IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

A.S.No.607 of 2018
and
C.M.P.No.15968 of 2018

1.Rajathi
2.Amudha .. Appellants/Plaintiffs 1 & 2

.Vs.

Mr.Raju Padayachi (died)
1.Muthuvel
2.Ravichandran
Palani (died)
3.Dhanalakshmi
4.Udayakumar
5.Selvakumar
6.Arul
7.Padmavathi
8.Mala
9.Minor Dhivya
D/o. Palani,
Vazhuthalampattu and Post,
represented by mother/next friend Mala,
W/o. Palani, Vazhuthalampattu and Post,
Kurinjipadi Taluk,
Cuddalore District.
10.Sundaramurthi
11.Vaithiyalingam
12.Devaki .. Respondents/
Defandants 2,3,5 to 13 &
3rd Plaintiff

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PRAYER:
Appeal against the Judgment and Decree dated 28.03.2018 passed in O.S.No.23 of 2012 by the learned 1st Additional District Judge, Cuddalore.

For Appellants : Mr.D.Baskar

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JUDGMENT

(Judgment of the Court was delivered by N.KIRUBAKARAN, J.)

The appeal suit has been filed against the partial decree granted by the trial Court, granting 1/8th share of item No.7 of the "B" schedule property as it is an ancestral property of the parties and against the dismissal of the suit in respect of other properties filed by the daughters of one Mr.Raju Padayachi.

2.The facts of the case are as follows:

According to the appellants, their brothers & sisters and father/Mr.Raju Padayachi constituted a joint Hindu family and coparcenary, enjoying large extent of lands. Pursuant to the oral partition among themselves, the 'B' schedule properties of the suit fell to the share of 1st defendant. The 1st defendant, who is no more now, is the father of the appellants as well as defendants 2 to 4. Therefore, 'B' schedule properties are the ancestral properties of the father of the parties viz., Mr.Raju Padayachi.

3.The further case of the appellants is that their father viz., Mr.Raju Padayachi, appellants and the other sons constituted a joint Hindu family. In view of the amendment to Hindu Succession Act with effect from 09.09.2005, the appellants are coparceners and they have got equal rights in the joint family properties. Therefore, the suit for partition has been filed seeking 1/8th share to each of the appellants and to each of defendants 2 to 4.

4.A written statement has been filed by 2nd defendant adopted by defendants 3 to 8 stating that Mr.Raju Padayachi inherited only item No.7 of the 'B' schedule property of the suit, by way of inheritance from the ancestors and all other properties were purchased by Mr.Raju Padayachi, the father. There is no right available to the appellants as all the properties except item No.7 of the 'B' schedule property of the suit are self acquired properties of Mr.Raju Padayachi. Further, Mr.Raju Padayachi settled the properties in favour of defendants 2 to 4 on 14.03.2007, 07.09.2007 and 06.09.2007. Subsequently, some of the properties were also sold in favour of D12 and D13. At no point of time, the appellants were in possession of the property.

5.Based on the pleadings stated above, the following issues were framed by the trial Court:

"(1)Whether the suit properties are joint family properties?

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(2)Whether the Settlement deeds dated 14.03.2007, 06.09.2007 and 07.09.2007 are true, valid and binding on the parties?

(3)Whether the sale deed dated 29.06.1965 binds the parties?

(4)Whether the details of the 17th item of the suit schedule properties is incorrect as mentioned in paragraph No.6 of the counter statement?

(5)Whether the plaintiffs were in possession of the suit properties at the time of filing of the plaint?

(6)Whether the plaintiffs are entitled to get 3/8th share of the B schedule property and separate possession as stated in the prayer, ?

(7)What are the other reliefs, which can be given to the plaintiffs?

The additional issues framed on 12.02.2018 are as follows:

1.Whether the 12th respondent is entitled to get 8th and 9th items of the suit schedule property by way of equity?

2.Whether the 13th respondent is entitled to get 2nd to 5th items of the suit schedule property by way of equity?"

6.On the side of the plaintiffs/appellants, the first appellant examined herself as PW1 and PW2 & PW3, independent witnesses were examined to prove that the properties are ancestral properties of Mr.Raju Padayachi. They exhibited three documents, which were marked as Ex.A.1 to Ex.A.3.

