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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.08.2018

PRONOUNCED ON : 26.09.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.Nos.202, 203 and 204 of 2015

- | | |
|--------------------|--|
| 1. S. Bagyalakshmi | ... 1 st Appellant in
S.A. No. 202/2015 and Appellant
in S.A.Nos.203 and 204 of 2015 /
Plaintiff in O.S.No.270/2010/
Defendant in O.S.No.319/2012 |
| 2. S. Senthilkumar | |
| 3. S.Geethanjali | |
| 4. S.Manjubhargavi | |
| 5. S.Kavitha | ... Appellants 2 to 5 in S.A.No.202 of 2015/
Plaintiff in O.S.No.270/2010 |

Vs.

R.K.Subramaniam ... Respondant/Plaintiff in O.S.No.319/2012
/Defendant in O.S.No.270/2010

Prayer: Second Appeals filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 22.09.2014 passed in A.S.Nos. 63, 67 and 68 of 2013 on the file of the Principal District court, Coimbatore, confirming/reversing/reversing the judgment and decree dated 30.04.2013 passed in O.S. No.270 of 2010 and O.S.No. 319 of 2012, on the file of Sub Court, Pollachi respectively.

For Appellants : Mrs.Chitra Sampath, Senior Counsel
for M/s. A.E.Ravichandran

For Respondent : Mr.B. Ramamoorthy



COMMON JUDGMENT

In these second appeals, challenge is made to the judgment and decree dated 22.09.2014 passed in A.S.Nos. 63, 67 and 68 of 2013 on the file of the Principal District court, Coimbatore, confirming/reversing/reversing the judgment and decree dated 30.04.2013 passed in O.S. No.270 of 2010 and O.S.No. 319 of 2012, on the file of Sub Court, Pollachi respectively.

2. The first appellant S.Bagyalakshmi and the appellants 2 to 5 in Second Appeal No. 202 of 2015 had laid the suit in O.S. No.270 of 2010 against the respondent R.K.Subramaniam for partition and permanent injunction. The first appellant S.Bagyalakshmi in Second Appeal No. 202 of 2015 is the wife and the appellants 2 to 5 in Second Appeal No. 202 of 2015 are the children of the respondent R.K.Subramaniam.

3. Seeking partition of 4/5 share to the plaintiffs 2 to 5 and also seeking the relief of permanent injunction, O.S. No.270 of 2010 had been laid by the abovesaid appellants against the respondent and in brief, according to their case, the suit property and other properties originally belonged to Kandasamy Gounder, the father of the respondent and the respondent and one Velusamy are his legal representatives and it is stated that after the demise of Kandasamy Gounder in 1986, the respondent had laid a suit in O.S.No.101 of 1986 for partition and in the said suit, the suit property had been allotted to the respondent's share in the final decree proceeding in I.A. No.193 of 1993 and accordingly the appellants and the respondent were enjoying the suit property in common and jointly and it is stated that the respondent thereafter, since 1997 onwards, started leading a wayward life and not looking after the family and it is only the first appellant who has been looking after the children and also maintaining the suit property and accordingly the revenue records had been mutated in the name of the first appellant in respect of the suit property and it is also stated that as Velusamy, son of Kandasamy Gounder interfered with the possession and enjoyment of the first appellant in respect of the suit property, she had also laid a police complaint against him and it is further stated that the respondent had not cared for the family and also not in the possession and enjoyment of the suit property for several years and it is only the appellants who are in the possession and enjoyment of the suit property. However, without any authority, inasmuch as the respondent attempted to dispossess and interfere with the possession and enjoyment of the appellants in respect of the suit property and as the appellants 2 to 5 are each entitled to 1/5 share in the suit property, accordingly it is



stated that the appellants had been necessitated to lay the suit for the appropriate reliefs as above stated.

4. The respondent had laid the suit for the relief of permanent injunction in O.S.No.319 of 2012 against the first appellant and even therein, the same defence has been set out by the first appellant to resist the abovesaid suit of the respondent.

