

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :20.09.2018

PRONOUNCED ON:29.10.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN
S.A.No.390 of 2015
and
M.P.No.1 of 2015

1.Dhanalakshmi

2.Selvanayagi ... Appellants/ Respondents/ Appellants

Vs.

1.Ramasamy

2.Venkatesan ... Respondents/Appellants/Defendant 1 & 3

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 20.09.2013 in A.S.No.01 of 2013 on the file of the III Additional District and Sessions Judge, Cuddalore at Vriddhachalam reversing the judgment and decree dated 21.07.2011 in O.S.No.153 of 2009 on the file of the Principal Subordinate Court, Vriddhachalam.

For Appellants : Mr.L.Palanimuthu

For Respondents : Mr.R.Agilesh

J U D G M E N T

Challenge in this Second Appeal is made to the judgment and Decree dated 20.09.2013 passed in A.S.No.01 of 2013 on the file of the III Additional District and Sessions Court, Cuddalore at Vriddhachalam reversing the judgment and decree dated 21.07.2011 passed in O.S.No.153 of 2009 on the file of the Principal Subordinate Court, Vriddhachalam.

2. The Second Appeal has been admitted on the following substantial questions of law.

(a) Whether the court below is correct in not appreciating the fact that the properties in the name of the first respondent were purchased from the income out of the joint family properties?

(b) Whether the court below is correct in finding that the suit properties are self acquired properties of first respondent without proof of any income?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. Suffice to state that the plaintiffs have laid the suit against the defendants for partition on the footing that the suit properties as described in the plaint schedule are the ancestral properties of the plaintiffs and the first defendant i.e., the suit properties are the ancestral properties of the plaintiffs' grandfather Nallathambi Padayachi and having acquired from the income derived from the ancestral properties and accordingly inasmuch as, the plaintiffs are entitled to a share in the suit properties as detailed in the plaint and the first defendant without acceding to the claim of partition to the suit properties as put forth by the plaintiffs, and had attempted to convey the suit properties in favour of the other defendants without any authority, it is stated that the plaintiffs have been necessitated to lay the suit for appropriate reliefs.

5. The defendants have challenged the case of the plaintiff and contended that the suit properties are not the ancestral properties of Nallathambi Padayachi as put forth in the plaint and on the other hand, it is the specific case of the defendants that the suit properties are the separate and self acquired properties of the first defendant in which the plaintiffs are not entitled to lay any claim of right or partition as such and accordingly it is stated that by way of various sale deeds, the first defendant had acquired the suit properties and also acquired one item of the suit properties through his mother and therefore the suit properties cannot be termed and characterized as the ancestral properties of the plaintiffs and the first defendant as projected in the plaint and therefore the plaintiffs are not entitled to obtain any share in the suit properties and the suit is therefore liable to be dismissed.

6. Based on the materials placed on record by the respective parties, the trial court was pleased to accept the plaintiffs' case. However, the first appellate court reversed the judgment and decree of the trial court and dismissed the suit laid by the plaintiffs.

7. As abovenoted, the plaintiffs have based their suit for partition and claiming share in the suit properties on the footing that the suit properties are the ancestral properties of Nallathambi Padayachi and derived with the income received from the ancestral properties. However, despite the challenge put to the same by the defendants, the plaintiffs have not placed any material worth acceptance to establish that the suit properties are the ancestral properties of the parties as put forth in the plaint. Other than Exs.A1 to A4 patta, the plaintiffs have not placed any material to hold that the family of the first defendant or the family of Nallathambi Padayachi had ancestral properties and out of income derived from the ancestral properties, they had acquired the suit properties and other properties and thereby the suit properties are the ancestral properties of the parties as stated in the plaint. On the other hand, as rightly determined by the first appellate court, considering the sale deeds projected in the matter by the defendants marked as Exs.B1 to B5 as well as the sale deed standing in the name of the first defendant's mother Sivamalai Ammal marked as Ex.B6 and the patta standing in the name of the first defendant marked as Ex.B8, it is found that as rightly held by the first appellate court, the suit properties are only the self acquired properties of the first defendant and not the ancestral joint family properties of the plaintiffs and the first defendant as put forth by the plaintiffs. When the documents projected in the matter clearly point out that it is only the first defendant who had acquired the suit properties by way of the various sale deeds and also derived one item of the suit properties through his mother and in such view of the matter, the party who is asserting the ancestral character of the suit properties should establish the same by adducing acceptable and reliable evidence. Merely because the family is joint, that by itself, would not lead to the presumption that the properties held by any member of the joint family are the joint family properties and on the other hand, the onus of proof, at the first instance, is upon the plaintiffs to establish that the properties are the joint family ancestral properties as put forth by them. In such view of the matter, when there is no material placed on record by the plaintiffs to hold that Nallathambi Padayachi's family owned ancestral properties and the alleged ancestral

