

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.02.2018
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.715 of 1999

1.Kandasamy
2.Komarasamy

... Appellants/Plaintiffs

Vs.

1.Valliammal
2.Sengottuvelappan
3.K.Palanivelu
4.Somasundaram
5.Kuppayeeammal

... Respondents/Defendants 2 to 6

Prayer:

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree of the Principal District Judge of Periyar District at Erode dated 28.10.1998 made in A.S.No.83 of 1998 in pursuance of the judgment and decree of the Principal District Munsif of Erode dated 24.02.1998 made in O.S.No.283 of 1996.

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

For Respondents: Mr.T.Murugamanickam
Senior Counsel
for M/s.P.T.Ramadevi

J U D G M E N T

The appellants herein are the plaintiffs in O.S.No.283 of 1996. The respondents herein are the defendants 2 to 6 in O.S.No.283 of 1996. During the pendency of the suit, the first defendant has died.

2.The plaintiffs filed the suit for declaration declaring that the registered settlement deeds dated 20.01.1994 executed by the first defendant under registered document Nos.67, 68 and 69 of 1994 on the file of the Sub-Registrar, Perundurai, are void ab initio and for a permanent injunction restraining the defendants 2 to 5 and their men and agents from interfering with or trespassing into the peaceful possession and enjoyment of the plaint 'A' schedule properties by the plaintiffs. The suit was dismissed by the lower Court. Aggrieved by the same, the plaintiffs filed an appeal before the lower Appellate Court.

The lower Appellate Court dismissed the appeal and confirmed the order of the Court below. Hence, the un-successful plaintiffs who lost the case before both the Courts below have filed the second appeal before this Court.

3.The plaintiffs are sons of the first defendant. The second defendant/ first respondent is the daughter of the first defendant. The defendants 3 to 5/ respondents 2 to 4 are the sons of the second

defendant/ first respondent. The sixth defendant/ fifth respondent is the wife of the first defendant and mother of the plaintiffs and she was impleaded in the suit after the death of the first defendant.

4.For the sake of convenience, the plaintiffs will be hereinafter referred to as per their rank in this appeal namely, appellants and the defendants 2 to 6 will be hereinafter referred to as per the rank in this appeal namely, respondents.

5.The sum and substance of the plaint averments are as follows: The first defendant and the appellants are the members of the joint Hindu family. The first defendant inherited 4.74 acres in G.S.Nos.153/3, 154/6 and 236/8 of Kanjikoil village, Perundurai Taluk from his father Avanashi Gounder. These are ancestral landed properties and they have been shown as 'B' schedule properties. The said ancestral lands are fertile garden lands and included in lower Bhavani Ayacut. The first defendant was raising valuable commercial and other crops in his ancestral lands. The first defendant did not have any avocation except agriculture and he did not have any other independent source of income.

6.The first defendant purchased 'A' schedule properties to an extent of 4.58 acres in G.S.No.303 of Nasiyanoor Village from one Chinna Nallanna Gounder under two registered sale deeds dated 05.05.1956 and 30.06.1959 and an extent of 2.62 acres in G.S.No.131 of Attayampalayam Village in Erode Taluk under registered sale deed dated 19.02.1964 from and out of the productive ancestral nucleus funds.

7.The father of the first defendant namely, Avanashi Gounder had given landed properties to the first defendant besides cash and jewels. The first defendant was in possession and enjoyment of the ancestral lands and raising valuable commercial and cash crops from and out of the income from the ancestral joint family properties described in the 'B' schedule and the first defendant purchased the lands described in the 'A' schedule from and out of the joint family nucleus funds in the name of the first defendant. Hence, the properties described in the 'A' schedule are also joint family properties.

8.The first defendant was the Kartha and Manager of the joint family consisting of himself and the appellants and he was in possession and enjoyment of the properties in 1956 and subsequently also during the minority of the appellants. The first respondent is the only daughter of the first defendant and she was married several decades ago to one Kolandasamy and she was provided with customary seers, dowry and jewels. The respondents 1 to 4 and the husband of the first respondent are scheming and cunning persons.

