

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.01.2018
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1956 of 2000

1. Kavitha
2. Minor Kumudham.S .. Appellants

-Vs-

1. Ramasamy Gounder
2. C.Palanisamy
3. Natarajan
4. Karuppana Gounder
5. Ponnammal
6. V.M.Subramaniam
7. M.K.Ayyavu
8. Kittappa Mudaliar
9. A.Angappan
10. Easwaramoorthi Gounder
11. K.P.Subramaniam
12. Shanthamani
13. P.S.Kadirvel
14. P.A.Senniappan
15. Karuppana Gounder
16. Palanisamy .. Respondents

Prayer:

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree in A.S.No.161 of 1998 dated 25.03.1999 on the file of the I Additional District Judge-cum-Chief Judicial Magistrate, Erode confirming the judgment and decree in O.S.No.550 of 1991 dated 20.03.1998 on the file of the Principal Sub-Court, Erode

For Appellants : Mr.V.Kadirvel
for Ms.P.T.Ramadevi

For Respondents : Mrs.Mythili
for M/s.Sarvabhaumann Associates
for R2 - 5,10,14,15 & 16.

for R1, 6 to 9 & 11 to 13 are set
exparte in lower court.

J U D G M E N T

The unsuccessful daughters of the first defendant filed a suit for partition and separate possession by metes and bounds of the schedule mentioned property. The appellants/plaintiffs who lost the case before the courts below filed this present second appeal as against the concurrent judgment.

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

(i) The plaintiffs are the daughters of the first defendant, the plaintiff's are living with their mother, the next friend herein at their maternal grandfather's house. The properties described in the schedule are the ancestral joint family properties of the plaintiffs and the first defendant. The plaintiffs being the co-parcener are entitled to 1/3 share each in the family properties as per the provisions of the "Hindu Succession Act" (Tamil Nadu) Amended Act of 1989.

(ii) The first defendant and his four brothers entered into a Registered Partition regarding their joint family properties on 04.02.1975. In the said partition, the properties described in 'E' schedule was allotted to the share of first defendant. Subsequently, on 03.02.1975, the mother of the first defendant and three sisters executed a deed of relinquishment with regard to their right in the family property in favour of the first defendant and his four brothers. The father of the first defendant died in or about 1964.

(iii) The first defendant married the plaintiffs' mother about 20 years of the date of filing of the suit. Since, the lands were not yielding sufficient income, the first defendant sold the ancestral properties in the year 1982. Thereafter, he was doing business in the agricultural products from the amount received by the sale of the ancestral properties. The first defendant also purchased the suit properties out of the money he received from the sale consideration of the ancestral property. Except the said amount, the first defendant has no source of income. So, the suit properties is the ancestral joint family properties of the plaintiff and the first defendant. Accordingly, the plaintiffs are entitled to equal share with the 'E' schedule properties, which was purchased from the ancestral nucleus fund.

(iv) The first defendant was properly looking after the family and its properties till the birth of the second plaintiff, who is a female child and the first defendant wanted a male issue. Thereby, the first defendant is upset and started the habit of drinking liquors and addicted to alcoholic. Resultantly the first defendant neglected the family and also

its properties. Since, his income is insufficient to meet his illegal and immoral activities, he borrowed amounts from various persons. In view of the unbearable cruelty, the plaintiffs' mother took the plaintiffs' to her father's house and they are living there for the past six years.

(v) The plaintiffs came to know that the first defendant obtained loans from the defendants 13 to 16 for his illegal and immoral activities and also learnt that the defendants 13 to 16 filed suits against the first defendant and obtained ex parte decree. The first defendant did not take care about contesting the suits and allowed the suits to be decreed ex parte itself is clear for the kind of life the first defendant is leading. After obtaining the ex parte decree the defendants 13 to 16 are bringing the entire family properties to court auction sale to realise their money due. The defendants 13 to 16 have no manner of right to bring the entire properties including the 2/3rd shares of the plaintiffs. The plaintiff suspect that the first defendant might have induced the defendants 13 and 14 to bring the share of the plaintiffs are also for sale. The activities of the first defendant is in detrimental interest of the minors. Aggrieved by the same, the plaintiffs filed the suit for partition and separate possession of the suit property.

