

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2018

CORAM:

THE HON'BLE MR.JUSTICE N.SESHASAYEE

S.A.No.59 of 2008
and
M.P.Nos.1,2 and 3 of 2014

Narayanasamy ...Appellant/Respondent/Plaintiff

Vs

1.Ramasamy
2.Munusamy @ Mani
3.Alamelu
4.Thanammal ...Respondents/Appellants/Defendants

Prayer:- Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree on the file of the District Judge, Tiruvannamalai made in A.S.No.26 of 1999, dated 17-10-2006 reversing the Judgment and Decree on the file of the Additional District Munsif No.1, Tiruvannamalai in O.S.No.158 of 1996 dated 03.02.1999.

For Appellant : Mr.P.Jagadeesan

For Respondents: Mr.P.Dinesh Kumar for
Mr. J.Ramakrishnan

JUDGMENT

The plaintiff, who has been successful before the trial Court in a suit for partition that he instituted in O.S.No.158 of 1966, but suffered a decree dismissing the suit before the first Appellate Court in A.S..No.26 of 1999 has come forward with this Appeal challenging the same. Parties would be referred to by their rank before the trial Court.

2. The third defendant is the mother of the plaintiff, defendants 1, 2 and 4. The fifth defendant is the wife of the second defendant. The suit property is described as a plot of

land with a residential house, measuring 4,095 sq.ft. The case of the plaintiff is that he along with defendants 1, 2 & 4 and their father Perumal Naidu constituted a coparcenary, that the coparcenary possessed agricultural properties, that the suit property was purchased in the name of the first defendant, he being the eldest coparcener under Ext A-1=Ext.B-5, dated 12.02.1957, from and out of the income of the other coparcenary properties. This property, hence, partakes the character of a joint family property in which the plaintiff is entitled to 5/16 shares.

3. All the defendants contested the suit, and the second defendant has filed a written statement, wherein it is primarily contended that the suit property is a self acquisition of the first defendant, that it has always been considered as his property, and has been treated thus, that under a sale deed dated 22.12.1964, the first defendant sold a portion of the property that he had purchased under Ext.A-1 to a certain Subramaniaya Gounder (who is not a party to the present suit) and the remaining portion was sold in two parts, first part on 27.01.1991, under Ext. A-1 to the second defendant, and subsequently, on 27.03.1991, the first defendant sold the balance portion to the 5th defendant, the wife of the second defendant.

4.1 The dispute went for trial and before the Trial Court and both sides adduced oral as well as documentary evidence. For the plaintiff, he examined himself as P.W.1, whereas, the first defendant had examined himself as D.W.1. The crucial documentary evidence that are relied on by rival sides are: (a) For the plaintiff, Ext A-1, the sale deed in favour of the first defendant; (b) Exts A-2, A-3 & A-4, all dated 23.07.1958, which Perumal Naidu and his sons had executed in favour of some strangers. The sale deed under which a portion of the suit property was sold by the first defendant to Subramaniaya Gounder was marked Ext A-5. For the Defendants, Exts. B-6 and B-14 are marked, which respectively are the sale deeds, under which, the first defendant had sold separate portion of the suit property to the second defendant and his wife, the fifth defendant.

4.2 On appreciating the evidence, the trial Court has decreed the suit and in its judgment, the trial Court has held that the evidence on record has disclosed the existence of family properties and based on the said finding, it drew an inference that the sale consideration for the purchase of the suit property under Ex A-1 could have been sourced only from the ancestral property, and that the burden is on the first defendant to establish that it was his self acquisition.

4.3 Aggrieved by the same, all the defendants moved the first Appellate Court, which found merit in the defence offered

by the defendants in the written statement and allowed the appeal. The first Appellate Court has reasoned that the sale consideration for the purchase of Ext A-1 could not have been sourced out of the sale proceeds of Exts.A-2, A-3 and A-4, since these sales had taken place after about 18 months since the purchase of the suit property by the first defendant under Ext A-1. So far as the possession of ancestral property is concerned, the first Appellate Court has held that the parties have possessed only about one acre of agricultural land, and it cannot, therefore, be determined as to which property belong to plaintiff's father Perumal Naidu and his brother, and therefore, it cannot be easily inferred that the sale consideration for the purchase of property under Ext. A-1 could have proceeded from the income derived from the ancestral properties.