9.The first defendant became very old and he had no independent advice and taking advantage of the first defendant's old age and physical and mental disabilities, the respondents 1 to 4 and Kolandasamy/ first respondent's husband exercised undue influence over the first defendant and made him to execute three gift settlement deeds dated 20.01.1994 in favour of the respondents 1 to 4 secretly without the knowledge and consent of the appellants.

10.Under registered settlement deed dated 20.01.1994 bearing Document No.67 of 1994, the first defendant gave 2.29 acres in G.S.No.303 of Nasiyanoor Village to respondents 1 and 3, under registered settlement deed dated 20.01.1994 bearing Document No.68 of 1994, the first defendant gave 2.29 acres in G.S.No.303 of Nasiyanoor Village to respondents 1 to 4 and under registered gift settlement deed dated 20.01.1994 bearing Document No.69 of 1994, the first defendant gave 2.62 acres in Attayampalayam Village in Erode Taluk to respondents 1 and 2.

11.The appellants further aver that the first defendant is not competent in law or on facts to throw away the joint family properties in favour of his married daughter and grandsons. There is no legal or moral necessity or justification for the first defendant to squander away valuable joint family properties by means of the so called gift settlement deeds in favour of anyone including the greedy daughter.

12.The appellants further aver that under Hindu Law, no member of Hindu Joint family can make a gift of any portion of the joint family property to anyone and the alleged gift of settlement, without consideration and legal necessity is void abinitio. The donee has no right to take possession of the property and his possession if any will amount to trespass.

13.The appellants further aver that though the 'A' schedule properties stood in the name of the first defendant, the appellants are in possession of the same and the second appellant alone is in exclusive possession of the same. The second appellant has raised groundnut and has recently harvested the same. There are two wells in the land fitted with 5 H.P.

electric motor. While so, taking advantage of the registered settlement deeds, the respondents 1 to 4 are attempting to take possession of the 'A' schedule properties and the same was successfully prevented by the appellants. Hence, left with no other option, the appellants have filed the suit.

14. The sum and substance of the written statement filed by the first defendant and adopted by the other defendants/respondents are as follows: The first defendant admitted the relationship between the parties and the physical features of the 'A' and 'B' schedule properties. The first defendant denied the fact that he was the father Kartha of the joint family and was in possession and enjoyment of the ancestral landed properties and further denied that 'A' schedule properties were purchased from and out of the substantial income derived from the ancestral joint family properties in the 'B' schedule. However, the first defendant admitted that the 'B' schedule properties are ancestral properties.

15. The first defendant further averred that he has been enjoying 6 acres of land in Samigoundanpalayam, Nasiyanur Village, which he has inherited from his maternal grandfather. The first defendant never enjoyed any portion of the 'B' schedule properties and the 'B' schedule properties are still in possession and enjoyment of the first defendant's brothers Sridevi Gounder and Palanisamy Gounder. Infact, the first defendant enjoyed the 6 acres of land in the same village as a tenant of the lands belonging to his brothers Lingappan Gounder and Ramasamy Gounder. Further, the first defendant had enjoyed the properties of Kothukarar Nallasami Gounder of Samigoundanpalayam as a lessee for two years in the year 1962.

16. The first defendant further averred that from and out of the income derived from the lands cultivated under lease and the lands inherited from his maternal grandfather, the first defendant purchased an extent of 4.58 acres in G.S.No.303 of Nasiyanoor Village from one Chinna Nallanna Gounder under two registered sale deeds dated 05.05.1956 and 30.06.1959 and also purchased an extent of 2.62 acres in G.S.No.131 of Attayampalayam Village in Erode Taluk under registered sale deed dated 19.02.1964. The said properties are separate properties of the first defendant and they cannot partake the character of joint family properties.