5. The case of the respondent, both in O.S.Nos.270 of 2010 and 319 of 2012, is that the suit property and other properties belonged to his parents and after the demise of his father, he along with his brother Velusamy and mother Kariammal, were enjoying the properties jointly and admitted that in the partition suit laid by him in O.S. No.101/86, he had been allotted the suit property and accordingly, it is his case that the suit property is his personal property and he is in the possession and enjoyment of the same by paying kists, etc., and after the marriage with the first appellant, it is he who had been enjoying the suit property and also stated that by way of doing the scrap iron business and out of the income earned therefrom, he has purchased the other properties in his name and due to the loss incurred in the said business, he had intended to sell his properties, which stood in his name and as the same was objected to by the first appellant, the relationship between the parties became strained and accordingly the appellants started living separately and inasmuch as the respondent is the absolute owner of the suit property and the same is in his possession and enjoyment, it is his contention that the appellants are not entitled to interfere with his possession and enjoyment of the suit property and accordingly, it is contended by him that the suit for partition laid by the appellants is liable to be dismissed and the suit laid by him for permanent injunction is to be decreed as prayed for.

6. On the abovesaid pleadings, the parties went for trial and it is found that the abovesaid two suits were jointly tried and in support of the appellants' case, PWs1 to 3 were examined and Exs.A1 to A29 were marked. On the side of the respondent, Dws1 and 2 were examined and EXs.B1 to B14 were marked.

7. The trial court, on an appreciation of the materials placed on record, both oral and documentary evidence, determined that the appellants 2 to 5 are not entitled to seek partition in respect of the suit property as prayed for, however, held that the first appellant, being in the possession and enjoyment of the suit property, accordingly, on that premise determined that she is entitled to the relief of permanent injunction as prayed for and resultantly declined the relief of partition prayed for in O.S.No.270/2010 and granted the relief of permanent



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9. At the time of admission of the second appeals, the following substantial questions of law were formulated for consideration.

2) When the wife has established that she is in possession of the property and that the husband is living with another women and the wife is residing and eking her livelihood from the property, whether her possession and enjoyment can be deprived only on the ground that possession follows title?



3) Whether the courts below had properly appreciated the oral and documentary evidence adduced before it for denying the claim made by the appellants?

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10. The relationship between the parties is not in dispute. As per the pleadings set out by the appellants in their plaint in O.S.No.270/2010 and as well as the written statement filed in O.S.No.319/2012, it is noted that the suit property originally belonged to Kandasamy Gounder and it is also noted, as determined by the first appellate court, Kandasamy Gounder married one Nachammal at the first instance and after her demise, had married one Kariammal and it is also seen that through his first wife Nachammal, he had one son by name Palanisamy and through his second wife, he had two sons, namely the respondent and Velusamy. It is not in dispute that Kandasamy Gounder died in the year 1985. As per the materials placed on record, particularly from Exs.B1 and B2 sale deeds, it is noted that Kandasamy Gounder had purchased 7.36 acres under Ex.B1 and a similar extent of land had been purchased in the name of his wife Kariammal under Ex.B2 sale deed, both together, it is found that an extent of 14.72 acres had been acquired under the abovesaid sale deeds. It is also not in dispute that the respondent had laid the suit in O.S.No.101/1986 against Velusamy and Kariammal, his brother and mother for partition and in the said suit, it is seen that as per the decree passed therein, the suit property had been allotted to the respondent and his brother had been allotted the other property. The mother Kariammal had been only monetarily compensated by both the sons.

11. Following the dispute between the appellants and the respondent, which need not be gone into detail, it is found that they are not residing together and living separately and accordingly as above noted, the litigation had been preferred by the parties concerned as against each other as above discussed.

