants 1 to 4 are the legal heirs of Karuppiah and defendants 5 to 7 are the legal heirs of the Ganesan.

17.The Trial Court and the First Appellate Court decreed the suit without considering the evidence of PW1 and subsequent patta which stands in the name of appellants concurrently held

in favour of the Respondents/plaintiffs is not a sustainable one. Hence, the appellants / defendants are entitled to succeed the second appeal.

18.The learned counsel for the respondents / plaintiffs would submit that admittedly, the properties stand in the name of Nagammal. When the properties stands in the name of a female member, unless any contra evidence to show that the properties were purchased from and out of nucleus funds of joint family, the legal heirs of the female member are equally entitled to share the properties among themselves.

19.The present case on hand admittedly the properties stand in the name of Nagammal and the revenue records and other Government taxes are paid in the name of Nagammal. The plaintiffs 1, 5 and 6 are the legal heirs of Nagammal and 2 to 4 are the legal heirs of Nagammal's daughter Maruthammal.

20.The defendants did not establish any materials to show that the properties were purchased from and out of the joint family funds. In the absence of any materials, this Court need not interfere with the findings of the Courts below. Accordingly, there is no substantial question of law available in the present case and the second appeal is liable to be dismissed.

21.Heard the learned counsel appearing on either side.

22.On a perusal of the materials, the suit schedule properties stand in the name of Nagammal. The plaintiffs 1,5 and 6 are the legal heirs of Nagammal and the plaintiffs 2 to 4 are the legal heirs of Maruthammal. Karupiah and Ganesan died prior to the filing of the suit. Karupiah's legal heirs are Defendants 1 to 4 and Ganesan's legal heirs are Defendants 5 to 7.

23.During the pendency of the second appeal, the said Sellammal, the first plaintiff died and her legal heirs are impleaded as Respondents 10 to 15. The deceased fifth plaintiff's legal heirs are Respondents 16 to 21 and the deceased sixth plaintiff's legal heirs are Respondents 22 to 24.

24.On a perusal of the materials, the plaintiffs have proved that the properties stand in the name of Nagammal and they have filed Ex.A1 to Ex.A3. Ex.A1 and A2 are the sale deeds purchased by Nagammal and Ex.A3 which is the patta stands in the name of Nagammal. In order to disprove the same, the appellants / defendants have filed four documents and the same have been marked as Ex.B1 to B4 i.e., Kist receipts and patta.

25.On a perusal of the entire materials, the suit properties stand in the name of Nagammal, which is proved by way of Ex.A1 & A2. Other documents are revenue documents which also stand in the name of Nagammal. The appellants / defendants did not produce any documents to show that the suit schedule properties were purchased out of the joint family nucleus funds.

26.In the absence of any documents, mere oral evidence deposed by PW1 is not sufficient to show that the suit properties were purchased from and out of the joint family funds.

27.In view of the above, the suit schedule properties are self acquired properties of Nagammal,

the legal heirs are equally entitled to get their shares on the properties. Hence, I do not find any error or infirmity in the order passed by the Trial Court and the First Appellate Court and the substantial questions of law are answered against the appellants.

28.In the result, the second appeal is dismissed. The Judgment and decree dated 02.02.1996 made in A.S.No.215 of 1990 on the file of the learned Subordinate Judge, Ariyalur, confirming the Judgment and Decree dated 16.04.1990 made in O.S.No.332 of 1987 on the file of the learned District Munsif, Ariyalur, is confirmed. No costs.

WEB COPY

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

kas

To.

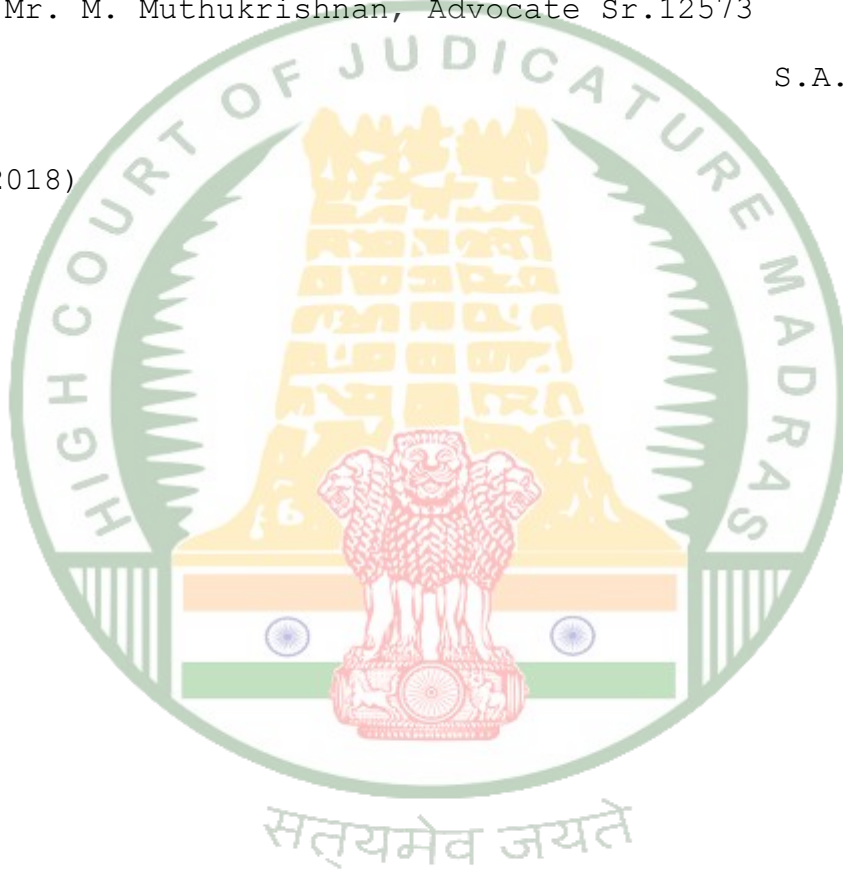
1.The Subordinate Judge,
Ariyalur.

2.The District Munsif,
Ariyalur.

+ 1 cc to M/s. Sarvabhauman Associates Sr.12644
+ 1 cc to Mr. M. Muthukrishnan, Advocate Sr.12573

S.A.No.741/1997

NMI (CO)
EU (02/04/2018)



WEB COPY