17. The first defendant further averred that the first respondent was married several decades ago and at the time of marriage, the first defendant did not perform any seers, dowry and jewels, but promised to perform seers by way of giving landed properties. Hence, to keep up his promise, he executed

registered settlement deeds dated 20.01.1994 bearing document Nos.67 to 69 of 1994 in favour of the respondents 1 to 4. Since it is the separate properties of the first defendant, he has every right to execute the settlement deeds.

18.After elaborate trial and considering the materials on record, the lower Court arrived at a conclusion that the 'A' schedule properties are self acquired properties of the first defendant and the same was not purchased from and out of the joint family nucleus funds and dismissed the suit. Aggrieved by the same, the appellants/ plaintiffs preferred appeal before the lower Appellate Court and the lower Appellate Court also dismissed the appeal and confirmed the order of the lower Court. As against the concurrent findings of the Courts below, the plaintiffs/ appellants have filed the second appeal.

19.At the time of admission of the second appeal, this Court framed the following substantial question of law:

"When the existence of joint family nucleus is established in an impeccable manner, whether the Courts below are correct in law in holding that the properties purchased by the "Karthi" of the family with the help of joint family nucleus are not joint family properties?"

20.The learned counsel appearing for the appellants submitted that the appellants are the sons of the first defendant and brothers of the first respondent. Admittedly, 'A' schedule properties stand in the name of their father and 'B' schedule properties are ancestral properties. The only issue raised before this Court is that whether the 'A' schedule properties are purchased from and out of the joint family nucleus funds or not. Admittedly, 'B' schedule properties are joint family properties and the same was enjoyed by the first defendant as Karthi of the joint family and the first defendant purchased 'A' schedule properties in his name. Subsequently, 'A' schedule properties are settled in favour of the first respondent who is none other than the sister of the appellants.

21.The learned counsel appearing for the appellants further submitted that the first defendant alienated the property by way of settlement deed only on the ground that at the time of marriage, the first defendant and the appellants did not perform any seers for the first respondent and in order to keep the promise made by the first defendant at the relevant point of time, the first defendant executed the settlement deeds in favour of the first respondent, which is un-sustainable in law.

22.The learned counsel appearing for the appellants further submitted that in order to substantiate the case, the second appellant examined himself as P.W.1 and in his deposition, he clearly deposed that at the time of marriage, he was minor and the marriage was performed as per the customary practice and seers were given to the first respondent. Apart from seers, cash and jewels were also given to the first respondent. Taking advantage of the first defendant's old age and inability, the first respondents and her sons schemingly convinced the first defendant and grabbed the joint family properties.

23.The learned counsel appearing for the appellants further submitted that the first respondent examined herself as D.W.1 and in her deposition, she has categorically admitted that 'A' schedule properties were purchased from and out of the joint family nucleus funds derived from the 'B' schedule properties and without perusing her deposition and without discussing the above facts, the lower Court as well as the lower Appellate Court held against the appellants, which is un-sustainable and the appellants are entitled to succeed before this Court. Accordingly, he prayed for allowing the second appeal.

24.Per contra, the learned Senior Counsel appearing for the respondents would submit that admittedly 'A' schedule properties stand in the name of the first defendant. During the pendency of the suit, the first defendant passed away. In order to establish the first defendant's case, his two brothers were examined as D.W.2 and D.W.3.