12. The main basis for the relief of partition sought for by the appellants is that the suit property is the ancestral property of the respondent and the appellants and accordingly, the appellants 2 to 5 are entitled to 1/5 share each in the suit property. The abovesaid case of the appellants had been resisted by the respondent by contending that the suit property is the separate property of the respondent, he, having been allotted the same in the partition suit laid by him in O.S.No.101 of 1986 and further according to him, the suit property having been acquired by the father Kandasamy Gounder, leaving behind the respondent and the other son Velusamy and mother Kariammal as his legal heirs and accordingly it is the case of the respondent that the property derived by him through



his father in the partition suit in O.S.No.101 of 1986 is the separate property of the respondent and such being the position, according to him, the appellants 2 to 5 are not entitled to seek any share in the suit property on the footing that the suit property is the ancestral property of the parties.

13. As rightly found by the first appellate court, the appellants seem to have based the case for partition on the premise that the suit property had been acquired out of the sale proceeds of the ancestral property effected in 1930s. The suit property had been acquired in the year 1978. Therefore, to say that, by way of the sale proceeds of the ancestral properties effected during 1930s, the suit property had come to be acquired in the year 1978 as such is found to be highly improbable and unacceptable. Furthermore, there is no plea or material placed by the appellants that the respondent's family had ancestral properties and the same had been alienated and the sale proceeds of the said alienation was the source of acquiring the suit property during 1978. Furthermore, though the appellants would claim that the so called ancestral properties had been alienated during 1930s, however, with reference to the same, as determined by the first appellate court, there is no material forth coming worth acceptance. In such view of the matter, when the appellants have failed to establish the existence of ancestral nucleus as well as the factum of alienation of the ancestral nucleus during 1930s and also the factum of the sale proceeds of the ancestral nucleus being the source for the acquisition of the suit property during 1978 by placing acceptable and reliable materials, the case projected by the appellants that the suit property is the ancestral property, as such, cannot be countenanced in any manner.

14. Similarly, the plea put forth by the appellants that the suit property had been acquired by way of the sale proceeds of the properties made under Exs.A3 to A5, also cannot be accepted, when it is noted that the property alienated by way of Exs.A3 to A5 are the self acquired properties of Kandasamy Gounder. Thus, when the properties comprised in Exs.A3 to A5 are found to be the self acquired properties of Kandasamy Gounder, even assuming for the sake of arguments, the consideration received there from had been utilised for acquisition of the suit property during 1978, even then, as rightly determined by the first appellate court, the character of the suit property acquired by Kandasamy Gounder by way of Exs.B1 and B2 would not get altered into as ancestral in nature and in such view of the matter, it is found that the appellants have miserably failed to establish that the suit property is the ancestral property of the respondent and the appellants.



15. Knowing fully well that the appellants had been unable to place any material worth acceptance to buttress their case of the suit property being ancestral in nature, it is seen that, accordingly, in this second appeal, the senior counsel appearing for the appellants laid stress only on the so called admission of the respondent in the pleading projected by him in O.S.No.101 of 1986. It is found that the certified copy of the plaint filed in O.S.No.101 of 1986 has been marked as Ex.A6 and the certified copy of the reply statement filed by the respondent in the said suit has been marked as Ex.A7 and on that footing, it is strenuously argued by the learned senior counsel for the appellants that inasmuch as the respondent in the abovesaid pleading had categorically admitted the character of the suit property as the joint family property, according to her, the courts below, without considering the same in the right perspective, erred in holding that the suit property is the separate property of the respondent and accordingly contended that the judgment and decree of the courts below are liable to be set aside.