7.On the side of the defendants, the second defendant R.Muthuvel and independent witnesses DW2 to DW5 were examined. Apart from that, subsequent purchasers D12 and D13 were examined as DW6 and DW7 and as many as 35 documents were exhibited. It is an admitted fact that Mr.Raju Padayachi is the father of the appellants as well as defendants 2 to 4. It is also admitted by defendants 2 to 11 that the only property, which was inherited by Mr.Raju Padayachi from his ancestors, is item No.7 of the 'B' schedule property. Hence, based on the admission, the trial Court granted 1/8th share of the property in item No.7 of the B schedule property.

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8.As far as other properties are concerned, the appellants only adduced oral evidence. No documents were exhibited on their side to show that they are ancestral properties, inherited by Mr.Raju Padayachi. They did not produce any document to show that the property was purchased by their ancestors or settled in their favour. It is the plaintiffs, who have to prove their case by positive evidence. Except marking of the pattas, Ex.A.1 (s) and copies of A registers as Ex.A.2(s) and Ex.A.3, A Registers standing in the names of 1st and 3rd defendants, admittedly, no other documents were produced. In the absence of any proof regarding the contention of the appellants that all the properties were inherited by Mr.Raju Padayachi from their ancestors, the trial Court dismissed the suit except item No.7 of the 'B' schedule property.

9.Moreover, it is the contention and evidence of DW1 (2nd defendant) that Mr.Raju Padayachi was a merchant dealing with groundnut and millet at Kullanchavadi and he purchased all the properties as proved by Ex.B.1 to Ex.B.7 sale deeds. Therefore, the trial Court rightly found that the property except item No.7 of the B schedule property are self acquired properties of Mr.Raju Padayachi.

10.Further, the properties were subsequently settled by deceased D1 viz., Mr.Raju Padayachi, in favour of D2, D3 and D4 which have been marked as Ex.B.8, Ex.B.9 and Ex.B.10 respectively. Therefore, it is found by the trial Court that the owner, the deceased Mr.Raju Padayachi settled the properties in favour of his sons. Based on the above documents, the trial Court found in respect of Issue No.1 that the properties except item No.7 of the 'B' schedule suit property, all other properties are self acquired properties of Mr.Raju Padayachi and they are not joint family properties.

11.As far as Issue No.2, as to whether the settlement deeds dated 14.03.2007, 07.09.2007 and 06.09.2007 executed by Mr.Raju Padayachi in favour of his sons are true, valid and binding on the parties, is concerned, the trial Court relied upon the documents executed by Mr.Raju Padayachi viz., Ex.B.8, Ex.B.9 and Ex.B.10 and Ex.B.30. All the documents are registered documents. DW1 (2nd defendant) had spoken about the settlement deeds. DW2, DW3 and DW4 who were all witnesses to those settlement deeds, spoke about the execution of settlements made by Mr.Raju Padayachi in favour of his sons viz., D2 to D4. Moreover, settlement deeds have not been challenged by the appellants and therefore, the trial Court rightly found that the settlement deeds dated 14.03.2007, 07.09.2007 and 06.09.2007 are genuine and valid.

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12.Hence, the finding reached by the trial Court that the settlement deeds are valid and genuine is based on evidence available. Moreover, the trial Court also took into consideration the mutation of records in favour of D2 to D4 and therefore, Issue No.2 was rightly decided in favour of defendants (2 to 11) and against the appellants.

13.As far as Issue No.3, the settlement deed dated 29.06.1965 would bind all the parties or not is concerned, the trial Court found that the said document is valid and is binding on all the parties as the defendants (2 to 11) marked the said sale deed dated 29.06.1965 as Ex.B.5, having been executed by one Mr.Sarangabani in favour of Mr.Raju Padayachi, conveying the title in respect of items 6, 10 and 11 of the suit schedule property. The only document to prove that the properties were purchased by Mr.Raju Padayachi is Ex.B.5 which was marked by the defendants. Moreover, there is no challenge to the sale deed dated 29.06.1965 by the appellants. There could not have been any challenge by the appellants and any challenge would violate their rights also. Therefore, the trial Court rightly decided the issue holding that the sale deed is valid and binding on the parties and decided against the appellants.