3. The sum and substance of the written statement filed by the third defendant are as follows:-

The third defendant purchased a portion of the Item No.1 of the suit properties from one Kaliappan for valuable consideration. His vendor Kaliappan was one of the partners of Gogula Kannan Finance along with the first defendant and others in which the first defendant was the Managing Partner. The said Kaliappan got the portion from the third defendant by way of settlement of accounts of the finance partnership from the first defendant. The third defendant has purchased a portion of Item No.1 of the suit properties for valuable consideration from Kaliappan without notice of the plaintiffs claim. The third defendant is a bonafide transferee. In the event of a decree for partition being passed in favour of the plaintiffs, this defendant prays that in equity the portion sold to this defendant may be allotted to the share of the first defendant.

4. The sum and substance of the written statement filed by the fourth defendant are as follows:-

(i) The fourth defendant deny the allegation made in the plaint, in fact the plaintiffs' and her mother always residing only in Vellariveli along with the first defendant and the fourth defendant. He further denied that the suit properties are the ancestral joint family properties of the plaintiffs and the plaintiffs are not co-parceners as alleged in the plaint. They are not entitled to any share in the suit properties. The suit properties are only separate and self acquired properties of the

first defendant, and the fourth defendant also denied that the suit properties were purchased out of the sale consideration of the ancestral properties. The ancestral properties were sold for the purpose of clearing the debts due to Kambuliampatty Land Mortgage Bank and other Sundry debts. Even, the sale profit is not sufficient to discharge his debts, and he had no surplus at all from and out of the sale price of the ancestral properties. In fact, after alienating the ancestral properties, the first defendant settled at Vellariveli from Kunnathur.

(ii) He started a small business by conducting chits, then he started a finance company in the year 1985 with his friend and he, received deposits from others and started money lending business. Out of the deposits he received, he purchased the properties. Infact, the debts of the first defendant were incurred by him for his business purposes, for purchasing lands and for constructing a pucca residential house at Vellariveli. The fourth defendant is further aware that the defendants 2,5 to 10 and one Kaliappan were partners of Gokula kannan Finance of which, the first defendant was the managing partner and Item No.1 of the suit properties were purchased by the first defendant out of the capital contributed by the other partners in his own name. He was the Managing Partner and this defendant and other partners wanted to retrieve from the Finance partnership on account of mismanagement by the first defendant and when they demanded settlement of their accounts, the first defendant executed sale deeds in favour of the other partners by way of settlement of accounts. As such the plaintiffs are not entitled to claim any share in Item No.1 of the suit properties and they are not entitled to question the sales in favour of this defendant and other partners.

5. Almost the written statements of 13, 15 and 16 are as like as the statement filed by the fourth defendant, which was adopted by 2, 5 and 10. Particularly, the averments of the fourteenth defendant are as like as other defendants. Except, on 08.02.1987 the first defendant borrowed a sum of Rs.20,000/- from this defendant for the purpose of completing the construction of his house and also for purchasing other lands. Thus, the suit properties were purchased by the first defendant one after another from out of the amounts borrowed and that he earned. Not a pie from the sale price of the ancestral lands was utilised for the purchase of the suit properties. The entire suit properties therefore are the separate and self acquired properties of the first defendant. The plaintiffs' mother are fully aware of all these facts and that the amount he borrowed from this defendant are fully utilised for completing the construction of the house in Item No.IV of the suit schedule properties and for the purchase of land properties. No portion of the amount borrowed from this defendant was used by the first defendant for any illegal or immoral purposes. Since the

borrowing by the first defendant were true and repayable by him, the first defendant allowed the suits filed against him to be decreed ex parte. The debt borrowed from this defendant has matured into a decree in O.S.No.302 of 1989 and this defendant has levied execution thereof in E.P.R. No.122 of 1991.