16. On a perusal of Exs.A6 and A7, it is found that the respondent in the abovesaid suit in the plaint, had stated about the acquisition of the property by Kandasamy Gounder by way of Exs.B1 and B2 and accordingly also pleaded that the property acquired by Exs.B1 and B2 belonged to the joint family consisting of the respondent, Velusamy and Kariammal, the defendants in O.S.No.101 of 1986 and also pleaded that after the death of Kandasamy Gounder in the year 1985, it has been so treated and enjoyed by the members of the family. Similar is the plea taken by him in the reply statement marked as Ex.A7 that the properties left by Kandasamy Gounder are of the joint family properties. On that reasonings, it is argued by the learned senior counsel for the appellants that inasmuch as the respondent without any ambiguity had admitted the character of the suit property as the joint family property of the family of Kandasamy Gounder, accordingly contended that the courts below should have held that the suit property is only the ancestral joint family property of the appellants and the respondent and on that basis should have granted the relief of partition as prayed for by the appellants in respect of the suit property. In this connection, she placed reliance upon the decisions reported in

(2013) 9 Supreme Court Cases 419 (Rohit Chauhan Vs. Surinder Singh and others)

(2006) 12 Supreme Court Cases 552 (Avtar Singh and others Vs. Gurdial Singh and others)

1969 SCC OnLine Mad 62:(1970) 83 LW 736:(1971) 1 Mad LJ 429 (V.Devaraj vs. Jayalakshmi Ammal (decds) and



others.

(2007) 14 Supreme Court Cases 63 (Thimmappa Rai vs. Ramanna Rai and others).

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In other words, according to the appellants' counsel, when the admission by a party in the earlier proceeding is the best evidence, the court should have taken into consideration the same and rejected the case of the respondent projected for stifling the case of the appellants.

17. Per contra, it is contended by the respondent's counsel that whatever be the nature of the pleas put forth by the respondent in O.S.No.101 of 1986, it is argued by him that the character of the property cannot be determined on that basis, but the character of the property could only be determined as how the same devolved from the original owner and accordingly it is stated by him that when there are materials placed to hold that the suit property had been acquired only by Kandasamy Gounder by way of Exs.B1 and B2 and when there is no material to hold that Kandasamy Gounder had ancestral property and with the aid of the said ancestral property, he had acquired the suit property in question and with reference to the same, the appellants had failed to establish their case by placing acceptable and reliable material, according to the respondent's counsel, in such view of the matter, the devolution of the property from Kandasamy Gounder to his legal heirs would only flow under Section 8 of the Hindu Succession Act, 1956 and not by way of Section 6 of the Hindu Succession Act, 1956 and accordingly when the property is found to be devolved upon the respondent by allotting the suit property to his share in O.S.No.101 of 1986, the suit property would only assume the character of the self acquired property of the respondent and can never be treated as the ancestral property and for the abovesaid preposition, he would rely upon the decisions reported in

(2011) 11 Supreme Court Cases 483 (Saroja v. Santhilkumar and others)

2017 MHC 1573 CDJ (Subramanian V. Sambandam & others)

2017 MHC 3904 CDJ (M.Mani V. B.Mathan & others)

2017 MHC 1178 CDJ (N.M.R.S. Santaprakash v. N.M.R. Siva & others)

CDJ 2017 MHC 6168 (Balakrishnan & others v. Selvi & others)



CDJ 2017 MHC 2630 (K.K.Anbazhagan & another v. C.Kumar & another)

Further contending that the revenue records projected by the appellants cannot be the basis for maintaining the relief of permanent injunction ipso facto and when the suit property is the self acquired property of the respondent, according to the respondent's counsel, in such view of the matter, possession following title, accordingly argued that the first appellant cannot obtain the relief of permanent injunction as against the true owner of the suit property, namely the respondent and accordingly, the appellants having no title in respect of the suit property, on the other hand, it is only the respondent who has title over the suit property, in such view of the matter, contended that the first appellate court is justified in declining the relief of permanent injunction prayed for by the first appellant and justified in granting the relief of permanent injunction as prayed for by the respondent in O.S. No.319 of 2012 and in this connection placed reliance upon the decisions reported in

2015 (3) MWN (Civil) 36 (G.Balakrishnan and another v. K.Jayalakshmi)

2015 (2) MWN (Civil) 689 (Selvarathinathammal v. R.Rajeswari)

2014 (4) CTC 653 (Kuruvamani and others v. A.Muthu and others)

2014 (2) CTC 421 (Ratna Kounder v. Annamalai and others)