5.This Second Appeal is admitted on the following substantial questions of law :-

1) Whether or not the suit property is a joint family property, especially, when the Plaintiff proved the existence of joint family property nucleus and the Plaintiff and defendants 1 and 2 jointly executed sale deeds in respect of portions of suit property under Exs.A1 to A5 ?

2) Whether the Lower Appellate Court is right in holding that the suit property is a separate property of D1 ignoring the valuable documentary evidences viz. Exs.A1 to A5 and the 1st defendant failed to prove that he alone discharged the loan mentioned under Ex.A1 ?

3. Whether the first defendant discharged his burden of proof that the suit property is his separate property by letting in any valid evidence ?

6. The learned counsel appearing for the appellant argued that inasmuch as Ext A-5, the sale deed was executed not just by the first defendant, but his other brothers, including the plaintiff in favour of Subramaniam, it is inferable that the suit property is treated as belonging to the first defendant and his brothers. The first defendant need not have included his brothers as parties to the said sale deed, unless they have a subsisting interest in the property sold. Secondly, when the existence of ancestral property is not in controversy or in dispute, it necessarily implies that any acquisition in favour of any of the coparcenars should be presumed to belong to him. Thirdly, so far as the other family properties are concerned, Perumal Naidu and all his sons have jointly executed three separate sale deeds dated 23.07.1958 under Exts.A2 to A4, which would indicate that the family remained joint even after one and half year since the purchase of the suit property under Ext A1.

Since the evidence indicates that the family possessed property even prior to Ext A-1 and the family stood joined after the execution of sale deed under Ext A-1, it has to be presumed that any property purchased in the name of a senior coparcenar should be out of the income from the common nucleus. He also added that the first defendant, who examined himself as D.W.1 had in fact admitted in his testimony that the suit property was not purchased out of his personal income.

7. Per contra, the learned counsel appearing for the respondents argued that a mere proof that the family possessed ancestral property, does not ipso facto lead to a presumption that the property purchased in the name of an individual coparcenar is not his personal property. So far as the evidence in the case goes, he argued that in the cross-examination, the first defendant had deposed that he was a mason, that he had been working since he was ten years old, and this fact was not disputed during his cross-examination. Not even a suggestion was made to the first defendant doubting its veracity. This would imply that the first defendant, indeed was working since his tenth year. Secondly, the suit property was purchased by him when he was around 20 years and the total consideration was only Rs.400/-. This would mean that it does not require considerable amount for the first defendant to purchase the suit property under Ext A-1. When the first defendant could prove his independent source of income, and given the fact that the other family properties were sold at least a year and half after the purchase of the suit property under Ext.A-1, the evidence is too meagre to suggest even remotely that the suit property could have been purchased only out of the income from the joint family property.

8. This Court finds considerable merit in the submission made by the learned counsel for the respondents. As argued by him, the oral testimony of D.W.1 indicates that he has been earning since he was ten years old, and given the fact that the total sale consideration for purchase of the suit property was only Rs.400/-, it could be easily inferred that the suit property was purchased from the first defendant's independent source of income. Now, the onus is on the plaintiff/appellant to establish that the property was purchased from and out of the income derived from the ancestral properties. As has been rightly found by the first appellate court, the sale of the so called ancestral property covered under Exts.A-2 to A-4 sale deeds had taken place long after the purchase of the suit property under Ext.A-1, and hence, the sale proceeds of this sale was of no avail to the plaintiff for him to purchase the suit property under Ext.A-1.

9. There is hardly any material to disagree with the finding of the first Appellate Court and hence all the substantial questions of law herein raised necessarily have to be held against the appellant. There is no merit in this Appeal and it is dismissed. Insofar as the Miscellaneous Petitions are concerned, it is pertinent to mention here, the same have been filed by the appellant/plaintiff to implead the widow of the first defendant, as the first defendant died during the pendency of this Appeal. Given the fact, the first defendant had sold the entire property under Exts.A-5, B-6 and B-14, and given the fact that the appeal itself is now being dismissed, this Court finds that there is no need to implead the widow of the first defendant and accordingly, these three miscellaneous petitions are dismissed as unnecessary. No costs.

tsg/sd

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The District Judge,
Tiruvannamalai.
2. The Additional District Munsif No.1,
Tiruvannamalai.

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1CC TO Mr.R.Jagadeesan, Advocate, SR.No.77363

S.A.No.59 of 2008

Kak(21/03/2019)