6. In any event, the debt due to this defendant has been incurred by the first defendant as father and Manager of the family for family benefit and necessities and therefore, the entire suit properties are liable to satisfy the debts of the first defendant. In order to defeat the rights of the defendants, the plaintiffs and the first defendant are colluding and it is only on the instigation of the first defendant, the next friend of the minor plaintiffs has filed this suit with the intention to delay and defraud the decree debt due to this defendant.

7. At the time of admission of the second appeal, this court has framed the following substantial questions of law:

"1. Have not both the Courts below committed an error of law in holding that debts were borrowed for binding purposes by the father?

2. Have not both the Courts below committed an error of law in not holding that the creditors and alienees of property have established legal necessity to support the same?"

8. The learned counsel appearing for the appellants admitted that the first defendant held the ancestral properties. The said ancestral properties were sold in the year 1982 for the valuable sale consideration of Rs.24,000/-. Out of Rs.24,000/-, the first defendant purchased the property by sale deed dated 01.03.1985 and 16.04.1986, it shows that the sale consideration is very minimum and that is not exceeding Rs.15,000/-. However, the ancestral properties were sold for Rs.24,000/- that itself shows, that the properties were purchased out of the nucleus fund of the joint family. Other properties were also purchased from the business, which was invested by the first defendant through the sale consideration of the ancestral property. Hence, the entire properties are joint family properties.

9. Accordingly, the plaintiffs are entitled to equal 1/3rd share with the first defendant. The plaintiffs are minors and without obtaining the court permission as required under Section 8 of the Hindu Minority and Guardianship Act, alienating the properties in favour of the defendants, is not sustainable in

law. Even if there was debts incurred by the first defendant, it cannot bind on the plaintiffs and the properties which were sold in favour of the defendants 2 to 10 will also not bind on the plaintiffs. Hence, the plaintiffs are entitled to 1/3rd share of the schedule mentioned properties.

10. The learned counsel appearing for the respondents/defendants submitted that the ancestral properties which was sold in the year 1982, i.e., after 3 years for clearing the debts were obtained from the first defendant from banks and other persons. Even after the sale consideration, it is not sufficient to clear the debts borrowed by the first defendant. Initially the first defendant lived in Kunnathoor and thereafter, he shifted to Vellariveli and started Finance Company. After starting the Finance Company, all the properties were purchased from the depositors money and other partners money. Infact, the first defendant constructed a pucca house in Vellariveli and huge amounts was spent for construction of the said property. All these facts were known to the plaintiffs mother and the plaintiffs mother clearly deposed in her witness as P.W.1. There was a categorical admission by the P.W.1 that the first plaintiff's marriage was performed by the first defendant and the plaintiff's mother in a lavish manner and all the properties were sold with the consent of the plaintiffs mother.

11. On perusal of the exhibits, which was marked by the plaintiffs itself shows that the ancestral properties were sold in the year 1982. Other three properties which was marked as exhibits A2, A3 and A4 were purchased in the year 1985 and 1986. Thereafter, two properties were sold by the first defendant in the year 1988 and again another one property was purchased on 02.09.1985. Thereafter, other three properties were sold by the first defendant. Thus, the transactions itself shows that all the properties are self acquired properties and acquired through his business namely Gokula kannan Finance Company. In order to clear the debts due to the partners and other depositors, the properties were sold by the first defendant with the consent of the plaintiffs' mother. In order to defeat the rights of the defendants, the plaintiffs and the first defendant colluded themselves and filed a vexatious suit for partition and both the courts concurrently held in favour of the defendants. The well considered Judgment need not be interfered with the second appeal. Accordingly, he prayed for dismissal of the second appeal.

12. On perusal of the Judgment of the courts below and the documents filed by the plaintiffs, clearly establish the case of the defendants. Admittedly, the ancestral properties were sold in the year 1982 and subsequently, in the years 1985 and 1986, three properties were purchased by the first defendant. Thereafter, he sold the two properties and again he purchased

one property in the year 02.09.1985, thereafter he sold other three properties.