18. As rightly put forth by the respondent's counsel, the admission of the respondent in O.S.No.101 of 1986 as regards the character of the property, would not, in any manner, determine the character of the property. The character of the property would only be determined based on the devolution of the property from the original owner and accordingly, when ample materials have been placed to evidence that the suit property had been acquired only by the father Kandasamy Gounder and the respondent found to have acquired the suit property from Kandasamy Gounder, no doubt, by levying the partition in O.S.No.101 of 1986, in such view of the matter, when the devolution of the property in favour of the respondent and his brother Velusamy had taken place by virtue of Section 8 of the Hindu Succession Act, 1956, and as above discussed, when the appellants have miserably failed to establish the ancestral character of the suit property as projected by them and when the pleas projected by them for determining the ancestral character of the suit property are



found to be highly improbable and unacceptable as above noted and as rightly determined by the courts below, in such view of the matter, the pleas made by the respondent in O.S.No.101 of 1986, would not, in any manner, alter the position of the character of the suit property. Accordingly, when it is found that the devolution of the property had taken place under Section 8 of the Hindu Succession Act, 1956, amongst the class-I heirs at the instance of the court proceeding, it could be seen that the suit property would only acquire the character of the self acquired or the separate property of the first respondent and not as the joint family property of the first respondent and his family members, namely, the appellants and the position of law has been discussed in the decision reported in 2017-2.L.W.343 (M.Palaniappan & another vs. Nachimuthu) and in the abovesaid decision, this court had taken into consideration the various pronouncement of the Apex Court, in particular, the decision of the Apex court reported in 2016-4-L.W. 309 and it is also noted in the said decision, though the decision relied upon by the appellant reported in (2013)9 Supreme Court Cases 419 had been considered by the Apex Court in the decision reported in 2016-4-L.W. 309, the Apex Court had distinguished the abovesaid decision relied on by the appellant's counsel by holding that in the abovesaid decision, there was no consideration of the effect of Sections 4,8,19 and 30 of the Hindu Succession Act, 1956, accordingly, it has been found that the self acquired property or joint family property, once they get devolved in accordance with Section 8 of the Hindu Succession Act, 1956, on principles of intestacy, the joint family property ceases to be the joint family property in the hand of the various persons, who have succeeded to it as they hold the property as tenants in common and not as joint tenants. The position of the law on the abovesaid aspect has been outlined in the abovesaid decision as follows:

20. It could be seen that as per the provisions of Hindu Succession Act,1956, considering the devolution of interest under Section 8 of the Hindu Succession Act, 1956 amongst the Class-I heirs, the properties derived by the first defendant from his father could only be treated as his separate properties and not as the joint family properties and not as the joint family properties of the first defedant and his son Viz. the second defendant. To the above position of law, there are ample authorities and a perusal of the decisions reported, which have been cited by the counsel for the defendants, would go to show that the properties derived by the first defendant from his father could only be treated as the separate properties of the



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first defendant and not as the joint family properties of the first defendant and his son viz., the second defendant. In this connection, a useful reference may be made to the decisions reported in AIR 1979 MADRAS 1 (The Additional Commissioner of Income-tax, Madras-1 v. P.L.Karuppan Chettiar), 1993 Supp (1) Supreme Court cases 580 (Commissioner of Income Tax v. P.L.Karuppan Chettiar), (1987) 100 L.W. 347 = (1986) 3 supreme Court cases 567 (Commissioner of Wealth Tax, Kanpur and others v. Chander Sen and others), 2008-2-L.W 424 = (2008) 3 supreme court cases 87 (Bhanwar Singh v. Puran and others) and the latest decision 2016-4-L.W. 309 = (2016) 4 supreme Court cases 68 (Uttam v. Saubhag Singh and others). A perusal of the abovesaid decisions would go to show that when the son inherits the property, as per Section 8 of the Hindu Succession Act, 1956, he does not take it as Kartha of his own undivided family, but take it in his individual capacity. Therefore, the position of law being above as adumbrated by our High Court and the Apex Court in the abovesaid decisions, the contention of the defendants' counsel that the suit properties are the joint family properties of the defendants 1 and 2 cannot at all be countenanced in any manner.