properties were contributing income, and out of the said income, the other suit properties had been acquired and on the other hand, when it is seen that the suit properties had been acquired by the first defendant on his own through the various sale deeds projected in the matter and through his mother, in all, as rightly determined by the first appellate court, the suit properties could only be determined to be the separate properties of the first defendant. Accordingly, it is seen that the patta also stands only in the name of the first defendant in respect of the suit properties.

8. Furthermore, even the witnesses examined on behalf of the plaintiffs as P.Ws.2 to 4 are unable to throw any clear picture as to the ancestral character of the suit properties as projected in the plaint and on the other hand, it is seen that they are unaware of the character of the suit properties and accordingly, the first appellate court on an appreciation of their evidence in the right perceptive held that their evidence would not in any manner advance the case of the plaintiffs for claiming partition.

9. The plaintiffs would however, rely upon the Will dated 30.11.2009 marked as Ex.B9 wherein there is a reference about the acquisition of the properties by the first defendant through the partition deed effected on 13.01.1967. However, when it is the case of the plaintiff that the first defendant had acquired the properties only by way of oral partition amongst his brothers, the reference about the partition deed dated 13.01.1967 in Ex.B9 Will would not in any manner be useful to sustain the plaintiffs' case. Furthermore, on a reading of the recitals contained in Ex.B9 Will, it is seen that the first defendant had clearly averred about the self acquisition of the suit properties in detail and in such view of the matter, it cannot be held that the suit properties had been acquired by the first defendant by way of the partition dated 13.01.1967 and therefore, it is seen that as rightly held by the first appellate court, the recitals contained in Ex.B9 Will would not in any manner support the case of the plaintiffs.

10. As rightly put forth by the defendants, there is no presumption of a property being joint family property merely on account of the existence of the joint Hindu family, and the plaintiffs having come forward that the suit properties are the joint family and ancestral properties, it is for them to prove the same, particularly, when the suit properties are found to be independently acquired by the first defendant and in such view of the matter, the case of the plaintiffs that the suit properties

are the joint family ancestral properties of the plaintiffs and the first defendant and therefore, they are also entitled to a share in the same cannot be countenanced and accordingly it is seen that the first appellate court had rightly rejected the plaintiffs' case. In such view of the matter, the first appellate court is right in holding that the suit properties are the self acquired properties of the first defendant and further right in holding that the plaintiffs had failed to establish that the suit properties are the joint family ancestral properties of the plaintiffs and the first defendant and also rightly concluded that the plaintiffs are not entitled to claim any share in the suit properties and in such view of the matter, the dismissal of the plaintiffs' suit by the first appellate court do not call for any interference. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiffs and in favour of the defendants.

11. The defendants' counsel placed reliance upon the decision reported in AIR 2003 Supreme Court 3800 [D.S.Lakshmaiah and another Vs. L.Balasubramanyam and another] The principles of law outlined in the above said decision are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

12. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Sd/-

Assistant Registrar(Ccc)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The III Additional District and Sessions Judge,
Cuddalore at Vriddhachalam.

2. The Principal Subordinate Court, Vriddhachalam.

Copy to

The Section Officer,
VR Section,
High Court, Chennai.

+1cc to Mr. Al.Gandhimathi, Advocate SR.No. 74983

S.A.No.390 of 2015
and

M.P.No.1 of 2015

ASK(19/12/2018)