13. On perusal of the transactions all the properties were acquired and the P.W.1 categorically admitted that the first defendant has started finance company in the name of Gokula kannan, in which the first defendant acted as a Managing Partner and other defendants acted as partners of that Company and the sale deeds were executed in favour of the partners in order to clear the debts. The P.W.1 has also admitted that there was a pucca house constructed in the Vellariveli by the first defendant, for which, he has spent huge money for constructing the said house. The P.W.1 categorically admitted that the marriage was solemnised by his brother. However, on perusal of the Exhibit B4, it is seen that the marriage was solemnised by the first defendant. The voter list and all those things establishes that the plaintiffs' mother is living with the first defendant in the Vellariveli. Perusal of the entire records, shows that all the properties were acquired by the first defendant as self-acquired properties through the finance depositors money and the partners money.

14. In view of the above, I do not find any error in the judgments passed by the courts below. Accordingly, the substantial questions of law are answered against the appellants/plaintiffs. In the result, the second appeal is dismissed by confirming the order of the lower court as well as the lower appellate court. The parties are directed to bear their own costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

msvm
To

- 1.The I Additional District Judge-cum-Chief Judicial Magistrate, Erode.
- 2.The Principal Sub-Court, Erode.

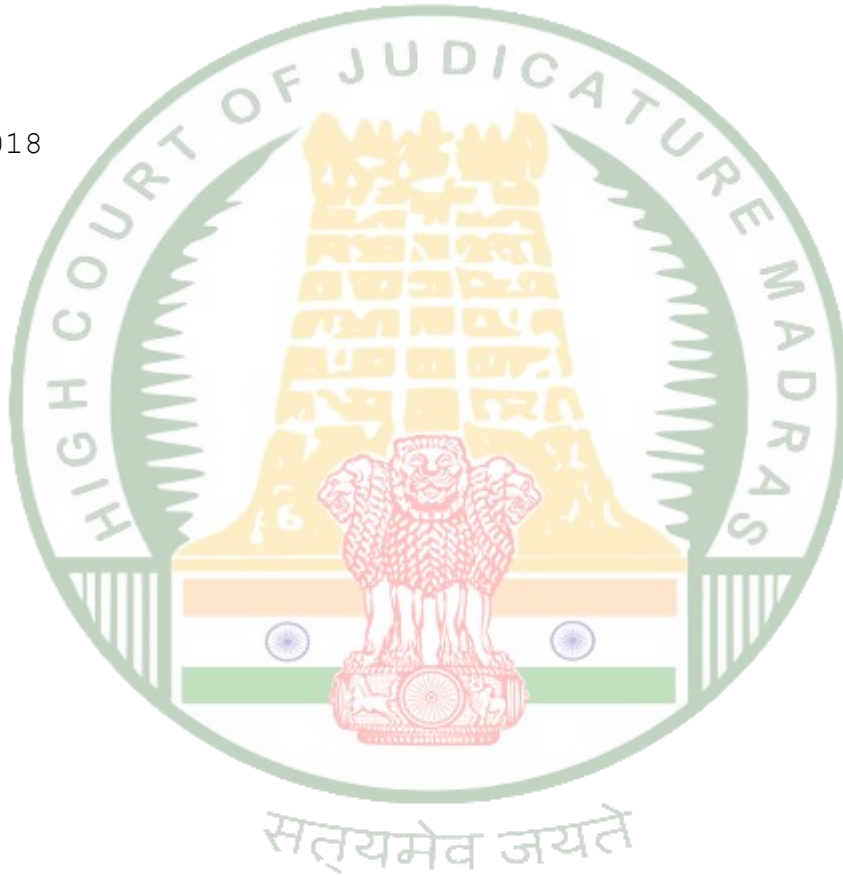
copy to

The Section Officer
VR Section
High Court, Madras(+2 copies)

+1 cc to M/s.Saravabhauman Associates sr 7192
+1 cc to Ms.P.T.Ramadevi Advocate sr 6910

S.A.No.1956 of 2000

ks (co)
aa26/02/2018



WEB COPY