21. However, still not losing hope, the defendants' counsel pressed into service, the decision reported in 2013-4-L.W. 672=(2013)9 Supreme Court Cases 419 (Rohit Chuhan Vs. Surinder Singh and Others). Though the abovesaid decision may lend support to his contention, however, the abovesaid decision is also taken note of in the decision reported in 2016-4.L.W. 309 = (2016) 4 Supreme Court Cases 68 (Uttam V. Saubhag Singh and Others) and the Apex Court has distinguished the abovesaid decision relied on by the defendants' counsel by holding that in the abovesaid decision, there was no consideration of the effect of Sections 4,8, 19 and 30 of the Hindu Succession Act, 1956. Therefore,, it could be seen that on a conjoint reading of Sections 4,8,19 and 30 of the Hindu Succession Act, 1956, it could be seen that if the self acquired property or joint family property, once they get devolved in accordance with Section 8 of Hindu Succession



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Act, 1956, on principles of intestacy, the joint family property ceases to be joint family property in the hand of the various persons, who have succeeded to it as they hold the property as tenants in common and not as joint tenants.

19. In the light of the abovesaid position, it is seen that the suit property could only be determined as the self acquired property of the respondent and therefore the so called admission said to have been made by the respondent in O.S.No.101 of 1986, would not, in any manner, tilt the scales in favour of the appellants for determining the character of the suit property as otherwise i.e., ancestral, as sought to be projected by the appellants.

20. In the light of the above discussions, the so called admission of the respondent in O.S.No.101 of 1986, as regards the character of the property, would not, in any manner, enure to the benefit of the appellants, particularly for determining the character of the property in dispute and when the appellants have failed to establish the ancestral character of the suit property, it is seen that the courts below are justified in negating the relief of partition prayed for by the appellants.

21. As regards the possession and enjoyment of the suit property, it is found that, when the appellants are found to be not the owners of the suit property at any angle, on the other hand, when it has been found that it is only the respondent who has title to the suit property as his separate and self acquired property and when the materials had been placed by the respondent to evidence that he is in possession and enjoyment of the suit property, as rightly determined by the first appellate court, considering the nature of the suit property, on the legal presumption that possession follows title and the appellants projecting the case of possession and enjoyment of the suit property based on mutation of revenue records in their favour, however, when the appellants are not entitled to seek the relief of permanent injunction against the true owner, namely the respondent and when the respondent is found to be entitled to be in the possession and enjoyment of the suit property, accordingly the grant of relief of permanent injunction in favour of the respondent and declinment of relief of permanent injunction prayed for the first appellant by the first appellate court, in my considered opinion, do no warrant any interference.

22. For the reasons abovestated, it is found that the courts below, on an appreciation of the oral and documentary evidence projected in the matter rightly, particularly, the first appellate court had considered the import of the oral and



documentary materials projected in the matter in the right perspective and on an analysis of the same, both factually as well as legally, determined the lis of the parties and therefore, the judgment and decree of the first appellate court dismissing the appellants' suit and decreeing the suit of the respondent, do not warrant any interference. Accordingly, the substantial questions of law formulated in these second appeals are answered against the appellants and in favour of the respondent.

23. In conclusion, all the second appeals are found to be devoid of merits and accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bga

To

1. The Principal District Judge, Coimbatore
2. The Subordinate Judge,
Sub Court, Pollachi.

Copy To: The Section Officer,
V.R.Section,
High Court, Madras.

+3 cc to Mr.A.E.Ravichandran, Advocate Sr.No.66523
+1 cc to Mr.B.Ramamoorthy, Advocate Sr.No.66404

Judgment in
S.A.No.202 to 204 of 2015

NGI (CO)
CSL/28.01.2019