14.As far as Issue No.4, regarding the extent of item 17 of the suit schedule property is correct or not is concerned, the trial Court relied upon Ex.A.1 Patta marked by appellants and rightly found that the extent given by the appellants is correct as there is no other contra evidence available on the side of defendants (2 to 11). Therefore, the said issue was rightly decided by the trial Court.

15.As far as issue No.5, as to whether the appellants were in possession of the properties is concerned, the trial Court relied upon the settlement deeds dated 14.03.2007, 07.09.2007 and 06.09.2007, in favour of respondents 2 to 4 and subsequent execution of sale deed dated 04.02.2008 in respect of item 10 by defendants 6 to 8 in favour of one Mr.Sivalingam through Ex.B.23 and execution of sale deed dated 06.03.2008 in respect of item No.11 of the 'B' schedule property through Ex.B.24 by defendants 6 to 8 in favour of one Mr.Jeyapal, the trial Court held that the plaintiffs were not in possession of the properties.

16.Moreover, the said Mr.Jeyapal and Mr.Sivalingam have not been made as parties in the suit. Item Nos. 26 and 28 of the suit schedule properties were sold to one Mr.Madhiyazhagan, through Court proceedings through Ex.B.25. Further, the said Mr.Madhiyazhagan executed the sale deed in respect of the said property in favour of D5 through Ex.B.26. Similarly, the 5th defendant executed a sale deed in respect of the property comprised in Survey No.150/4B-5A through Ex.B.20 in favour of 3rd

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defendant. Thereafter, through Ex.B.21 sale deed dated 08.04.1992, the 3rd defendant executed a sale deed in favour of the 2nd defendant.

17.The 3rd defendant subsequently purchased a property from 2nd defendant through sale deed dated 11.07.2007 which has been marked as Ex.B.22. The trial Court also found that Ex.B.20, Ex.B.21, Ex.B.22, Ex.B.25 and Ex.B.26 have not been reflected in the plaint. Further , through Ex.B.31, item Nos. 8 and 9 of the 'B' schedule suit property were sold to 13th defendant and patta was also transferred in his name through Ex.B.35. In respect of items Nos.2, 3, 4 and 5 of the suit schedule properties, 12th respondent got sale deeds as early as in 2008 itself through Ex.B.32 and pattas have been changed in his name through Ex.B.33. Based on the above facts, the trial Court rightly found that the appellants have not been in possession of the properties.

18.The additional issues framed by the trial Court as to whether 12th defendant is entitled to items 8 and 9 of the suit schedule property on equity and similarly, 13th defendant in respect of item Nos.2 and 5 of the suit schedule property on equity, the trial Court, taking into consideration, the purchase of the properties by Mr.Raju Padayachi from various parties and subsequent execution of settlement deeds in favour of his sons, who sold the properties in favour of D12 and D13 through Exs.B.31 & B.32, the trial court found that the said defendants are entitled to the properties rightly.

19.As far as Issue No.6, as to whether the plaintiffs are entitled to 1/8th share of the 'B' schedule property and other reliefs are concerned, the trial Court, based on the documents executed by defendants 2 to 11, rightly found that all the properties except item No.7 of the 'B' schedule property are self earned properties of Mr.Raju Padayachi, who settled the properties in favour of his sons/defendants 2 to 4. Therefore, the trial Court rightly found that all the properties are self earned properties of Mr.Raju Padayachi and no evidence was adduced by the appellants to prove that the suit properties are joint family properties, except item No.7 of the 'B' schedule property. Therefore, the said issues are also answered against the appellants.

20.The trial Court rightly found based on the admission made by defendants 2 to 11 that item No.7 of the 'B' schedule property alone is the ancestral property of Mr.Raju Padayachi had rightly granted 1/8th share to each of the appellants. Therefore, there is no infirmity or illegality in the decree and Judgment passed by the trial Court.

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21.Hence, the appeal fails and the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

ay/sai

To

1. The Ist Additional District & Judge,
   Cuddalore.

+1cc to Mr.D.Baskar , Advocate, S.R.No.76569

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