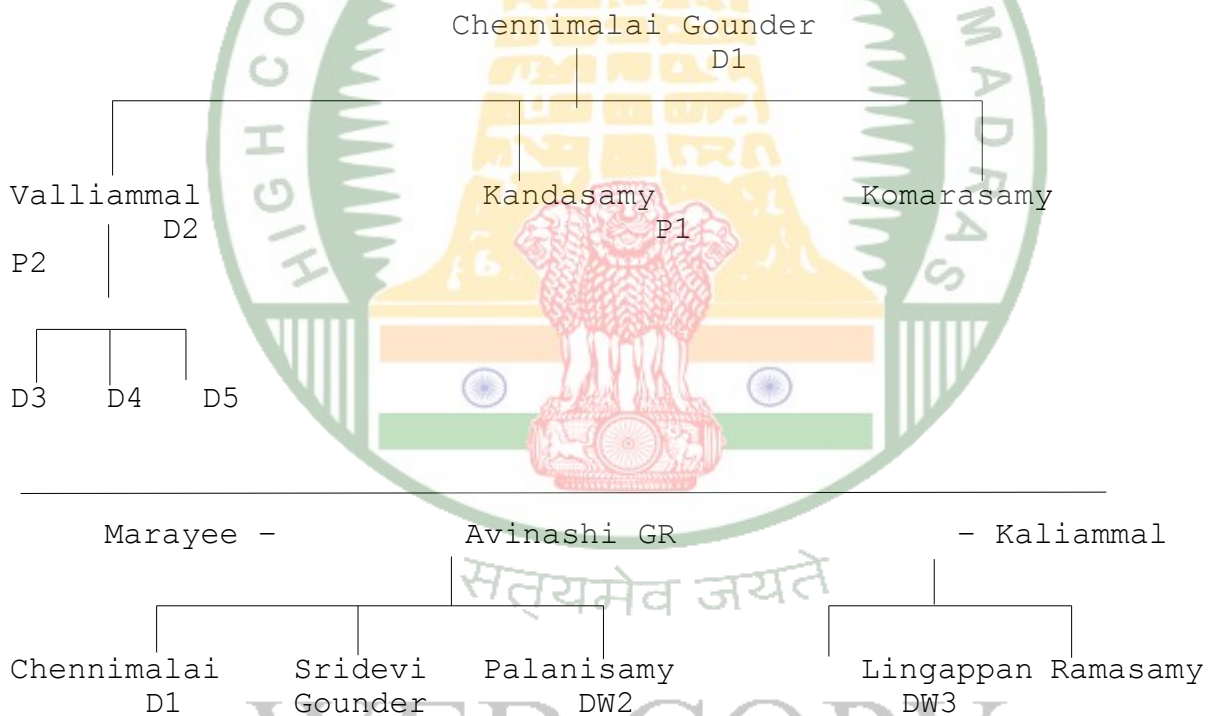
25.The learned Senior Counsel appearing for the respondents would further submit that D.W.2 in his deposition has clearly deposed that they are five brothers including the first defendant. They were enjoying the 12 acres of ancestral properties in Kanchikoil Village. After the death of Avanashi Gounder, his five sons jointly enjoyed the property and they were not partitioned. Even today, the said properties are jointly enjoyed by the brothers of the first defendant. He further deposed that he did not know with regard to the settlement deed executed by the first defendant in favour of the other defendants/ respondents 1 to 4.

26.The learned Senior Counsel appearing for the respondents would further submit that D.W.3 in his deposition has categorically deposed that D.W.1 after marriage enjoyed only Samigoundanpalayam property and not Kanchikoil property and D.W.3 confirmed the deposition of D.W.2 and both categorically held that the ancestral properties were not enjoyed by the first defendant and the ancestral properties are un-partitioned properties and they are still enjoying the common ancestral property.

27.The learned Senior Counsel appearing for the respondents would further submit that no documents were filed inorder to establish that 'A' schedule properties were purchased from and out of the joint family nucleus funds and without any documentary proof or evidence, the lower Court rightly arrived at the conclusion that 'A' schedule properties are self acquired properties and the first defendant is entitled to alienate the same by way of settlement deed. Hence, the well considered findings of both the Courts below need not be interfered with without any basis. Accordingly, he prayed for dismissal of the second appeal.

28.Heard the learned counsel appearing for the appellants and the learned Senior Counsel appearing for the respondents and also perused the materials placed on record.

29.For better appreciation, the genealogy is shown hereunder:



30.Perusal of the above genealogy discloses that the first defendant/ Chennimalai Gounder had two sons namely, Kandasamy and Komarasamy who are the plaintiffs in the suit and one daughter namely, Valliammal/ second defendant in the suit and defendants 3 to 5 are the sons of the second defendant. After the death of Chennimalai Gounder, his wife, the fifth respondent/ legal heir was impleaded as the sixth defendant in the suit. Further, the said Chennimalai Gounder had four brothers namely, Sridevi Gounder and Palanisamy, born to his

mother Marayee and Lingappan, Ramasamy, born to his step mother Kaliammal.

31.The un-disputed facts are that the 'B' schedule properties are ancestral properties and 'B' schedule properties are enjoyed commonly as joint family properties by the appellants and brothers of the first defendant. The only issue raised before this Court is whether the 'A' schedule properties were purchased from and out of the joint family nucleus funds or not.

32.Admittedly, the first defendant purchased 'A' schedule properties under three registered sale deeds dated 05.05.1956, 30.06.1959 and 19.02.1964. The first defendant filed written statement for himself and on behalf of the other defendants and categorically stated that the 'A' schedule properties were purchased by him from and out of the income derived from the lands cultivated

under lease and out of the hard earned money from the 6 acres of land in Samigoundanpalayam, Nasiyanur Village, which he had inherited from his maternal grandfather.

33.It is not disputed that the first respondent has taken care of her parents namely, first defendant/ father and sixth defendant/ fifth respondent/ mother. The first defendant was with her till his lifetime and he died in her house. Though this fact was initially denied by the second appellant/ P.W.1, however, in his cross-examination, he has admitted that his father died in the house of his sister/ first respondent and he performed his last rights in his sister's house.

34.On perusal of the entire records, it is known that the first respondent was married several decades ago and at the time of marriage, the first defendant did not perform any seers, dowry and jewels, but promised to perform seers by way of giving landed properties. Hence, to keep up his promise, he executed registered settlement deeds dated 20.01.1994 bearing document Nos.67 to 69 of 1994 in favour of the respondents 1 to 4. However, the appellants/ plaintiffs have filed the suit for declaration declaring that the settlement deeds are void ab initio.

35.The appellants in order to establish their case had examined one Chinnasamy as P.W.3. P.W.3 is the resident of Kanchikoil and he, in his deposition has deposed that the appellants father Chennimalai Gounder/ first defendant had four acres of land in Kanchikoil and he was enjoying the said land. He further deposed that the said land is Thundukkadu land and is

part of lower Bhavani project. However, in his cross examination, he has deposed that he do not know as to who is enjoying the Thundukkadu land. Hence, on perusal of the deposition of P.W.3, this Court is not able to arrive at the conclusion that 'A' schedule properties were purchased by the first defendant from and out of the joint family nucleus funds.

36. On perusal of the entire records, I do not find any material establishing the appellants case that 'A' schedule properties were purchased by the first defendant from and out of the joint family nucleus funds. Hence, in the absence of any documentary proof or oral evidence, I do not find any error in the findings of the lower Court as well as the lower Appellate Court. Hence, the substantial question of law is answered against the appellants.

37. Accordingly, the second appeal is dismissed. The judgment and decree passed by the learned Principal District Judge, Periyar District at Erode, dated 28.10.1998, in A.S.No.83 of 1998 confirming the judgment and decree passed by the learned Principal District Munsif, Erode, dated 24.02.1998, in O.S.No.283 of 1996, is confirmed. The parties are directed to bear their own costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge, Periyar District at Erode.

2. The Principal District Munsif, Erode.

3. The Section Officer
VR Section,
High Court, Madras-104

+1 cc to M/s.Sarvabhauman Associates sr 12969

+1 cc to M/s.P.T.Ramadevi Advcoate sr 12981

S.A.No.715 of 1999

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